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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ LPA 695/2018 & CM APPLs. 51841-43/2018

ALL INDIA PUNJAB NATIONAL BANK OFFICERS ASSOCIATION ..... Appellant

Through: Mr. Rajiv Garg with Mr. K. K. Aggarwal, Mr. Aayush Agrawal, Mr. Suneet & Mr. Ashish Garg, Advs.

versus

UNION OF INDIA & ANR ..... Respondents

Through: Ms. Khushboo Aggarwal, Adv. for R-2/PNB.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE V. KAMESWAR RAO

O R D E R

% **11.12.2018**

CM APPL. 51843/2018 *(exemption)*

Allowed, subject to just exceptions.

CM APPL. 51842/2018 *(condonation of delay)*

In view of the reasons stated in the application, delay in filing the appeal is condoned.

The application stands disposed of.

LPA 695/2018 & CM APPL. 51841/2018

1. Seeking exception to an order dated 07.08.2018 passed by the writ court in W.P.(C) 1387/2016, this appeal has been filed under Clause 10 of the Letters Patent.

2. The Association in question challenged a communication dated 12.10.2015 by which in the matter of nomination of officer employees representative and workmen representative as Directors under the

Nationalized Banks (Management and Miscellaneous Provisions) Scheme, 1970 (hereafter referred to as "the Scheme"), it has been indicated that the person to be nominated in the category should have at least three years of residual service as on the date vacancy on the Board of Directors appeared. *Inter alia* contending that this condition stipulated is contrary to the statutory scheme, the writ petition was filed.

3. The learned writ court examined the statutory scheme, found that it only contemplates nomination of a Director in the category as indicated hereinabove vide Clause (e) and (f) of sub-section (3) of Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (hereafter referred to as "the Act") and finding that there is no stipulation with regard to the period of service in the scheme, the rationale for the circular was examined and it has been upheld by the Court by recording the following reasons in Para 9 and 10:

> *"9. There is no dispute that the said procedure needs to be followed, thus, the right of the association of employees to furnish a panel of names for being considered for nomination as a director is not curtailed in any manner. The only requirement imposed is that the names of persons sent by the association should have at least three years of residual service. The rationale for such requirement is obvious: the term of the board of directors is three years and, therefore, any person nominated as a director is required to serve on the board for a period of three years. He is also required to be an employee of the bank. It is not in dispute that if the person appointed as a director under Clause (f) of sub-section (3) of Section 9 of the Act ceases to be the employee of the bank, he would also automatically demit the office as a director. Therefore, if the petitioner sends a panel of names of persons who do not have three years residual of service, the said persons would be unable to serve for their entire term as directors. Thus, this*

Court is unable to accept that the said condition is arbitrary or in any manner unreasonable. On the contrary, insisting on appointment of persons that the petitioner knows would be unable to serve the entire term would not only result in the nominee director having a truncated term but would also result in respondent no.1 repeating the entire process of nomination. Plainly, the petitioner has no right to insist on the same.

10. The contention that the impugned communication is contrary to the Scheme is also unmerited. Whilst the learned counsel for the petitioner is correct that the Scheme does not expressly indicate that the panel of persons suggested by the petitioner for appointment of directors must have a minimum residual service of three years, it does not prohibit such qualification either. In terms of Section 9(2) of the Scheme, directors referred to in clause (f) of sub-section 3 of Section 9 of the Act are to hold an office for a term not exceeding three years and also eligible for re-nominations. However, in terms of proviso to Section 9(2) of the Scheme, no director shall hold an office continuously for a period exceeding six years."

4. Even though learned counsel for the appellant vehemently argued that a statutory scheme could not be amended in the manner done by an executive order and placed reliance on the following two judgments in support thereof, namely, *All India Bank Officers' Confederation v. Union of India,* AIR 1989 SC 2045 and *Sant Ram Sharma v. State of Rajasthan,* AIR 1967 SC 1910, we are of the considered view that the aforesaid contention of the appellant - Association is wholly misconceived. There is no amendment to the scheme as canvassed by the appellant. The scheme only stipulates the procedure to be followed and the essential qualifications required for nomination of a Director, both in the category of employee officer and a workman, under the Industrial Disputes Act, 1947. However, by the impugned instruction/circular, only the residual period of service

which should be available to an employee to be nominated is indicated. The rationale for the same is that once a person is nominated, he should continue in the Board at least for three years and if a person with less service is nominated, it would require re-nomination before the period is over. That being the rationale and there being nothing to indicate that this is contrary to the statutory scheme, the learned writ court has refused to interfere into the matter.

5. In our considered view, the scheme being silent with regard to the stipulation contained in the impugned instruction, the impugned instruction only supplants the requirement of the statutory scheme and this being permissible in law the learned writ court has not committed any error in dismissing the writ petition. The contention of the appellant – Association that the instruction runs contrary to the statutory scheme is wholly misconceived, in fact, there is no amendment to the scheme as alleged and therefore we find no merit in the appeal. The judgments relied upon by the appellant are not applicable in the facts and circumstances of the present case for a simple reason that they pertain to acts done contrary to the statutory scheme. In this case, there is nothing to indicate that the instruction is contrary to any provision of the scheme. Accordingly, in our considered view, the judgments are not applicable.

6. The appeal is dismissed. The pending application also stands disposed of.

CHIEF JUSTICE

V. KAMESWAR RAO, J

DECEMBER 11, 2018/kks