

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

LPA NO.28 OF 2023 (O&M)

RESERVED ON : APRIL 29, 2024

DATE OF DECISION : MAY 16, 2024

The Jalandhar Central Cooperative Bank Limited ...Appellant

Versus

Special Secretary Cooperation Punjab and others ...Respondents

**CORAM : HON'BLE MR. JUSTICE G. S. SANDHAWALIA
ACTING CHIEF JUSTICE**

HON'BLE MS. JUSTICE LAPITA BANERJI

Present : Mr. Ashwani Prashar, Advocate,
for the appellant.

Mr. Saurav Khurana, Additional Advocate General, Punjab.

Mr. Harjot Singh Bedi, Advocate,
For respondent No.4.

Mr. Anupam Bhardwaj, Advocate,
For respondent No.5.

LAPITA BANERJI, J.

Consideration in the present letters patent appeal is to an order dated December 08, 2022, whereby the Hon'ble Single Judge in CWP No.10460 of 2017 "*Gurnek Singh v. Special Secretary Cooperation Punjab and others*", allowed the writ petition by quashing/setting-aside the impugned orders dated May 03, 2017 (Annexure P-5) and May 08, 2017 (Annexure P-6). Furthermore, the official respondents were directed to take the writ petitioner back in service and grant him all consequential financial

benefits, as admissible under the Rules, within a period of one month from the date of receipt of the order.

2. The facts which led to the present dispute are narrated herein after:-

i) The writ petitioner was appointed as Clerk on March 04, 1992 in the Nawanshahar Central Cooperative Bank Limited (NCCBL). On April 22, 1998, on being transferred the petitioner joined the present appellant/Jalandhar Central Cooperative Bank Limited (JCCBL).

ii) At the time of appointment with NCCBL and transfer to JCCBL/appellant, it was intimated to the petitioner that none of his relatives should be a member of the Board of Directors of the aforesaid banks. The petitioner continued to render his service throughout without any allegation against him.

iii) On December 22, 2010, election of the Board of Directors of the appellant bank was conducted whereby the wife and father of petitioner were elected on the Board of Directors for a period of five years. The election of the petitioner's wife was challenged by the then sitting MLA of Nakodar constituency, but the proceedings were lost upto the Coordinate Bench of this Court.

iv) Thereafter, a complaint of sexual harassment from three women employees of the appellant bank was lodged against the Board of Directors as well as the petitioner, which was purportedly done at the behest of the sitting MLA.

v) However, the Joint Registrar Cooperative Societies, Jalandhar rejected the enquiry report and held that no action was required to be taken

against any of the members of the Board of Directors or the petitioner regarding the complaint of sexual harassment.

vi) The respondent No.5-Mandeep Kaur (MK) filed a revision petition before the Registrar Cooperative Societies, Punjab against the order passed by the Joint Registrar Cooperative Societies, Jalandhar.

vii) The said revision petition was marked to the Additional Registrar (Admin.). A preliminary objection was raised by the petitioner with regard to maintainability of the revision petition but the same was rejected vide order dated April 07, 2016.

viii) The Managing Director of the appellant bank as well as the petitioner challenged the order passed by the Additional Registrar with regard to maintainability by way of filing of CWP-7900 of 2016 before this Court. An order dated April 28, 2016, issuing notice of motion was passed and an interim protection was granted by staying the passing of final order, by the Additional Registrar (Admin.) Cooperative Societies, Punjab on the sexual harassment complaint.

ix) As the effort to dislodge the Board of Directors and get the petitioner removed from service did not fructify, the respondent No.5 sent a legal notice dated December 12, 2015 to the Deputy Registrar, Cooperative Societies, Jalandhar, stating that Rule 6 (v) of the Punjab State Cooperative Financing Institution Service Rules, 1958 (for short "1958 Rules") had to be complied with and the petitioner had to be informed that his relative was on the Board of Directors of the bank. Upon being informed, the petitioner would be *deemed to be removed* from service in terms of Rule 6 (v) of the 1958 Rules.

x) On receipt of the said notice, the Deputy Registrar (DR) directed the Assistant Registrar (AR) Cooperative Societies, Jalandhar, vide letter dated December 14, 2015, to take necessary action. The legal notice issued by MK/respondent No.5 was disposed of by DR vide order dated February 23, 2016. The DR held that since the tenure of the Board of Directors of the appellant bank had come to an end on December 21, 2015 and thereafter the bank was being run by an Administrator, the question of relationship of the employee with the office bearers of the Managing Committee of the Board, did not and could not arise.

xi) Against the order dated February 23, 2016 passed by the DR, the respondent No.5-MK filed a revision petition under Section 69 of the Punjab Cooperative Societies Act, 1961. The said petition was accepted by the Special Secretary (SS), Cooperation, Punjab, Chandigarh/respondent No.1 vide impugned order dated May 03, 2017 (Annexure P-5) who directed the DR/respondent No.2 to give effect to Rule 6 (v) of the 1958 Rules.

xii) In compliance of the order dated May 03, 2017 passed by the Special Secretary, the respondent No.2/DR passed the impugned order dated May 08, 2017 (Annexure P-6), removing the petitioner from service of the appellant bank with effect from December 14, 2015. Challenging the aforesaid orders dated May 03, 2017 and May 08, 2017, the writ petition bearing CWP No.10460 of 2017 was filed by the aggrieved employee Gurnek Singh.

3. The Hon'ble Single Judge after noting that no one represented respondent No.5-Mandeep Kaur, proceeded to deal with the controversy raised in CWP No.10460 of 2017. Rule 6 was reproduced by her and it was

noted that there was no dispute with regard to interpretation of Rule 6 (v) on the issue that no employee of the bank *shall at any time* be related to any member of the Board of Directors and if he/she happened to be so related, then he/she *shall be deemed to be removed from service* from the date on which such fact is brought to the notice of an officer of the bank or the Registrar and the same was brought to the notice of such employee.

4. However, on December 22, 2010 when the petitioner's wife came to be elected as Director of the appellant bank for a fixed period of 05 years, the petitioner had already served the bank for 18 years and 09 months. The tenure of his wife as a member of the Board of Directors came to an end on December 21, 2015. During the period between December 22, 2010 till December 21, 2015, there was no complaint with regard to the status or conduct of the petitioner being an employee of the bank.

5. It was only on December 12, 2015 that the respondent No.5-MK through her advocate served a legal notice on the DR bringing the factum of petitioner's father and wife being on the Board of Directors, to the fore. After the DR disposed of the complaint of respondent No.5 vide order dated December 23, 2016 then revision was filed by respondent No.5 and upon the directions of the Special Secretary/respondent No.1 dated May 03, 2017, the petitioner stood removed from the service vide impugned order dated May 08, 2017.

6. The Hon'ble Single Judge held that the Special Secretary while passing the impugned order dated May 03, 2017, had only taken into consideration Rule 6 (v) of the 1958 Rules but did not consider that from March 04, 1992 (date of initial appointment) till December 21, 2015 (date on which tenure of petitioner's wife and father ended), the petitioner had

already put in 23 years and 09 months of service and there was no complaint against the petitioner ever, especially during the tenure when his relatives were members of Board of Directors (December 22, 2010 to December 21, 2015).

7. Furthermore, the legal notice issued by respondent No.5 was received by the AR on December 14, 2015 itself. In terms of Clause 6, the petitioner could have been removed from service on the same day as the information was received that his relatives were members of the Board but such removal could only be done upon intimation to the petitioner.

8. In the interregnum, the tenure of the Board of Directors had expired and an Administrator was appointed. The Hon'ble Single Judge held that without giving notice to the petitioner about his family members being on the Board, no order terminating his services could be sustained, more so, when such orders should have been passed during the subsistence of the period when the family members were on the Board.

9. It was further held that the Special Secretary by impugned order dated May 03, 2017 went beyond his jurisdiction while ordering that the revision petition be treated as a representation and suitable action was required to be taken under the law as far as the issue of sexual harassment was concerned. The issue of sexual harassment was not at all the subject matter of the revision petition and such directions were unwarranted.

10. After a detailed analysis of facts and meticulous reasoning, the writ petition was allowed and the impugned orders by which the petitioner was removed from service, were set-aside. The official respondents were further directed to take the writ petitioner back in service and grant him all consequential benefits.

11. Mr. Prashar, learned counsel appearing on behalf of the appellant bank argued that respondents No.1 to 3 (State-respondents) were well within their jurisdiction to pass the impugned orders. The impugned order dated May 08, 2017 passed by respondent No.2/DR in compliance with the order dated May 03, 2017 passed by respondent No.1/SS, being a *quasi-judicial* authority were passed strictly in accordance with law. Therefore, no fault should be found with the same.

12. It was further submitted on behalf of the appellant bank that Rule 5 of 1958 Rules provided for method of recruitment. Before any person could be appointed he/she was required to give an affidavit to the effect that he/she was not related to any member of the Board of Directors of the bank. Under Rule 6 of 1958 Rules, no employee could be related, at any point of time to any member of Board of Directors. The Rules had been framed to ensure that no candidate/employee is able to abuse the authority of the Board of Directors at any point in time whether during his appointment or during his service.

13. It was further argued that since the wife and father of petitioner were elected on the Board of Directors of the bank on December 22, 2010, the petitioner was *deemed to be removed from service* in terms of the mandatory nature of Rule 6 (v) of the 1958 Rules. No legal right of the petitioner was infringed in any manner and therefore, the Hon'ble Single Judge erred in interfering with the impugned orders.

14. The learned counsel appearing on behalf of the writ petitioner/respondent No.4 argued that the removal of the writ petitioner from his long and unblemished service without any opportunity of hearing was arbitrary, illegal and in violation of all principles of natural justice.

15. This Court has heard the parties and considered the materials on record. It appears that out of five respondents, only respondent No.4-bank in the writ petition has challenged the order of learned Single Judge by filing the present letters patent appeal and the other respondents are not aggrieved by the order passed by the Hon'ble Single Judge. It is true that words enshrined in sub-clause (v) of Rule 6 of the 1958 Rules are stringent in nature. The said Rule relates to appointment to the service and is reproduced here under :-

*“6. **Appointment** to the service :*

(i) to (iv) xx xx xx

*v) No employee of the Bank shall **at any time** be related to any member of the Board of Directors. If he happens to be so related, as defined in SO 7.17 viz (a) any one related to the person concerned, or to his wife through a common ancestor who is not more remote than a great grandfather and (b) anyone married to a person falling under (a) **then the employee shall be deemed to have been removed from service from the same date on which this fact after having been brought to the notice of any officer of the Bank/Registrar, is brought by the latter, to the notice of such an employee.**”*

16. It is true that under Rule 6 (v) of the 1958 Rules, the employee ***shall be deemed*** to be removed from service from the same date on which said fact of the relationship is brought to his notice after the same had been brought to the notice of an officer of the bank/Registrar.

17. Upon a close reading of Rule 6, it transpires that the said Rule relates to ***appointment of an employee***. The purport and the object of the Rule must be read in the context of appointment of a person who is related to any member of the Board through himself or through his wife by a common ancestor. If the relationship with the members of the Board was

not more remote at the time of ***appointment*** than that of a great grandfather, then the employee could be *deemed* to be *removed* from the service.

18. Undisputedly, the petitioner was appointed on March 04, 1992 in NCCBL and was transferred to JCCBL/appellant on April 22, 1998. The petitioner served the bank for 18 years and 09 months before his wife was elected on the Board of Directors on December 22, 2010. Therefore, the question of any nepotism/favoritism being shown in the ***appointment*** of the petitioner does not and cannot arise.

19. To the mind of this Court, a purposive interpretation is required to be given to the said Rule and the ***mischief*** that the Rule was seeking to prevent has to be considered given the draconian nature of the Rule. A beneficial reference is made to a three Bench recent judgment of Hon'ble Supreme Court in "***X v. Principal Secretary, Health and Family Welfare Department, Government of NCT of Delhi and another***" (2023) 9 *Supreme Court Cases* 433, to come to the finding that the cardinal principle of construction of statute is to identify the intention of legislature and the true legal meaning of the enactment. The intention of legislature is to be derived by considering the meaning of the words used in the statute with the view to understanding the purpose or object of the enactment, the mischief and its corresponding remedy. The relevant extract is reproduced herein below :

“xxx

31. *The cardinal principle of the construction of statutes is to identify intention of the legislature and the true legal meaning of the enactment. The intention of legislature is derived by considering the meaning of the words used in the statute, with a view to understanding the purpose or object of the enactment, the mischief and its corresponding remedy that the enactment is designed to actualize. Ordinarily, the*

language used by the legislature is indicative of legislative intent. In Kanai Lal Sur v. Paramnidhi Sadhukaran Gajendragadkar, J. (as the learned Chief Justice then was) opined that “the first and primary rule of construction is that the intention of the legislature must be found in the words used by the legislature itself.” But when the words are capable of bearing two or more constructions, they should be construed in light of the object and purpose of the enactment. The purposive construction of the provision must be “illuminated by the goal, though guided by the word. Aharaon Barak opines that in certain circumstances this may indicate giving “an unusual and exceptional meaning” to the language and the words used.

32. *Before we engage in the exercise of purposive construction, we must caution that a court’s power to purposively interpret a statutory text does not imply that a Judge can substitute legislative intent with their own individual notions. The alternative construction propounded by the Judge must be within the ambit of the statute and should help carry out the purpose and object of the Act in question.*

xxx”

The Apex Court while analyzing the object and purpose of the Medical Termination of Pregnancy Act, 1971 tried to discern the purpose and object of the enactment to prevent the mischief against which the enactment was directed and the remedy that law makes device to address the mischief.

20. Furthermore, when the petitioner’s service was sought to be terminated, his wife and father had retired from the Board of Directors. Therefore, he was not related to any person on the Board through a common ancestor or through his wife’s common ancestor when he was *deemed* to be *removed* from service. The date on which the presence of his wife on the Board was brought to the notice of petitioner, was long after the completion of his wife’s term as a director. Therefore, the Special Secretary/respondent No.1 was not justified in mechanically directing the invocation of Rule 6 (v) of 1958 Rules without considering the fact that the petitioner had

already put in 23 years and 09 months of service when the tenure of his family members came to an end. No complaint with regard to the conduct of the petitioner was made during the period of his wife's tenure on the Board. The legal notice in that respect was received on December 14, 2015 by the officials from respondent No.5. The *deemed removal* could have been made on the same day but only with due intimation to the petitioner which admittedly was not done. This Court has considered the reply dated July 04, 2017 and also additional affidavit dated December 28, 2018 affirmed by respondent No.2 on behalf of respondents No.1 (SS) and 2 (DR) and the affidavit dated September 11, 2017 affirmed on behalf of respondent No.4-Bank through the District Manager. All the affidavits are silent as regards to the date on which notice was sought to be given to the writ petitioner with regard to his *deemed removal*. In view of no material been placed on record and complete silence on the part of respondents as to the date on which the notice was sought to be given to the writ petitioner/employee, this Court is constrained to hold that only after the respondent No.1-SS directed respondent No.2-DR to implement Rule 6 (v) of the 1958 Rules vide impugned order dated May 03, 2017 that notice regarding the anomaly was served on the petitioner, long after his wife's tenure was over, if at all. Therefore, this Court finds that the *removal* of the petitioner by relying on Rule 6 (v) was arbitrary and wholly unjustified. The appellant bank cannot be permitted to dispense with the service of the writ petitioner relying upon the 1958 Rules without itself complying with the provisions of the same.

21. The Hon'ble Single Judge also correctly noted that the Special Secretary vide impugned order dated May 03, 2017, went beyond his

jurisdiction by ordering a probe into the findings of sexual harassment when same was at all not the subject matter of the revision, thereby quashing the same and also the order dated May 05, 2017 which was passed pursuant to the order dated May 03, 2017.

22. For the reasons stated by the Hon'ble Single Judge and the additional reasons given by this Court, the appeal stands dismissed. The official respondents are directed to implement the order/directions passed by Hon'ble Single Judge, within a period of one month from the date of receipt of the certified copy of the order. Connected applications, if any, are also disposed of accordingly.

(G. S. SANDHAWALIA)
ACTING CHIEF JUSTICE

(LAPITA BANERJI)
JUDGE

MAY 16 , 2024
Shalini

Whether speaking/reasoned : Yes
Whether reportable : Yes