
(2003) 07 RAJ CK 0016
In the Rajasthan High Court
Case No : Civil Writ Petition No. 425 of 1994

Ram Prakash Jalan

APPELLANT

Vs

Nagaur Urban Co-operative Bank Ltd. and Another

RESPONDENT

Date of Decision : 11-07-2003

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16, 2, 226
Rajasthan Co-operative Societies Act, 1965 — Section 128, 75
Urban Cooperative Bank Employees Service Rules, 1987 — Rule 11, 8(1)

Citation : (2004) 3 RLW 1540 : (2003) 4 WLC 116

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Advocate : Sangeet Lodha, for the Appellant; Rajesh Joshi and B.S. Bhati, for the Respondent

Final Decision : Allowed

Judgement

Sunil Kumar Garg, J.—This writ petition has been filed by the petitioner under Article 226 of the Constitution of India against the respondents with a prayer that by an appropriate writ, order or direction the impugned order dtd. 22.12.93 (Annex.3) passed by the Chairman Nagaur Urban Cooperative Bank Limited (respondent No. 1) by which the respondent No. 2 (Durgesh Chandra Joshi) was promoted to the post of Branch Manager, though according to the petitioner, he was senior to Respondent No. 2 (Durgesh Chandra Joshi), be quashed and set aside and the respondent No. 1 be directed to promote the petitioner on the post of Branch Manager with effect from 22.12.93 with all consequential benefits.

2. The facts of the case as put forward by the petitioner are as under:

i) That the petitioner entered the services of Nagaur Urban Cooperative Bank Limited as Cashier cum Clerk on 17.4.74. He was confirmed on the aforesaid post w.e.f. 11.10.1974.

ii) Further case of the petitioner is that respondent No. 2 (Durgesh Chandra

Joshi) entered the services of respondent - Bank as Cashier cum Clerk on 29.1.1975 and was confirmed on the said post on 8.11.1975.

iii) That a combined seniority list (Annex.2) of all the officers/employees working in the respondent - bank upto 31.7.1993 was published by the General Manager of the respondent Bank in which the petitioner was shown senior to respondent No. 2.

iv) Further case of the petitioner is that the services of the employees working in the respondent - bank are governed by the Urban Cooperative Bank Employees Service Rules, 1987 (hereinafter referred to as the Rules of 1987).

v) That further case of the petitioner is that meeting of DPC was held on 22.12.93 for consideration of eligible candidates for promotion on the post of Branch Manager. In that meeting, the case of the petitioner as well as respondent No. 2 was considered and the promotion was to be made on the basis of seniority cum merit.

vi) Further case of the petitioner is that though he was senior to respondent No. 2, but the Department Promotion Committee recommended the name of respondent No. 2 for promotion to the post of Branch Manager and consequently vide order dtd. 22.12.93 (Annex.3) passed by respondent No. 1 (Chairman), the respondent No. 2 (Durgesh Chandra Joshi) was promoted as Branch Manager. This order dtd. 22.12.93 (Annex.3) has been challenged by the petitioner in this writ petition.

vii) Further case of the petitioner is that according to Rule 11 of the Rules of 1987, promotion on the post of Branch Manager should have been made on the basis of seniority cum merit (there is no dispute on this point). Further more Sub-rule 1 of Rule 8 of the Rules of 1987 prescribes that promotion of the eligible candidate is required to be made strictly on the basis of seniority cum merit. Thus, while denying promotion to the petitioner on the post of Branch Manager, the respondent - bank had acted in most perfunctory manner and contrary to the Rules of 1987 and this act on the part of the respondent No. 1 is illegal, arbitrary and discriminatory so as to be violative of Articles 14 and 16 of the Constitution of India. Hence, this writ petition with the abovementioned prayer.

3. Reply to the writ petition was filed by the respondent No. 1 and in this reply, following preliminary objections have been raised:

i) That the respondent - Bank is not state within the meaning of Article 12 of the Constitution of India and, therefore, writ petition is not maintainable against the respondent - Bank. It has further been submitted by the learned counsel for the respondent No. 1 that the respondent - Bank is a Society registered under the Rajasthan Cooperative Societies Act, 1965 (hereinafter referred to as the Act of 1965), but the State Government is not having deep and pervasive control in the day to day management of the respondent - Bank nor the State Government is having substantial finance in the total fair capital of the respondent - Bank. It has

been submitted by the learned counsel for the respondent No. 1 that out of 6,47,300/-, the State Government has only the share capital of Rs. 1,00,000 and as such the State Government does not have substantial finance in the total share capital of the respondent - Bank and thus the present writ petition is not maintainable against the respondent No. 1.

ii) That the writ petition filed by the petitioner is also not maintainable on the ground that the petitioner is having equally efficacious and alternative remedy in the matter under the provisions of Section 75 and 128 of the Rajasthan Cooperative Societies Act, 1965. Therefore, the present writ petition is not maintainable on the ground of alternative remedy.

4. On merits, it has been submitted by the learned counsel for the respondent No. 1 that no doubt the petitioner was senior to respondent No. 2 (Durgesh Chandra Joshi) and there is also no dispute on the point that the promotion was to be made on the basis of seniority cum merit, but the respondent No. 2 (Durgesh Chandra Joshi) was found more suitable for promotion on the basis of seniority cum merit, therefore, his name was recommended. It has been further submitted by the learned counsel for the respondent No. 1 that the record of the petitioner could not be said to be unblemished as through letter dtd. 18.12.93 (Annex.R/2), he himself wrote a letter to the General Manager of the respondent bank stating that in future he will not commit any mistake. Further more, ACRs of the petitioner as well as respondent No. 2 were perused and respondent No. 2 (Shri Durgesh Chandra Joshi) stood first in the merit having 19 marks in the category of outstanding, whereas the petitioner is having only 16 marks under the said category and for that proforma prepared by the Management of respondent Bank has been produced on record as Annex.R/3. Hence, no case is made out and writ petition be dismissed.

5. Similar reply has been submitted by the respondent No. 2 (Durgesh Chandra Joshi).

6. A rejoinder was also filed by the petitioner and it has been submitted that the State Government exercises deep and pervasive control over the affairs of the Cooperative Societies registered under the Rajasthan Cooperative Societies Act, 1965 and the respondent bank is a Society registered under the Rajasthan Cooperative Societies Act, 1965 and hence it is a state within the meaning of Article 12 of the Constitution of India. On second preliminary objection, it was submitted by the petitioner that since the respondent No. 2 was promoted against the Rules of 1987, therefore, he had right to approach this Court directly as a legal right of the petitioner was infringed and hence, this Court has jurisdiction to entertain the present writ petition.

7. Heard the counsel for the parties.

ON PRELIMINARY OBJECTION NO. 1:

8. Before deciding this question, Rules of 1987 have to be kept in mind. In

Definition Clause of Rules of 1987 in Rule 2A, it has been specifically mentioned that "Act" means the Rajasthan Cooperative Societies Act, 1965 and as per Rule 2B of the rules of 1987 "Rules" means the Rajasthan Cooperative Society Rules, 1966. As per Rule 2C of the Rules of 1987, "Registrar" means a person appointed to perform the functions of the Registrar of Cooperative Societies for the State under the Act.

9. Rule 8 of the Rules of 1987 provides for Procedure for recruitment by promotion. It also provides for constitution of Promotion Committee and this Promotion Committee includes nominee of the Registrar, Cooperative Societies.

10. Rule 20 of the Rules of 1987 deals with termination of employees and in Rule 20(a), it has been specifically mentioned that the Chief Executive Officer may require an employee to retire from service compulsorily subject to prior written approval of the Registrar, Cooperative Societies, Rajasthan, Jaipur and the record of service will be examined by the Committee or by the Board of Directors/Registrar Cooperative Societies as the case may be. For taking disciplinary action against the Chief Executive Officer of the respondent - Bank, the Registrar, Cooperative Societies will be the disciplinary Authority.

11. A bare perusal of Rules of 1987 clearly goes to show that the Registrar, Cooperative Societies or its nominee has full control over the management of the respondent - Bank particularly, over the staff of the respondent No. 1. The respondent - Bank has himself admitted in its reply that out of Rs. 6,47,300/-, the State Government has the share capital of 1,00,000/-, meaning thereby that State share is there in the bank's deposit.

12. For convenience Article 12 of the Constitution of India is quoted hereunder:

"Article 12. In this part, unless the context otherwise requires, "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.

13. The word "includes" indicates that the definition of "the State" is not confined to a Government Department and the Legislature, but extends to any action - administrative (whether statutory or not statutory), judicial or quasi-judicial, which can be brought within the fold of the "State action", which violates a fundamental right.

14. The Hon'ble Supreme Court in the case of U.P. State Cooperative Land Development Bank Ltd. v. Chandra Bhan Dubey (1), has observed that U.P. State Cooperative Land Development Bank Limited is an instrumentality of the State or an Authority as mentioned in Article 12 of the Constitution of India and the grounds for coming to the above conclusion were that the U.P. State Cooperative Land Development Bank Ltd. was controlled by the State Government and service conditions of its employees particularly in regard to disciplinary proceedings were statutory in nature. Further more under the Bank Act,

Registrar of the Cooperative Societies for the State of Uttar Pradesh shall be the trustee for the purpose of security the fulfilling of the obligations of the State Land Development Bank and not only that, Services Rules show that the Managing Director and the Chief General Manager of the U.P. State Cooperative Land Development Bank Ltd. are the officials of the State sent on deputation and thus, it was held by the Hon'ble Supreme Court that the U.P. State Cooperative Land Development Bank Ltd. was an authority controlled by the State Government and the service conditions of the employees of U.P. State Cooperative Land Development Bank Ltd. particularly with regard to disciplinary proceedings against them are statutory in nature and hence the writ petition was maintainable against the U.P. State Cooperative Land Development Bank Ltd.

15. In my opinion, the law laid down in the case of U.P. State Cooperative Land Development Bank Ltd. is fully applicable to the facts and circumstances of the present case as in this case as stated above, the Registrar of the Cooperative Societies has full control over all the service matter of the employees of the respondent - Bank and the State Government has also capital share of Rs. 1,00,000/- in the respondent - bank. Further more, the Registrar, Cooperative Societies can initiate disciplinary proceedings even against the Chief Executive Officer of the respondent - Bank. In view of this fact, the respondent - Bank is State or other Authority within the meaning of Article 12 of the Constitution of India and hence the present writ petition is maintainable against the respondent No. 1.

16. So far as law laid down by this Court in the case of Niyamat Ali v. Sirohi Dist. Commercial Cooperative Bank Ltd. (2), cited by the learned counsel for the respondents is concerned, the Division Bench of this Court has held that a Cooperative Bank is not a "State" or "other authority" within the meaning of Article 12 of the Constitution of India, and the writ petition was not maintainable. However, in view of the law laid down by the Hon'ble Supreme Court in the case of U.P. State Cooperative Land Development Bank Ltd. (supra), the authority cited by the learned counsel for the respondents in the case of Niyamat Ali (supra), stands distinguished and would not be helpful to the learned counsel for the respondents.

PRELIMINARY OBJECTIONS NO. 2.

17. On the alternative remedy, it has been submitted by the learned counsel for the respondents that the petitioners should have first availed alternative remedy as provided under Sections 75 and 128 of the Rajasthan Cooperative Societies Act, 1965. It may be stated here that this writ petition was filed before this Court on 22.1.94 and since then the same is pending.

18. In my opinion, the argument that the writ petition is not maintainable because the petitioner is having equally efficacious alternative remedy would not be helpful to the learned counsel for the respondents because of the simple reason that the writ petition was filed on 22.1.94 and since then 8 years have

elapsed and, therefore, it would not be proper to throw the present writ petition simply on the ground that alternative remedy was available to the petitioner. It may further be stated here that as principle alternative remedy bars jurisdiction of High Court under Article 226 of the Constitution of India, but that limitation is not absolute and in exceptional cases, even there is alternative remedy, the writ lies and since in the present case, 8 years have elapsed, therefore, this case should be decided on merits instead of throwing away the writ petition on the ground of alternative remedy. For that judgment of this Court in the case of Project Manager v. Authority under the Payment of Wages Act (3), may be referred to wherein it has been held as under:

"Constitution of India, Article 226 - Alternative remedy - Alternative remedy no absolute bar - Petitions filed as back as in 1991 - not proper to thrown them away after seven years on the ground that alternative remedy was available.

19. In this respect, following authorities may also be referred to :

(i) L. Hirday Narain v. Income Tax Officer (4).

(ii) Bal Kishan v. Dist. Judge Pali (5).

20. Thus, the plea of the respondents regarding alternative remedy also stands rejected.

ON MERITS

21. Since promotion to the post of Branch Manager was to be made on the basis of seniority cum merit and there is no dispute on the point that the petitioner was senior to respondent No. 2, therefore, he should have been promoted prior to respondent No. 2.

22. A perusal of proforma (Annex.R/3) prepared by the Management reveals that the petitioner had secured 16 marks in the Category of outstanding whereas respondent No. 2 had secured 19 marks in the category of outstanding, but this would not give any benefit to the respondent No. 2 when the promotion is made on the basis of seniority cum merit. Had the promotion would have been made strictly on the basis of merit, then the position would have been different one.

23. So far as arguments that the letter dtd. 18.12.93 (Annex.R/2) was written by the petitioner to the General Manager of the respondent Bank in which he submitted that he would not commit mistake in future is concerned, this letter cannot be termed as adverse in any manner and hence if on the basis of letter dtd. 18.12.93 (Annex.R/2), the petitioner was not given promotion, this action on the part of the respondent No. 1 is perse illegal and from this point of view also, since the petitioner was senior to respondent No. 2 and the promotion was to be made on the basis of seniority cum merit, therefore, the petitioner who was senior to the respondent No. 2 should have been promoted first prior to promotion of respondent No. 2 and hence a legal right of the petitioner has been infringed and therefore, he is entitled to seek remedy under Article 226 of the

Constitution of India.

24. Before parting with this order, I would like to say something about the promotion of respondent No. 2. No doubt promotion of respondent No. 2 was made in dis-regard to the Rules of 1987 and in disregard to the claim of the petitioner, but since the respondent No. 2 was given promotion through order dtd. 22.12.93 (Annex.3) and since then he is working, it would not be proper now to disturb the respondent No. 2 and hence, the order dtd. 22.12.93 (Annex.3) is not going to be quashed, but the petitioner is certainly entitled to the promotion with effect from 22.12.93 with all consequential benefits.

25. For the reasons mentioned above, the writ petition is liable to be allowed in the manner that the petitioner is also liable to be promoted with effect from 22.12.93 with all consequential benefits.

Accordingly this writ petition is allowed in the manner that the respondent No. 1 (Nagaur Urban Cooperative Bank Ltd. Nagaur through its Chairman) is directed to give promotion to the petitioner on the post of Branch Manager with effect from 22.12.93 with all consequential benefits.

No order as to costs.