

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

C.W.P. No. 19790 of 2008

DATE OF DECISION : 15.07.2009

The Amritsar Central Cooperative Bank Ltd., Amritsar

.... PETITIONER

Versus

Deputy Registrar (E) Cooperative Societies, Punjab and another

..... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE SATISH KUMAR MITTAL

Present: Mr. I.S. Saggu, Advocate,
for the petitioner.

Mr. M.S. Bedi, Advocate,
for respondent No.2.

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SATISH KUMAR MITTAL, J.

The Amritsar Central Cooperative Bank Ltd., Amritsar has filed the instant petition under Article 226 of the Constitution of India for quashing the order dated 29.9.2008 (Annexure P-7), passed by the Deputy Registrar (E) Cooperative Societies, Punjab, Chandigarh (respondent No.1 herein), whereby the disciplinary proceedings initiated by the petitioner Bank against Sukhwant Singh (respondent No.2 herein) have been quashed, on a revision filed by him under Section 69 of the Punjab Co-operative Societies Act, 1961 (hereinafter referred to as 'the Act').

In the present case, respondent No.2 is working as Clerk in the

petitioner Bank. On 1.8.2006, he was placed under suspension and the Supervisory Committee of the petitioner Bank initiated the disciplinary proceedings against respondent No.2 for committing various embezzlements and fraud with the account holders. On 22.1.2008, respondent No.2 was issued charge sheet by the Supervisory Committee of the petitioner Bank. Against the suspension order and the issuance of charge sheet, respondent No.2 filed a revision petition under Section 69 of the Act before respondent No.1, on the ground that he could not have been placed under suspension for a period exceeding six months without the prior approval of the Registrar. It was also pleaded that in the enquiry report dated 25.5.2008 conducted on the order of the Chief Minister, Punjab, respondent No.2 was not found guilty, and only Branch Manager and the Cashier were held responsible. Therefore, initiation of the departmental enquiry against respondent No.2 was illegal and arbitrary. It was also contended that the Supervisory Committee was having no jurisdiction to issue the charge sheet.

Before the revisional authority (respondent No.1), the petitioner Bank took the preliminary objection that the revision petition filed by respondent No.2 under Section 69 of the Act was not maintainable. Respondent No.1, while rejecting the preliminary objection of the petitioner Bank, allowed the said revision petition and quashed the suspension order as well as the disciplinary proceedings initiated by the Supervisory Committee and reinstated respondent No.2 with all consequential benefits, while observing as under :

“I have carefully considered the arguments produced by the Ld. counsel for the parties and also have perused the record on file. The petition is maintainable u/s 69 as per the judgment given by the Hon'ble High Court in the latest case of “Deepak Kalia Versus State of Punjab 2007 (1) RCR (C) 805” as per which section 69 petition is maintainable against the order passed by the society. The petitioner has been kept under suspension exceeding 6 months without the approval of the RCS Punjab. The disciplinary action has been taken by the supervisory committee which was not competent to take any action against an employee of the Bank in the absence of the Board of Directors or Administrator. In view of the above the revision petition is allowed and the petitioner reinstated with all consequential benefits and the disciplinary proceedings initiated by the supervisory committee are quashed. The bank is at liberty to proceed afresh against the petitioner through competent authority.”

The petitioner Bank has challenged the aforesaid order by way of the instant petition.

I have heard the arguments of learned counsel for the parties.

The only issue involved in this petition is : Whether against the suspension order and the issuance of charge sheet by the Supervisory Committee, a revision petition under Section 69 of the Act filed by the delinquent employee was maintainable, and whether the order dated 29.9.2008 passed by respondent No.1 in exercise of the revisional power under Section 69 of the Act is wholly without jurisdiction and is liable to be quashed?

Learned counsel for the petitioner Bank submits that the revision petition filed by respondent No.2 before respondent No.1 was not maintainable, as the same was filed against the suspension order passed under Rule 9 (iv) of the Service Rules and the said Rule does not provide for filing of appeal or revision against the order of suspension. The filing of an appeal against the issuance of charge sheet has also not been provided. Under Rule 10 of the Service Rules, remedy of appeal has been provided against the order of penalty imposed by the punishing authority. Learned counsel further submits that a revision petition under Section 69 of the Act is maintainable only against those orders, which have been passed by an authority under the Act, against which the remedy of appeal has not been provided under Section 68 of the Act. He submits that since the suspension order and the order of issuance of charge sheet were passed by the officials of the Society under the Service Rules, therefore, against those orders, no revision under Section 69 of the Act was maintainable. In support of his contention, learned counsel for the petitioner has relied upon a Division Bench decision of this Court in **Rajinder Singh v. The Registrar, Cooperative Societies, Punjab and others**, 2001 (1) PLJ 81, wherein it has been held that a petition under Section 69 of the Act can be entertained by the State Government or the Registrar, as the case may be, for the purpose of examining legality or propriety of any decision or the order passed by an authority in any proceedings under the Act. When no order is passed by any authority under the Act, revision against such an order is not maintainable.

Learned counsel further argued that respondent No.1 has wrongly relied upon the Division Bench decision of this Court in **Deepak Kumar Kalia v. Punjab State Handloom Weavers Apex Coop. Society and others**, 2007 (1) RCR (Civil) 805 and another Division Bench decision of this Court in the case of **Punjab State Handloom Weavers Apex Society Ltd. v. State of Punjab**, 1996 (1) S.C.T. 156, while holding that the revision under Section 69 of the Act was maintainable. Learned counsel for the petitioner Bank submits that in both these cases, the employee was dismissed under the Service Rules and against the order of dismissal, the appeal was preferred by the employee under the Service Rules before the Deputy/Assistant Registrar, an authority under the Act, and after dismissal of the said appeal, the revision was filed under Section 69 of the Act. Therefore, in those cases, the revision was filed against the order passed by the authority under the Act.

On the other hand, learned counsel for respondent No.1 argued that Section 69 of the Act empowers the Government as well as the Registrar to examine the legality or propriety of any decision or the order passed by a Society. He submits that for filing a revision under Section 69 of the Act, it is not necessary that the order under challenge should have been passed by an authority in a proceeding under the Act. According to learned counsel, the revision can be filed even against an order or decision of the Society. Therefore, learned counsel submits that against the suspension order and the order of issuance of charge sheet, passed by the

officials of the Society, respondent No.2 filed revision, which was rightly entertained by respondent No.1. In support of his contention, learned counsel has relied upon Deepak Kumar Kalia v. Punjab State Handloom Weavers Apex Coop. Society and others, 2007 (1) RCR (Civil) 805, and Punjab State Handloom Weavers Apex Society Ltd. v. State of Punjab, 1996 (1) S.C.T. 156.

After considering the rival contentions raised by learned counsel for the parties, I am of the opinion that the instant writ petition deserves to be allowed, as the impugned order passed by respondent No.1 was wholly without jurisdiction. In my opinion, against the suspension order and the order of issuance of charge sheet, passed by the Society, no revision under Section 69 of the Act before respondent No.1 was maintainable.

Section 55 of the Act provides for disputes which may be referred to arbitration. Section 55 reads as under :-

55. Disputes which may be referred to arbitration – (1)

Notwithstanding anything contained in any law for the time being in force, if any dispute touching the constitution, management or the business of a co-operative society arises -

- (a) among members, past member and persons claiming through members, past members and deceased member;
or
- (b) between a member, past member or person claiming through a member, past member or deceased member and the society, its committee or any officer, agent or

- employee of the society or liquidator, past or present; or
- (c) between the society or its committee and any past committee, any officer, agent or employee; or any past officer, past agent or past employee or the nominee, heirs or legal representatives of any deceased officer, deceased agent, or deceased employee of the society; or
 - (d) between the society and any other co-operative society, between a society and liquidator of another society or between the liquidator of one society and the liquidator of another society;

such dispute shall be referred to the Registrar for decision and no court shall have jurisdiction to entertain any suit or other proceedings in respect of such dispute.

(2) For the purposes of sub-section (1), the following shall be deemed to be disputes touching the constitution, management or the business of a co-operative society, namely -

- (a) a claim by the society for any debt or demand due to it from a member or the nominee, heirs or legal representative of a deceased member, whether such debt or demand be admitted or not;
- (b) a claim by a surety against the principal debtor where the society has recovered from the surety any amount in respect of any debt or demand due to it from the principal debtor as a result of the default of the principal debtor whether such debt or demand is admitted or not;
- (c) any dispute arising in connection with the election of any officer of the society.

(3) If any question arises whether a dispute referred to the Registrar under this section is or is not a dispute touching the constitution, management or the business of a co-operative

society, the decision thereof of the Registrar shall be final and shall not be called in question in any court.

Section 56 of the Act, which provides the reference of disputes to arbitration, is being re-produced below :

56. Reference of disputes to arbitration – (1) The Registrar may, on receipt of the reference of dispute under Section 55, -

- (a) decide the dispute himself; or
- (b) transfer it for disposal to any person who has been invested by the Government with powers in that behalf; or
- (c) refer it for disposal to arbitrator.

(2) The Registrar may withdraw any reference transferred under clause (b) of sub-section (1) or referred under clause (c) of that sub-section and decide it himself or refer the same to another arbitrator for decision.

(3) The Registrar or another person to whom a dispute is referred for decision under this section may, pending the decision of the dispute, make such interlocutory orders as he may deem necessary in the interest of justice.

Section 68 of the Act provides the filing of appeal. Under sub-section (1), an appeal shall lie against -

- (a) an order of the Registrar made under sub-section (2) of section 8 refusing to register a society;
- (b) an order of the Registrar made under sub-section (4) of Section 10 refusing to register an amendment of the bye-laws of a co-operative society;
- (b) an order of the Registrar made under section 10A directing amendment of the bye-laws of a co-operative society;

- (c) a decision of a co-operative society, other than a producers' society, refusing to admit any person as a member of the society who is otherwise duly qualified for membership under the bye-laws of the society;
- (d) a decision of a co-operative society expelling any of its members;
- (e) an order made by the Registrar removing or suspending a committee or a member thereof under Section 27;
- (f) an order made by the Registrar under Section 52 apportioning the cost of an inquiry held under Section 50 or an inspection made under Section 51;
- (g) any order of surcharge under Section 54;
- (h) any decision or award made under Section 56;
- (i) an order made by the Registrar under Section 57 directing the winding up of a co-operative society;
- (j) any order made by the liquidator of a co-operative society in exercise of the powers conferred on him by Section 59;
- (k) any order made under Section 65;
- (l) grant of a certificate under Section (2) of Section 67-A for the recovery of the amount due from a member on account of loan and interest thereon.

Sub-section (2) of Section 68 provides that an appeal against any decision or order under sub-section (1) shall be made within sixty days from the date of decision or order -

- (a) if the decision or order was made by the Assistant Registrar to the Deputy Registrar;
- (b) if the decision or order was made by the Deputy Registrar to the Registrar or such Additional Registrar or Joint Registrar as may be authorised by the Registrar in this behalf;

- (c) if the decision or order was made by the Joint Registrar or Additional Registrar, to the Registrar;
- (d) if the decision or order was made by the Registrar, to the Government;
- (e) if the decision or order was made by any other person, to the Registrar or such Additional Registrar to Joint Registrar or Deputy Registrar or Assistant Registrar as may be authorised by the Registrar in this behalf.

Sub-section (3) further provides that no appeal shall lie under this section from any decision or order made by any authority in appeal.

A perusal of Section 68 of the Act clearly reveals that an appeal lies only against the orders, which have been passed by the authorities under the Act or in a proceedings under the Act. Sub-section (3) further provides that no appeal shall lie under this section from any decision or order made by any authority in appeal. Therefore, the order in appeal is final.

Section 69 of the Act, which provides the filing of revision, reads as under :

69. Revision – 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 under Section 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.

A perusal of the aforesaid provision clearly indicates that the State Government or the Registrar has been empowered to call for and examine the record of any proceeding under the Act in which no appeal under Section 68 lies to the Government or the Registrar, for the purpose of satisfying itself or himself as to the legality or propriety of any decision or order passed by the authorities under the Act. A Division Bench of this Court in **Rajinder Singh's case** (supra) has considered this aspect of the matter. In that case, elections of the Managing Committee of a Primary Cooperative Society were held and thereafter, Rajinder Singh (petitioner in that case) was elected a Director from Zone No.3. Harjit Singh (the unsuccessful candidate) filed a revision petition under Section 69 of the Act, challenging the election programme. The said revision petition was entertained by the Registrar, Co-operative Societies and interim order restraining Rajinder Singh from performing his duties as Director was passed. In the writ petition, the said order passed in revision petition was quashed by this Court, while holding that the revision petition under Section 69 of the Act, filed by Harjit Singh was not maintainable. It was observed as under :

“A petition can be entertained by the State Government or the Registrar as the case may be for the purpose of examining legality or propriety of any decision or the order passed in any proceedings under the Act. There was no order passed by any authority which was challenged before the Registrar nor were

any proceedings pending, the propriety of which could be examined by him. What was sought to be challenged in the revision petition was the election programme approved by the Deputy Registrar exercising the powers of the Registrar and not the election of the petitioner as a Director. In this view of the matter, the order of the Registrar restraining the petitioner from performing his duties as an elected Director of the Bank is without jurisdiction.”

Even in *Gurnam Kaur v. State of Punjab etc.* 1992 (2) PLR 746, the Full Bench of this Court has observed that revision under Section 69 of the Act lies against the order passed by the subordinate authorities under the Act. In my opinion, the above said decisions squarely cover the controversy involved in the instant petition. In the present case also, the suspension order and the order of issuance of charge sheet were not passed by any authority or in any proceedings under the Act. Those orders were passed by the Society under the Service Rules. The two judgments relied upon by learned counsel for respondent do not support the case of respondent No.2, particularly in the facts and circumstances of the instant case. In both the cases, revision petition was filed against the order passed by the Appellate Authority i.e. Deputy Registrar/Assistant Registrar, which was an authority under the Act. In the instant case, the suspension order and the order of issuance of charge sheet were passed by the officers of the Society, therefore, against those orders, revision under Section 69 of the Act was not maintainable. Thus, the order dated 29.9.2008, passed by respondent No.1 is wholly without jurisdiction and the same is liable to be quashed.

In view of the above, without going into the question as to whether the order of suspension was valid or not or whether the Supervisory Committee of the petitioner Bank was empowered to issue the charge sheet or not, the impugned order is liable to be quashed on the ground that revision petition filed by respondent No.2 before respondent No.1 under Section 69 of the Act was not maintainable. Consequently, the writ petition is allowed and the order dated 29.9.2008 (Annexure P-7), passed by respondent No.1 is quashed. However, it will be open for respondent No.2 to avail his other remedy challenging the order of his suspension or the charge sheet in accordance with law, including the Service Rules.

July 15, 2009
ndj

(SATISH KUMAR MITTAL)
JUDGE

Refer to Reporter