

(2006) 07 P&H CK 0201
In the Punjab And Haryana At Chandigarh

The Jalandhar Central Cooperative Bank Ltd.

APPELLANT

Vs

The Additional Registrar Cooperative Societies (I) and
Another

RESPONDENT

Date of Decision : 03-07-2006

Acts Referred:

Punjab Co-operative Societies Act, 1961 — Section 69

Citation : (2007) 145 PLR 268 : (2006) 4 RCR(Civil) 441

Hon'ble Judges : Jasbir Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Jasbir Singh, J.—Petitioner, by filing this writ petition, has prayed for issuance of a writ of certiorari to quash the order dated 28.4.1999 (P/4), passed by respondent No. 1.

2. Record reveals that vide impugned order, revision filed by respondent No. 2 u/s 69 of the Punjab Cooperative Societies Act, 1961 (in short the Act) was allowed by respondent No. 1 and the petitioner was directed to consider case of respondent No. 2 for promotion from the date when his juniors were promoted to the post of Junior Accountant i.e. w.e.f. 1.1.1998 and to allow him all consequential benefits. As per averments made in this writ petition, respondent No. 2 was appointed as Junior Clerk with the petitioner on 14.6.1984. His service conditions are governed by the rules known as Punjab Cooperative Financing Institution Service Rules, 1958 (in short the Service Rules). Respondent No. 2 was promoted to the post of Senior Clerk on 14.6.1991.

3. As per rules, he was put on probation for a period of one year, which could have been extended upto 18 months, however, keeping in view work and conduct of respondent No. 2, he was regularized in service w.e.f. 5.6.1992 (Annexure R2/1). Name of respondent No. 2 alongwith others, was considered for promotion to the post of Junior Accountant, however, keeping in view adverse remarks entered in his confidential reports for the year 1991 and 1992, he was

ignored, whereas persons junior to him were promoted to the higher post. Respondent No. 2 challenged said action of the petitioner by filing a revision u/s 69 of the Act. After notice, revision was allowed by respondent No. 1 vide order dated 28.4.1999, directing the petitioner to consider case of respondent No. 2 for promotion to the post of Junior Accountant and to give him all consequential benefits. Hence, this writ petition.

4. Perusal of paper book indicates that in this writ petition, the petitioner, by referring to Rule 10 of the Service Rules and by-law 37 Clause (iii) of the registered by-laws of the petitioner, has assailed the impugned order on the ground that respondent No. 1 was not competent to exercise jurisdiction u/s 69 of the Act. It is primary contention of counsel for the petitioner that dispute regarding promotion of respondent No. 2 was not covered under the provisions of the Act, the respondent No. 2 was ignored as per registered by-laws of the petitioner, as such, respondent No. 1 has no jurisdiction to interfere in the matter, while exercising its revisional jurisdiction, as has been done in the present case.

5. Reading of paper book further reveals that on merits, nothing substantial has been said as to why respondent No. 2 was not entitled to be promoted to the next higher post. In the written statement filed on behalf of respondent No. 2, various allegations have been leveled against members of the Board of Directors, wherein it has been said that an attempt has been made to harass him and the bad entries in his confidential reports were made on account of malafides on part of the members of the Board of Directors. It has been stated that he has unnecessarily been put under suspension again and again. It has further been said that in the year 1992, respondent No. 2 was promoted to the next post of Senior Clerk keeping in view his efficient work and conduct. His services were regularized on completion of one year probation period, which could have been extended upto 18 months. Respondent No. 2 has, further averred that on account of malafides on part of the petitioner, adverse remarks, for the period ending on 30.6.1991 and 31.3.1992 were communicated to him only in the month of September, 1997, against which, he has represented, but the same was not decided when his case for promotion to the next post was considered. Copy of the representation has been placed on record as Annexure R2/3. It has also been stated that thereafter, all confidential reports were good except for the year ending 31.3.1996, for which, period A.C.R. is not available. Respondent No. 2 has given a long history of facts to show that he has unnecessarily been harassed by the petitioner/its officers. He has also placed on record copy of the confidential remarks for the year ending 30.6.1991 to show that nothing serious has been said against him, so far as his integrity is concerned. Despite serious allegations levelled by respondent No. 2 against the petitioner/its officers, no replication was filed by the petitioner to rebut averments made by respondent No. 2 in his written statement.

6. At the time of arguments, it was primary contention of counsel for the

petitioner that the order, under challenge, having been passed without any jurisdiction, is liable to be set aside. It has been stated that as no action was taken under the provisions of the Act. as such, no appeal/revision was competent before respondent No. 1. It has further been argued that respondent No. 2 was ignored for promotion on the basis of registered by-laws of the petitioner, against which, no appeal/revision lies. To support his contention, counsel for the petitioner has placed reliance upon a Full Bench Judgment of this Court in Gurnam Kaur Vs. State of Punjab etc., . In the alternative, it has been argued that respondent No. 1 was not justified in granting relief to the petitioner, at the maximum, directions could have been given to the petitioner to consider case of respondent No. 2 for promotion, by taking note of adverse remarks made against him. It was prayed that the writ petition be allowed and the order, under challenge be set aside.

7. Counsel for respondent No. 2 has vehemently controverted the arguments raised by counsel for the petitioner. He, by referring to order, under challenge, has argued that on merits, nothing has been said to assail the same, no replication was filed to deny allegations of malafides and harassment levelled against the petitioner. It was also argued that the petitioner had made an attempt to conceal material facts. Alleged adverse confidential remarks were conveyed to respondent No. 2 at a very belated stage, without waiting for his reply, immediately thereafter, case for promotion to the next post was taken up, simply with a view to deny that right to him. Even sufficient opportunity was not given to respondent No. 2 to represent against adverse confidential remarks. His representation was not decided and he has wrongly been ignored for promotion. It has further been stated that the order, under challenge, was rightly passed by the competent authority, prayer has been made to dismiss the writ petition, having no substance.

8. After hearing counsel for the parties, this Court feels that the present writ petition deserves to be dismissed.

9. Reading of the paper book clearly demonstrates that no effort has been made to assail the order, under challenge, on merits. An attempt has been made to deny right of respondent No. 2 for promotion to the next post, simply on the basis of technicalities. It is primary objection of the petitioner that the order, under challenge, having been passed without any jurisdiction, deserves to be set aside. Despite objection raised to the contrary and many allegations levelled on merits, no replication was filed, to controvert the allegations leveled in the written statement.

10. In the writ petition, following questions of law were raised by the petitioner:

- (i) Whether any appeal is competent against the impugned orders, Annexure P/1?
- (ii) Whether any revision petition is competent u/s 69 of the Act before Registrar, Cooperative Societies against the orders Annexure P/1?

(iii) Whether the Registrar, Cooperative Societies, Punjab, Chandigarh can adjudicate a matter with regard to the condition of service of an employee?

11. To look into controversy as to whether revision u/s 69 of the Act was competent or not, it is necessary to see provisions of Section 69 of the Act, which reads as under:

69. The State Government and the Registrar may, suo moto or on the application of a party to a reference call for and examine the record of any proceedings in which no appeal u/s 68 lies to the Government or the Registrar, as the case may be for the purpose of satisfying itself or himself as to the legality or propriety of any decision or order passed and if in any case it appears to the Government or the Registrar that any such decision or order should be modified annulled or revised, the government or the Registrar, as the case may be, may, after giving persons affected thereby an opportunity of being heard, pass such order thereon as it or he may deem fit.

12. Reading of Section 69 of the Act clearly indicates that the State Government and the Registrar has power either suo moto or on an application made by the party to look into validity or otherwise of any action taken. Contention of counsel for the petitioner that as no action was taken under the provisions of the Act, rather promotion order was passed as per registered by-laws of the Bank, respondent No. 1 was not competent to entertain revision u/s 69 of the Act, has already been set at rest by a Division Bench of this Court, in *The Punjab State Handloom Weavers Apex Society Ltd. Vs. The State of Punjab and Others*, . In that case also, similar controversy was involved, by referring to provisions of Section 69 of the Act, this Court has observed thus:

5. A perusal of the above provision shows that the State Government as well as the Registrar have been empowered to examine the legality or propriety of any decision or order passed by a Society. They can do so either suo moto or on the application of a party to a reference. The power is not subject to any provision of the rules or the bye-laws. It is in the nature of a supervisory jurisdiction conferred on the Government and the Registrar. In the very nature of things where an order has been passed by the Registrar, the power vests in the State Government.

6. Mr. D.V. Sharma, learned Counsel for the petitioner has contended that the bye-laws of a Society are not law. They are not a part of the Act. Consequently, any order passed in exercise or the power under a bye-law cannot be subjected to the revisional jurisdiction of the Government under the Act. We are unable to accept this contention.

7. It is true that the bye-laws of a Society are not a part of the Act. However, it is equally clear that the jurisdiction conferred by the Legislature on the State Government or the Registrar cannot be taken away by a Society by framing the bye-laws. If that were permitted, it would become possible for a Society to make the provisions of the Act which provide for an Appeal and a Revision totally

otiose. Such cannot be the state of law.

Reliance of counsel for the petitioner upon a Full Bench judgment of this Court in Gurnam Singh's case (supra), is of no help to him. In that case, controversy was altogether different. The Full Bench was considering a proposition as to whether revisional powers can be exercised on an application moved by a party or not. To settle that controversy, it was held that "in the exercise of revisional jurisdiction it would be immaterial as to whether action was taken suo motu or at the instance of aggrieved or concerned party. If the revisional authority comes to the conclusion after going through the records of the case pending or decided by the subordinate authority that such order needed modification or annulment and hence modifies or annuls such an order and passes appropriate order, the same would be within jurisdiction.

13. In this writ petition, nothing has been averred on merits so far as order, under challenge is concerned. Order passed is very elaborate and respondent No. 1 has dealt with all disputed questions raised before him. After noticing contention raised by both the parties, the revisional authority has observed thus:

After hearing the counsel for the parties the case was adjourned in order to produce the record of the Bank in respect of the A.C.Rs. A number of dates were given for that purpose. Finally, the Manager of the Bank appeared alongwith the record on 15.3.1999. The record was perused. It has been seen that adverse reports for the year 1991 and 1992 on the basis of which the appellant has not been considered for promotion to the post of Junior Accountant were communicated to the petitioner only in September, 1997. Representation filed by the appellant against the said communication is pending. It was also seen that appellant's services in the promoted post Senior Clerk was confirmed in June, 1992 (vide order Annexure-1) after finding his work and conduct satisfactory. The Manager of the Bank, in order to justify the non consideration of the appellant while passing order Annexure-1 under challenge in this appeal/revision also relied upon charge sheet issued after passing Annexure-1. Since his confirmation as Senior Clerk in June 1992 no adverse report has been communicated to the appellant and all his A.C.Rs. for the period between the year 1992 to the date of passing of order Annexure-2 have been found to be good except for the year ending 31.3.1996 for which the A.C.R. is not available.

I have heard the counsel for the parties, considered the arguments advanced by them and have also gone through the record of the Bank pertaining to the A.C.Rs. of the appellant and also order under challenge. Keeping in view of the fact that all the A.C.Rs. of the appellant from the year 1992 to the date of passing of order under challenge are good and no adverse entry has been communicated to him and also the fact that A.C.Rs. for the year 1991 and 1992 which are admittedly communicated in September, 1997 and against which appeal/representation of the appellant is pending and has not decided and also keeping in view the factum of his confirmation as Senior Clerk vide order Annexure-1 in June, 1992. I am of the considered opinion that this appeal must

succeed because to my mind in the well settled position of law by various judgments of the Punjab and Haryana High Court and Hon'ble Supreme Court of India adverse reports prior to the earlier promotion cannot be taken into consideration. To my mind an adverse report communicated after more than five years is also liable to be ignored when no reasons are forthcoming why it took so long to communicate this adverse report and especially when he has been confirmed in the promoted post after the period for which adverse report has been communicated. There being no adverse report since his conformation to the date of the order under challenge, I see no reasons how the appellant could be ignored for promotion. Admittedly juniors to him have been promoted vide order under challenge it is wholly illegal and arbitrary and also amounts to denial of equal opportunity in the matter of promotion. So far as preliminary objections taken by the Bank are concerned the order under challenge has been passed with the concurrence of the Supervisory Officer and, therefore, no appeal can be said to be competent before the Board of Directors of the Bank because

Supervisory Officer was acting as Board. Therefore, question of limitation would not rise. Even otherwise the order under challenge is wholly illegal and, therefore, I do not feel convinced regarding objections raised by the Bank. In the circumstances this appeal is allowed and the Bank is directed to consider the case of the appellant for promotion from the date of passing order Annexure-2 and in case of his promotion from the date to allow him all consequential benefits flowing from the order of his promotion including arrears of his pay and seniority etc.

14. this Court feels that the order passed is perfectly justified. Respondent No. 1 has looked into the adverse entries made against respondent No. 2 and was convinced that on that account, respondent No. 2 could not have been denied the right of promotion to the next post. After looking into adverse entries made, which have been brought on record as Annexure R2/2 by respondent No. 2, similar is the opinion of this Court. It is very unfortunate that the alleged adverse remarks, were not communicated to respondent No. 2 for a long period of more than 5 years and after communication of remarks, immediately thereafter, case for promotion was taken up and he was ignored on the basis of those remarks without giving him proper opportunity to represent against those remarks (as per averments of respondent No. 2, his representation was pending, which was not taken note of when he was ignored for promotion). As no replication has been filed to the written statement, it can be presumed that the allegations of malafides leveled by respondent No. 2, against the petitioner/its officers, have been gone, un rebutted. If that is the situation, this Court feels that respondent No. 2 was wrongly ignored for promotion without any justification. One adverse entry in the confidential record was already in existence when respondent No. 2 was promoted as a Senior Clerk in the year 1992. The second had also become available when his services were regularized on 1.10.1993. Despite that probation period was not extended, no objection was raised and in a routine manner, services of respondent No. 2 were regularized as Senior Clerk and now when his

turn has come for the next promotion, those very report have been made as an excuse, to deny him his right. No doubt, previous bad entries in the service record can be looked into at the time of next higher promotion but present is the case, where this Court feels, that the petitioner was not justified in doing the same, as adverse remarks were not communicated to respondent No. 2 for a long period of more than 5 years without any justification. Had the action been taken in a very prompt manner, respondent No. 2 would have been in a position to represent against those adverse remarks and, may be, the competent authority would have decided to expunge those remarks from his confidential record. Inaction on the part of the petitioner/its officers and further wrongful denial of right of promotion to respondent No. 2, without looking into his representation against the adverse remarks, deserves to be deprecated. On merits, this Court is convinced that injustice was done to respondent No. 2, which has been set right by the revisional authority vide order under challenge. 15. In view of facts of this case, no case is made out for interference. The writ petition stands dismissed. No order as to costs.