

(2022) 08 SHI CK 0029

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition (Original Application) No. 5828 Of 2019

Barfoo Ram And Others

APPELLANT

Vs

Jogindera Central Co-Operative Bank Limited And Others

RESPONDENT

Date of Decision : 10-08-2022

Acts Referred:

Constitution Of India, 1950 — Article 12, 226

Citation : (2022) 08 SHI CK 0029

Hon'ble Judges : Vivek Singh Thakur, J

Bench : Single Bench

Advocate : Surinder Saklani, Karan Singh Kanwar, Hemant Vaid, Ajay Sharma

Final Decision : Dismissed

Judgement

Vivek Singh Thakur, J

1. Petitioners, employees of respondent No. 1 Jogindra Central Cooperative Bank Ltd., have approached the Court against order dated 13.4.2015, whereby respondent-Bank has withdrawn all pending recommendations of Departmental Promotion Committee (DPC) held on 10.5.2002, submitted by respondent No. 1-Bank to respondent No. 2-Registrar Co-operative Societies, for his approval.

2. Originally present petition was filed by petitioners as Original Application No. 3655 of 2015 before Erstwhile H.P. State Administrative Tribunal, which on abolition of Erstwhile Tribunal was transferred to this Court and has been considered as petition under section 226 of the Constitution of India, assigning it new number i.e. CWPOA No. 5828 of 2019.

3. First and foremost objection raised by respondents in present case is that in view of findings returned by a Division Bench of this Court in LPA Nos. 182 and 183 of 2007, arising out of judgments passed by Single Bench dated 26.9.2007 in CWP Nos. 641 of 2002, titled as Mehar Chand and another Vs. Jogindera Central Cooperative Bank and others and CWP No. 1398 of 2002, titled as Jagat Ram and another Vs. Jogindera Central Cooperative Bank Ltd and others, filed by

some employees of respondent No. 2-Bank against proceedings of DPC dated 10.5.2002, whereby it has been held that those Writ Petitions were not maintainable against the Bank, present petition is also liable to be dismissed being not maintainable being filed against decision of respondent No. 1-Bank with respect to same proceedings/recommendations of DPC dated 10.5.2002.

4. Learned counsel for the petitioners referring judgment of this Court in case titled as Kehar Singh and others Vs. State of Himachal Pradesh, reported in 2021 (1) Shim. LC 143 has contended that present Writ Petition is maintainable against respondent-Bank. Reliance has been placed on following para of this judgment:

"26, In view of the above discussion, I am of the considered view that mandate of C.K. Malhotra's, S.S. Rana's, Vikram Chauhan's and Sanjeev Kumar's cases is not that High Court has no jurisdiction to exercise power under Article 226 of the Constitution of India against a Society or Registrar while dealing with the matters pertaining to the Society. Even in the judgments of the Apex Court, referred supra, there is clear mandate that in given facts and circumstances, writ is maintainable not only against the State of its functionaries within meaning of Article 12 of Constitution but even against private person, including natural as well as juristic person and thus a writ petition against a Society may or may not be maintainable, depending upon facts and circumstances of the case, however, undoubtedly a writ petition is maintainable against the orders passed by the Registrar with respect to functioning of the Society, exercising statutory powers under the Act or Rules framed thereunder."

5. It is undisputed fact that in the proceedings of Departmental Promotion Committee on 10.5.2002, recommendations were made for promotion of petitioners for promotion from Class-IV to Class-III which were submitted for approval before respondent No. 2, Registrar Co-operative Societies. Employees of the Bank, being petitioners in CWP Nos. 641 of 2002 and 1398 of 2002, had assailed those recommendations seeking direction to the respondent-Bank to consider those petitioners/employees for promotion from Grade-IV to Grade-III as per rules existing on the date of convening the meeting of Departmental Promotion Committee, i.e. on 10.5.2002.

6. In those petitions, petitioners herein were arrayed as party-respondents No. 4 to 11. Those Writ Petitions were allowed by learned Single Judge vide order dated 26.9.2007, directing the respondent-Bank to consider their case for promotion w.e.f. their date of becoming eligible for the same, as prayed in those Writ Petition alongwith consequential benefits including the arrears of salary in case they were found suitable for promotion. Copies of orders/judgments passed therein have been placed on record as annexure A-2 (Colly).

7. The aforesaid judgments passed by learned Single Judge were assailed by present petitioners by filing LPAs No. 182 of 2007, titled Yog Raj and others Vs. Jagat Ram & others and LPA No. 183 of 2007, titled as Yog Raj & other Vs. Mehar

Chand & others, raising issue of maintainability of Writ Petitions against respondent-Bank. Those LPAs were allowed by observing as under:-

"21.

The language of Article 226 is no doubt very wide when it states that a writ can be issued 'to any person or authority' on an enforcement of any rights conferred by part-III and for any other purpose. However, the aforesaid language in Article 226 cannot be interpreted and understood literally. We cannot apply the literal rule of interpretation while interpreting this Article or else it would follow that a writ can even be issued to any private person or to settle even private disputes.

22. Undoubtedly, individuals and private bodies and in certain cases societies and companies registered under the statutes do not fall within the inclusive definition of State under Article 12 of the Constitution. However, persons and legal entities created under various laws have been brought within the expansive definition by judicial interpretation. It is no more resintegra that the body can be termed to be an instrumentality or agency of the State while performing public functions and discharging public duties irrespective of its birth by non-legislative action as the existence of such entity, be statutory or non-statutory is irrelevant because it is only the nature of the activity which becomes a determinative factor to bring it within the purview of instrumentality or authority under Article 226 of the Constitution of India.

23. From the above discussion judged by any yardstick, the functions to be performed by the respondent bank are, in no manner, governmental functions so as to bring them within the compass of public duty or public functions to enable us to compel the respondent bank to yield to the jurisdiction of this court under Article 226 or for that matter to enable the court to assume jurisdiction over the respondent bank.

24. In view of the aforesaid clear exposition of law, not only by this Court but also by the Hon'ble Apex Court, we have no other option but to hold that no writ petition against Jogindra Central Co op Bank Ltd would be maintainable where the writ is directed and relief claimed is only against the Jogindra Central Co operative Bank Ltd. Therefore, appeals are allowed accordingly and the judgment passed by learned Single Judge taking contrary view is set aside."

8. After decision of above referred LPAs, petitioner Barfoo Ram and Ajit Singh preferred representations to the Managing Director of respondent-Bank for consideration of their candidature for promotion from May, 2002, i.e. the date of convening the Departmental Promotion Committee. Proceedings/recommendations of Departmental Promotional Committee were pending before the Registrar for approval. It is also pertinent to mention that in furtherance to the judgment dated 26.9.2007 passed in CWP Nos. 641 of 2002 and 1398 of 2002, certain persons were promoted to Grade-III and after decision of LPAs, their promotion was withdrawn vide Office Order dated 13.4.2015 and proceedings of Departmental Promotion Committee dated 10.5.2002 which were

pending for the last 13 years before Registrar Cooperative Societies were also withdrawn before passing any order or granting any approval by the Registrar.

9. Admittedly, in present case, impugned order has not been passed by respondent No. 2-Registrar Cooperative Societies, but action of respondent-Bank with respect to Departmental Promotion Committee is under challenge.

10. Following paras of pronouncement of this Court in Kehar Singh's case are also relevant to refer:-

"19. As discussed hereinafter, even if an institution does not fall within the expression "State" or "instrumentality of State", within the meaning of Article 12 of the Constitution of India, then also for appropriate given facts and circumstances such institution can be subjected to the jurisdiction of the High Court under Article 226 of the Constitution. An institution, which is not covered under public authority for the purpose of Right to Information Act, can be subjected to jurisdiction of High Court under Article 226 of the Constitution in an appropriate case.

20. Article 226 of the Constitution empowers the High Court to issue direction, orders or writs or any of it, for enforcing of rights conferred by Part-III and for any other purpose not only to the State or its functionaries but to any other person also. Therefore, in given facts and circumstances, power under Article 226 can be exercised against a private person also, including natural as well as juristic person. Needless to refer to an example of Writ of Habeas Corpus, which, so many times, may warrant issuance of writ against a private person to produce or to let free a person from illegal detention.

21. In present case, admittedly, Cooperative Bank is not an authority or instrumentality of the State under Article 12 of the Constitution. Its status is like a private person.

22..... ..

23. Earlier also, this Court vide judgment dated 20.3.2017, passed in CWP No.8724 of 2018, titled Surjeet Kaur v. State of Himachal Pradesh and others, after considering judgments of the Supreme Court, passed in Binny Limited and another v. V. Sadasivan and others with D.S. Veer Ranji v. Ciba Specialty Chemical (I) and another, reported in (2005) 6 SCC 657; K.K. Saxena v. International Commission on Irrigation & Drainage and others, reported in (2015) 4 SCC 670; and that of Kerala High Court in Mrs. Sobha George Adolfus Vs. State of Kerala, AIR 2016 Kerala 175, has held that in view of ratio of law laid down by Apex court, it is clear that writ of mandamus can be issue against a private person/institution in the given facts and circumstances of the case where the said person/Institution is discharging public duty or positive obligation of public nature or is under liability to discharge any function under any statute; to compel it to perform such statutory function.

24. Registrar, with respect to Cooperative Society, performs two types of

functions, acting in dual capacity. Some powers are conferred upon him by the statute and rules framed thereunder, whereas others by nominating him as an Authority or Officer to perform the functions under the regulations/bye-laws as framed by the Society.

25. Exercise of statutory power and performing a statutory function by Registrar is definitely amenable to writ jurisdiction of this Court. But as held in C.K. Malhotra's case and judgments passed by the Apex Court and other subsequent judgments passed by this High Court, referred supra, exercise of power by the Registrar, under bye-laws and regulations framed thereunder by the Society itself, but not having statutory force, is not amenable to writ jurisdiction."

11. In previous litigation in LPA Nos. 182 and 183 of 2007, at the instance of petitioners herein, findings has been returned by the Division Bench that issue related with respect to recommendations of proceedings of DPC dated 10.5.2002, no Writ Petition would be maintainable, for the reason that Writ was directed and relief claimed was only against Jgindra Central Cooperative Bank Limited.

12. In present case situation is identical. Present Writ Petition with respect to recommendations and proceedings of DPC dated 10. 5.2002 and relief claimed is only against the respondent-Bank, as petitioners are seeking directions to respondent No. 1-Bank for sending case for approval of proceedings of DPC dated 10.5.2002 and to consider petitioners for promotion to the post of Officer Grade-III by promoting them from the date of meeting of DPC with all consequential benefits.

13. The judgment passed by Division Bench in LPA Nos. 182 and 183 of 2007 on the same subject matter is binding on the petitioners as well as this Court. Thus present petition is also not maintainable.

14. In view of above discussion, present petition is dismissed being not maintainable. By taking a lenient view, petitioners are not being burdened with cost.

Interim order, if any, stands vacated.

CMP-T No. 304 of 2022

15. In view of order passed in the main petition, grounds on which this application has been filed, do not survive and this application has lost its relevancy and disposed of accordingly.