

(1986) 02 P&H CK 0059
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 5513 of 1985

Karan Singh and ors.

APPELLANT

Vs

State of Haryana and ors.

RESPONDENT

Date of Decision : 27-02-1986

Acts Referred:

Citation : (1987) PLJ 617 : (1988) 2 RRR 244

Hon'ble Judges : P.C.Jain;CJ., J and S.S.Kang, J

Advocate : Prem Singh, Advocate., Advocates for appearing Parties

Judgement

P.C. Jain, C.J. and S.S. Kang, J.

1. The petitioners are the employees of respondent No. 4. They were appointed Secretaries under Rule 9.3(1) (4), of the Haryana State Central Cooperative 'Banks' Staff Service (Common Cadre) Rules, 1975 (hereinafter referred to as the Rules"). It is averred in the petition that on 17.5.1985 almost all the Directors including the so called Government nominee came present and took a decision to authorise the Managing Director of the Bank to make appointments under Rule 9.3 of the Rules. It appears that all the petitioners joined the service in the first week of June, 1985.

2. It is further averred that when another meeting of the Board of Director of the Bank was held on 27.7.1985, the Assistant Registrar, Cooperative Societies, Karnal recorded a note of dissent, that he was not in favour of authorising the Managing Director of the Bank and the appointment made by him vide order dated 1.6.1985 were not in accordance with law. It, seems that this meeting of 27.7.1985 had been called to confirm the proceedings of the earlier meeting. As a note of dissent had been put by the Assistant Registrar, the matter was referred to the Government. On consideration of the matter, the Government accepted the note of dissent recorded by the Assistant Registrar Cooperative Societies and a communication in, that, respect was sent to respondent No. 4 by the Registrar, copy which has been attached with the petition as Annexure P. 5. On receipt of this communication meeting of the Board of Directors was convened on

11.11.1985 in which a resolution was passed terminating the services of the petitioners who had been appointed by the Managing Directors on 1.6.1985. The petitioners are the Secretaries whose services have been terminated and they have challenged the legality of the orders, Annexures P.5, P.6 and P. 7 i.e. the communication sent by the Registrar and the subsequent proceedings taken by respondent No. 4, through this petition on the grounds stated in para 13 of the writ petition.

3. In obedience to the notice of motion issued, separate written statement have been filed on behalf of respondents 1, 2, 3, 4 and 5 respectively in which the material allegations made in the petition have been controverted. .

4. We have heard the learned counsel for the parties at length and find no merit in this petition. It may be observed at the outset that the learned counsel did not challenge before us the appointment of the Assistant Registrar Cooperative Societies as Government's nominee on the Board of Directors. What was sought to be contended by the learned counsel was that it was not essential to refer the matter to the Government on the basis, of note of dissent recorded by the Assistant Registrar. As contended by the learned counsel, the note of dissent could be recorded only in those matter in which financial implication was involved and as the appointment of the petitioners did not involve any financial implication, the matter was not required to be referred to the Government on account of the note of dissent. This contention of the learned counsel, on the face of it, is fallacious. The Appointment of the petitioners did involve financial implication and it was on that account that on the basis of the note of dissent, the reference was made to the Government.

5. As earlier observed the nomination of the Assistant Registrar by the Government is not under challenge before us rather it was accepted by the learned counsel that the Assistant Registrar was rightly nominated. That being so, under subsection (3) of Section 29 of the Act, in the event of difference of opinion between any member nominated by the Government and other members, the matter had to be referred to the Government. On consideration of the entire matter, the Government did not agree with the resolution. In view of the provision of subsection (3) of Section 29 of the Act, the decision of the Government is final. Consequently the Board of Directors rightly annulled the appointment of the petitioners which was made by the Managing Directors on 1st June, 1985.

6. It was next contended by the learned counsel that the Government has not passed any speaking order giving the reasons for accepting the dissent of its nominee. This contention of the learned counsel has no merit in view of the reply given by the Deputy Secretary, which reads as under :

"Para 13(g). In reply to subpara (g) to Para 13 of the Writ Petition, it is respectfully submitted that the recommendations of the Registrar, Cooperative Societies, Haryana, received vide his letter No. 11/52/85Credit (1), dated

5.10.1985 were in detail and on going through the facts of the case minutely, the Government took the decision under Section 29(3) of the Haryana Cooperative Societies Act, 1984, purely on merits. The action taken by the Government is warranted by law and the facts of the case and is thus legal."

7. It was next contended by the learned counsel that no guidelines are given in the Act as to how and under what circumstances a dissent could be recorded by the nominee of the Government, with the result that such a power is arbitrary and has to be struck down. Again, we find our selves unable to accept the submission of the learned counsel as no specific guidelines could possibly be provided, on the consideration of which note of dissent could be recorded. It is always on the facts of each case that an opinion is to be expressed by a member as to why he is not agreeing with the others members. Further, this opinion of the Government nominee is not binding on the Government. The requirement of law is that in the event of dissent, the final decision has to be taken by the Government. In this situation, to urge that the power given to a member to record his dissent is arbitrary, has no merit.

8. It was further submitted by the learned counsel that the meeting convened after the decision of the Government in which decision was taken to terminate the services of the petitioners was illegal. In our view, this argument of the learned counsel is of despair. The appointment of the petitioners in the instant case would have been valid only in the event of the Government accepting recommendation of the Board and not agreeing with the note of dissent made by the Assistant Registrar. In the instant case, the Government did not accept the resolution of the Board, with the result that the petitioners' appointment, from the very beginning would be deemed not to be in order. The meeting of the Board of Directors called after the decision of the Government was a mere formality. The original appointment stood annulled in the wake of the decision of the Government. Hence, as observed earlier, the contention of the learned counsel that the meeting of the Board of Directors in which the services of the petitioners were terminated was illegal, has no merit.

9. No others point was raised.

10. For the reasons recorded above, this petition is dismissed in limine.