

CWP-26931-2013 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-26931-2013 (O&M)

Date of Decision: February 25, 2019

Parshotam Singh

... Petitioner

vs.

The Registrar Cooperative Societies, Punjab, Chandigarh and Ors

.. Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. J.S.Toor, Advocate, for the petitioner.

Ms. Ambika Sood, Deputy Advocate General, Punjab.

Mr. I.S.Saggu, Advocate, for respondent No.2.

ARUN MONGA, J

The present petition has been filed for issuance of a writ in the nature of *certiorari* to quash the reference of dispute (Annexure P1) for arbitration under Section 55 of the Punjab Cooperative Societies Act, 1961 (for short 'the Act').

2. Learned counsel for the petitioner submits that the arbitration proceedings are not maintainable as the matter is squarely covered under Section 54 of the Act, *ibid*.

3. Per contra, the pointed stand in the reply filed by the respondent-bank is that no enquiry has been conducted under Section 54 of the Act, *ibid*, and, therefore, the entire prayer in the present writ petition is misplaced.

4. Having heard learned counsels for the parties, I am of the view that the present writ petition has been filed pre-maturely.

5. A bare perusal of impugned order dated 28.12.2012 (Annexure P2) reflects that the same has been passed in pursuance of the departmental proceedings, wherein, a charge-sheet was issued to the petitioner. An enquiry was directed to be conducted on the said charges, report whereof Annexure P5 was furnished. The petitioner has been exonerated by the Inquiry Officer of the charge of fraud and based thereon, the disciplinary authority, vide order dated 28.12.2012 (Annexure P2) took a lenient view against him and the allegations qua the petitioner were filed.

6. Thereafter, the matter has been referred for arbitration proceedings under Section 55 of the Act, *ibid*, vide reference (Annexure P1) which is under challenge before this Court.

7. Learned counsel for the petitioner vehemently contends that the arbitration proceedings could not have been initiated, as order dated 28.12.2012 (Annexure P2) has been passed under Section 54 of the Act. He submit that once the petitioner has been exonerated in the proceedings under Section 54, the respondent/bank is estopped from invoking arbitration proceedings under Section 55 of the Act.

8. I am unable to accept the said argument advanced by learned counsel for the petitioner. As already noticed, the impugned order dated 28.12.2012 (Annexure P2) has been passed in departmental proceedings and not under Section 54 of the Act, *ibid*.

9. It is settled proposition of law that the scope and ambit of proceedings under Section 55 of the Act is much wider than Section 54 and the Society/respondent/bank has the option either to invoke proceedings under Section 54 or Section 55, depending upon the nature of the case.

10 In the present case, the bank has opted to proceed for referring the matter to Arbitrator under Section 55, by filing an application and not for action under Section 54, *ibid*.

11. In view this, I hold that the contention of learned counsel for the petitioner is misplaced and is to be rejected.

12. Learned counsel for the petitioner has relied upon the judgment rendered by this Court in case titled as **Laiq Singh vs. State of Punjab, 1997 (2), R.C.R (Civil), 245.** The relevant extract thereof is reproduced herein below.

“A cursory and superficial reading of Sections 54 and 55 together may suggest that Section 54 is in the nature of a special provision dealing with cases of wrongful payments, deficiency in the assets of the Society by breach of trust or wilful negligence or mis-appropriation or fraud by officers or employees entrusted with the organization and management of the Society as against general provisions contained in Section 55 for adjudication of disputes touching the constitution, management or the business of a Co-operative Society. However, a minute examination of the two provisions shows that in reality two options are available to a Society and the departmental authorities to initiate action against a person who is connected with the management or the organization of the Society. Ambit and scope of Section 55 is wider than of Section 54. In our opinion, when two options/remedies are available to the Society and the departmental authorities, they are entitled to elect any one of them and mere fact that action initiated under Section 55 by way of reference of dispute relates to allegation of embezzlement or fraud by officers or employees discovered in the course of audit, inquiry, inspection or winding up of the Society will not render the proceedings as without jurisdiction on the ground that

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actions could have been initiated under Section 54.”

13. What has been held is that if a person is proceeded against under 54 and is exonerated, then proceeding under Section 55 cannot be resorted against him on the same cause. I have already held that the proceedings against the petitioner were not under Section 54. The said judgment is, therefore, not applicable in the present case.

14. Even otherwise, learned counsel for the respondent(s) contends that Section 55 merely envisages reference of the dispute to arbitration for award, the final award is passed under Section 56 of the Act and the same is appealable under Section 68 of the Act, *ibid*. In this case, award has not yet been passed and this petition is premature.

15. I am in agreement with the contention of learned counsel for the respondent/bank and hold that the present writ petition has been filed prematurely. The same is, accordingly, dismissed.

16. The petitioner is, however, at liberty to join the arbitration proceedings and seek appropriate recourse under the Act, *ibid*.

February 25, 2019
smriti

(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No