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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-7839-2020 (O&M)
Date of decision: 23.09.2022

PREM NATH

...Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. D. V. Sharma, Senior Advocate with
Mr. Tushar Sharma, Advocate
for the petitioner.

Ms. Deepali Puri, Addl. A. G., Punjab.

Mr. Anupam Bhardwaj, Advocate and
Mr. Naginder Singh Vashisth, Advocate
for respondent No.6.

JAISHREE THAKUR, J. (Oral)

By this order, this Court proposes to dispose of the application CM-15235-CWP-2022 seeking amendment of the writ petition as well as the main writ petition itself.

The instant writ petition has been filed invoking Articles 226/227 of the Constitution of India with the following prayers:

- i) issue a writ of certiorari quashing letter dated 30.03.2020 Annexure P-8, consequent letter 16.04.2020 Annexure P-10 issued by the Deputy Registrar, Cooperative Societies, Jalandhar and letter dated 27.05.2020 Annexure P-14;

- ii) issue a writ of mandamus directing the respondents to allow Prem Nath-petitioner to work as Chief Executive Officer of the Bank on contractual basis up to the age of 65 years;

Learned Senior Advocate appearing for the petitioner herein would contend that the petitioner is an employee of Nakodar Hindu Urban Cooperative Bank Ltd. Nakodar and had been appointed as a Clerk in the said Bank in the year 1978. Subsequently, he was promoted as an Accountant and then as a Manager of the Bank. He came to be appointed as Chief Executive Officer of the Bank by the Board of Directors of the Bank on 01.08.2010 with due approval of the Registrar, Cooperative Societies, Punjab. He was to retire on attaining the age of 58 years on 31.12.2014 and was re-appointed as Chief Executive Officer up till the age of 62 years vide resolution dated 12.02.2014. The petitioner attained the age of 62 years and the Board of Directors then decided to re-join him as Chief Executive Officer on contractual basis for another period of three years i.e. up till the age of 65 years with effect from 01.01.2019. Since the Registrar, Cooperative Societies, Punjab did not agree for re-appointment of the petitioner for a period of another three years up to his attaining the age of 65 years, the petitioner herein approached this Court with the prayers as detailed above.

The basic grouse of the petitioner herein is that no reasons have been given as to why the Registrar, Cooperative Societies, Punjab was not according approval of extending the retirement age of the petitioner as Chief Executive Officer till he attains the age of 65 years.

Learned Senior Advocate for the petitioner would re-emphasize that the term was not an extension but was a re-appointment.

Notice of motion was issued as far back as on 08.06.2020 and by the same order, status quo regarding the services of the petitioner was directed to be maintained. During the pendency of these proceedings, written statement has been filed by the respondents and when the matter was taken up for arguments, it has been brought to the notice of the Court that during the very pendency of these proceedings, the petitioner has attained the age of 65 years and hence, the very writ petition would be rendered infructuous.

By way of an application for amendment of the writ petition, it has been pleaded that the Board of Directors of the Bank met on 17.09.2021, wherein there was an agenda item to consider about the Reserve Bank of India circular no.2021-22/60-25/12 DORGOV.REC dated 25.06.2021 regarding the appointment/reappointment of Managing Director/Chief Executive Officer for the Bank and a resolution was passed, wherein it had been unanimously decided to re-appoint Prem Nath-petitioner, presently serving the Bank as Chief Executive Officer for a period up to 31.07.2025 at a consolidated remuneration of Rs.50,000/- per month. He would submit that this resolution has been passed by keeping in view the circular of the Reserve Bank of India, which was issued on 25.06.2021, applicable to all those Urban Cooperative Banks, which have a deposit size of less than Rs.100 crores as per the preceding year's audited balance sheet. It is also submitted that as per the said circular, the eligibility has been set out for appointment of Managing Director/whole time Director, who may also be designated as a Chief Executive Officer and as per clause 3.4.2 of the circular, the overall age limit may be of

70 years. He would submit that in terms of clause 3.4.2, the Board decided to re-appoint the petitioner till such an age and, therefore, the amendment of the writ petition would be required seeking to amend the prayer clause for allowing the petitioner to continue till the age of 70 years. Learned Senior Advocate, while praying for the aforesaid amendment would also lay stress on the fact that the Board of Directors is following the said circular in letter and spirit.

Respondent No.6-The Nakodar Hindu Urban Cooperative Bank Ltd. Nakodar was earlier represented by Mr. Naginder Singh Vashisth, Advocate who has filed written statement under his signatures. Subsequently, Mr. Anupam Bhardwaj, Advocate has also put in an appearance on behalf of respondent No.6-Bank. Mr. Anupam Bhardwaj, Advocate came forward with an application for dismissal of the writ petition having been rendered infructuous as the grievance of the petitioner already stood redressed, whereas Mr. Naginder Singh Vashisth, Advocate raised an objection that he still represents respondent No.6-Bank and his 'NOC' had not been obtained before filing power of attorney by Mr. Anupam Bhardwaj, Advocate. Mr. Naginder Singh Vashisth, Advocate supports the claim of the petitioner as contained in the application for amendment to permit to petitioner to continue as Chief Executive Officer of the Bank till the age of 70 years, which is strenuously opposed by Mr. Anupam Bhardwaj, Advocate on behalf of respondent No.6 by contending that the petitioner herein having already attained the age of 65 years, the very writ petition has been rendered infructuous and if he has any grievance, he should approach the Courts and seek appropriate remedy in accordance with law.

Learned State counsel would also oppose the amendment considering the fact that the term of the petitioner is already over and, therefore, the very writ petition does not survive.

I have heard learned counsel for the parties.

I find that the basic prayer in the writ petition filed was for the petitioner to be allowed to continue as a Chief Executive Officer till he attains the age of 65 years, which milestone he has crossed and, therefore, in those terms, the instant writ petition stands rendered infructuous.

As far as the prayer made for amendment of the writ petition in application filed under Order 6 Rule 17 read with Section 151 CPC permitting the petitioner to continue in service till the age of 70 years on the basis of a resolution that has been passed, this Court finds no ground to allow the said amendment for the following reason. Rule 17 of Order 6, Code of Civil Procedure is reproduced hereinunder for ready reference:-

17. Amendment of pleadings- *The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:*

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

The law as regards amendment of pleadings is well settled. It has been held that pleadings may not be permitted in case, the nature of suit is likely to be changed. Reference in this regard may be made to the judgment

rendered by the Supreme Court in *Asian Hotels (North) Ltd. versus Alok Kumar Lodha and others, Civil Appeal Nos.3703-3750 of 2022*, decided recently on 12.07.2022. A similar view has been taken by the Supreme Court in *Kumaraswami Gounder and others versus D. R. Nanjappa Gounder (dead) and others, AIR 1978 Madras 285 FB* that when an amendment is sought which sets up a different plea or a different cause of action, the Courts would be loathe to allow such amendment. In case of *Ganesh Trading Co. versus Moji Ram, (1978) 2 SCC 91*, it was held that if a plaintiff seeks to alter the cause of action itself and to introduce indirectly, through an amendment of his pleadings, an entirely new or inconsistent cause of action amounting virtually to the substitution of a new plaint or a new cause of action in place of what was originally there, the Court will refuse to permit it if it amounts to depriving the party against which a suit is pending of any right which may have accrued in its favour due to lapse of time.

In the instant case, the primary prayer in the original writ petition was that the petitioner be permitted to continue till he attains the age of 65 years by relying upon the Board of Directors resolution and that prayer has been satisfied. Now by way of amendment, the petitioner seeks to be allowed to continue as Chief Executive Officer of the Bank till he attains the age of 70 years and again on the basis of Board's resolution, which is in a way seeking a stamp of approval of the Court on the Board's resolution and circumventing procedure, which this Court is not inclined to entertain. It is not within the purview of this Court to give a stamp of approval when there may be issues that need to be gone through.

Learned Senior Advocate for the petitioner has relied upon a circular dated 25.06.2021, which apparently is also under consideration before the Division Bench of this Court in **Dr. Karan Sharma versus Reserve Bank of India and others, CWP No.16519 of 2021**. The situation there was converse. In fact, Dr. Karan Sharma, the petitioner in those proceedings, had been appointed as a Managing Director and was well below the age of 35 years and when the circular issued by Reserve Bank of India came into effect, which stipulated that only a person above the age of 35 years could be a Managing Director/Chief Executive Officer, his services were sought to be terminated, which has been challenged before the Division Bench and a status quo order has been passed therein.

While considering this application for amendment, nothing has been brought out or established to this Court that the very appointment of the petitioner herein by virtue of the resolution as passed by the Board of Directors is threatened in any manner for this Court to interfere. Keeping all these factors in mind, this Court deems it appropriate to dismiss the application for amendment leaving it open to the petitioner herein to avail any appropriate remedy in accordance with law, in case his re-appointment as a Chief Executive Officer is threatened.

Ordered accordingly.

The instant writ petition having already rendered infructuous is also dismissed as such.

23.09.2022
Chetan Thakur

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No