

Watan Singh Giani v. The State of Punjab, etc. (Sodhi, J.)

make no order as to costs. Civil Writ No. 1362 of 1970 is allowed to the extent that the order of the Assessing Authority dated March 16, 1970 (copy Annexure 'A' to the petition), disallowing the claim of Rs. 14,307.72 P. in respect of the sale of 'Chokar' out of the tax free claim, is quashed while in all other respects the writ petition stands dismissed with no order as to costs.

N. K. S.

CIVIL MISCELLANEOUS

Before H. R. Sodhi, J.

WATAN SINGH GIANI,—Petitioner.

versus

THE STATE OF PUNJAB AND OTHERS,—Respondents.

**Civil Writ No. 1204 of 1970**

October 20, 1970.

*Punjab Co-operative Societies Act (XXV of 1961 as amended by XXVI of 1969)—Section 26-A—Disqualification for re-election to the Managing Committee of a Co-operative Society—Period of six years of service thereon and a gap of three years therefrom—Whether to be continuous.*

*Held*, that section 26-A of the Punjab Co-operative Societies Act, 1961, laying down restrictions on membership of a Managing Committee of a Co-operative Society, has been introduced by the Punjab Co-operative Societies (Amendment) Act, 1969, to discourage creation of vested interests in the matter of management of the Co-operative Societies and for that purpose a person who has already served on the committee of a Co-operative Society for a continuous period of six years cannot seek election again unless a period of not less than 3 years has expired since he last so served on the committee. A plain and natural reading of sub-section (2) of the Section leaves no room for doubt that a period of six years and the gap of three years must be continuous. The use of the words "whether before or after or partly before or partly after" in the sub-section furnishes a key and a guide to the object of this provision. The disqualification is not intended to be imposed on a person who has ever continued as a member for six years followed by discontinuity in membership of three years. Any such interpretation would defeat the very purpose of the Act and would work hardship. The use of the words "last so served" is also not without significance and is again a pointer to the conclusion that the period of three years for which a person cannot seek election will commence on the expiry of the period of continuous membership for six years.

(Para 6)

*Amended Petition under Article 226 and 227 of the Constitution of India, praying that an appropriate writ, order or direction be issued setting aside the election order dated 16th January, 1970, of the Joint Registrar, Co-operative Societies, Punjab, Chandigarh (Annexure 'B') and the order of the Registrar, Co-operative Societies, Punjab, Chandigarh, dated 20th April, 1970, and further praying that your Lordships be pleased to stay the election from Zone No. 2 of the Hoshiarpur General Co-operative Bank Ltd., Hoshiarpur, to be held on 30th April, 1970, and also praying that the writ petition be accepted with costs and also praying that the records of the case be summoned and it is also prayed that the election of the respondent No. 5 as a Director of the Hoshiarpur Central Co-operative Bank, Limited, Hoshiarpur, held on 20th April, 1970, be set aside and it be further ordered that the respondent No. 5 is prohibited from participating in the meetings of the Board of Directors of the said Bank.*

B. S. KHOJI, ADVOCATE, for the petitioner.

K. S. KEER, ADVOCATE FOR ADVOCATE-GENERAL, (PUNJAB), R. L. AGGARWAL, ADVOCATE, for Respondent No. 5.

#### JUDGMENT

This writ petition arises out of an election dispute between the petitioner and respondent 5 both of whom were seeking election as a Director of the Hoshiarpur Central Co-operative Bank Limited, Hoshiarpur, hereinafter described as the Bank. Respondent 5 was a Director of the Bank earlier as well from 6th November, 1960 to 26th June, 1968, and again from 24th December, 1968, till 2nd December, 1969, when scrutiny of nomination papers for the present election which has led to the dispute took place. Elections to the Managing Committee of the Bank were held under the Punjab Co-operative Societies Act, 1961, referred to hereinafter as the Act, and the petitioner and respondent 5 filed their nomination papers. On an objection being taken by the petitioner, respondent 5 was held by the Returning Officer (Assistant Registrar, Co-operative Societies) to be ineligible to seek election on the ground that he had been a member of the Committee previously for six years and a period of three years since he last so served had not expired. The alleged disqualification was because of the Punjab Co-operative Societies (Amendment) Ordinance, 1969. Sub-section (2) of section 26-A of the Ordinance reads as under:—

“(2) No person shall be eligible for being elected to the Committee of any co-operative society after he has served on the Committee of that Society, whether before or after or

partly before and partly after the commencement of the Punjab Co-operative Societies (Amendment) Ordinance, 1969, for a continuous period of 6 years, unless a period of not less than three years has expired since he last so served."

(2) The Returning Officer took the view that respondent 5 had continued as a Director for six years and that since there was not a gap of three years after the said respondent last so served, the latter was disqualified from seeking election again.

(3) Respondent 5 moved the Registrar for arbitration under section 56(2) of the Act in order to have the dispute settled and the Joint Registrar, Co-operative Societies, Punjab, was appointed an arbitrator. The arbitrator set aside the order of the Returning Officer rejecting the nomination papers of respondent 5 and also the elections which had by then taken place. Fresh elections were consequently directed to be held according to law.

(4) The petitioner filed an appeal against the order of the arbitrator before the Registrar, Co-operative Societies, but the same was dismissed on 20th April, 1970. Elections were again fixed for 30th April, 1970, and election programme issued afresh. It was open to the petitioner to have filed a revision petition before the State Government under section 69 of the Act, but instead of pursuing that remedy he moved this Court for the exercise of its extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India to get the orders of the arbitrator and the Registrar quashed. He prayed for stay of election, but the admitting Bench declined that request. Had he chosen to prefer the revision petition, the State Government was competent, under section 70, to pass an interlocutory order including an order of stay. In the meantime, elections were held and respondent 5 was elected. The petitioner then made an application (Civil Miscellaneous Application No. 4096 of 1970) for getting respondent 5 restrained from acting as a Director of the Bank but this prayer was refused by Tuli J., on 25th August, 1970.

(5) The sole question that arises for consideration from the interpretation of the aforesaid sub-section (2) of section 26-A of the Ordinance is whether the case of respondent 5 was covered by the ineligibility stated therein. There is a preliminary objection as well about the maintainability of the writ petition, when the petitioner did not pursue the alternative remedy by way of revision to the

State Government as available to him under sections 69 and 70 of the Act.

(6) After hearing the learned counsel for the parties, I am of the opinion that the writ petition is liable to be dismissed on both the grounds. Section 26 of the Act provides for election and nomination of members of the committee of a Co-operative Society and it was amended by the Punjab Co-operative Societies (Amendment) Ordinance, 1969 (Punjab Ordinance No. 10 of 1969), followed by the Punjab Co-operative Societies (Amendment) Act, 1969 (Punjab Act No. 26 of 1969), whereby section 26-A, including the aforesaid sub-section (2) was inserted for the first time. The Ordinance was promulgated on the 8th September, 1969, and published in the Punjab Government Gazette (Extraordinary), dated 10th September, 1969. This new provision laid down restrictions on membership of a Committee and seems to have been introduced to discourage creation of vested interests in the matter of management of the Co-operative Societies and for that purpose a person, who had already served on the committee of a Co-operative Society for a continuous period of six years could not seek election again unless a period of not less than 3 years had expired since he last so served on the committee. A plain and natural reading of sub-section (2), the words of which are clear and unambiguous, leaves no room for doubt that a period of six years and the gap of three years must be continuous. A statute will normally be interpreted as taking effect prospectively, but the Ordinance, in the instant case, in reckoning the period of six years took into account the period for which a person had acted as a member of the committee when the Ordinance came into force so that he could continue for a total length of six years after which a gap of three years would become necessary before he could seek re-election. This interpretation follows from the use of the words "whether before or after or partly before or partly after" which in fact furnish a key and a guide to the object of this provision. The disqualification was not intended to be imposed on a person, who had ever before the promulgation of the Ordinance continued as a member for six years followed by discontinuity in membership, but was a member again at the time of the coming into force of the Ordinance. Any such interpretation, as urged by the learned counsel for the petitioner, would defeat the very purpose of the Act and work hardship which could not be intended. The use of the words "last so served" is also not without significance and is again a pointer to the conclusion that that the period of three years for which a person cannot seek election will

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commence on the expiry of the period of continuous membership for six years.

(7) There is, therefore, no merit in the writ petition and the Arbitrator rightly held that the respondent was eligible to seek re-election.

(8) The writ petition merits dismissal on another ground as well that the petitioner did not pursue an alternative legal remedy which could be quite efficacious and was available to him. A power of revision has been given to the State Government and the Registrar *suo motu* or on the application of a party to a reference, call for and examine the records of any proceedings in which no appeal lies to the Government or the Registrar as the case may be. These two authorities could pass any order as they thought fit and it is conceded before me that the case was covered by section 69. The only reason given is that the existence of an alternative remedy is not an absolute bar to the exercise of extraordinary jurisdiction by this Court under Articles 226 and 227 of the Constitution of India. I quite agree that in an appropriate case this Court may interfere in spite of an alternative remedy being unavailable, but the present is not that case. The petitioner could have, in my opinion, gone to the revisional authority first before coming to this Court. It is not a case where there was any inherent lack of jurisdiction and the issue involved was one within the jurisdiction of the authorities concerned, no matter that, according to the petitioner, their decision was erroneous and depended on an interpretation of a provision in a statute.

(9) In the result, the writ petition fails, but in the peculiar circumstances of the case, the parties are left to bear their own costs.

B. S. G.

INCOME TAX REFERENCE.

Before D. K. Mahajan and Bal Raj Tuli, JJ.

THE COMMISSIONER OF INCOME-TAX,—Applicant.

versus

SARDAR SINGH SACHDEVA,—Respondent.

**Income Tax Reference No. 15 of 1968**

October 21, 1970.

*Indian Income-tax Act (XI of 1922)—Section 10(2) (vi-b), Proviso (b)—Development Rebate—Claim for—Assessee not making necessary entries*