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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-5823-2020 (O&M)
Date of decision: 27.09.2024

Dharambir Sharma

...Petitioner

VERSUS

The Panchkula Urban Cooperative Bank Limited and another

...Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. R.K. Malik, Senior Advocate with
Mr. Sunil Hooda, Advocate, for the petitioner.

Mr. Jitender Dhanda, Advocate, for the respondents.

JASGURPREET SINGH PURI, J. (Oral)

1. The present petition has been filed under Article 226 of the Constitution of India seeking a writ in the nature of *certiorari* for quashing the decision of Board of Directors in its meeting held on 10.02.2020 (Annexure P-4).

2. Learned Senior Counsel appearing on behalf of the petitioner submitted that it is a case where the petitioner was served a charge-sheet and vide Annexure P-2, the Enquiry Officer exonerated the petitioner from the charges as the charges were not proved against him. Thereafter when the matter went to the Board of Directors who were the punishing authority disagreed with the finding of the Enquiry Officer and after disagreeing it was so directed by the Board of Directors vide Annexure P-4 that the Chief Executive Officer was



authorized to communicate a detailed dissent note on behalf of the Bank to the petitioner for the disagreement by giving reasons in respect of each charge of misconduct by providing an opportunity to the petitioner to file his reply. Learned Senior Counsel submitted that after disagreeing with the finding of the Enquiry Officer, no useful purpose would have been served by giving any notice to the petitioner for seeking his reply. In this regard, he referred to a judgment of Hon'ble Supreme Court in ***Punjab National Bank Versus Kunj Behari Misra, 1998(7) SCC 84*** to contend that whenever the disciplinary /punishing authority disagrees with the enquiry authority on any article of charge, then before recording its own findings on such charge, it must record its tentative reasons for disagreement and give to the delinquent officer an opportunity to represent himself before it records its findings but in the present case, Board came to a conclusion with regard to the disagreement and thereafter directed the CEO to give notice and not even any tentative reason has been recorded and both the counts the aforesaid passed by the Board of Directors was in violation of the principles of natural justice and also in violation of the law laid down by the Hon'ble Supreme Court in ***Kunj Behari Misra's case (supra)***. Learned Senior Counsel submitted that the prayer made by the petitioner now would be only to the extent that the impugned order P-4 be set aside and quashed being violation of the principles of natural justice and liberty may be granted to the respondent-Board to pass a fresh order in accordance with law.

3. On the other hand, learned counsel appearing on behalf of the respondent-Bank submitted that under the Haryana Urban Cooperative Bank Staff Service Rules, 1989, there is no specific procedure provided as to how the



punishing authority is to proceed on the basis of dissent or disagreement. He submitted that in the judgment of Supreme Court in ***Kunj Behari Misra's case (supra)***, there was a provision of Regulation 7(2) wherein a provision was provided for dissent and Hon'ble Supreme Court was dealing with the aforesaid Regulation of 7(2). He submitted that the present petition has been filed against a Cooperative Bank and against which the writ petition would not be maintainable.

4. I have heard the learned counsel for the parties.

5. So far as the preliminary objection taken by the learned counsel for the respondent-Bank that the writ petition is not maintainable against a Cooperative Bank, this Court does not agree with the contention of the learned counsel for the respondent-Bank on the ground of maintainability in view of the fact that here is a case where the petitioner is challenging the aforesaid decision of the Board of Directors on the ground of violation of the principles of natural justice and also in violation of the law laid down by Hon'ble Supreme Court in ***Kunj Behari Misra's case (supra)*** and therefore, the present petition would be maintainable.

6. So far as the second argument raised by the learned counsel for the respondent-Bank that the aforesaid judgment would not be applicable in the present case is concerned, the same is also liable to be rejected. Para No.19 of the aforesaid judgment is reproduced as under:-

“19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to



represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favorable conclusion of the enquiry officer. The principles of natural justice as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.

7. A perusal of the aforesaid judgment would show that Hon'ble Supreme Court was dealing with Regulation 7(2) which has also been reproduced in para No.10 of the judgment and the aforesaid provision provides that the disciplinary authority shall if it disagrees with the findings of the enquiry authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose. In para No.19 as reproduced above, the Hon'ble Supreme Court rather submitted that the principles of natural justice have to be read into Regulation 7(2). Since in the aforesaid Regulation the provision of giving notice in both disagreement and by recording of tentative reasons was not provided, therefore, the principles of natural justice were read into the aforesaid Regulation. In the present case, the respondent-Bank does not have any such kind of Regulation nor the same has been shown to this Court during the course of arguments. Therefore, the principle of law which has been laid down by Hon'ble Supreme Court in the aforesaid judgment would be directly applicable to the present case particularly when the principles of natural justice have been violated.

8. A perusal of the impugned order passed by the Board of Directors would show that it is liable to be set aside on both the counts. Firstly, no tentative reasons have been given by the Board of Directors before taking any



decision and secondly, before issuance of notice to the delinquent officer i.e. the petitioner, the Board on its own decided that they are not agreeing with the findings of the enquiry officer who had exonerated the petitioner.

9. In view of the above, the present petition is allowed. The impugned order dated 10.02.2020 (Annexure P-4) is set aside. The Board of Directors of the respondent-Bank are directed to take a fresh decision in accordance with law and in the light of the aforesaid judgment of Hon'ble Supreme Court in *Kunj Behari Misra's case (supra)*, within a period of three months from today.

27.09.2024

(JASGURPREET SINGH PURI)

rakesh

JUDGE

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