

The Kangra Central Cooperative Bank Pensioners Welfare Association (Registered) Vs. State of Himachal Pradesh & Ors.

Civil Appeal No. 5251 of 2022 arising out of S.L.P. (Civil) No. 1246 of 2015
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Full judgment text

The Kangra Central Cooperative Bank Pensioners Welfare Association (Registered) Vs. State of Himachal Pradesh & Ors.

[Civil Appeal No. 5251 of 2022 arising out of S.L.P. (Civil) No. 1246 of 2015]

[Special Leave Petition (Civil) No. 4518 of 2016]

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1. Leave granted.

2. This appeal challenges the judgment and order dated 03.09.2014 passed by the High Court of Himachal Pradesh at Shimla in LPA No.316 of 2012.

3. While dealing with the claim preferred by the Kangra Central Co-operative Bank Pensioners Welfare Association ("the Association", for short) challenging the Orders dated 21.04.2010 and 24.04.2010 stopping grant of pension to the Members of the Association, the Single Judge of the High Court by his judgment dated 15.05.2012 in CWP No.1679 of 2010 directed as under: "

26. In the instant case, the withdrawing of the scheme by the BOD when it was approved by the General House, which is a final authority, is contrary to the provisions of the Policy and the second respondent has acted beyond his powers delegated under the Act.

27. The change of the policy and withdrawal has to be made in the same process in which it has been made, which lacks in the present case.

28. Thus, for the aforesaid reasons, the impugned orders Annexures R-3/7 and R- 3/8 discontinuing of policy are hereby quashed and set-aside. Thus, there shall be a direction to respondent No.2 to place the Scheme before the General House for reconsideration and take a final decision in the matter whether to continue the Scheme with some modifications, if required or to completely disband it or suggest alternative proposal. Such a decision be taken after affording hearing to the petitioners and also the respondentbank within four months from the production of the copy of this judgment."

4. During the course of his judgment, the Single Judge dealt with all the relevant submissions including one concerning maintainability of the writ petition and observed as under:

"19. The learned counsel for the respondents admitted that the State had more than 50 per cent share in the capital of the bank. The Registrar of the Cooperative Societies is a member of Himachal Pradesh Administrative Services. The perusal of the Cooperative Societies Act reveals that the respondent-Society cannot budge even an inch without his approval, therefore, there is deep and pervasive control of the State Government not only on its employees by the second respondent as ventilated by the learned counsel for the respondents but also on the working of respondents-Bank, as is evident from the facts in hand that the respondent-bank has more than 50% share of the Government, it is financially,

functionally and administratively dominated by or is under the control of the State Government, as also the Government nominates members of the Managing Committee (BOD) under Section 35 of Cooperative Societies Act, also 1/3 of the members are appointed by the Registrar under Rule 39 framed under the Act. Even under Rule 49, he is empowered to inter-alia issue general or special orders to the Managing Committee to raise and invest funds. Therefore, the State has a deep and pervasive control on its working. Hence, the respondent-bank is an instrumentality of the State within the meaning of Article 12 of the Constitution. Therefore, in my opinion, the writ is maintainable against the respondent-bank."

5. It appears that in a different context, the issue concerning maintainability of a Writ Petition against Kangra Central Co-operative Bank Ltd. ('the Bank', for short) again came up before the Full bench of the High Court, which by its judgment dated 14.05.2013 observed as under: "15. For the view taken by us on both facets of the referred questions, we proceed to answer the Reference as under:

(1) The question as to whether Kangra Bank is a State within the meaning of Article 12 of the Constitution of India, is no more res integra. It has been authoritatively answered by the Apex Court in S.S. Rana's case (supra.)

(2) Even in the case of H.P. State Cooperative Bank Ltd., the question has been answered by the Division Bench of our High Court in Chandra Kumar Malhotra's case (supra). There is no conflicting decision of coordinate Bench of this Court necessitating pronouncement on that question by the Full Bench.

(3) In the case of Jogindra Central Cooperative Bank, the decision in Mehar Chand's case (supra) is rendered by the learned Single Judge of this Court and no conflicting decision of the co-ordinate Bench much less of the Division Bench or Larger Bench of our High Court with regard to the stated Bank has been brought to our notice. In any case, the said question can be conveniently answered by the Division Bench in appropriate proceedings whether in the form of writ petition or Reference made by the learned Single Judge of this Court, as the case may be. As and when such occasion arises, the issue can be answered on the basis of settled legal principles and including keeping in mind the exposition of S.S. Rana's case (supra) of the Apex Court concerning another Cooperative Bank constituted under the Himachal Pradesh State Cooperative Act.

(4) As regards the second part of the question as to whether a writ would lie against the stated Cooperative Banks, we hold that it is not appropriate to give a definite answer to this question. For, it would depend on several attending factors. Further, even if the said Banks were held to be not a State within the meaning of Article 12, the High Court in exercise of powers under Article 226 of the Constitution of India, can certainly issue a writ or order in the nature of writ even against any person or Authority, if the fact situation of the case so warrants. In other words, writ can lie even against a Corporative Society. Whether the same should be issued by the High Court would depend on the facts of each case.

16. Accordingly, having answered the referred questions, we direct the Registry to place the concerned writ petitions and the LPA before the appropriate Bench for proceeding on merits in accordance with law."

6. In the Review Petition preferred against the decision of the Single Judge, the decision rendered by the Full Bench was relied upon and the Review Petition was rejected.

7. The matter however was carried in appeal before the Division Bench at the instance of the Bank.

8. Relying on its earlier decision in Sanjeev Kumar & Others v. State of Himachal Pradesh & Others, C.W.P. No.6709 of 2013 the Division Bench by its judgment and order which is presently under challenge, set aside the view taken by the Single Judge. The matter essentially turned on the issue of maintainability.

9. We have heard Mr. Kavin Gulati, learned Senior Advocate in support of the appeal, Mr. Abhinav Mukerji, learned Additional Advocate General for the State and Mr. Ritesh Khatri, learned Advocate for the Bank.

10. The issue concerning maintainability was considered by the Full bench and the observations made by the Full Bench summed up the law on the point quite succinctly. On the facts as found by the Single Judge, which were recorded in paragraph 19 of the judgment, without entering into any other question, in our view, the petition as filed was perfectly maintainable. The Division Bench was in error in setting aside the view taken by the Single Judge in allowing the writ petition and in rejecting the review petition.

11. We, therefore, allow this appeal and set aside the view taken by the Division Bench. However, since the Division Bench had not dealt with the matter on merits, we restore LPA No.316 of 2012 to the file of the Division Bench and request the High Court to dispose of the same as early as possible and preferably within three months from the receipt of this order.

12. The Civil Appeal is allowed to the aforesaid extent, without any order as to costs.

[SPECIAL LEAVE PETITION (CIVIL) No.4518 OF 2016]

1. This Special Leave Petition challenges the judgment and order dated 04.08.2014 passed by the High Court of Himachal Pradesh at Shimla in Civil Writ Petition No.6709 of 2013.

2. Though the issue raised in this matter also pertains to the maintainability of a writ petition filed in the High Court; and the instant matter was tagged with the Special Leave Petition from which the aforesaid appeal arose, in the facts and circumstances of the case, we refuse to entertain this Special Leave Petition.

3. It has been brought to our notice that the Joint Registrar (Credit) Cooperative Societies, H.P., while disposing of the action initiated before him had observed as under:

"24. In view of the findings recorded hereinabove, the respondent bank shall consider the applicants/petitioners along with other similarly situated subordinate category employees for promotion to vacant post of junior clerks/ Gr.IV under specified promotion quota earmarked under bank service rules for them subject to their eligibility and fitness for promotion as and when vacancies under promotion quota or otherwise are filled by the respondent bank in near future. Further, the period of service rendered by the applicants/petitioners as sub-helpers on contract/ad hoc basis shall be considered as qualifying service by the bank for determining their length of service in feeder/subordinate category for the purpose of promotion to junior clerks/ Gr.IV as per rules and settled principles of service jurisprudence and in view of the fact that bank had extended their contract period till 2011 as per terms of the scheme of appointment and rules etc.

25. In the aforesaid terms, the representations/ references u/s 72 of the Act ibid preferred by the applicants/petitioners stand disposed of in compliance of the orders of Hon'ble High Court, H.P. these findings made before the parties present today on 18.8.2012 at Shimla shall also be kept on record in concerned files of the applicants/petitioners as those are preferred on similar grounds before Registrar Cooperative Societies, H.P. and stood clubbed as discussed above and accordingly disposed of along with applications filed for stay etc. if any. These case files be returned along with findings to the Registrar Cooperative Societies, H.P. for record and further appropriate action after due completion."

4. The further action initiated by the present petitioners in the form of a Writ Petition did not meet with success on the ground of maintainability. However, as indicated in the Additional Affidavit filed by the respondents, out of six petitioners presently before this Court, four of them were granted the benefit of regularization¹ to the next higher post. Ms. Pragati Neekhara, learned Advocate appearing for the H.P. State Cooperative Bank Ltd. submits that since the filing of the additional affidavit, other two petitioners have also been afforded the similar benefit.

5. In the circumstances, we refuse to entertain this Special Leave Petition which is thus disposed of.

1 Shri Suresh Kumar Mehta, petitioner No.1 by office order dated 02.09.2019; Shri Rajinder Kumar, petitioner No.2 by order dated 20.06.2020; Shri Anil Prakash, petitioner no.4 by office order dated 28.01.2020; and, Shri Kuldeep Singh, petitioner No.5 by order dated 28.01.2021.

Source disclosure: Complete sanitized public judgment text retained for research. Official-primary replacement and later-history closure remain pending.

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