

(2020) 06 JH CK 0005

In the Jharkhand High Court

Case No : Writ Petition(S) No.1411 Of 2020

Bijay Kumar Choudhary @ B.K. Choudhary

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 03-06-2020

Acts Referred:

Jharkhand Co-operative Societies Act, 1935 — Section 16(a), 16(b), 44AV, 44AV(16),
44AV(16)(a), 44AV(16)(b), 44AV(22)(c), 44AV24
Jharkhand State Co-operative Bank Employees Service Rules, 2015 — Rule 24

Citation : (2020) 06 JH CK 0005

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Ritu Kumar, U.N. Jha, Jai Prakash, Ashok Kumar Shukla

Final Decision : Dismissed

Judgement

1. Heard Mrs. Ritu Kumar, the learned counsel appearing for the petitioner, Mr. Jai Prakash, the learned Additional Advocate General, appearing on behalf of the respondent-State and Mr. Ashok Kumar Shukla, the learned counsel appearing for respondent no.3-Jharkhand State Co-operative Bank Ltd.

2. This writ petition has been heard through Video Conferencing in view of the guidelines of the High Court taking into account the situation arising due to COVID-19 pandemic. None of the parties have complained about any technical snag of audio-video and with their consent this matter has been heard.

3. The petitioner has filed this writ petition for quashing an order of removal from service on the post of Chief Executive Officer, Jharkhand State Co-operative Bank Ltd., Ranchi. The further prayer is made for a direction to reinstate the petitioner into the service on the post of Chief Executive Officer, Jharkhand State Co-operative Bank Ltd., Ranchi.

4. Mrs. Ritu Kumar, the learned counsel appearing on behalf of the petitioner submitted that the petitioner is a serving officer in the National Bank for

Agriculture and Rural Development (hereinafter to be referred as NABARD) and during his service in NABARD he has applied for the post of Chief Executive Officer in Jharkhand State Co-operative Bank Ltd., Ranchi on deputation vide application dated 29.05.2019 pursuant to the advertisement on vacancy portal of NABARD web-site and the Jharkhand State Co-operative Bank Ltd. (JSCB) addressed to the Chairman, NABARD. She submitted that all these happened as the petitioner was eligible for the post. The NABARD considered the application and forwarded to the Jharkhand State Co-operative Bank Ltd.-respondent no.3 for their needful. The petitioner was found eligible for appointment to the post of Chief Executive Officer, Jharkhand State Co-operative Bank Ltd., Ranchi and pursuant thereto the petitioner was handed over a letter relating to his appointment on deputation vide letter dated 30.05.2019 along with the direction to report and join at Jharkhand State Co-operative Bank Ltd. citing the terms and conditions of deputation of the national bank officers of NABARD. The petitioner has reported to the Chairman of the Jharkhand State Co-operative Bank Ltd. in writing on 01.06.2019. After following the due process the petitioner has joined on the same date vide charge report dated 01.06.2019. She further submitted that all these happened as the petitioner was well within the age limit. The petitioner started performing his duties which were assigned to the post of Chief Executive Officer of Jharkhand State Co-operative Bank Ltd., Ranchi. She further submitted that the Reserve Bank of India has issued advisory to all the Registrars of Co-operative Societies to relax the age limit at entry level eligibility to 62 years and upper age limit for superannuation fixed at 70 years vide RBI letter No.BCBR. CO.RCBD. No.2365/ 19.51.022/ 2017-18 dated 04.01.2018 which find contained in NABARD Circular No.-13/IDD-01/2018 dated 17.01.2018 addressed to the Registrar of the Co-operative Societies of all the States and Union Territories. She further submitted that the respondents are negligent to the advisory of the Reserve Bank of India to the above effect. She further submitted that the order of the respondent relating to removal of the petitioner from the post of Chief Executive Officer of Jharkhand State Co-operative Bank Ltd. is solely on the ground that he does not conform to the fit and proper criteria of age prescribed by the NABARD. She also submitted that the show cause was issued to the petitioner under the signature of the respondent no.2. She further submitted that it is a colourable exercise of powers. She submitted that however the reply was submitted by the petitioner on 04.05.2020. She further submitted that the respondent no.2 has misconceived and wrongly interpreted the contents of the letter of Reserve Bank of India. She further submitted that the removal of the petitioner is arbitrary. She further submitted that the order of removal of the petitioner from the post of Chief Executive Officer 25 days prior to completion of his tenure is intentional and in haste to frustrate the enquiry of Saraikella-Kharsawan Police case which was initiated by the petitioner himself against the nexus of the bank. Mrs. Ritu Kumar, the learned counsel appearing for the petitioner challenged the impugned order on the ground that it is stigmatic to the petitioner. The Registrar has got no power to remove the petitioner. She further submitted that the NABARD has the power of

removal of the petitioner. She submitted that there is no allegation of misrepresentation on behalf of the petitioner. The minutes of the meeting dated 15.06.2019 is not annexed with the counter affidavit. She submitted that the action is wholly arbitrary by the respondent no.2. The contention of the petitioner is that the removal is solely on the ground that he does not conform to the fit and proper criteria of age prescribed by the NABARD is illegal, prejudicial, unjustified and abuse of powers conferred upon the respondent no.2 under the provision of section 44 AV and 16(b) of the Jharkhand Co-operative Societies Act, 1935, as amended in 2011. She further submitted that the respondent no.2 acted contrary to the provisions contained in section 44 AV- (22)(c) of Jharkhand Co-operative Societies (Amendment) Act, 1935. The power exercised is a colourable exercise of powers by the respondent no.2.

5. Per contra, Mr. Jai Prakash, the learned Additional Advocate General appearing on behalf of the respondent nos.1 and 2 submitted that Chapter VI-C was inserted in Jharkhand Co-operative Societies Act, 1935 by way of amending the Jharkhand Act No.6, 2011 which contained in section 44 AV- (16). He further submitted that section 44 AV- (16)(a) is fixed criteria for Chief Executive Officer or member of the Managing Committee. He further submitted that in view of the said provision a person holding the post of Chief Executive Officer who does not fulfil fit and proper criteria stipulated by the Reserve Bank of India shall be treated as ineligible for such post. On the strength of this section, he further submitted that such person is liable to be removed by the Registrar or the appointing authority, as the case may be, forthwith on being so advised by the Reserve Bank of India or National Bank. He further submitted that the Rule 24 of the bye-laws of Jharkhand State Co-operative Bank Ltd. provides for appointment of Managing Director by the Board of Directors under the fit and proper criteria specified by the Reserve Bank of India subject to the control of the Board. He further submitted that the Fit and Proper criteria of Reserve Bank of India is contained in the Circular No.RPCD.CO.RCBD. 131/13.0103/2011-12. He further submitted by way of referring this circular that a candidate appointed on the post of Chief Executive Officer may preferably not be above 55 years of age. By way of referring to Jharkhand State Co-operative Bank Employees' Service Rules, 2015 approved by the Board of Directors in its meeting held on 18.12.2015 vide agenda no.5 also provides for appointment of CEO/MD. Schedule IV of the Rule further provides for direct recruitment on the post of CEO through selection process on the basis of interview. He further submitted that rules clearly provide that the age of a candidate should not be more than 55 years.

The extract of Jharkhand State Co-operative Bank Employees' Service Rules, 2015 is annexed as Annexure-C to the counter affidavit. He further submitted that in the meeting of Board of Directors, Jharkhand State Co-operative Bank Ltd. which held under the chairmanship of the Chairman of the Bank on 24.12.2018 vide agenda no.6, the decision was taken to call three officers from NABARD on deputation to hold three posts of Regional Manager and three posts

of Assistant General Manager. By way of referring to that meeting, minutes of which is annexed as Annexure-D, he further submitted that it is clear that no decision was taken in the meeting in respect of the post of Chief Executive Officer, however, the Chairman wrote letter dated 19.03.2019 addressed to the Chairman, NABARD that the Board of Directors in its meeting dated 24.12.2018 has resolved to depute an officer to the post of Chief Executive Officer to run day-to-day affairs of the Bank. A request was made to forward the name of likely officers of the NABARD to enable the Chairman to place the same before the Board of Directors. The said letter dated 19.03.2019 is annexed as Annexure-E to the counter affidavit. This request was again repeated by the Chairman by letter dated 22.03.2019, 23.03.2019 and 03.04.2019. The D.G.M., NABARD vide letter dated 06.05.2019 forwarded the application of the petitioner. On 21.05.2019 the decision was taken to appoint the petitioner on the post of C.E.O for one term. The period of deputation was for a period of one year removable by mutual agreement. The right was reserved with the NABARD to recall the officer from deputation. He submitted that the appointment of the petitioner was made in violation of the Fit and Proper criteria of the Reserve Bank of India. The appointment has been made without issuing any advertisement, without constituting any screening committee and selection committee and without any interview. He further submitted that the joining of the petitioner has not been before the Board of Directors nor the same has been approved by the Board of Directors and only the Chairman has approved the joining of the petitioner and accordingly by letter dated 24.06.2019 a request was made to inquire into the matter. A two-Member committee was constituted by the respondent no.2 by letter dated 09.07.2019 and the committee submitted its report. The committee found that in the minutes of meeting dated 24.12.2018 there was neither any agenda nor any decision regarding appointment of the Chief Executive Officer, however, the Chairman wrote three letters to the NABARD with reference to the said meeting itself requesting to send officer of NABARD on deputation for the post of C.E.O. It was thus found that the Chairman mislead the NABARD. The committee also found that no procedure was followed in the matter of appointment of the petitioner. Only one name was send by the NABARD and the same was accepted by the Chairman. The committee also found that the criteria were changed by the Chairman vide letter no.03.04.2019 keeping in view the same qualification of the petitioner. The joining of the petitioner was not approved by the Board of Directors. It was only accepted by the Chairman. The application submitted by the petitioner was not in the format prescribed under the Fit and Proper criteria fixed by the Reserve Bank of India resulting in suppression of many important information. This was deliberately done to suppress the age and other details. The enquiry committee came to the conclusion that many irregularities have been committed by the Bank in the matter of appointment of the petitioner on deputation basis. The petitioner was asked to show cause from the Chairman in the light of the findings by the enquiry committee. The opinion of the R.B.I was also obtained in this matter. The R.B.I provided its opinion vide letter dated 11.02.2020 and confirmed that the

petitioner does not fulfill the age criteria as per Fit and Proper criteria as prescribed by the R.B.I. The State Government has not amended its service rules and hence the age limit was not relaxed to 62 years and the copy of the opinion dated 11.02.2020 of the R.B.I is annexed as Annexure-S. The NABARD in its inspection report dated 05.02.2020 also found that the C.E.O is not complying with the Fit and Proper criteria in respect of the age as he was more than 55 years. The petitioner was show caused to reply within 3 days but the petitioner did not submit his reply. Again by letter dated 12.03.2020 the petitioner was directed to submit his reply to the show cause within 24 hours. The letter demanded by the petitioner was provided to the petitioner by letter dated 20.03.2020. Again on 24.04.2020 a letter was issued for reply to the show cause by the petitioner. In spite of that, the petitioner did not submit his reply. Finally the order dated 04.05.2020 has been passed by the respondent no.2 in exercise of its powers under section 44 AV-16(a) of the Act. Mr. Jai Prakash, the learned Additional Advocate General appearing for the State submitted that there is no illegality in the impugned order and the contention of the petitioner is misplaced and the writ petition is fit to be dismissed.

6. Mr. Ashok Kumar Shulka, the learned counsel appearing for the respondent no.3 submitted that Jharkhand State Co-operative Bank Ltd. is an autonomous body and he submitted that on deputation the petitioner was appointed as C.E.O. There were necessary correspondence under the subject heading of "Deputation of NABARD officers for the post of Chief Executive Officer of JSCBL". He further submitted that the petitioner was appointed under due provisions contained in Jharkhand State Co-operative Bank Ltd. bye-laws and the service rules through the process of appointment on deputation. He also submitted that the contention of the petitioner with regard to the age, according to him it is relaxed to 62 years. The initiation of enquiry by the respondent no.2 is also admitted in the counter affidavit filed by the respondent no.3. He further submitted that by way of mis-representation of section 44AV-16(b) in the light of section 44AV-24 of Chapter VI (C) and the provisions of the terms and conditions of NABARD the respondent no.2 has acted. The petitioner's service on deputation with the Bank has commenced on. 01.06.2019 and it is due to complete on 31.05.2020. The learned counsel appearing for the respondent no.3 on the query of the Court accepted that the Reserve Bank of India guideline is applicable on the respondent no.3. He also submitted that there is no direct role of respondent no.3 in this writ petition, however, as the respondent no.3 has been made party in this writ petition that is why he has submitted so. By way of referring Annexure-E to the counter affidavit he submitted that there is an age relaxation.

7. By way of replying to the submission of the learned counsel appearing for the respondent nos. 1 and 2, Mrs. Ritu Kumar, the learned counsel appearing on behalf of the petitioner vehemently argued that in view of the observation made in the impugned order the stigma is cast upon the petitioner. She further submitted that the petitioner is not willing to go to his parent Department carrying such stigma. She further submitted that there is no word against the

petitioner in the entire counter affidavit filed by the respondent nos.1 and 2. She submitted that the allegation is illegal. She further submitted that the advertisement was on the portal and there is no mis-representation on the part of the petitioner.

8. The Court has given anxious consideration on the submission of the learned counsels appearing on behalf of the parties. The Chapter VI C was inserted in the Jharkhand Co-operative Societies Act, 1935 by way of Amending Act No.6 of 2011 which contain section 44 AV- 16(a).

For ready reference, section 44 AV- 16(a) is quoted hereinbelow:

"16(a) Criteria for Chief Executive or member of the Managing Committee:

The members of the Managing Committee or Chief Executive Officer of the State Co-operative Bank and Central Cooperative Bank shall fulfill the criteria stipulated by the Reserve Bank for the time being in force.

(b) A member of the Managing Committee of the State Co-operative Bank or a Central Co-operative Bank or a person holding the post of Chief Executive Officer who does not fulfill the fit and proper criteria stipulated by the Reserve Bank shall be treated as ineligible for such post and if such person is holding the post, he shall be removed by the Registrar or the Appointing Authority, as the case may be, forthwith on being so advised by the Reserve Bank or National Bank."

9. On going through the above provisions of section 44 AV- 16, it transpires that a candidate who fulfills the criteria as stipulated by the Reserve Bank of India may be appointed on the post of Member of the Board of Directors or C.E.O by the State Co-operative Bank or Central Co-operative Bank. Further any person holding the said post who does not fulfill the Fit and Proper criteria stipulated by the R.B.I may be forthwith removed by the Registrar or the appointing authority on being so advised by the Reserve Bank of India. Annexure-S dated 11.02.2020 which is a letter of the Reserve Bank of India suggests that the petitioner does not fulfill the age criteria as per the Fit and Proper criteria prescribed by the Reserve Bank of India. It suggests that the State Government may take its own view on the issue, as other parameters prescribed under the Fit and Proper criteria for appointment of CEOs of StCBs/DCCBs have been complied with except the age criteria. It transpires that the suggestion of relaxation of the age has not been incorporated by the Government of Jharkhand. It also suggests that the age criteria has not been complied with regard to the appointment of the petitioner. The guidelines of Reserve Bank of India is binding upon the respondent no.3. Section 16(a) empowers the Registrar to remove a person who does not fulfill the Fit and Proper criteria as stipulated by the Reserve Bank of India. The Fit and Proper criteria for the Directors and the C.E.O have been brought on record as Annexure-B to the counter affidavit of respondent no.3, wherein the requirement of the C.E.O with regard to age at condition no.1 as stipulated that a person may preferably not be above 55 years of age at the time of appointment. On the query of the Court, the learned counsel appearing for the

petitioner submitted that the petitioner is 59 years of age. Thus, it transpired that from the Annexure-B to the counter affidavit that Fit and Proper criteria for Directors and C.E.Os provide the age with regard to C.E.O as 55 years of age whereas the petitioner is 59 years of age and relaxation in the age has not been incorporated by the Government of Jharkhand. Thus, it transpired that the petitioner has been appointed de hors the rules. Jharkhand State Co-operative Bank Employees Service Rules, 2015 approved by the Board of Directors has been brought on record by way of Annexure-C to the counter affidavit of respondent no.2 and the fourth schedule of that rule has prescribed the age of the Chief Executive Officer as 55 years. Thus, it is evident that in view of Annexure-B and Annexure-C the age of the Chief Executive Officer as prescribed is 55 years. It transpired from the letter dated 22.03.2019, 23.03.2019 and as averred in the counter affidavit the another letter dated 03.04.2019 that the Chairman has acted in terms so that the benefit may be accrued to the petitioner. Thus, the Court comes to the conclusion that the age criteria prescribed was of 55 years whereas the petitioner has been provided the employment at the age of 59 years and in such eventuality the power is kept reserved in view of section 44 AV- 16(a) of the Jharkhand Co-operative Societies Act, 1935 with the Registrar. Thus, the Registrar has got the power to remove the petitioner. The petitioner was posted on deputation. It is well settled that a deputationist has no legal right to continue on the post. The reversion of the petitioner has been questioned as the appointment of the petitioner was illegal. It is well settled proposition of law that the illegality cannot be allowed to perpetuate. The deputationist has got no legal right to continue on the post. The impugned order has rightly been issued considering the age criteria which is not in accordance with the age prescribed as considered supra. The deputation does not result in recruitment. Lastly, the only question required to be answered by the Court which has been vehemently argued on behalf of the petitioner that the order in question is stigmatic to the petitioner. On perusal of the impugned order it transpired that there is no stigma against the petitioner. The order is simplisiter of removal from the post of C.E.O. The said order contains various provisions of appointment and removal. This is general in nature. Thus, it cannot be said that there is stigma against the petitioner. By way of issuing several show cause notice, the principle of natural justice has been complied with. Thus, the order is not attaching stigma to the petitioner. The petitioner was on deputation and in view of the age criteria not being fulfilled the impugned order has been passed. The Court finds that there is no stigma against the petitioner. The order is not punitive in nature or prejudicial to the future employment of the petitioner in getting employment. In view of the above it transpired that there is no colourable exercise of powers as argued by the petitioner. In view of the above facts the argument of the petitioner is not tenable against the arbitrariness and mala fide. No respondent has been made party by name. Thus, the contention of mala fide is not made out.

10. As a cumulative effect of the above discussion, there is no merit in the writ

petition and accordingly, W.P.(S) No.1411 of 2020 stands dismissed.