

**(2024) 12 SHI CK 0026**

**High Court Of Himachal Pradesh**

**Case No:** CWP No.15133 Of 2024

Sh. K.C. Bhardwaj

APPELLANT

Vs

State Of H.P. & Others

RESPONDENT

**Date of Decision:** Dec. 11, 2024

**Acts Referred:**

- Himachal Pradesh Cooperative Societies Act, 1968 - Section 35B(2)

**Hon'ble Judges:** Ajay Mohan Goel, J

**Bench:** Single Bench

**Advocate:** Shrawan Dogra, K.S. Dhaulta, Manish Sharma, Bharat Thakur, Harsh Kalta, Tejasvi Dogra, Sharmila Patial, Sohan Singh Thakur

**Final Decision:** Disposed Of

### **Judgement**

Ajay Mohan Goel, J

1. Notice. Ms. Sharmila Patial, learned Additional Advocate General and Mr. Sohan Singh Thakur, learned counsel, accept notice on behalf of

respondents No.1,2 and 3, respectively.

2. Taking into consideration the controversy involved in the petition, the same with the consent of the parties is taken up for hearing today itself.

3. By way of this petition, the petitioner has, inter alia, prayed for the following reliefs:-

âœ(i) That the impugned orders of the Respondents dated 22.10.2024 (Annexure P-31) upholding order dated 17.4.2023 (Annexure P-24) qua withholding of

two increments from cumulative effect of the petitioner; de-hors the provisions of Act and Rules ibid and settled position of law on the matter & in contravention

to the principles of natural justice, may kindly be quashed and set-aside.

(ii) That the Respondent No.3 may be directed to open the sealed cover of the petitioner kept in DPC meeting held on 29/09/2022, to allow petitioner the due and legitimate promotion pending since 2022 and its consequential benefits forthwith, as the petitioner is left with less than 10 months of service and to save the petitioner from mental and financial agony.

(iii) That the order of MD dated 28.2.2023 (Annexure P-22) may also kindly be quashed and set-aside being unjust, arbitrary and wrong orders in the eyes of law.â€

4. Brief facts necessary for the adjudication of the present petition are that the disciplinary proceedings were initiated against the petitioner, which culminated into passing of order dated 28.02.2023 (Annexure P-22), in terms whereof, the following penalty was imposed upon the petitioner:-

â€œNOW, THEREFORE the undersigned being the competent authority as per APPENDIX 1(a) read with Rule 2 (q) under CHAPTER-2 (DEFINITION) of rules relating to the terms of employment and working conditions of the employees of the bank hereby impose a major penalty of reversion to next lower grade/ post I.e, post of Senior Manager, Grade-1 as per Rule 55 (a) (iii) of rules ibid on Sh K.C. Bhardwaj charged official.â€

5. Feeling aggrieved, the petitioner preferred an appeal.

6. In terms of Annexure P-24, the appeal of the petitioner was considered by the Board of Directors of the respondent-Bank in its Meeting held on 17.04.2023, through Resolution No.3.

7. Learned Senior Counsel has taken the Court through the proceedings of the Meeting of Board of Directors, in general and Resolution No.3, in particular. By referring to the said Resolution, learned Senior Counsel has submitted that the Resolution of the Board of Directors qua the hearing of the appeal of the petitioner is vitiated, because of the fact that the Managing Director, who was the Disciplinary Authority and whose order was under challenge in appeal, participated in the hearing of the appeal. Learned Senior Counsel submitted that as it is settled law that one cannot be a judge in his own cause and as the Managing Director, whose order was under challenge, participated in the hearing of the appeal, the adjudication of the appeal by the Board of Directors is per se bad and has to be set aside.

8. Learned Senior Counsel further submitted that as far as the subsequent order passed by Registrar, Cooperative Societies, Himachal Pradesh, in the Second Appeal preferred by the petitioner in terms of Rule 64(a) read with Appendix-1(a) of the Kangra Central Cooperative Bank Limited, Dharamshala, District Kangra, H.P., is concerned, Registrar, Cooperative Societies erred in not appreciating this extremely important aspect of the matter and has erroneously dismissed the appeal of the petitioner. Learned Senior Counsel, by referring to (Annexure P-31), submitted that in Para-5 thereof, an erroneous finding has been returned by the Registrar that the Managing Director was not part of the Board of Directors and he participated in the process only in his capacity as a Member Secretary of the Board of Directors, which fact is vitiated by the contents of Resolution that was passed by the Board of Directors itself, which categorically records that in the course of hearing of the appeal whereas majority of the Members of Board of Directors were of the view that the penalty that was imposed by the Disciplinary Authority was disproportionate with the misconduct of the appellant official, however, there was dissent thereto from the Managing Director. Learned Senior Counsel by referring to the provisions of Section 35-B (2) of the Himachal Pradesh Cooperative Societies Act, 1968, which deals with the appointments, powers and functions of the Managing Director, submitted that in terms of the said statutory provision, a person nominated and appointed as the Managing Director under sub-section (1) of a Cooperative Society, shall be the ex officio member of the Committee and shall have a right to participate in the Resolution of the Committee. Learned Senior Counsel submitted that Committee is the Board of Directors. Accordingly, he submitted that the petition be allowed by setting aside the Resolution of the Board of Directors, in terms whereof, the appeal of the petitioner was considered as well as the order passed by Registrar, in terms whereof, the Second Appeal filed by the petitioner was rejected.

9. Learned Additional Advocate General has opposed the petition. She submitted as there is no infirmity in the order that has been passed by the Registrar in the adjudication of the 2nd Appeal, because the findings returned by the Registrar are strictly in terms of the statutory provisions. She

further submitted that otherwise also in exercise of its power of judicial review, this Court is not to act as an Appellate Court and the contentions of learned Senior Counsel for the petitioner tantamount to re-hearing of the matter as an appeal, which is not permissible in law. Accordingly, she submitted that the petition being devoid of any merit be dismissed.

10. The petition is also seriously opposed by learned counsel appearing for the respondent-Bank. He submitted that the appeal of the petitioner was considered by the Board of Directors on its merit, which is further evident from the fact that punishment imposed upon the petitioner by the Disciplinary Authority was reduced. Learned counsel further submitted that otherwise also, as it is not that Managing Director indeed played a major role in the adjudication of the appeal, therefore also, present petition being devoid of any merit is liable to be dismissed.

11. I have heard learned counsel for the parties and have also gone through the pleadings as well as documents appended therewith.

12. The issue involved in the present petition is in a very narrow compass. The issue is as to whether the adjudication of the appeal of the petitioner by the Board of Directors in which the Managing Director also participated, is vitiated and further as to whether the order passed by the Registrar in the Second Appeal preferred by the petitioner is sustainable in law or not.

13. It is not in dispute that the Managing Director of the respondent-Bank passed Annexure P-22, i.e. order dated 28.02.2023, in terms whereof, a major penalty of reversion to the next lower grade was inflicted upon the petitioner. Said order was passed by the Managing Director of the respondent No.3-Bank in his capacity as the Disciplinary Authority. Further, a perusal of the proceedings of the Meeting of Board of Directors, dated 21.10.2023 (Annexure P-28), demonstrates that the Managing Director participated in the said Meeting. This Court is not oblivious to the fact that the Board of Directors on that particular day did not deal only with the appeal of the petitioner, but there were other agenda items also. A perusal of the Minutes demonstrate that when the appeal of the petitioner was discussed by the Board of Directors and the same was dealt with by the Board, the same was disposed of in the following terms:-

“Resolution No. 3

The BOD perused the appeal of the appellant official Sh. K C Bhardwaj and all the relevant record pertaining to the appeal, inquiry report, penalty order and relevant service rules gone through carefully in depth. The BOD was satisfied with the procedure adopted for conducting the disciplinary proceedings and inquiry report findings, but the majority of the BOD members with the dissent of the Managing Director-cum-CEO were of the opinion that the penalty imposed upon the appellant official was not commensurate with the misconduct of the official and majority of BOD members, despite the dissent from Managing Director-cum-CEO resolved to decide that the punishment awarded to the appellant official of reversion to lower grade was harsh and it was amended to stoppage of two annual increments with cumulative effect instead of reversion to lower grade of Gr-1 Sr. Manager of lowest scale from AGM.

The Managing Director-cum-CEO differed with the opinion of the majority of the BOD members and gave his dissent as the misconduct of the appellant official was highly objectionable and unbecoming of the rank of AGM and all the procedure as per relevant service rules had been adopted and the penalty imposed was fully in commensuration with the misconduct of the appellant official.â€

14. Thus, perusal of the said Resolution demonstrates that when the appeal of the petitioner was considered by the Board of Directors, the Board of

Directors was though satisfied with the procedure adopted for conducting the disciplinary proceedings and the findings of the Inquiry Report, however,

the â€œmajority of the members of the Board of Directors, despite the dissent from Managing Director-cum-CEOâ€ were of the opinion that the

penalty imposed upon the appellant official did not commensurate with the misconduct of the said official. It further stands recorded in the Resolution

that the majority of the members of the Board of Directors despite the dissent from Managing Director-cum-CEO resolved to decide that the

punishment awarded to the appellant/official of reversion to lower grade was hard and it was amended to stoppage of two annual increments.

15. Thus, it is evident from the contents of Resolution itself that Managing Director actively participated in the course of the adjudication of the appeal.

Twice, his dissent has been recorded with regard to the mode and manner in which the majority of the members of the Board of Directors reviewed

the order passed by the Disciplinary Authority.

16. Now, incidently, herein because the Managing Director himself was the Disciplinary Authority, it obviously amounted to a situation that the Authority whose order was under challenge, was sitting as Appellate Authority also to consider the validity of that order. This is not permissible in law.

It is settled law that one cannot be a Judge in his own cause. Here the participation, which indeed was active participation, of the Managing Director vitiates the entire process, for the reason that when the order under challenge was that of the Managing Director, by no stretch of imagination, he could have participated in the course of hearing the appeal against the order passed by it.

17. Therefore, this Court has no hesitation in holding that the Resolution of the Board of Directors, in terms whereof, the appeal of the petitioner was considered, is bad in law.

18. Similarly, if one goes to the order that has been passed by the Registrar, i.e. Annexure P-31, one finds that the findings that have been returned by the Registrar in Para-5 of the order are not sustainable in law. This Court is not oblivious to the fact that in exercise of its power of judicial review, it is not to act as an Appellate Authority, but perversity cannot be overlooked by the High Court in exercise of its power of Judicial Review in writ jurisdiction.

19. In terms of the findings that have been returned in Para-5 of the Second Appellate order, the Registrar has held that Managing Director was not a part of the Board of Directors and rather he was a Member Secretary for the Meeting of Board of Directors and thus the objection qua his participation of as Managing Director in the Meeting of the Board of Directors, on the part of the petitioner was rejected. While passing this order, Registrar, Cooperative Societies erred in not appreciating that in the present case, it was not as if the Managing Director participated in the Meeting of the Board of Directors in its ex officio capacity as a mute spectator. As has already been observed by me hereinabove, there was not only active participation of the Managing Director in the course of hearing of the appeal by the Board of Directors, but it is apparent that he vehemently defended his order when the majority of the Board of Directors were not agreeing with the order passed by the Managing Director with regard to the quantum

of punishment inflicted upon the petitioner. Therefore the findings returned by the Registrar are not only against the record, but are otherwise not sustainable in law.

20. Otherwise also, these findings cannot be sustained even in light of the statutory provisions of Section 35-B (2) of the Himachal Pradesh

Cooperative Societies Act, 1968, which clearly mention as to what are the powers and functions of the Managing Director and in terms whereof, the

Managing Director is an ex officio member of the Board who not only has a right to participate in the meeting of the Board of Directors, but also has

no right to vote.

21. Accordingly, in view of the above, this petition is allowed. Annexure P-24, dated 17.04.2023 qua Resolution No.3 is quashed and set aside.

Annexure P-31, dated 22.10.2024, i.e. the Second Appellate Order, passed by Registrar Cooperative Societies, is also quashed and set aside. The

respondent-Bank is directed to decide the appeal preferred by the petitioner against the order passed by the Disciplinary Authority afresh within a

period of four weeks from today, by ensuring that the Authority which has passed the order under challenge does not participate in the process. It

goes without saying that the adjudication of the appeal of the petitioner will be without being influenced by the earlier adjudication of the appeal of the

petitioner in terms of Annexure P-24. The Court has granted four weeksâ€™ time to the respondent-Bank to do the needful as it has been pointed out

by learned Senior Counsel for the petitioner that the petitioner is to superannuate within ten months.

22. The petition stands disposed of. Pending miscellaneous application(s), if any also stand disposed of accordingly.