IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Reserved on 5th of January, 2023
Pronounced on 23rd February, 2023

CWP No.27527 of 2017

Krishan Kant ....Petitioner

Versus

Punjab State Cooperative Agricultural Development Bank Limited and others ...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Navdeep, Advocate for
Mr. Manjit Singh Sarao, Advocate for the petitioner.

Mr. Ashwani Prashar, Advocate
for respondent No.1.

None for respondent No.3.

PANKAJ JAIN, J.

Petitioner seeks writ in the nature of mandamus directing the respondents to consider his claim for promotion as Deputy Manager w.e.f. 7th of July, 2017 i.e. the date from which his juniors stand promoted vide Annexure P-1.

2. As per the facts pleaded in the writ petition, petitioner is an employee of respondent No.1-Bank. He joined the services as Clerk on 31st of January, 1995. Petitioner claims that he was due for promotion to the post of Deputy Manager from the post of Assistant Manager yet he was ignored despite being at Seniority No.48 whereas

private respondents who were at Seniority Nos.49 and 50 stand promoted. Petitioner represented to the respondent for assigning reason for ignoring him from consideration. The representation has been placed on record at Annexure P-6 which has not been decided as yet. Petitioner claims that respondent No.1 conveyed through communication dated 1st of September, 2017 that in ACR for the year 2016-17 he has been assessed as 'Average'. Petitioner claims that the remarks were never conveyed to him.

3. Ld. Counsel for the petitioner submits that as per the settled law, ACR not communicated to an employee cannot be read to defeat his right to be considered for promotion. Reliance is being placed upon **Rajinder Kumar vs. Punjab State Cooperative Agricultural Development Bank Ltd., CWP No.20465 of 2012,** decided on 13.05.2016; and by the Apex Court in **Dev Dutt vs. Union of India and others, 2008(8) SCC 725** and **Sukhdev Singh vs. Union of India and others, 2013(5) SCR 1004**.

4. Ld. Counsel representing the respondent No.1 has raised a preliminary issue w.r.t. the maintainability of the writ petition claiming that the respondent-Bank is a Co-operative Society registered under the provisions of Punjab Cooperative Societies Act, 1961. Thus, the same is not amenable to writ jurisdiction. It has been averred that the Cooperative Society does not fall within the definition of 'State' as

enumerated under Article 12 of the Constitution of India and thus, as per law laid down by Apex Court in **S.S. Rana vs. Registrar Cooperative Societies and another, (2006)11 SCC 634** and in **General Manager, Kisan Sahkari Chini Mills Ltd. Sultanpur, U.P. vs. Satrughan Nishad and others, JT 2003(8) SC 235** the present writ petition is not maintainable.

5. In order to controvert the preliminary objection raised by respondent, counsel for the petitioner has relied upon **AIR 1982 P&H 228** titled as **Pritam Singh Gill vs. State of Punjab and others** and **U.P. State Co-Operative Land Development Bank Ltd. vs. Chandra Bhan Dubey and others** decided on 18th of December, 1998. It has been claimed that since the Bank has been constituted under the Punjab Act No.26 of 1957 titled as 'the Punjab Cooperative Agricultural Development Banks Act, 1957', the case of the petitioner would be fully covered by the law laid down by Apex Court in **U.P. State Co-Operative Land Development Bank Ltd.** (supra).

6. I have heard counsel for the parties and have gone through the records of the case.

7. The issues involved in the present writ petition are : a) *whether Cooperative Society falls within the ambit of 'State' as enumerated under Article 12 of the Constitution of India?*'. *b) 'whether the writ petition would be maintainable against a*

Cooperative Society despite the fact that it does not fall within the ambit of 'State'?.

8. So far as the first issue is concerned Seven Judges Bench of Apex Court in the case of **Pradeep Kumar Biswas vs. Indian Institute of Chemical Biology, (2002) 5 SCC 111** while considering the test as laid down in the case of **Ajay Hasia v. Khalid Mujib Sehravardi, (1981) 1 SCC 722** and overruling the view taken in **Sabhajit Tewari vs. Union of India and others, (1975) 1 SCC 485** observed as under :

> "40. The picture that ultimately emerges is that the tests formulated in Ajay Hasia are not a rigid set of principles so that if a body falls within any one of them it must, ex-hypothesis, be considered to be a State within the meaning of Article 12. The question in each case would be - whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the Government. Such control must be particular to the body in question and must be pervasive. If this is found then the body is a State within Article 12. On the other hand, when the control is merely regulatory whether under statute or otherwise, it would not serve to make the body a State."

9. The question w.r.t. Punjab State Co-operative Land Mortgage Bank being a 'State' or not already stands answered by Full Bench of this Court in the case of **Pritam Singh vs. State (FB), AIR 1982 Punjab and Haryana 228**. The Full Bench following the principles laid down in Ajay Hasia's case (supra) concluded as

under :-

> "25. From the above, the conclusion, therefore, is inevitable that it has not even remotely been established that respondent No. 3 the mortgage bank (against which alone the primary relief is claimed), is an instrumentality or agency of the State. Consequently, it cannot be deemed to be an authority within the meaning of Art. 12 of the Constitution of India and thus not amenable to a writ of certiorari under Art. 226 of the Constitution of India, which is the primary relief sought.
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> 26. Repelled on his primary plank to establish that the mortgage bank was an instrumentality of the State and consequently amenable to the writ jurisdiction (despite the fact of its being registered under the Co-operative Societies Act), Mr. Saini made a tactical retreat to make a flanking attack which seems to be equally futile. It was forcefully contended that in spite of the fact that the mortgage bank may not be an authority under Art. 12 of the Constitution of India, a writ of certiorari will nevertheless still lie for quashing the order of the Managing Director of the respondent-mortgage bank, whereby the petitioner has been compulsorily retried. This contention might merit some dubious tribute to the ingenuity of the learned counsel but the same is patently fallacious."

It needs to be mentioned that in afore-said judgment Full Bench approved the view taken by Single Bench *viz-a-viz* the respondent-Bank in this case holding that it is not 'State'.

10. Being bound by ratio of law laid down by the Full Bench in **Pritam Singh's** case (supra), I have no hesitation in holding that the respondent-Cooperative Society is not 'State' or instrumentality thereof and, thus, would not fall within ambit of Article 12 of the Constitution of India. Resultantly, the first question framed in Para 7 stands

answered in favour of the respondent.

11. Now coming on to the second issue. The law has evolved. Owing to the change post economic liberalization of the country in the 1990s, role of the State is getting limited. Doctrine of *laissez-faire* is the norm. However, it has led to creation of a parallel eco-system wherein bodies of different characters and species are performing public functions. The Apex Court in the case of **Anadi Mukta Sadguru vs. V.R. Rudani and others, (1989) 2 SCC 691** made following observations :-

> "The term "authority" used in Article 226, in the con- text, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Art. 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words "Any person or authority" used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed. If a positive obligation exists mandamus cannot be denied."

12. In the case of **St. Mary's Education Society and another vs. Rajendra Prasad Bhargava and others, 2022 SCC OnLine SC 1091** while concluding the law w.r.t. maintainability of writ petition

against the State instrumentality/bodies involved in public functions held as under :

> "(a) An application under Article 226 of the Constitution is maintainable against a person or a body discharging public duties or public functions. The public duty cast may be either statutory or otherwise and where it is otherwise, the body or the person must be shown to owe that duty or obligation to the public involving the public law element. Similarly, for ascertaining the discharge of public function, it must be established that the body or the person was seeking to achieve the same for the collective benefit of the public or a section of it and the authority to do so must be accepted by the public.
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> (b) Even if it be assumed that an educational institution is imparting public duty, the act complained of must have a direct nexus with the discharge of public duty. It is indisputably a public law action which confers a right upon the aggrieved to invoke the extraordinary writ jurisdiction under Article 226 for a prerogative writ. Individual wrongs or breach of mutual contracts without having any public element as its integral part cannot be rectified through a writ petition under Article 226. Wherever Courts have intervened in their exercise of jurisdiction under Article 226, either the service conditions were regulated by the statutory provisions or the employer had the status of "State" within the expansive definition under Article 12 or it was found that the action complained of has public law element.
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> (c) It must be consequently held that while a body may be discharging a public function or performing a public duty and thus its actions becoming amenable to judicial review by a Constitutional Court, its employees would not have the right to invoke the powers of the High Court conferred by Article 226 in respect of matter relating to service where they are not governed or controlled by the statutory provisions. An educational institution may perform myriad functions touching various facets of public life and in the societal sphere. While such of those

> functions as would fall within the domain of a "public function" or "public duty" be undisputedly open to challenge and scrutiny under Article 226 of the Constitution, the actions or decisions taken solely within the confines of an ordinary contract of service, having no statutory force or backing, cannot be recognised as being amenable to challenge under Article 226 of the Constitution. In the absence of the service conditions being controlled or governed by statutory provisions, the matter would remain in the realm of an ordinary contract of service.
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> (d) Even if it be perceived that imparting education by private unaided the school is a public duty within the expanded expression of the term, an employee of a nonteaching staff engaged by the school for the purpose of its administration or internal management is only an agency created by it. It is immaterial whether "A" or "B" is employed by school to discharge that duty. In any case, the terms of employment of contract between a school and non-teaching staff cannot and should not be construed to be an inseparable part of the obligation to impart education. This is particularly in respect to the disciplinary proceedings that may be initiated against a particular employee. It is only where the removal of an employee of non-teaching staff is regulated by some statutory provisions, its violation by the employer in contravention of law may be interfered by the court. But such interference will be on the ground of breach of law and not on the basis of interference in discharge of public duty.
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> (e) From the pleadings in the original writ petition, it is apparent that no element of any public law is agitated or otherwise made out. In other words, the action challenged has no public element and writ of mandamus cannot be issued as the action was essentially of a private character."

13. Thus, the proposition that emerges is that for an establishment to be a 'State' as defined under Article 12 of the

Constitution of India, it must pass the tests as enumerated by Apex Court in **Ajay Hasia's case** (supra) and reiterated by the Constitution Bench in the case of **Pradeep Kumar Biswas** (supra). In case the establishment against whom writ has been filed falls within the ambit of Article 12 and can be termed as 'State', there would be no doubt about the same being amenable to writ jurisdiction. However, writ petition will not be held to be maintainable against a body discharging public function merely because it does not fall within the definition of 'State'. The test is : *whether cause of action pleaded by the petitioner involves breach of statutory provision?* In the case of Cooperative Society also though it is not 'State' but a breach of statutory Rules would render it amenable to writ jurisdiction.

14. Even in the case of **S.S. Rana vs. Registrar Co-operative Societies & Anr. (2006) 11 SCC 434** Apex Court held as under :-

> "8. ....It is not in dispute that the Society has not been constituted under an Act. Its functions like any other Co-operative Society are mainly regulated in terms of the provisions of the Act, except as provided in the bye-laws of the Society. The State has no say in the functions of the Society. Membership, acquisition of shares and all other matters are governed by the bye-laws framed under the Act. The terms and conditions of an officer of the Co-operative Society, indisputably, are governed by the Rules. Rule 56, to which reference has been made by Mr. Vijay Kumar, does not contain any provision in terms whereof any legal right as such is conferred upon an officer of the Society.
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> 9. It has not been shown before us that the State exercises any

direct or indirect control over the affairs of the Society for deep and pervasive control. The State furthermore is not the majority shareholder. The State has the power only to nominate one director. It cannot, thus, be said that the State exercises any functional control over the affairs of the Society in the sense that the majority directors are nominated by the State. For arriving at the conclusion that the State has a deep and pervasive control over the Society, several other relevant questions are required to be considered, namely : (1) How the Society was created ?; (2) Whether it enjoys any monopoly character ?; (3) Do the functions of the Society partake to statutory functions or public functions ?; and (4) Can it be characterised as public Authority ?

10. The respondent No. 1-Society does not answer any of the afore-mentioned tests. In the case of a non-statutory society, the control thereover would mean that the same satisfies the tests laid down by this Court in ***Ajay Hasia v. Khalid Mujib Sehravardi, (1981)1 SCC 722.*** [See ***Zoroastrian Coop. Housing Society Ltd. v. District Registrar, Coop. Societies (Urban) & Ors., 2005(5) SCC 632].***

11. It is well settled that general regulations under an Act, like Companies Act or the Co-operative Societies Act, would not render the activities of a company or a society as subject to control of the State. Such control in terms of the provisions of the Act are meant to ensure proper functioning of the Society and the State or statutory authorities would have nothing to do with its day-to-day functions.

12. The decision of the Seven Judge Bench of this Court in Pradeep Kumar Biswas (supra), whereupon strong reliance has been placed, has no application in the instant case. In that case, the Bench was deciding a question as to whether in view of the subsequent decisions of this Court, the law was correctly laid down in ***Sabhajit Tewary v. Union of India & Ors., (1975) 1 SCC 485***, and it not whether the same deserved to be overruled. The majority opined that the Council of Scientific and Industrial

Research (CSIR) was a 'State' within the meaning of Article 12 of the Constitution of India. This Court noticed the history of the formation thereof, its objects and functions, its management and control as also the extent of financial aid received by it. Apart from the said fact it was noticed by reason of an appropriate notification issued by the Central Government that CSIR was amenable to the jurisdiction of the Central Administrative Tribunal in terms of Section 14(2) of the Administrative Tribunals Act, 1985. It was on the aforementioned premises this Court opined that Sabhajit Tewary (supra) did not lay down the correct law. This Court reiterated the following six tests laid down in ***Ajay Hasia v. Khalid Mujib Sehravardi, (1981) 1 SCC 722*** :

> "(1) One thing is clear that if the entire share capital of the corporation is held by Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of Government.
> (2) Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with Governmental character.
> (3) It may also be relevant factor ...whether the corporation enjoys monopoly status which is State conferred or State protected.
> (4) Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality.
> (5) If the functions of the corporation are of public importance and closely related to Governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government.
> (6) 'Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference' of the corporation being an instrumentality or agency of Government."

This Court further held :

> "This picture that ultimately emerges is that the tests formulated in Ajay Hasia are not a rigid set of principles so that if a body falls within any one of them it must, *ex hypothesi*, be considered to be a State within the meaning of Article 12. The question in each case would be whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the Government. Such control must be particular to the body in question and must be pervasive. If this is found then the body is a State within Article 12. *On the other hand, when the control is merely regulatory whether under statute or otherwise, it would not serve to make the body a State."* (Emphasis supplied)

13. As the respondent No. 1 does not satisfy any of the tests laid down in ***Pradeep Kumar Biswas (supra)***, we are of the opinion that the High Court cannot be said to have commtted any error in arriving at a finding that the respondent-Bank is not a State within the meaning of Article 12 of the Constitution of India.

14. We are, however, not oblivious of a three judge Bench decision in ***Gayatri De v. Mousumi Cooperative Housing Society Ltd. & Ors., 2004(3) RCR (Civil) 204 : (2004) 5 SCC 90***, wherein this Court held a writ petition to be maintainable against the cooperative society only stating :

> "We have, in paragraphs supra, considered the judgments for and against on the question of maintainability of writ petition. The judgments cited by the learned Senior Counsel appearing for the respondents are distinguishable on facts and on law. Those cases are not cases covered by the appointment of a Special Officer to manage the administration of the Society and its affairs. In the instant case, the Special Officer was appointed by the High Court to discharge the functions of the Society, therefore, he

> should be regarded as a public authority and hence, the writ petition is maintainable."

15. The said decision, therefore, is of no assistance to us.

16. Our attention has also been drawn to ***U.P. State Cooperative Land development Bank Ltd. v. Chandra Bhan Dubey & Ors., 1999(1) S.C.T. 593 : (1999) 1 SCC 741***, wherein the writ petition was held to be maintainable principally on the ground that it had been created under an Act. Reliance has also been placed upon ***Ram Sahan Rai v. Sachiv Samanaya Prabandhak & Anr., 2001 (2) S.C.T. 231 : (2001) 3 SCC 323***, wherein again the appellant thus was recruited in a Society constituted under the U.P. Cooperative Land Development Bank Act, 1964 and this Court, having examined different provisions of rules, bye-laws and regulations, was of the firm opinion that the State Government exercised all-pervasive control over the Bank and moreover its employees were governed by statutory rules, prescribing an entire gamut of procedure of initiation of disciplinary proceedings by framing a set of charges culminating in inflicting of appropriate punishment, after complying with the requirements of giving a show-cause and an opportunity of hearing to the delinquent.

17. It is, therefore, evident that in Ram Sahan Rai (supra) also the cooperative society was held to be established under a statute. We may notice that in ***Nayagarh Cooperative Central Bank Ltd. & Anr. v. Narayan Rath & Anr., (1977) 3 SCC 576***, this Court was of the opinion that :

> "The High Court has dealt with the question whether a writ petition can be maintained against a cooperative society, but we are inclined to the view that the observations made by the High Court and its decision that such a writ petition is maintainable are not strictly in accordance with the decisions of this Court. We would have liked to go into the question for ourselves, but it is unnecessary to do so as Respondent 1 by his writ petition,

> was asking for relief not really against a cooperative society but in regard to the order which was passed by the Registrar, who was acting as a statutory authority in the purported exercise of powers conferred on him by the Cooperative Societies Act. The writ petition was in that view maintainable."

> 18. We may notice in some decisions, some High Courts have held wherein that a writ petition would be maintainable against a society if it is demonstrated that any mandatory provision of the Act or the rules framed thereunder, have been violated by it. [See ***Bholanath Roy & Ors. v. State of West Bengal & Ors., (1996) Vol. 1 Calcutta Law Journal 502]***.
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> 19. The Society has not been created under any statute. It has not been shown before that in terminating the services of the appellant, the Respondent has violated any mandatory provisions of the Act or the rules framed thereunder. In fact, in the writ petition no such case was made out."

(emphasis supplied)

15. In the present writ petition, the petitioner prays for writ of mandamus and not for writ of certiorari. Trite it is that in order to invoke the mandamus jurisdiction, the petitioner is under obligation to show public or statutory duty laid on the respondent and to demonstrate an equally clear legal right to enforce the same. On the aforesaid principle, ratio of law laid down by Full Bench of this Court in **Pritam Singh's case (supra)** is fully in-line with exceptions carved out in **S.S. Rana's case** (supra). Now the question arises is: *whether the Punjab State Cooperative Agricultural Development Bank Service*

Common Cadre Rules, 1978 are mandatory?.

16. It need not look far as the said issue also stands concluded by Full Bench of this Court in **Jasbir Singh vs. Commissioner (Appeals), Jalandhar Division and others, 2011(4) RCR (Civil) 1**, wherein it has been held that :-

> "37. There are three categories of Service Rules which can be framed to regulate the conditions of service of the employees of the Society. In first category, a registered Society under the Societies Act can frame its own Service Rules to regulate the service conditions of its employees. The Rules may be binding between the Society and its employees. The second category of the Rules is those rules which are formulated under Section 85(2) (xxxviii), which empower the Government to frame Service Rules for any Co-operative Society or for class of societies with regard to qualifications for employees of a Society or class of society and the conditions of service subject to which persons may be employed by Societies. Such Rules so framed have the force of Statute and are deemed to be incorporated as a part of the Statute, whereas this principle does not apply to the first category of Rules framed by the Society because those Rules merely govern the internal management, business or administration of a society. They are of the nature of the Articles of Association of a Company incorporated under the Companies Act. They may be binding between the persons affected by them, but they do not have the force of a statute. But the second category of Rules is the Statutory Rules and they have the force of the statute. Similarly, there is third category of Rules known as Common Cadre Rules. These rules could have been framed under Section 84-A of the Punjab Act which provide that an apex society may suo motu and when required to do so by the Registrar shall constitute a common cadre of all, or specified class of employee in the service of that society or in the service of the central societies which are

> members of the apex society or in the service of the primary societies which are members of the apex society. Sub-section (2) further provides that when a common cadre of employee is constituted under sub-section (1), the Registrar shall notwithstanding anything contained in any law for the time being in force or any agreement, settlement or award determine the pay scales and allowances admissible to such employees and Apex Society shall make rules for the regulation of recruitment and conditions of service of such employees with the prior approval of the Registrar. Therefore, the Common Cadre Rules framed under sub-section (2) by the Registrar are also having the statutory colour and stand on the same footing as that of the Statutory Rules."

17. Thus Full Bench of this Court has already held that the Common Cadre Rules are mandatory in nature and, thus, the writ of mandamus to enforce the same would be maintainable in view of settled law.

18. In the present case admittedly, the service conditions of the employees of the Bank are governed by the Punjab State Cooperative Agricultural Development Bank Service Common Cadre Rules, 1978 which are statutory in nature. The petitioner claims right to be considered for promotion on the basis of the said Rules. Thus, writ petition is held to be maintainable. The petitioner claims that the action of the authorities in relying upon un-communicated ACRs ought not have been considered to deny him promotion. On merits the respondent-Bank in its written statement has not denied that the

Average ACRs were never communicated to the petitioner. As per counsel for the petitioner the matter is squarely covered by ratio of law laid down by this Court in the case of **Rajinder Kumar vs. Punjab State Agricultural Development Bank Limited - CWP No.20465 of 2012**, decided vide order dated 13th of May, 2016 in which this Court held as under :

> "The said stand taken by the Bank, cannot be accepted. It has been time and again held that ACRs, whether good or adverse, have to be communicated to the employee so that he can improve his performance. The Apex Court in ***Dev Dutt Vs. Union of India & others 2008 (8) SCC 725*** held to that effect. The said view has further been approved by a three-Judge Bench of the Apex Court in ***Sukhdev Singh vs. Union of India and others, 2013 (5) SCR 1004***. The relevant portion reads as under:-
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> > "8. In our opinion, the view taken in Dev Dutt that every entry in ACR of a public servant must be communicated to him/her within a reasonable period is legally sound and helps in achieving threefold objectives. First, the communication of every entry in the ACR to a public servant helps him/her to work harder and achieve more that helps him in improving his work and give better results. Second and equally important, on being made aware of the entry in the ACR, the public servant may feel dissatisfied with the same. Communication of the entry enables him/her to make representation for upgradation of the remarks entered in the ACR. Third, communication of every entry in the ACR brings transparency in recording the remarks relating to a public servant and the system becomes more conforming to the principles of natural justice. We, accordingly, hold that every entry in ACR – poor, fair, average, good or very good – must be communicated to him/her within a reasonable period. 9.

> The decisions of this Court in Satya Narain Shukla vs. Union of India and others10 and K.M. Mishra vs. Central Bank of India and others11 and the other decisions of this Court taking a contrary view are declared to be not laying down a good law."

Similarly, in ***Dr.Gurdev Singh Bhardwaj vs. State of Punjab and others 2013 (1) RSJ 474***, it was held that adverse entry needs to be communicated to the employee and is liable to be ignored while determining the bench marks. The relevant portions read thus:-

> "12. Following the dictum laid down by the Apex Court, it is clear that the average report relating to the year 2005- 06 which clearly had an adverse effect insofar as consideration of the petitioner for purposes of promotion to the higher post of Senior Medical Officer, was required to be conveyed to him. Accordingly, it is held that the ACR for the year 2005- 06 having not been communicated to the petitioner was liable to be ignored while determining the bench mark.
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> 13. That apart, I find that the respondent-authorities have acted arbitrarily in not considering the ACR of the petitioner for the year 2007-08. The right of an employee to be considered for promotion is a fundamental right under Article 16 of the Constitution of India. It is not just a right of consideration but, in fact, an obligation cast upon the employer to afford a fair consideration to an employee in terms of the principles of service jurisprudence. It has been admitted that the petitioner had been graded 'very good' for the year 2007-08 and such report had been duly received but was not available at the time of preparation of agenda submitted before the Departmental Promotion Committee. This cannot be a basis for denying to the petitioner the grading in terms of assigning three numbers for such 'very good' report for the year 2007- 08. 14. Learned counsel appearing for the petitioner would bring to my notice that the petitioner has since retired on

> 29.2.2012, having attained the age of superannuation. 15. Accordingly, I allow the present petition in terms of directing the respondent-authorities to reconsider the claim of the petitioner for promotion to the post of Senior Medical Officer in terms of determining the bench mark afresh by ignoring the ACR for the year 2005-06 and in terms of taking into account the five previous ACRs i.e. for the years 2008-09, 2007- 08, 2006-07, 2004-05 and 2003-04. It is further directed that if in pursuance to such exercise, which shall be concluded positively within a period of three months from the date of receipt of a certified copy of this order, the petitioner fulfils the requisite bench mark, then orders shall be issued promoting the petitioner to the post of Senior Medical Officer on a notional basis. The petitioner in such eventuality would also be held entitled to notional pay fixation on the post of Senior Medical Officer as on the date of his superannuation and would be released the revised pensionary/retiral benefits accordingly."

Accordingly, keeping in view the settled position of law, the present writ petition is allowed...."

19. The same approved by the Division Bench holding that :-

"11. However, if the appellant-bank introduced the element of 'selection' for promoting its officials, then it cannot adopt the rule of seniority-cum-merit. In that even, the bank needs to amend its rules and insert the criteria of 'merit-cum-seniority' or 'selection'. The fact remains that as per the existing provisions of the rules, the respondent having earned all the favourable annual confidential reports, was entitled to be promoted on seniority-cum-merit basis. Denial of such benefit to him was undoubtedly violative of Article 14 & 16 of the Constitution. Hence, the interference made by learned Single Judge is fully justified."

20. Thus, in view of the fact that the Division Bench has already held that denial of promotion at the hands of the Punjab State Cooperative Agricultural Development Bank Limited by considering un-communicated ACR would be violative of Articles 14 and 16 of the Constitution of India in view of law laid down by Apex Court in the case of **Dev Dutt. vs. Union of India and others** (supra) as approved by Three-Judges Bench in the case of **Sukhdev Singh vs. Union of India and others** (supra), the claim of the petitioner merits acceptance.

21. Accordingly, present writ petition is allowed. Respondents are directed to promote the petitioner from the date his juniors were promoted i.e. 7th of July, 2017 as Deputy Manager and the financial benefits due to the petitioner be disbursed accordingly. Needful be done within a period of three months from the date of receipt of certified copy of this order.

February 23, 2023 **(PANKAJ JAIN)**
Dpr **JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No