

CASE NO.:
Appeal (civil) 3729-3730 of 1999

PETITIONER:
LUDHIANA CENTRAL CO-OPERATIVE BANK LTD.

RESPONDENT:
AMRIK SINGH AND ORS.

DATE OF JUDGMENT: 19/08/2003

BENCH:
S. RAJENDRA BABU & DORAISWAMY RAJU

JUDGMENT:
JUDGMENT

2003 Supp(2) SCR 766

The Judgment of the Court was delivered by

RAJENDRA BABU, J. The appellant-Bank invited applications for the posts of Junior Clerks/Junior Clerk-cum-Typist by means of an advertisement in "Indian Express" newspaper dated 24.5.96, in the then pay scales of Rs. 1450-2950, plus usual allowances. Similar advertisements were issued in two other daily newspapers also on 25.5.96. The last date was fixed for receipt of applications as 8.6.96. All these were done pursuant to the decision taken by the Board of Directors of the appellant-Bank. As many as 1565 applications were said to have been received and the private respondents who were writ petitioners before the High Court seem to be few among those applicants. The Board of Directors appears to have constituted a Committee to conduct the selections, consisting of (a) President of the appellant-Bank; (b) Managing Director of the appellant-Bank; (c) A Director of the appellant-Bank (Shri Harmohinder Singh); (d) nominee of the Registrar of Co-operative Societies Punjab and (e) General Manager of the Punjab State Co-operative Bank Ltd. (Shri Sohan Singh-nominated member from the State Government). During the period from 19.12.96 to 28.12.96 typing tests and interviews were said to have been conducted by the said Selection Committee, and a merit list was also stated to have been prepared, though signed by only three out of five members of the Committee and that the two who did not sign it were said to be (d) and (e) mentioned above.

While so, in the teeth of the announcement made on 30.12.96. for conduct of General Elections in the State for the Legislative Assembly, on 9.1.97 the Registrar of Co-operative Societies seem to have written to the appellant-Bank to freeze all appointments, followed by another letter dated 21.1.97 to all the Co-operative Banks in the State that recruitment process could be resumed only with the specific prior permission of the Registrar. After the general elections it is stated that on 9.2.97 a new Government took over the reigns of administration in the State and in the place of erstwhile Congress Party Akail Deal appears to have become the ruling party. On 10.2.97 the Chief Secretary to the Government is stated to have communicated to the Registrar of Co-operative Societies and all other State Corporations that the Government had banned all recruitments/appointments/transfers, at all levels, until the election process is completed by the new Government taking over the charge. While so, the Manager of the appellant Bank by a letter written on 21.2.97 to the Registrar of Co-operative Societies sought for permission to declare the results and make appointments. The Registrar, by his communication dated 3.4.97, wrote to all the Joint Registrars and Deputy Registrars of Co-operative Societies and Managers of all Co-operative Banks, in continuation of his earlier letter dated 21.1.97 that in some Co-operative Banks, the vacancies were not notified to the Employment Exchange and sufficient time was also found not given in calling for interviews resulting in number of deserving candidates being denied an opportunity to participate in the

election process and also could not appear for interview and consequently directed all Co-operative Banks to (a) notify to the concerned Employment Exchange in accordance with the instructions of the Government the vacancy position before making any recruitment; (b) give public notice/advertisement in newspaper for vacant posts for information of general public; (c) that even those banks which have already given advertisements in newspapers also give again advertisement in newspapers setting out the latest position of vacant, posts, indicating at the same time that those who had already submitted their applications pursuant to the earlier advertisement need not apply again and (d) in order to maintain parity in the standard of test/interview for recruitment, a combine test/interview of old and fresh candidates be held again.

While matters stood thus, the private respondents herein (writ petitioners before the High Court) filed on 30.4.97 CWP No. 6056 of 97 a writ petition for directing the appellant-Bank to declare the results of the selections made for the recruitment of junior clerks/junior clerks-cum-typists and further direct appointments to be made in terms of such results. The appellant-Bank filed their counter affidavit contending that there was no obligation on the part of the Appointing Authority to give appointments on the basis of the selection process undertaken, even if there had been any recommendations made out of such selection process, and therefore, the relief as prayed for could not be granted. Objection regarding the maintainability of the writ petition itself against the Bank which is a Co-operative Societies only also seems to have been raised. The attention of the High Court was also drawn to the intervening of General Elections, the directions of the Registrar, the ban orders of the Government and the subsequent directions of the Registrar, to which reference has been made supra. It was urged that, in the light of all such above stated developments, the process has to be redone by resorting to fresh advertisements of posts, conduct of interviews and tests and results could not be declared as prayed for and that those who applied earlier can compete along with the new candidates, if any, afresh. The plea that the appellant-Bank was bound by the directions noticed above and cannot disobey them also appears to have been urged.

After final hearing of the writ petition, by an order dated 22.10.97, the Division Bench of the High Court, while allowing the writ petition, directed the publication of the results of selection and fill up the posts on the basis of merit performance, as indicated from the results of selections, within one month from the date of the order. The Managing Director of the appellant-Bank as it is contended now, without choosing to submit the records relating the selection before the Board of Directors which appointed the Selection Committee and which alone is claimed to be the competent authority for the purpose, unauthorizedly and arbitrarily, in gross abuse of his position and in an illegal manner issued on 21.11.97 a list of 55 candidates as having been selected for the said posts. A wait list of 14 candidates was also said to have been issued, followed by issuance of appointment letters also on that date itself. On 24.11.97, the Registrar of Co-operative Societies seems to have passed an order in exercise of powers under Section 50 of the Punjab Co-operative Societies Act, 1961, that since number of complaints have been received as to the manner and method of the so called selection and recruitment process relating the appellant-Bank, it became imperative to hold an enquiry into the working of the Board of Directors and the Selection Committee in respect of such selections and appointed the then Deputy Secretary Co-operative Department (Shri A.S. Bains) an Enquiry Officer for the purpose. The said Enquiry Officer by his communication dated 24.11.97 called upon the Managing Director to place the entire records of selected before him on 1.12.97 but the said direction was not complied with. The Managing Director did not participate in the proposed enquiry. In the meantime, on 24.11.97 the Chief Executive Officer of the Bank called for a meeting of the Board of Directors on 28.11.97, which the Managing Director is stated to have cancelled on 27.11.97. As per claim made, though it was said to be only a manipulation by him of having done so, when not really done. But the

emergent meeting called for is said to have been held, as proposed on 28.11.97. The resolution said to have been passed on the date requires to be set out, for appreciating the nature of things which were said to have marred/vitiated the so called selection process and the consequent declaration of results and appointments made pursuant thereto.

"The Board considered the agenda item which was produced by the Manager in detail. In the agenda note Manager has said that C.W.P.No 6056 of 1997 was decided by the High Court on 22.10.97 copy of which was issued by the Hon'ble High Court on 21.11.97. which was received in the Bank on 24.11.97. It was also told by him that on 21.11.97 Shri Baljit Singh Gill Managing Director sent a list of 55 selected candidates and the candidates on the waiting list to the Bank which was signed only by Shri Baljit Singh Gill Managing Director and appointment letters were also issued by him at his own level. For the purpose of selection of Clerks, the Board of Director vide its supplementary resolution No.1 dated 4.9.97 had constituted the following selection committee:-

1. Shri Tejinder Singh, President
2. Shri Baljit Singh, Managing Director
3. Shri Harmohinder Singh, Director
4. Deputy Registrar, Co-operative Societies, Ludhiana
5. Nominee of the Registrar, Cooperative Societies, Punjab, Chandigarh
6. Representative of Punjab State Cooperative bank Ltd. Chandigarh.

Vide this resolution the Board of Directors did not authorize any member of the selection committee to issue appointment letters. The above selection committee was required to finalise the selection list and send the same to the Board of Directors for approval but instead of doing so only one member of the selection committee Sh. Baljit Singh Gill, Managing Director prepared the selection list and sent it to the Manager. The same member also unauthorisedly issued appointment letters at his own level. Member of the Selection Committee Shri Sohan Singh, G.M. Apex Bank Chandigarh and S. Nazar Singh Deputy Registrar now M.D., C.C.B. Patiala have reported in writing that the selection list has been issued without their knowledge/signatures. The Manager did not produce the record/documents relating to type test and interview marks. No record of any type was produced to prove that the selection of candidates is as per merit. Manager also informed the Board of Directors that Managing Director Sahib did not give him any record relating to the selections. Manager also informed that the selection list has been sent by Managing Director Sahib under his sole signatures. It is for this reason that he could not inform the Board as to how many marks were given to each candidate in the interview and the list and what is the basis of the selection list. After consideration all this circumstances, it seems clear to the Board of Directors that selection list has been prepared after tempering with the record and it is for this reason that the original records is not being produced before the Board. The selection list issued by M.D. Sahib is issued unauthorisedly and in a hurried manner and as such he has created obstacles in the implementation of the order of the High Court in letter and spirit. It is also clear that the selection list has been prepared by the Managing Director in an unjust and unfair manner and by ignoring the true facts and the merits/qualifications of the candidates. Therefore, the Board of Directors, unanimously by expressing disagreement with the entire action of the Managing Director, rejects the selection list issued by him. The Board of Directors issued directions to the Manager that he should obtain the entire record relating to the selection and in this regard, whatever legal action is to be taken, the Manager Head Office C.C.B. Ludhiana is authorized to take. He may settle the advocate's fee and make payment to him.

It is also resolved unanimously that Manager is authorized to file/ defend in any court regarding this selection and for procuring the record. Manager of the Bank is also directed that after obtaining the record, he should produce it within one week before the Board of Directors so that the directions of the Hon'ble High Court be complied with in letter and spirit.

Sd/-President.

Certified that the above is true copy of the Proceeding Book and the same is available in the Bank Record.

So/-

Chief Executive Officer, C.C.B. Ludhiana."

Thereafter an application setting out extensively the serious irregularities, infirmities and gross violations of law alleged to have been committed in the matter of selection, the improper manner of determination of the successful candidates and infirmities in the appointments made pursuant thereto, was filed in the High Court with a prayer seeking for review of the earlier order dated 22.10.97 allowing the writ petition. The said application in RACW No. 180 of 1998 was summarily rejected by making certain cryptic observations really not touching upon the seriousness of the matter brought before the court. Hence these appeals.

The learned senior counsel for the appellant-Bank contended that the serious irregularities committed in the matter of the selection resulted not only in serious miscarriage of justice to the interests of the appellant but also to the large number of unselected candidates in denying them a transparent and fair method of consideration assessment and selection of their claims; that, assuming without conceding that the selection process was really properly completed, there is no compulsion on the part of the Board of Directors to accept the same and the Board had every right, in obedience to the directions of the Government and Registrar and even for other valid reasons as found in this case, ultimately not to accord sanction and refuse to approve the so called selections and gone for fresh advertisement by inviting applications and make selections in the manner directed by the Registrar taking into account those who applied earlier by conducting fresh selections of all those who applied earlier and also subsequently responding to fresh advertisements; that, the High Court committed a serious error of law in allowing the writ petition with no proper or serious contest of the matter before it on vitally relevant aspects and without even looking into the records of the so called selections to find out whether there had been proper and lawful selections before issuing a writ, as prayed for; that, at least when the nature of irregularities and illegailities have been pointed out which seriously undermined the so called selection process as a whole, the High Court ought to have gone into them objectively and could not afford to lightly ignore or brush them aside by rejecting them summarily; that, consequently, the order of the High Court should be set aside and fresh selections ordered, to do real and substantial justice in the matter to all these concerned.

Per contra, on behalf of the writ petitioners before the High Court, respondents 1 to 20 herein, political bias has been attributed to the move of the Bank and other authorities, besides claiming that the selections have been properly held and conducted by the Committee duly constituted and consequently, the High Court was right in allowing the writ petition to declare the results and order their appointments in pursuance thereto. The learned senior counsel for the contesting respondents also contended that all the relevant records relating to the selections have been not produced but withheld and therefore there is no merit in the challenge made to the selections claimed to have been duly and properly made by the committee constituted for the purpose, and consequently the appeals are liable to be dismissed, as of no merit.

We have carefully considered the submissions on behalf of the parties on either side, in the light of the materials placed on record. The conclusion that the functioning of the then Managing Director of the appellant-Bank is neither appreciable nor the so called selections can be given any credence of real/proper selections or can be said to have been made in accordance with law, becomes irresistible. The whole process appear to have been not only perfunctory but really a farce of selection vitiated by award of indiscriminate marks to boost up candidates of choice and unreasonably put down others in utter disregard and derogation of the binding guidelines. Indisputably, the power to appoint is vested in the Board of Directors of the appellant-Bank under the bylaws and the constitution of a Committee for the selection of candidates by conducting tests and interviews cannot clothe the said committee with also powers to finalise the same without the approval of the Board and/ or either declare the results of selection on their own or appoint persons pursuant to such selections without reference to the Board. There is a serious claim by the appellant-Bank, that the assessment of candidates appear to be in gross violation of the binding circular orders of the Registrar of Co-operative Societies dated 31.12.91. The High Court while passing the order on 22.10.97 allowing the writ petition, could not have ignored the directions of the Registrar on 9.1.97 and 31.1.97, the ban orders of the Government issued on 10.2.97 and the final directions issued on 3.4.97 by the Registrar as to what should be done in all pending as well as fresh matters to ensure transparency as well as to mete out real and effective justice to all aspirants for the jobs in question, by finding a solution of its own without even looking into the records relating to the selection to satisfy itself as to the legality, propriety regularity and reasonableness of the so called selections and the process adopted by the Committee before directing action to be taken in implementation thereof. Even otherwise it is well settled by now that a person whose name is said to find place in a select panel has no vested right to get appointed to the post in spite of vacancies existing. The appointing authority cannot afford to ignore individual claims at its whim or fancy, in operating such panel or making appointments on the basis of the panel, by merely 'pick and choose' of candidates. The High Court could not have directed the publication of results or to accord appointments as per such results, all the more in this case, in the teeth of and in derogation of the circular orders of the Registrar of Co-operative Societies dated 3.4.97 which decision seem to have been taken as a matter of policy and for uniform application to all cases pending finalisation as well as for any new proposals for recruitment of staff relating to all Co-operative Banks in the State. The High Court, ought to have, at any rate, gone into all these relevant and vital aspects at least when serious irregularities have been brought to notice by filing a review petition, by calling for production of the relevant records. The cavalier fashion in which it seems to have been rejected cannot meet with our approval, at any rate on the peculiar facts and circumstances, highlighted in this case.

For the reasons stated above, we set aside the orders of the High Court dated 22.10.97 allowing CWP No. 6056 of 1997 as well as the one made on 30.10.98 on the review petition and further order that the said writ petition to be dismissed. To meet the peculiar situation created by the decision of the High Court and the need to do real and effective justice to all parties concerned the following directions are issued.

"1. Since we have set aside the order of the High Court dated 22.10.97 and 30.10.98 and dismissed CWP No. 6056 of 1967 on its file, the results published and appointment orders issued pursuant thereto shall have no legal effect or consequence and cannot confer any rights there under, to anyone concerned. The posts to which such appointments were made is declared to be vacant and available for being filled up under this order.

2. Further action shall be taken by the appellant-Bank:

(a) issue fresh public notice/advertisement in newspapers disclosing the

vacancy position and invite applications;

(b) conduct a common/combined test and interview for all candidates who already applied without insisting upon any fresh application from them and as if they also applied along with those who respond now pursuant to the fresh advertisements by making applications, and prepare a select list for appointment following the guidelines or orders in force and binding in respect of such selections;

(c) relax the requirement of age, if need be, to those who already applied pursuant to the earlier advertisement-whether found selected in the earlier selection or not; and

(d) if anyone appointed pursuant to the orders of the High Court dated 22.10.97 which orders have been now set aside is holding office-they will be considered to be ad hoc appointees to hold position with no right for any priority or preference or for any claim of permanence, subject to the results of the fresh selections to be made and till such time as the new selections and appointments are made, yielding place to such newly selected/appointed persons."

The appeals, therefore, shall stand allowed subject to the above directions. No costs.