

Before V. Ramaswami, C.J. and G. R. Majithia, J.

CHANDER DATT and others,—*Petitioners.*

*versus*

SONEPAT CENTRAL COOPERATIVE BANK LTD. and others,—  
*Respondents.*

Civil Writ Petition No. 4543 of 1981

August 8, 1988.

*Punjab Cooperative Societies Act (XXV of 1961)—S. 29—Haryana State Central Cooperative Bank's Staff Service (Common Cadre) Rules, 1975—Rl. 2 (k), 9.2(e)—Appointment of relatives of Directors and Members of Administrative Committee barred by Rule 9.2 (e)—Appointment made in breach of statutory rule—Whether invalid—Such appointment—Whether can be saved by section 29 of the Act—Persons so appointed serving for seven years during the pendency of writ proceedings and becoming overage for government service—Right to continue in service—Plea—Whether sustainable.*

*Held*, that though the act or acts done by the Cooperative Society or its Committee or any officer will be protected under section 29 of the Punjab Cooperative Societies Act, 1961 this section does not validate the appointment of staff which are in direct breach of mandatory provisions of the statute or the rules framed thereunder. The carrying out of the day-to-day business of the cooperative societies stands on a different footing than the selection or appointments made by an administrative committee of the Society. Therefore, it has to be held that section 29 of the Act does not validate the same. (Para 18).

*Held*, that in view of the statutory bar that relations of a Director cannot be appointed in the service of the bank only because the candidates so selected have remained in service for more than seven years or that they have become overage for appointment to government service and their chances for entry in the service would be adversely effected would be no ground to continue such appointees in service. (Paras 16 and 17).

*Civil Writ Petition under Articles 226/227 of the Constitution of India praying that :—*

- (a) *a writ in the nature of certiorari after calling the record quashing the impugned selection by the Administrative Committee of the Bank be issued.*
- (b) *a writ in the nature of mandamus directing the respondent to constitute a valid committee and to select the candidates according to the Rules.*

- (c) *Any other appropriate writ, order of direction which this Hon'ble Court may deem fit and proper under the circumstances of the case may also be issued.*
- (d) *That despite the best efforts of the petitioners, the selection list is not made available to the petitioners, so the filing of the copy of the same (original or certified) may be dispensed with and the respondents be directed to furnish the copy of the selection list.*
- (e) *filing of certified copy of Annexure P1 dispensed with.*
- (f) *service of advance notice on the respondents be dispensed with.*
- (g) *the costs of the petition be awarded to the petitioners.*

*It is further prayed that during the pendency of the writ petition, the appointment of various candidates by the Administrative Committee of the Bank be stayed.*

#### PRESENT

Bhoop Singh, Advocate, for the Petitioners.

J. L. Gupta, Senior Advocate, (Arun Kathpalia and Subash Ahuja, Advocates with him), for Respondent No. 1.

H. S. Hooda, Senior Advocate with Ramesh Hooda, Advocate, for Respondent Nos. 13 to 15.

Deepak Agnihotri, Advocate, for Respondent Nos. 16 to 18, 20, 22 to 35, 38 to 40, 42, 47 to 50, 53, 56, 61 to 75.

#### JUDGMENT

G. R. Majithia, J.

This judgment will dispose of CWP Nos. 4543/1981, 4714/1981, 870/1982 and 871/1982. In all these cases, the selection of the respondents has been challenged on grounds of bias, nepotism and that the administrative committee which made the selections was not validly constituted. The third allegation covers CWP Nos. 4543/1981 and 4714/1981 only. The other two allegations are common in all the four cases.

(2) The selection of respondents No. 11 to 15 in CWP No. 4543/1981 was challenged on the ground that respondent No. 11 was the real brother of respondent No. 5 who was a member of the administrative committee; that respondent No. 12 is the son of Shri Inder

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Dev Sharma, Managing Director of the Bank, and that respondent No. 13 is the brother-in-law of Giani Ram Kundu, one of the Directors of the Bank. It is further alleged that respondent No. 14 is the son-in-law of respondent No. 8 while respondent No. 15 is the son-in-law of Kartar Singh, and that Shri Giani Ram Kundu and Shri Kartar Singh are the Directors of the Bank but not the members of the administrative committee.

(3) In CWP Nos. 4543/81 and 4714/81, the selection of the respondents, namely Nos. 11 to 15, was challenged on identical grounds. In CWP No. 4543/81, some of the private respondents also filed a written statement but did not controvert the specific plea of the petitioners taken in para 13(c) of the petition in which the relationship of the selected candidates with the members of the administrative committee or the Board of Directors is mentioned. They, in general terms, pleaded that the constitution of the administrative committee and the selection made by it was invalid.

(4) Shri Inder Dev Sharma, the Managing Director of the Bank, filed written statement on behalf of the Bank and took a categorical stand that when his son, respondent No. 12, was called for interview he had gone out of the room where the interview was held by the selection committee. He denied the allegation that he was present at the time of the interview of his son.

(5) In CWP No. 4714/81, no written statement was filed either on behalf of the private respondents or the Sonepat Central Cooperative Bank Ltd.

(6) In CWP Nos. 870 and 871 of 1982, the selection of respondents No. 11, 13, 14 and 29 was questioned on the ground that respondent No. 11 is the son of respondent No. 3; that respondent No. 13 is the sister's son of respondent No. 6; that respondent No. 14 is a close relative of respondent No. 5 being the sister's husband of the latter, and that respondent No. 29 is the son-in-law of respondent No. 4.

(7) In CWP No. 871/1982, the selection of respondent No. 11 as Junior Accountant was assailed on the ground that he is the real brother of respondent No. 6 who was a Director of the Bank. In CWP No. 870/1892, the appointment of Clerks was challenged on identical grounds.

(8) In all the cases, the petitioners have assailed the selection of selected candidates on identical ground and the petitioners were also applicants for the posts against which the respondents were selected.

(9) Sonapat Central Cooperative Bank Ltd. (hereinafter called the Bank) is a society registered under the Punjab Cooperative Societies Act, 1961 (for short, called the Act). In pursuance of the provisions of section 84 of the Act, the Registrar, Cooperative Societies, Haryana, required the Haryana State Central Cooperative Banks Ltd. to constitute a common cadre for the employees in the service of the Central Cooperative Banks Ltd. and the Secretaries in the service of Primary Cooperative Agricultural Credit/Service Societies which are members of that Bank. Pursuant thereto, Haryana State Central Cooperative Bank's Staff Service (Common Cadre) Rules, 1975 (for short, to be called the Common Cadre Rules) were framed and these Rules *mutatis mutandis* apply to all Central Cooperative Banks in Haryana State, and the service conditions of all the employees working in the Central Cooperative Banks are governed by these Rules.

(10) Rule 2(d) of the Common Cadre Rules define 'administrative Committee.' It reads as under :—

"Administrative Committee' means the Committee constituted by the respective Central Cooperative Bank under the provisions of the bye-laws, or in the absence of such provisions in bye-laws, a Committee constituted by the Board of the respective Central Cooperative Bank for the administration of these Rules."

The Board of the respective Central Cooperative Banks constitutes an administrative committee to make appointments to various posts in each category.

(11) The administrative committee, in the absence of the President of the Board, elects one of the members as its Chairman to transact business.

(12) In CWP Nos. 4543/81 and 4714/81, election of Shri Raj Singh respondent No. 9 as the Chairman of the Committee was assailed on the ground that he was a defaulter of Gohana Cooperative Marketing-cum-Processing Society Ltd., Gohana, with effect from January 18, 1973, and, thus, was disqualified for election as a Director of the

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Bank and his inclusion in the administrative committee rendered its constitution invalid. This objection does not survive in view of the decision of this Court reported as *Raj Singh v. J. S. Verma, etc.* (1). In that case, the order of the Deputy Registrar, Cooperative Societies, declaring that Shri Raj Singh had ceased to be a Director of the Sonapat Central Cooperative Bank Ltd. was assailed. The Deputy Registrar, in his order, had held that Shri Raj Singh had deposited the amount taken by him as an advance from the Gohana Cooperative Marketing-cum-Processing Society Ltd., after considerable efforts were made for effecting recovery by the said society, and, thus, made him ineligible to hold the office of the Director of the Bank. Shri Raj Singh assailed the order by way of a writ petition in this Court, and it was held that the order of the Deputy Registrar declaring that Shri Raj Singh had ceased to be the Director of the bank for having made delayed payments due from him to the said society was *ultra vires* and was, thus, quashed. The Sonapat Central Cooperative Bank Ltd., Sonapat, was a party to the writ petition and the decision in the case, thus, became final between Shri Raj Singh and the Sonapat Central Cooperative Bank Ltd., Sonapat (respondent No. 1). Thus the objection that the election of Shri Raj Singh as the Chairman of the administrative committee was invalid, and resultantly vitiated the entire selection, does not survive.

(13) Bye-law 42 of the Registered Bye-laws of the Sonapat Central Cooperative Bank Ltd., Sonapat, provide the manner in which the Board of Directors has to elect an administrative committee and it comprises the following members:—

- (i) President of the Board of Directors ;
- (ii) one of the Government nominees ;
- (iii) five Directors elected from amongst themselves ;
- (iv) one nominee of the Registrar, Cooperative Societies.

(14) The grouse of the petitioners is that the nominee of the Registrar was not a member of the administrative committee as enjoined by bye-law 42 of the Bye-laws of the Sonapat Central Cooperative Bank Ltd., that the Managing Director of the Bank participated in the proceedings of the Committee ; that he had no right to participate in the meeting, and the entire selection stands vitiated.

(15) Section 85 of the Act provides that the Government may for any co-operative society or a class of co-operative societies make rules to carry out the purposes of this Act. In exercise of these powers, Punjab Co-operative Societies Rules, 1963 (for short, called the Co-operative Societies Rules) were framed by the Haryana Government. Rule 2 (k) defines 'relative' and it reads as under :—

“2. Definitions—In these rules, unless the context otherwise requires :—

... ..

(k) “relative” includes any one related to the person concerned, his wife, his son/daughter his son’s wife or daughter’s husband through a common ancestor, but more remote than a grandfather or anyone married to a person so related.”

Rule 9.2 (b) of the Common Cadre Rules provides that no person shall be appointed in the Bank who is related to any of the Directors within the meaning of rule 2 (k) of the Cooperative Societies Rules. The Common Cadre Rules are framed by the Apex Bank (the Haryana State Cooperative Bank Ltd.) with the prior approval of the Registrar, Cooperative Societies. These Rules were framed in pursuance of the provisions of section 85 (xxxviii) of the Act. Any violation of the Common Cadre Rules renders the selection invalid. Respondents No. 11 to 15 were related to the Directors of the Bank and the members of the administrative committee and they could not be appointed because of the rigor of rule 9.2 (e) of the Common Cadre Rules which forbids the appointment of a person in the service of the Bank who is related to the Directors of the Bank within the meaning of rule 2 (k) of the Co-operative Societies Rules. Thus, the appointment of respondents No. 11, 12, 14 and 15 in CWP No. 4543/81 and that of respondent No. 11 in CWP No. 4714/81 is vitiated. In CWP Nos. 870 and 871 of 1982, the appointment of respondents No. 11 and 29 is vitiated. In CWP No. 871/1982, the appointment of respondent No. 11 is vitiated. These appointments were made in violation of the mandatory provisions contained in rule 9.2 (e) of the Common Cadre Rules.

(16) Mr. J. L. Gupta, the learned senior advocate for the respondents referred to the following authorities:—

*Mohan Lal Bansal v. State of Punjab* (2).

*Gurbax Rai Sood v. The State of Punjab* (3).

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(2) 1977 SLWR 394.

(3) 1984 (1) SLR 83.

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*Darshan Singh v. State of Punjab* (4).

*Ashok Kumar Yadav v. State of Haryana* (5).

and contended that the selected candidates had remained in service for more than seven years. The selection though not in order ought not be quashed since the appointees had become overage for appointment to Government service and their chances for entry into Government service would be adversely affected. He also highlights that in CWP No. 4543/1981 and 4714/1981, the selection of respondent No. 12 be not quashed since Sh. Inder Dev Dua (respondent No. 10), father of respondent No. 12, has stated on oath that he was not present in the meeting of the administrative committee when his son was interviewed. Both these submissions made by Mr. Gupta are unsustainable.

(17) Rule 9.2(e) of the Common Cadre Rules contains a statutory bar that relations of a Director as specified in rule 2(k) of the Cooperative Societies Rules cannot be appointed to the service of the bank. In view of the statutory bar that relations of a Director (non official) cannot be appointed in the service of the Bank, the submission made by Mr. Gupta is to be rejected. The general proposition stated in these judgments is not attracted to the facts of the instant case. Moreover, the selection was finalised on September 19, 1984. The petitioners came to the Court on September 30, 1981 within less than a month of the selection. The petitioners have alleged in the petition that despite efforts they could not know the result of the selection officially. There was no delay on the part of the petitioners to challenge the selection. The delay is for non-hearing of the case on an early date by this Court for which no fault can be found with the petitioners.

(18) Mr. C. B. Kaushik, Advocate, who appeared for the Bank, relying upon section 29 of the Act, submitted that the defect, if any, in the appointment of the selected candidates stood cured u/s 29 of the Act. Section 29 envisages that the acts of co-operative societies cannot be invalidated by reason of there being defects in the constitution of the society or the committee, and it reads as under :—

“No act of a co-operative society or of any committee or of any officer shall be deemed to be invalid by reason only

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(4) 1973 (2) SLR 529.

(5) A.I.R. 1987 S.C. 454.

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of the existence of any defect in procedure or in the constitution of the society or of the committee or in the appointment or election of an officer or on the ground that such officer was disqualified for his appointment."

The argument though apparently plausible but on deeper probe is found to be without any substance. The salutary provision (supra) has been brought on the statute book in order to protect the interests of the cooperative societies and of those who have dealings with these. The committee of the society consists of officers of the State Cooperative Department, employees of the Apex Society and the elected directors of the society. The committee transacts business, enters into contracts with outside agencies, make appointments and subsequently if it is found that any of the office-bearers or directors or any of the nominees of the State Government or the employees of the Apex Society was ineligible or the selection of the elected directors is held invalid, the act or acts done by the society will be protected under this provision but it does not validate the appointments of the staff which are indirect breach of mandatory provisions of the statute or the rules framed thereunder. The carrying out of the day-to-day business of the cooperative societies stands on a different footing than the selection/appointments made by an administrative committee of the society. The selection of the respondents as discussed in the preceding paragraph cannot be validated u/s 29 of the Act, and it is wholly inapplicable to an eventuality as has arisen in the instant case.

(19) In view of the foregoing discussion, we set aside the appointments/selections of respondents No. 11, 12, 14 and 15 in CWP Nos. 4543/81 and that of respondent No. 11 in CWP No. 4714/81; in CWP Nos. 870 and 871 of 1982, the appointment/selection of respondents No. 11 and 29, and in CWP No. 871/1982 that of respondent No. 11. The selection of other appointees is not disturbed. Respondent No. 1 in all these four cases is directed to consider the petitioners along with the other candidates who had applied for various posts for which the petitioners had applied. It shall not issue any fresh advertisement or invite applications but will call all those applicants who had applied for the various posts for which the petitioners had applied, for interview and then make selections according to law. The writ petitions are disposed of accordingly. We however, leave the parties to bear their own costs.

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**R.N.R.**