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

+ W.P.(C) 11648/2018 and C.M. No.44998/2018

JAIN COOPERATIVE BANK LTD. Petitioner

Through: Mr. Rajesh Gogna, Mr. Kamaldeep &
Mr. P. Upendra Sai, Advocates.

versus

SHRI PUNEET JAIN Respondent

Through: Mr. S.K. Jain & Mr. Akshu Jain,
Advocates.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE REKHA PALLI

ORDER
15.04.2019

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1. Learned counsel for the respondent has appeared upon issuance of notice. We have heard submissions of learned counsels.
2. The petitioner bank has assailed the order dated 20.07.2018 passed by the Delhi Cooperative Tribunal (DCT) in Appeal No. 101/2016/DCT arising out of Arbitration Case No.1673/AR/ARB/17-18. The DCT has rejected the said appeal preferred by the petitioner and affirmed the arbitral award made by the learned Arbitrator under Section 70 of the Delhi Cooperative Societies Act on 14.04.2016. The claim raised before the Arbitral Tribunal by the respondent was with regard to his claim for earned leaves; medical leaves; five annual increments with arrears and interest; his promotion from the post of Clerk-cum-Cashier to the post of Recovery Officer as legal and

valid; and challenge to the letter dated 29.06.2015 issued by the petitioner reverting the respondent from the post of Recovery Officer to that of Clerk-cum-Cashier.

3. The prime defence of the petitioner before the Arbitral Tribunal was based on a directive issued by the Registrar of Cooperative Societies (RCS) to Rule 77 of the Delhi Cooperative Societies Rules to the effect that the employees of cooperative societies should acquire Diploma in Cooperative Management from a designated university. According to the petitioner bank, the respondent had not obtained the said diploma – either when he was appointed in the year 2001, or thereafter. The aforesaid directive was issued on 18.06.2004, and even thereafter, the respondent had not acquired the said diploma.

4. Before the Arbitral Tribunal, the respondent had asserted that he had, in fact, obtained the Diploma in Cooperative Management in the month of February 2003, i.e. much before the issuance of the directive by the RCS.

5. The Arbitral Tribunal did not find the action of the petitioner bank in reverting the respondent from the post of Recovery Officer to the post of Clerk-cum-Cashier, to be justified, and consequently allowed the claim of the respondent. The Tribunal has also not found favour with the appeal preferred by the petitioner.

6. Learned counsel for the petitioner has sought to place reliance:

(i) Firstly, on the order dated 31.12.2014 passed by the RCS declaring the decision of the Board of Directors of the petitioner bank to be null &

void, whereby the respondent was promoted. Paragraph 8 of the said order dated 31.12.2014 reads as follows:

“8. I have also considered the submissions made by both the parties. Sh. Pradeep Jain & Ors. and Sh. Shashank Jain & Ors as well as arguments during the hearing. The respondents could not produce any evidence despite affording proper opportunity as to how representationists have incurred disqualification. After careful consideration of all the facts it is observed the representationists and other Directors expelled in the meeting of Board of Directors held on 27/08/2014 do not incur any of the disqualification as laid down in clauses mentioned in section 36 of the Act 2003 and Rule 55 of the DCS Rules, 2007. Hence, the decision taken in the said meeting of expelling these Directors/ Applicants is set aside and declared null and void. Further, any other decisions taken during the said meeting on 27/08/2014 are also declared null and void. During arguments, references were also made regarding the alleged meeting held on 25/08/2014. If any such meeting was held, same is also declared as null and void.”

(ii) Secondly, on the report dated 15.06.2015 prepared by an Inquiry Officer appointed on 03.06.2015 by the Officiating CEO of the petitioner bank.

7. We do not find any merit in the submissions of learned counsel for the petitioner for the reason that the petitioner did not dispute the finding returned by the Arbitral Tribunal that the respondent had acquired the said diploma in the year 2003, and he was promoted as Recovery Officer only after 13 years of service. Pertinently, neither when the order dated 31.12.2014 was passed by the Registrar, nor when the inquiry was held by the petitioner, the respondent was made a party and, therefore, in our view, the said documents cannot be read against him. His claim was adjudicated

by the Arbitral Tribunal on the basis of the documents produced by him in the arbitral proceedings which clearly show that he has acquired aforesaid diploma in the year 2003.

8. In these circumstances, we find no merit in this petition and dismiss the same with costs of Rs.20,000/-, to be paid to the respondent.

VIPIN SANGHI, J

REKHA PALLI, J

APRIL 15, 2019

B.S. Rohella