224+225

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision : 20th of March, 2023

CWP No.886 of 2018 (O&M)

Balwinder Singh .....Petitioner

Versus

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

CWP No.8265 of 2018 (O&M)

Vinod Kumar .....Petitioner

Versus

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

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Manjit S. Sarao, Advocate and
Mr. Navdeep, Advocate
for the petitioner(s).

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

None for respondent No.2.

Mr. Aminder Singh, Advocate
for respondent No.3.

PANKAJ JAIN, J.

By way of present writ petitions filed under Article 226/227 of the Constitution of India, petitioners seek writ in the nature of mandamus directing respondent No.1-Bank to consider claim of the petitioners for promotion to the post of Deputy Manager by ignoring the effect of uncommunicated adverse remarks in ACR. Petitioners claim for promotion from the date their juniors stand promoted.

2. Petitioners the employees of respondent No.1-Bank joined services on 3rd of February, 1995 along with private respondents No.2 and 3 as Clerk. Petitioners were senior to respondent Nos. 2 and 3 in the cadre of the Clerks. On being promoted as Assistant Manager, petitioners still remained senior to respondents No.2 and 3. For further promotion to the post of Deputy Manager, petitioners were ignored and their juniors i.e. respondents No.2 and 3 stand promoted vide order dated 7th of July, 2017 placed on record as Annexure P-1. Petitioners claim that no adverse ACR has ever been communicated to them prior to order dated 7th of July, 2017. Petitioners represented to the respondents vide Annexure P-6. However, the only reason assigned is that ACR for the year 2016-2017 communicated to the petitioners on 1st of September, 2017 assesses them to be "good". Copy of the memos (in both writ petitions) have been placed on record as Annexure P-9 and Annexure P-13 respectively.

3. Counsel for the petitioners thus submits that the uncommunicated adverse remarks ought not have been taken into consideration to deny promotion to the petitioners. Reliance is being

placed upon the law laid down by Apex Court in the case of '**Dev Dutt vs. Union of India and others' (2008) 8 SCC 725** and order passed by Co-ordinate Bench of this Court in **CWP No.20465 of 2012** titled as '**Rajinder Kumar vs. Punjab State Cooperative Agricultural Development Bank Ltd.'**, decided on dated 13th of May, 2016 which further upheld by Division Bench of this Court in LPA No.1526 of 2016 decided on 10th of November, 2016.

4. Per contra, Mr. Ashwani Prashar, Advocate representing respondent No.1 has seriously disputed the very maintainability of the instant writ petitions relying upon law laid by Apex Court in the case of '**S.S. Rana vs. Registrar Cooperative Societies and another', (2006) 11 SCC 634**.

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

6. Counsel for the parties are *ad idem* that the precise issues involved in the present writ petition(s) already stand decided by this Court in **CWP No.27527 of 2017** titled as '**Krishan Kant vs. Punjab Stte Cooperative Agricultural Development Bank Limited and others'**, on 23rd of February, 2023, wherein it has been held as under :-

> "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'?.

7. Answering the said issues it was held that :-

"xxxxx

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.

xxxxx

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.

xxxxx

"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. I 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:-

> "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.
>
> 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."

8. In view of the above, the present writ petitions are allowed. Petitioners are held entitled for promotion to the post of Deputy Manager from the date their juniors stand promoted i.e. 7th of July, 2017 in terms of judgment rendered in **Krishan Kant's** case (supra). Respondents are directed to disburse all the financial benefits due to the petitioners. Needful be done within a period of three months from the date of receipt of certified copy of this order.

9. Pending application, if any, shall also stand disposed off.

10. A copy of this order be kept on the file of other connected case.

March 20, 2023 **(PANKAJ JAIN)**
Dpr **JUDGE**

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