

(2012) 07 AHC CK 0092

In the Allahabad High Court

Case No : C.M.W.P. No. 17866 of 1987 with other W.Ps.

Aliganj Kshetriya Sahkari Samiti Ltd., Bareilly

APPELLANT

Vs

Murari Lal Sharma and another

RESPONDENT

Date of Decision : 23-07-2012

Acts Referred:

Constitution of India, 1950 — Article 141, 226
Industrial Disputes Act, 1947 — Section 33C, 33C(2)
Payment of Wages Act, 1936 — Section 1(4), 15, 2, 2(ii)(ag)
Uttar Pradesh Co-operative Societies Act, 1965 — Section 128, 135, 70

Citation : (2012) 6 AWC 5992 : (2012) 135 FLR 536

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : Triloki Nath, S.N. Pandey and M.P. Gupta, for the Appellant; Shyam Narain, B.N. Singh and C.S.C., for the Respondent

Judgement

Sudhir Agarwal, J.—Heard Sri S.N. Pandey and Sri M.P. Gupta learned counsels for Co-operative Society-employer and Sri B.N. Singh, learned counsel appearing for the workman. Writ Petition No. 4444 of 1994 has been filed by petitioner, a Co-operative Society registered under U.P. Co-operative Societies Act, 1965 (hereinafter referred to as "Act. 1965"), aggrieved by the order dated 13.10.1993 (Annexure-10 to writ petition) passed by Prescribed Authority under Payment of Wages Act, 1936 (hereinafter referred to as "Act, 1936") holding petitioner-Society as a commercial establishment under U.P. Shops and Commercial Establishments Act, 1962 (hereinafter referred to as "Act. 1962") and, therefore, governed by Act. 1936. He has further directed petitioner-Society to pay Rs. 22,415.35 towards wages and an equal amount towards damages to the respondent-workman, Murari Lal Sharma.

2. The facts in brief are: The workman was employed as Supervisor of U.P. Co-operative Union and was terminated in 1970. The termination was challenged in Writ Petition No. 350 of 1970 but vide judgment dated 9.3.1972 upholding termination this court held that termination from the post of Cooperative

Supervisor is not bad but since he was also holding the office of Secretary-cum-Manager of Kshetriya Sahkari Samiti. Aliganj Bareilly and if he was to be relieved therefrom, an order by competent authority to that effect had to be passed.

3. The Co-operative Society claimed that workman did not resume duty as Secretary and subsequently was terminated by Management's resolution dated 8.12.1973.

4. Respondent No. 1, the workman, however, filed application under Act, 1936 before Prescribed Authority claiming wages from 1.3.1974 to 31.10.1982. The application was registered as Case No. 93/P.W.A./1982. This application was opposed by petitioner-Cooperative Society but vide Judgment dated 20.5.1987, workman's application was allowed. The Society was directed to pay a total sum of Rs. 58,923.10 to workman, Murari Lal Sharma. This order is under challenge in Writ Petition No. 17866 of 1987 (hereinafter referred to as "first writ petition"). The order of Prescribed Authority was stayed by this Court vide interim order dated 12.5.1989.

5. Another application was filed by workman respondent No. 1 before Prescribed Authority, registered as Case No. 166/P.W.A./83. During pendency of this application, one more application was filed in the year 1984 claiming wages from 1.11.1983 to 31.10.1984 registered as Case No. 39/E.W.A./84. Both these applications have been allowed by means of the order impugned in Writ Petition No. 4444 of 1994 (hereinafter referred to as "second writ petition").

6. Thereafter the workman-respondent No. 1 filed some more cases claiming wages for different subsequent periods which were registered as Case No. 66/P.W.A./85, 61/P.W.A./91 and 65/E.W.A./92. When these cases were pending, this Court in Assistant Registrar Co-operative Societies Vs. State of Uttar Pradesh and Others, , held that employees of cooperative societies are not entitled to move application u/s 15 of Act, 1936. In view of the above judgment, the workman was ordered to withdraw his applications filed before Prescribed Authority with liberty to file fresh application before the labour court. The workman accordingly withdrew all the aforesaid applications and thereafter for realization of wages from 1.11.1984 to 31.3.1992 filed application u/s 33C (2) of Industrial Disputes Act, 1947 (hereinafter referred to as "Central Act, 1947") before Labour Court, Bareilly, registered as Misc. Case No. 67 of 1998. The employer-Society sought some amendment in the written statement which was allowed by labour court by order dated 12.12.2002. The workman filed Writ Petition No. 14907 of 2002 (hereinafter referred to as "third writ petition") challenging the aforesaid order of labour court.

7. So far as the first two writ petitions are concerned, the issue, whether Act, 1936 would apply and Prescribed Authority has any jurisdiction u/s 15 thereof to pass an order in respect to claim of wages of an employee of Co-operative Society is squarely covered by this Court's Judgment in Registrar, Cooperative Societies (supra) where in paras 2 and 3 the Court has held:

In my opinion, the Payment of Wages Act does not at all apply in this case. Section 1 (4) of the Act states that Act will apply to person employed in a factory or in railway administration or to establishment covered by Section 2 (ii) (ag).

3. The petitioner is not covered by any of the aforesaid clauses of Section 2 of the Act, Hence, the Payment of Wages Act has no application at all. The remedy, if any, of the petitioner was to apply u/s 33C (2) of Industrial Disputes Act or Section 6H (2) of the U.P. Industrial Disputes Act.

(Emphasis added)

8. On behalf of respondent-workman, Sri B.N. Singh has placed reliance on The Upper India Coupar Paper Mills Co. Ltd. Vs. J.C. Mathur, , but I find that there was no issue about the applicability of Act, 1936 upon the Co-operative Society, hence the said decision would lend no credence to workman so far as the issue of applicability of Act, 1936 is concerned. On this aspect, In my view, the issue is squarely covered by this Court's judgment in Registrar, Co-operative Society (supra). Nothing has been shown to this Court with respect to the law laid down by this Court regarding the applicability of Act, 1936 upon the employees of Co-operative Societies that the said decision is not holding the field as on date. In view of the above, first and second writ petitions have to be allowed.

9. Now this Court comes to the third writ petition filed by workman himself. Evidently the observations made by this Court in Registrar. Cooperative Society (supra) observing that remedy lies u/s 33C (2) or 6H (2) of Central or U.P. Act. 1947 led the workman to approach labour court. Learned counsel for Cooperative Society pointed out that in fact this part of the observations in the aforesaid Judgment is no more a good law In view of Apex Courts decision in Ghaziabad Zila Sahkari Bank Ltd. Vs. Addl. Labour Commissioner and Others, . The Apex Court has held that in respect to the dispute regarding payment of salary etc. of the employees of Co-operative Society, the provisions of U.P. Industrial Disputes Act. 1947 (hereinafter referred to as "U.P. Act, 1947") are not applicable. He, therefore, submitted that in fact entire proceedings before the Labour Court are wholly without Jurisdiction in view of the above decision of Apex Court and therefore, third writ petition is liable to be dismissed.

10. Sri B. N. Singh has seriously contested this argument. He pleaded that the Apex Court's decision in Co-operative Central Bank Ltd. and Others Vs. Additional Industrial Tribunal and Others, . and, therefore, is a judgment per incuriam. This Court is bound by Larger Bench judgment of Apex Court, hence it cannot be said that proceedings before the labour court are not maintainable. He also buttressed his arguments referring to a single Judge judgment of this Court in Rama Shankar Vaish Vs. The Presiding Officer, Labour Court and Others, , in order to show that a two-Judge Judgment cannot bye-pass or take a view different than that of a three-Judge Bench Judgment and it is the Larger Bench judgment of Apex Court which will prevail. He also placed reliance on a three-Judge judgment in General Manager, Telecom Vs. A. Srinivasa Rao and Others, ,

in support of above plea. In the alternative he submitted that submission about inapplicability of U.P. Act, 1947 in the matters of dispute relating to employment between the employees of Cooperative Societies and the Society, the observations of Apex Court in Ghaziabad Zila Sahkari Bank Ltd. (supra) are at the best "obiter dicta" and not a binding decision. In this regard he placed reliance on Arun Kumar Aggarwal Vs. State of Madhya Pradesh and Others, .

11. I have given my anxious consideration to the above submissions but find it difficult to agree with what has been argued by Sri B. N. Singh, counsel for petitioner in third writ petition and, in my view, the submissions advanced on behalf of respondent-Co-operative Society deserves to sustain.

12. In Ghaziabad Zila Sahkari Bank Ltd. (supra), this question was specifically raised, whether dispute relating to service conditions of employees of Co-operative Societies would attract U.P. Act, 1947 or not. This is evident from a bare perusal of paragraphs 36 to 41 of judgment. The Court also noticed the argument that Section 135 of Act, 1965 has not been enforced by the Government. Having said so, the Court considered Sections 70 and 128 of the Act, 1965 and after referring its earlier decision in Deccan Merchants Co-operative Bank Ltd. Vs. Dalichand Jugraj Jain and Others, ; Allahabad District Cooperative Limited Vs. Hanuman Dutt Tewari, and Morinda Cooperative Sugar Mills Ltd. Vs. Morinda Coop. Sugar Mills Workers Union, . The Court also referred to R.C. Tiwari Vs. M.P. State Co-operative Marketing Federation Ltd. and others, , wherein the earlier decision in Co-operative Central Bank Ltd. (supra) was also considered and discussed, Thereafter in para 65 it held that Act, 1947 is inapplicable. It also held that it is immaterial that Section 135 of Act 1965 has not been enforced since it was included in the Act, 1965 only by way of clarification and abundant caution.

13. This is how the Apex Court's decision was also considered and read by a Division Bench (in which I was also a Member) in Special Appeal No. 1906 of 2008, Brij Bhushan Singh and another v. State of U.P. and others, and other connected matter decided on 19.12.2008. Referring to Ghaziabad Zila Sahkari Bank Ltd. (supra) the Court said as under:

It is said that Section 135 has not been enforced so far but the question as to whether despite of non-enforcement of Section 135 of 1965 Act, the Central Act, 1947 or U.P. Act, 1947 would apply to the employees of a cooperative society governed by the provisions of 1965 Act and the rules and regulations framed there under came to be considered in Ghaziabad Zila Sahkari Bank Ltd. Vs. Addl. Labour Commissioner and Others, , and it was held that Section 135 has been added only by way of clarification and abundant caution and, therefore, where the provisions are contained in 1965 Act, the labour laws and in particular the U.P. Act, 1947 would not be applicable. It is also said that 1965 Act alone would apply in the matter of employment of cooperative societies to the exclusion of all other laws since it is a complete code in itself as regards employment in cooperative societies and its machinery etc. In para 78 of the judgment the Apex

Court held:

It is relevant to mention here that the services of the employees of the Bank are governed by service regulations 1975 framed under the Act of 1965, which provides complete machinery and adjudication. Moreover, the provisions u/s 70 of the U.P. Co-operative Societies Act, 1965 is elaborate in this regard, which provides complete machinery that if there is any dispute between the employers and the employees of the Cooperative Society, the matter shall be referred to the Arbitrator as provided u/s 70 of the U.P. Co-operative Societies Act, 1965. Section 70 of the U.P. Cooperative Societies Act and Section 64 of the M.P. Co-operative Societies Act are *pari materia* and this Court in the matter of R.C. Tiwari Vs. M.P. State Co-operative Marketing Federation Ltd. and others, , held that Labour Court and Industrial Laws are not applicable where complete machinery has been provided under the provisions of the Co-operative Societies Act and in such view of the matter the learned Additional Labour Commissioner, U.P. has no jurisdiction to pass orders in the nature it has been passed.

14. The Apex Court's decision as well as Division Bench judgment thereafter has been followed by this Court in a catena of Judgments including Civil Misc. Writ Petition No. 23765 of 2005, Co-operative Cane Development Union Limited v. State of U.P. and others, decided on 18.4.2011; Civil Misc. Writ Petition No. 11386 of 1993, Farrukhabad Dugdh Utpadak Sahkari Sangh Ltd. v. Presiding Officer and others, decided on 4.8.2011; Civil Misc. Writ Petition No. 42227 of 1992. Sunder Lal v. L. S. R. Sahkari Samiti Ltd. and others, decided on 29.11.2011 and Civil Misc. Writ Petition No. 48700 of 2010, Pradeshik Co-operative Dairy Federation Ltd. and another v. State of U.P. and others, decided on 23.5.2012.

15. In Farrukhabad Dugdh Utpadak Sahkari Sangh Ltd. (*supra*), which was also argued by Sri B. N. Singh on behalf of workman, these very questions raising doubt on the decision in Ghaziabad Zila Sahkari Bank Ltd. (*supra*) were raised but rejected by this Court observing:

Having heard the contention so raised, this Court may only record that the law laid down by the Supreme Court of India Is binding on all Courts of law in view of the Article 141 of the Constitution of India and this Court in exercise of powers under Article 226 of the Constitution of India can neither disagree with the judgment nor can hold that the law laid down by the Supreme Court of India is not to be followed.

In view of the aforesaid this Court finds that the labour court has rightly relied upon the judgment of the Supreme Court in the case of Ghaziabad District Cooperative Bank Ltd. (*supra*) and has rightly held that the dispute as referred is not maintainable.

16. Therein, some other Judgments were also cited and this Court considered the same in Farrukhabad Dugdh Utpadak Sahkari Sangh Ltd. (*supra*) and held:

Identical argument was also raised before this Court in Writ-C. No. 71022 of 2009, Raj Kumar Singh v. Labour Court, Varanasi and others, and this Court vide judgment dated 8.1.2010 declined to make any comment on similar arguments observed that the law laid down by the Apex Court is binding on all Courts of law including the High Court and this Court neither can disagree with the Judgment nor can hold that the law laid down by the Supreme Court of India is not to be followed. In fact, I find that in U.P. Co-operative Bank Ltd. Kanpur v. Presiding Officer. Labour Court, Kanpur and others (supra) also similar argument was raised, but it was not accepted by the Court, as is evident from what has been stated in paragraphs 18 and 19 of the Judgment. It is different thing that considering peculiar facts and circumstances of that case the Court proceeded not to interfere with the award of labour court in exercise of its power under Article 226, but those reasons, as such are not applicable in the case in hand. The issue of applicability of Industrial Dispute Act was already raised before this Court, which was decided vide judgment dated 1.7.1994 against employer holding that labour court had jurisdiction. This finding was not reversed by the Apex Court while remanding the matter on limited point. These aspects are clear from paras 21 and 22 of the Judgment. It is in these circumstances, in my view, it cannot be said that labour court in the present case had jurisdiction, since the U.P. Industrial Disputes Act itself was not applicable in the case in hand.

17. In view of above, it is evident that the issue regarding applicability of U.P. Act. 1947 has been considered specifically in Ghaziabad Zila Sahkari Bank Ltd. (supra) and has been decided in a particular manner holding that in respect to disputes relating to service conditions of employees of Co-operative Societies governed by Act, 1965, U.P. Act, 1947 is not applicable. The Apex Court also considered its earlier decisions rendered by larger Bench and has discussed the same. In this view of the matter, it is not possible for this Court to take a view other than what has been held in Ghaziabad Zila Sahkari Bank Ltd. (supra) which is law of the land laid down by Apex Court and is binding on this Court. The question that a smaller Bench cannot take a different view than the larger Bench does not arise in the light of the fact that larger Bench decision has been duly considered and interpreted by Apex Court. The interpretation given by Apex Court in later decision is binding on this Court.

18. In the result, I have no hesitation in holding that petitioner in third writ petition, an employee of Cooperative Society, and the dispute being related to his service conditions, the Adjudicatory Forum under U.P. Act, 1947 has no jurisdiction to entertain such dispute. Therefore" petitioner in third writ petition has invoked a jurisdiction which was not open to him in law. The observations of this Court in its judgment in Registrar, Co-operative Societies (supra) that the remedy lies before Labour Court/Industrial Tribunal u/s 33C or Section 6H of Central or U.P. Act, 1947 being contrary to the Apex Court's decision in Ghaziabad Zila Sahkari Bank Ltd. (supra) Is no longer a good law. The entire proceedings before labour court registered as Misc. Case No. 67 of 1998, therefore, are wholly without jurisdiction.

19. In view of above discussion, in the result, the writ petitions No. 17866 of 1987 and 4444 of 1994 are hereby allowed. The orders passed by Prescribed Authority under Act, 1936, impugned in these two writ petitions, i.e., dated 20.5.1987 (Annexure A-12 to writ petition No. 17866 of 1987) and 30.10.1993 (Annexure-10 to writ petition No. 4444 of 1994) are hereby quashed.

20. The order passed by the Labour Court in Misc. Case No. 67 of 1998 need not be interfered since the entire proceedings before Labour Court in Misc. Case No. 67 of 1998 are wholly without jurisdiction and the same are accordingly quashed. The third writ petition, i.e., writ petition No. 14907 of 2003 is disposed in the above manner. There shall be no order as to costs.