2024:PHHC:033852

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.4262 of 2017 (O&M)
Reserved on: 07.03.2024
Pronounced on: 15.03.2024

Davinderpritpal Singh

....Petitioner

Versus

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Gurnam Singh, Advocate
for the petitioner.

Mr. Teevar Sharma, AAG, Punjab.

Mr. Nitin Kaushal, Advocate
for respondent No.3.

Mr. Naginder Singh Vashist, Advocate
for respondent No.4.

None for respondent No.5.

NAMIT KUMAR J. (Oral)

1. The petitioner has filed the present petition under Articles 226/227 of the Constitution of India, seeking a writ of certiorari for quashing the order dated 02.11.2016 (Annexure P-6), passed by respondent No.1 and order dated 01.02.2016 (Annexure P-5A) (wrongly mentioned as 20.01.2016 in the petition), passed by respondent No.2 and order dated 08.10.2015 (Annexure P-5), passed by Board of Directors of respondent No.4 – Bank, whereby the claim of the petitioner for grant of 01 year extension in service, has been rejected. Further a writ of mandamus has been sought for directing the respondents to permit the petitioner to continue in service for 01 year till

31.01.2015.

2. Brief facts, as have been pleaded in the petition, are that the petitioner was employed as Clerk in year 1986 with respondent No.4 – The Patiala Central Cooperative Bank Limited, Patiala, and he was lastly working as an Assistant Manager. He was to retire on 31.01.2014, on attaining the age of superannuation of 58 years as his date of birth was 23.01.1956. He submitted an application along with his option for extension of 01 year in service on 27.01.2014 and the said application was rejected by respondent No.4, vide order dated 29.01.2014 (Annexure P-2) on the ground that the same was to be submitted within 03 months prior to the date of completion of 58/60 years.

Aggrieved against the said order, the petitioner filed CWP No.3313 of 2014, titled as *"Davinder Pritpal Singh vs State of Punjab and others"*, on the ground that the order of rejection was passed by the District Manager of the Bank i.e. respondent No.4, whereas the appointing and punishing authority of the petitioner was the Board of Directors of the Bank. The said writ petition was dismissed vide order dated 04.08.2015, being not maintainable, however, the petitioner was given liberty to avail alternative remedy under the Punjab Cooperative Societies Act, 1961 and Rules of 1963 and if any such petition before a competent authority is filed within a period of 03 months, the competent authority would not raise the question of limitation. Consequently, the petitioner filed a petition before the Registrar, Cooperative Societies, Punjab, on 24.08.2015 and the same was dismissed vide order dated 08.09.2015 (Annexure P-4), on the ground that no provision of law has been mentioned in the petition and the petitioner has filed an incomplete petition, however, he was advised to approach the Board of Directors for redressal of his grievances.

Thereafter, the petitioner filed an application before the Board of Directors of the Bank on 10.09.2015 and the same was dismissed by it in the meeting held on 08.10.2015 (Annexure P-5).

Thereafter, the petitioner filed a revision petition under Section 69 of the Punjab Cooperative Societies Act, 1961 read with Rule 45 of the Punjab Cooperative Societies Rules, 1963, before the Additional Registrar (General), Cooperative Societies, Punjab, Chandigarh, and the same was dismissed vide order dated 01.02.2016 (Annexure P-5A) (wrongly mentioned as 20.01.2016 in the petition).

Thereafter, the petitioner filed a revision petition before respondent No.1 – Special Secretary, Department of Cooperation, Punjab, Chandigarh, which was also dismissed vide order dated 02.11.2016 (Annexure P-6), by recording the following finding:-

> *"XXXX XXXX XXXX XXXX*
>
> *A perusal of the above clearly shows that the option is to be exercised before attaining the age of 58 years. The petitioner had completed 58 years on 22.01.2014, whereas the application was given by him on 27.01.2014 i.e. after attaining the age of 58 years. Moreover, as of now the period of two years has already passed on 31.01.2016. The petitioner had filed the present revision on 26.02.2016 i.e. after the expiry of the period of extension. On this ground alone the present revision petition becomes infructuous. Therefore, I do not find any merit in the revision petition, hence the same is dismissed.*

Case was reserved for orders on 06.10.2016, which is announced and signed today. Parties be informed.

Announced
02.11.2016

Sd/-
(Gurneet Tej)
Special Secretary Cooperation
Punjab, Chandigarh."

Aggrieved against the order dated 02.11.2016 (Annexure P-6), order dated 08.10.2015 (Annexure P-5) and order dated 01.02.2016 (Annexure P-5A) (wrongly mentioned as 20.01.2016 in the petition), the petitioner has filed the present writ petition.

3. Learned counsel for the petitioner submits that since the petitioner had submitted the application for extension in service for 01 year before his date of retirement i.e. 31.01.2014, therefore, he was entitled to continue in service upto 31.01.2015 and his claim has wrongly been rejected by the respondents.

4. Per contra, learned counsel for the respondents submits that the present writ petition is not maintainable against respondent No.4 as the Bank is neither an instrumentality of the State nor any other authority as defined under Article 12 of the Constitution of India. Learned counsel for the respondents further submits that since the petitioner was required to submit his application 03 months before his date of retirement and the petitioner submitted the said application 04 days before his retirement and that too, not on the prescribed proforma, the same has rightly been rejected. He further submits that on 26.12.2013, the petitioner had applied for release of his Provident Fund wherein his date of retirement was also mentioned as 31.01.2014 and

the same was also verified by the concerned officer, therefore, the petitioner cannot claim extension of 01 year in service.

5. I have heard learned counsel for the parties and perused the record with their able assistance.

6. Admittedly in terms of the Notification dated 08.10.2012, which was regarding extension of 01 year in service of the employees of Punjab Government, a clear-cut condition was incorporated that the extension shall be given only to those employees who give their option as per specified proforma attached with the said letter, which can be given to the Head of the Office within 03 months prior to completing the date of age of 58/60 years. The relevant portion from the said Notification dated 08.10.2012, reads as under:-

> *"Subject: Regarding extension of one year in services of the employees of the Punjab Government.*
>
> *Respected Sir,*
>
> *I have been directed to bring the above mentioned subject into your kind notice that in view of Clause (a) and Clause (b) of Rule 3.26 of Volume 1, Part-1 of the Punjab Civil Services Rules, the Hon'ble Governor of Punjab has pleased to accord his approval to give one year extension in service period of employees of Group "A", Group "B", Group "C", Group "D" of the Punjab Government. The extension in service shall be as per the below mentioned terms and conditions:-*
>
> > *(a) This extension shall be given only to those employees who give their option as per the specified performa attached with this letter. In view of Clause (a) of Rule 3.26 of Volume 1, Part-1 of the Punjab Civil Services Rules, the desired option can*

be given to the Head of his Office within 3 months prior to completion of the date of age of 58/60 years, provided that those employees in whose retirement there is less than three months are remaining they can give their option at any time from the date of issuance of this letter. The option once given shall be deemed to be final and no permission shall be granted to amend the same.

X X X X X X

2. These instructions of one year extension in service shall be applicable to those employees whose date of retirement falls on 31st October, 2012 or thereafter.

Sd/-
(Mohinder Singh Prashar)
Under Secretary, Finance."

Whereas, petitioner has given option four days before his date of retirement i.e. 31.01.2014.

7. **Maintainability of the Writ Petition**

The issue of maintainability of writ petition against respondent No.4 – Bank has already been considered by this Court in CWP No.3313 of 2014 (Annexure P-3), filed by the petitioner wherein it has been held as under:-

"XXXX XXXX XXXX XXXX

Respondent No.3- The Central Cooperative Bank Ltd. (fort short 'the Bank') is a Cooperative Society registered under Punjab Cooperative Societies Act 1961 (for brevity 'the Act'). 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 being a cooperative society is not owned, controlled or managed by the *appropriate government.*

The cooperative society is not an authority within the meaning of Article 12 of the Constitution of India. 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.*** *(Page No.1 to 5 of compilation of judgments) 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 the cooperative society. 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.*

Vide judgment passed in CWP No.10054 of 2013-Baldev Krishan Gupta Vs. State of Punjab, this Court has also held that no such writ petition is maintainable against a Cooperative Society.

Keeping in view the above discussion, it is held that no writ is maintainable against the respondent No.3-The Patiala Central Cooperative Bank Ltd., Patiala.

Hence, the present writ petition is dismissed as not maintainable."

However, liberty was granted by this Court to avail the alternative remedy in the following terms:-

"It has been brought to the notice of the Court by the learned counsel for the respondents that the petitioner

has an alternate remedy to approach to the appropriate/competent authority for redreassal of his grievance under the Punjab Cooperative Societies Act, 1961 and the Rules, 1963. All pleas and grounds, which have been pleaded in the present writ petition, could be pleaded and asserted before the said Authority under the relevant provisions.

In view of the above, the petitioner would be at liberty to file such a petition before the competent authority within a period of three months from the date of receipt of certified copy of this order.

In case any such a petition is filed, within the above stipulated period, the Competent Authority would not raise the question of limitation.

Any observations made herein shall have no bearing on the merits of the case."

8. **On Merits**

Admittedly, the petitioner was working as Assistant Manager with respondent No.4 – Bank. His date of birth is 23.01.1956 and he was to retire on 31.01.2014, on attaining the age of superannuation of 58 years. On 26.12.2013 (Annexure R-4/2), the petitioner submitted an application to the Commissioner, Employees Provident Fund for taking out his Provident Fund. A perusal of the same shows that on the opening page and on the subsequent pages, the petitioner has himself written that he is going to retire on 31.01.2014. Meaning thereby till 26.12.2013, the petitioner was very much aware that he is going to retire on 31.01.2014 but thereafter, the petitioner gave an option only four days prior to his date of retirement i.e. 27.01.2014, whereas the same was required to be given to the Head of the Office, within 03 months prior to completing the age of 58/60 years.

9. Another plea has been raised by learned counsel for the petitioner that one Smt. Daljit Kaur (respondent No.5) was granted extension in service. The said plea has been replied by respondent No.4 in the following manner:-

> *"In reply to para no.11 & 12 it is submitted here that no discrimination has been done with the petitioner though extension of one year in service has been granted to Smt. Daljit Kaur (respondent No.4) in the year 2013 but it is submitted here that the same was not given by the then District Manager. It is further submitted here that the Instructions dated 08.10.2012 was not applicable to the Cooperative Department and thereafter another notification dated 27.02.2013 which was in continuation of Notification dated 08.10.2012, then the notification dated 08.10.2012 was adopted by the Board of Directors in view of the letter dated 04.04.2013 issued by Registrar, Cooperative Societies, Punjab. Thereafter a decision was taken by Board of Directors of the Bank on 11.06.2013 and due approval was given by the Joint Registrar, Cooperative Societies, Patiala on 11.07.2013. It is further submitted here that the extension was given to her in view of instructions dated 27.02.2013 whereas the date of superannuation was 28.02.2013. Thereafter a decision was taken by Board of Directors of the Bank and due approval was given by the Joint Registrar, Cooperative Societies, Patiala on 11.06.2013."*

10. Although the case of the petitioner is not similar to that of Daljit Kaur – respondent No.5, however, even if she was granted extension not in conformity with the Notification dated 27.02.2013, yet

a wrong benefit granted to one employee cannot be claimed by another employee like the present petitioner as discrimination cannot be claimed in a negative form.

11. Accordingly, in this view of the matter, the present petition is hereby dismissed, with no order as to costs.

(NAMIT KUMAR)
JUDGE

15.03.2024
yakub

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No