

(2019) 03 CAL CK 0042

In the Calcutta High Court

Case No : Writ Petitions (WP) 5916 (W) Of 2013

Ajoy Kumar Hajra

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 11-03-2019

Acts Referred:

West Bengal Co-operative Societies Act, 2006 — Section 4(16), 4(25), 102
Andhra Pradesh Co-Operative Societies Act, 1964 — Section 62
Bengal Co-Operative Societies Act, 1940 — Section 2(j), 86, 87
Constitution Of India, 1950 — Article 226

Citation : (2019) 03 CAL CK 0042

Hon'ble Judges : Abhijit Gangopadhyay, J

Bench : Single Bench

**Advocate : Debabrata Saha Roy, Indranath Mitra, Subrata Kumar Basu,
Manoranjan Jana, Dipanjan Biswas**

Final Decision : Dismissed

Judgement

Abhijit Gangopadhyay, J

This writ application has been filed in respect of a dispute between the petitioner, a former employee of Burdwan Co-operative Agriculture and Rural Development Bank and the said Co-operative Agriculture and Rural Development Bank. Such a Bank is a primary Co-operative Society under sub section (16) of section 4 of the West Bengal Co-operative Societies Act 2006. The above named Agriculture and Rural Development Bank has been referred to as the Co-operative society thereafter.

When this matter was argued at length before me nobody addressed this Court regarding Section 102 of the West Bengal Co-operative Societies Act, 2006. Subsequently this Court wanted to know from the parties as to their views in respect of the matter in dispute in the back drop of Section 102 of the above Act of 2006 (hereinafter referred to as the said Act) which Section lays down that certain disputes are to be filed before Registrar of Co-operative Societies.

As the matter relates to a dispute between the Co-operative Society or its board and a past Officer of the Co-operative Society, the specific question which the parties were requested to answer was, whether the dispute as has been raised in the writ application was to be filed before Registrar of Co-operative Societies (Registrar, hereafter, in short) and whether the writ application is entertainable as there is an efficacious alternative remedy.

The parties have argued at length in respect of the above question and have filed their written notes of argument referring to some judgments on which they placed reliance at the time of argument on the above question.

The petitioner has submitted that the above question was never raised by the respondents and no such ground was taken in the affidavit-in-opposition. It has been further submitted that such question was also not raised when this writ application was initially disposed of on 02.04.2013 and no such question was raised by the Co-operative Society when it filed an appeal against the order dated 02.04.2013. The appeal Court remanded the matter to the writ Court again which is now being heard.

The petitioner has also submitted that section 102 of the said Act read with section 4 (25) thereof show that Registrar of Co-operative Societies can settle the dispute which is only civil in nature. The writ application relates to fixation of amount of gratuity and leave salary and these questions are not civil disputes but the same are statutory rights of the employees which are disputes in connection with statutory provision and therefore, such disputes can be raised in writ jurisdiction.

The petitioner has further submitted that non-payment of gratuity in terms of the payment of Gratuity Act, 1972 as amended from time to time shows that the dispute is in fact unilateral change of service condition under the guise of an agreement dated 30.11.2011 entered into by and between the society and the union of the employees of which the petitioner was a member. As it has been laid down by judgment of Hon'ble Supreme Court that change of service condition is not a civil dispute the writ application is maintainable and the Registrar does not have the power to determine entitlement of the Gratuity Act 1972.

The petitioner has relied upon the following three judgments;

(i) reported in 2008 (4) CHN 33(Central Provident Fund Commissioner & Anr. - Versus- Modern Transportation Consultancy Service Pvt. Ltd. & Ors.) to show that the preliminary objection as was not taken at the earliest before a Learned Single Judge, the Division Bench declined to entertain that question;

(ii) reported in 2003 (7) SCC 546(GURUVAYOOR DEVASWOM MANAGING COMMITTEE AND ANOTHER -Versus- C.K. RAJAN AND OTHERS) (paragraph-82). The petitioner has placed reliance upon this judgment to show the view expressed by the Supreme Court for the reason that the question of examining the maintainability of the writ petition as a preliminary issue by the High Court

became academic as the parties addressed the High Court on the merit of the matter and upon considering the rival submission the impugned order was passed (by the High Court).

The above two judgments are required to be dealt with at the very beginning. The third judgment will be dealt with later.

In the present facts and circumstances of the case none of the above judgments are applicable.

In the first of the above judgments the Hon'ble Division Bench held that as the preliminary objection was not taken before the learned single Judge, said objection could not be entertained by the Court.

Here, the preliminary question of maintainability for existence of alternative remedy is being decided now and the matter is not decided on merit without examining the preliminary question.

In the second case the matter was argued on merit and the High Court after hearing the rival submissions on merit passed the order (on merit) against which the aggrieved party approached the Supreme Court and in such facts and circumstances the Supreme Court declined to entertain the preliminary objection.

The facts and the circumstances of the present case are not at all similar to the case in which the Supreme Court made the above observations. Here this Court has not passed any order on merit without examining the preliminary questing of existence of alternative remedy as provided in Section 102 of the above Act.

It is not the proposition of law that when a petition is admitted it could never be dismissed on the ground of alternative remedy for the reason that if such bald contention is upheld even the Hon'ble Supreme Court cannot order dismissal of a writ petition which ought not to have been entertained by the High Court under Article 226 of the Constitution in view of availability of alternative and equally efficacious remedy to the aggrieved party, once the High Court has entertained a writ petition albeit wrongfully and granted the relief to the petitioner.

The above principle has been enunciated by the Supreme Court in its judgment reported in (2008)-12 Supreme Court cases 675 (State of Uttar Pradesh and another -versus-Uttar Pradesh Rajya Khanij Vikas Nigam Sangharsh Samiti and Others).

Now I take a look at the third judgement relied on by the petitioner.

(iii) Reported in AIR 1970 Supreme Court page 245 (Co-operative Central Bank Ltd. and others etc. - Versus- Additional Industrial Tribunal, Andhra Pradesh, Hyderabad and others)

In this judgment the Supreme Court has held that in respect of the dispute related to various conditions of service the Registrar or other persons dealing with it under section 62 of the Andhra Pradesh Co-operative Societies Act 1964

cannot deal with the disputes. In this judgment of the Supreme Court one judgment of our High Court reported in AIR 1958 Cal 373, (Co-operative Milk Societies -versus-State of West Bengal and others) has been referred. This judgment of our High Court was not placed before me by the petitioner. However, on perusal of the above judgment of our High Court it is found that in the said judgment it was held that wages and wage scales and dearness allowances were not proper matters capable of being the subject of civil litigation and the dispute between a Co-operative Society and its workmen does not relate to the actual business of a Co-operative Society and does not touch the business of a Co-operative Society. It was also held that a sum payable to or by a Co-operative Society surely can be subject of a civil litigation and therefore, such a dispute was considered a dispute as defined in section 2 (j) of the Bengal Co-operative Act, 1940 Sections 86 and 87 of the said Act of 1940 are similar to section 102 of the West Bengal Co-operative Societies Act of 2006.

In the above matter it has also been held by our High Court that question of "payability" of "a sum" in the context of that particular definition seems to be individual debt or individual sum of money and does not appear to include claims for a general wage scale and dearness allowances as a matter of collective bargain between labour and employer. The Supreme Court judgement also does not say anything contrary to the view of our High Court and the view of the Supreme Court does not support the contention of the petitioner. Therefore, this judgment reported in AIR 1970 Supreme Court 245 as also the judgment reported in AIR 1958 Cal 373 go against the petitioner.

The petitioner's contention that the dispute between him and the society is not a civil dispute does not have any merit. The dispute is a civil dispute and noting but a civil dispute. Its a money claim and not a dispute related to conditions of service: the prayers of the writ application show this clearly.

By referring to payment of Gratuity Act 1972 and the payment of cash equivalent of leave salary the petitioner has tried to give the dispute a colour of 'unilateral change of service condition' which also cannot be accepted by this Court. There was an agreement between the parties according to which the Society paid the petitioner the gratuity amount and the leave salary. Under no circumstances this can be termed as change of service condition which has been done unilaterally.

The respondent No. 4 to 7 have also filed their written notes of argument along with some judgments which they placed before this Court while arguing the question of alternative remedy available to the writ petitioner. Most of the said judgments relate to well known views of the Supreme Court regarding alternative remedy etc. and some judgments relate to principles when despite having alternative remedy the High Court can entertain the writ application. Those judgements have been reported in I) (2014)1 SCC 603; II) (2018) 1 SCC 626; III) (2018) 2 SCC 729, IV) One unreported judgement of our High Court being WP 20902 (W) of 2015 (decided by this Court on October 11, 2018).

I have perused those judgements, all of which speak about the non maintainability of writ application for existence of alternative remedy. The respondent has also relied on a judgement delivered by the Supreme Court reported in AIR 1970 Supreme Court 245 which case does not help the respondent so far as questions involved in the matter are concerned. The principal argument of the said respondent is that present case does not come within the exception when despite having alternative remedy the Court can entertain a writ application and therefore the writ application should be dismissed.

From the prayers of the writ application it is found that the petitioner has, inter alia, claimed a specific amount of money being Rs.3, 48,620.00 towards alleged unpaid gratuity and a specific amount of alleged leave salary amounting to Rs. 1, 77,324.00. In the above facts and circumstances I hold that the dispute relating to such quantified money claim is required to be decided by the Registrar of Co-operative Societies and not by a writ Court.

In view of the above discussion and facts and circumstances as narrated above I hold that there is an equally efficacious alternative remedy in section 102 of the Act of 2006 and the writ application cannot be entertained even after admission of the same by this Court.

With the above observation this writ application is dismissed.

No costs.