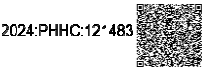


CWP-21197 of 2014



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-21197 of 2014
Date of decision: 12.09.2024

Vikramjeet Joshan and another
.....Petitioners

Versus

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

CWP-6534 of 2016 (O&M)

Shaheen Ismail and others
.....Petitioners

Versus

State of Punjab and others
.....Respondents

CWP-18637 of 2018

Harleen Kaur
.....Petitioner

Versus

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

CWP-21197 of 2014

2024:PHHC:12*483



CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. H.C. Arora, Advocate,
for the petitioners in CWP-21197 of 2014 and
CWP-18637 of 2018.

Mr. Kishan Garg, Advocate,
for Mr. Navjot Singh, Advocate,
for the petitioners in CWP-6534 of 2016.

Mr. Ashwani Prashar, Advocate,
for the respondent-Bank.

Mr. Surya Kumar, AAG, Punjab.

NAMIT KUMAR, J.

1. By this common order, afore-mentioned three writ petitions are being disposed of as common questions of law and facts are involved therein. For the sake of brevity, facts are being taken from CWP-21197 of 2014 – Vikramjeet Joshan and another v. Punjab State Cooperative Bank Limited and others.

2. This writ petition has been filed under Article 226 of the Constitution of India for issuance of a writ of *mandamus*, directing the respondents to revise the merit/select list of General category and Backward Class category issued by the respondents for recruitment to 500 posts of Clerk-cum-Data Entry Operator in respondent No.1-Bank in various Central Cooperative Banks in the Districts, in response to public notice Annexure P-1 issued in September, 2013, by shifting various selected candidates of Backward Class category, who have obtained more marks than the last candidate of General category at the cut off point, and to issue appointment letters to the next meritorious for the post of Clerk-cum-Data Entry Operators on the ground that the select lists of General category and Backward Classes category

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prepared by the respondents are in violation of the directions issued by the Hon'ble Supreme Court in ***R.K. Sabharwal and others v. State of Punjab and others, 1995(2) RSJ 895*** and ***Jaskaran Singh v. State of Punjab and others, 1995(2) SCT 65***.

2. Brief facts, as have been pleaded in the petition, are that respondent No. 1- Bank had issued a public notice (Annexure P-1) for recruitment of various posts, which included 500 posts of Clerk-cum-Data Entry Operators. Recruitment to the post of Clerk-cum-Data Entry Operator was to be made on the basis of merit of marks obtained by various candidates in the recruitment examination. It was further stated in the public notice (Annexure P-1) that the reservation policy of Punjab Government shall be applicable in the matter of recruitment to the posts meant for various reserved categories. No marks were assigned for the interview. The petitioners being fully eligible for the post of Clerk-cum-Data Entry Operator, submitted their applications online and appeared in the recruitment examination held on 19.1.2014 at Chandigarh. Both the petitioners obtained 69.75 marks in the said examination. Thereafter, the respondents notified only a common merit list of the candidates of all categories, and did not publish any category-wise merit list. However, the petitioners have, on the basis of complete result of examination uploaded by the respondents on the official website, prepared separate merit list of general category as well as B.C. category (Annexures P-2 and P-3). Respondent No. 2 uploaded a public notice dated Nil (Annexure P-4) on its official website inviting candidates for first counseling, which was held from 19.2.2014 to

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21.2.2014 for different posts/categories in the office of respondent No.1 at Sector 34-A, Chandigarh, inviting the candidates of general category, who had obtained 77.00 marks or more in the recruitment examination and the candidates of B.C. category who had obtained 71.25 marks and above. Against 64 posts reserved for B.C. category, 62 candidates with more than 71.25 marks in the recruitment examination were invited for appearing in the first counseling and against 198 posts of general category, 196 candidates with 77.00 marks or more marks were invited for counseling. Candidates of general category who had obtained more marks than 196th candidates i.e. Ramandeep Kaur of general category, were not invited for counseling for general category post. Rather, they were invited for posts against reserved category. 13 posts of Clerk-cum-Data Entry Operators remained unconsumed, since some of the selected candidates for the said post did not join. Another public notice (Annexure P-5) was issued for second counseling on 24.6.2014. Candidates of SC category were also invited for second counseling. However, the result of second counseling has not been declared or notified so far, nor any appointment letters have been issued so far to any of the candidates who attended the second counseling. The petitioners were not invited for counseling. Candidates with 70.00 and above marks were invited for second counseling for B.C. category posts. At least 13 candidates with more than 77 marks were there in the list (Annexure P-3) of Backward class category, which were required to be shifted to merit list (Annexure P-2). Thereafter, another public notice (Annexure P-6) for third counseling was also issued for filling

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up various posts. Petitioners submitted a representation dated 04.07.2014 (Annexure P-7) to respondent No. 2 for shifting such candidates of BC category to general category who have secured more marks than the last candidate of general category at the cut off point and to give appointment letters to the next meritorious candidates of BC category, but to no avail. Hence, the present writ petition.

3. Pursuant to notice of motion, respondents-Bank have filed written statement taking various preliminary objections to the effect that the Bank has not been established or constituted by or under the Constitution of India; by any other law made by the Parliament; by any other law made by the State Legislature. The Bank has also not been established by any notification issued or order made by the appropriate government. Appropriate Government in this case means the Government of Punjab. It has further been stated that a Constitution Bench judgment of the Hon'ble Supreme Court of India in ***Sukhdev Singh v. Bhagat Ram Sardar Singh Raghuvanshi, 1975(1) SLR 605 (SC)*** has held that an authority which has been established or constituted by an Act of Parliament or State Legislature is a statutory body and a body which comes into existence in accordance with the provisions of an Act is a non-statutory body. The Bank is deemed to have come into existence in accordance with the provisions of the Act and thus is a non-statutory body. The Bank being a cooperative society is not owned, controlled or managed by the appropriate government. The present writ petition is not maintainable and is liable to be dismissed because in a number of judgments, it has been held that

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cooperative society is not an authority within the meaning of Article 12 of the Constitution of India. No department of the Government has been transferred to the Bank. It does not perform any sovereign functions and the share money of the State Government in the Bank as on 31.03.2014 is 0.14%. State Government does not have any deep and pervasive control over the affairs of the Bank. It has further been averred that otherwise also for making recruitment in the respondent Bank and in the other Central Cooperative Banks in the State of Punjab, NITTR was engaged as a recruitment agency. Thereafter as per merit list prepared and as per the option given by the candidates and after 3 counseling held on 19.2.2014 to 21.2.2014, 24.6.2014 and 7.7.2014, the candidates have been appointed and all the selected candidates have been issued appointment letters by the respective Central Cooperative Banks including the respondent bank. It is relevant to mention here that the post of clerk cum data entry operator is a non common cadre post and is governed by statutory rules known as the 'Punjab State Cooperative Financing Institutions Services Rule, 1958' and under the provision of these rules, appointing authority of non common cadre employees is the Board of Directors of the respective Central Cooperative Bank. Thus in the absence of selected candidates being impleaded as party before this Court, no relief can be granted to the petitioners. It has further been stated that the respondent bank is the appointing authority only qua the selected candidates for it's bank and not for other Central Cooperative Banks in the State of Punjab. Thus no relief can be claimed by the petitioners and the writ petition is liable to



be dismissed on this ground alone. It has further been averred that that an officer from The Directorate of Scheduled castes and backward classes welfare, Punjab was also a member of the counselling committee formed by the bank for scrutiny of eligibility of the candidates. The counseling committee after scrutiny of the documents of the candidates forwarded the names of the category-wise eligible candidates. Thus, in the absence of 'The Directorate of Scheduled castes and backward classes welfare, Punjab' being impleaded as party before this Court, no relief can be claimed by the petitioners.

4. I have heard learned counsel for the parties and perused the record.

5. Facts of the case are not in dispute as detailed above. The issue involved in the present writ petition, required to be adjudicated upon, is solely based upon question of law which is no more *res integra*.

6. This Court in its decision dated 20.05.2015 in **CWP No.7668 of 1997 –Sudershan Kumari v. State of Punjab and others** has held that cooperative society is not an instrumentality within the meaning of Article 12 of the Constitution of India and no writ is maintainable against a cooperative society. Relevant extract from the judgment in **Sudershan Kumari's** case (supra) is as under: -

*“6. The cooperative society is not an instrumentality within the meaning of Article 12 of the Constitution of India. No department of the Government has been transferred to the Bank. This Court in the case of **Ranjit Singh Vs. The Registrar Cooperative Societies, Punjab, Chandigarh and another-2010(4) Services Cases Today***



750 (Punjab and Haryana) held that no writ is maintainable against the Punjab State Cooperative Bank Ltd., Chandigarh. Relevant paras of this judgment read as under:-

(8) I am of the considered view that the present writ petition would not be maintainable against respondent No.2/the Punjab State Cooperative Bank Ltd. as the case of the respondent/Cooperative Bank would be covered by the judgments of Hon'ble the Supreme Court in the cases of General Manager Kisan Sahkari Chini Mills, Sultanpur, UP (Supra) and S. S. Rana (supra). In the present case, the share money of the State Government in the respondent/Cooperative Bank at the relevant time was merely 0.78%, whereas at present it is only 0.36%. There is nothing on the record to suggest that the control over the Society is of the State Government. The tests as laid down in S.S. Rana's case (supra), Hon'ble Supreme Court has in para-10 held as follows:-

“(10) 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?: (4) Can it be characterized as public authority?:”

(9) None of these tests are fulfilled by the Cooperative Bank.”

*The Hon'ble Supreme Court of India in a case reported as **JT 2003(8) SC 235 – General Manager, Kisan Sahkari Chini Mills Ltd. Sultanpur, UP Vs. Satrughan Nishad and Ors.** has held that even if share money of the Government is 50% and government nominates three directors on the Board and appointments a person to be the Managing Director, even then the writ is not maintainable against a cooperative society.*

*7. In an another judgment of the Hon'ble Supreme court of India reported in **JT 2006(5) SC 186 titled as S. S. Rana Vs. Registrar, Cooperative Societies and another**, it has been held by the Hon'ble Supreme Court of India that no writ is maintainable against the Kangra Central Cooperative Bank Ltd. Kangra, wherein it has been held as under:-*

“(10) 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 ?; (4) Can it be characterized as public authority ? (para 10)”

*Again pertaining to the Hoshiarpur Central Cooperative Bank Limited a Division Bench of this Court while deciding **Som Nath and others Vs. The Deputy Registrar Cooperative Societies-2012(4) PLR 262** has held that “the Cooperative Bank, Hoshiarpur” is not an authority or an instrumentality of the State within the meaning of Article 12 of the Constitution of India.*

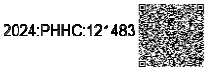
*8. Vide separate detailed judgment of even date passed in 2015(3) S.C.T. 285 : **CWP No.10054 of 2013-Baldev Krishan Gupta Vs. State of Punjab**, this Bench has also held that no such writ petition is maintainable against a Cooperative Society.*

*9. This case is squarely covered by a bunch of CWPs in judgment dated 15.07.2011, Civil Writ Petition No.11003 of 1993, titled as **Tek Chand Vs. State of Punjab and others** wherein, it has been held that this Court has no jurisdiction to entertain the present writ petition against the Hoshiarpur Central Cooperative Bank Limited, Hoshiarpur.*

*10. The case **UP State Cooperative Land Development Bank Ltd. Vs. Chandra Bhan Dubey-1999(1) SCT 593=AIR 1999 SC 753** cited by the learned counsel for the petitioner is distinguishable on facts.”*

7. In view of the above, present writ petition is dismissed as not maintainable. However, liberty is granted to the petitioners to approach the appropriate/competent authority for redressal of their grievance under the Punjab Cooperative Societies Act, 1961 and Rules,

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1963. All pleas and grounds, which have been pleaded in the present writ petitions, could be pleaded and asserted before the said Authority under the relevant provisions. The petitioners would be at liberty to file such a petition(s) within a period of 45 days from the date of receipt of certified copy of this Order. In case such a petition(s) is filed within the above stipulated period, the Competent Authority would not raise the pleas of limitation, keeping in view the present petitions remained pending adjudication in this Court for 6-10 years. The Competent Authority will make an endeavour to consider and decide the petition, so filed, expeditiously. Any observations made herein shall have no bearing on the merits of the case.

12.09.2024
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No