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(2000) 02 PAT CK 0141

In the Patna High Court

Case No : C.W.J.C. No. 1891 of 1998 (R)

Arbind Kumar and Others — APPELLANT

Vs

Steel Authority of India Ltd. and Others — RESPONDENT

Date of Decision : 11-02-2000

Acts Referred:
Constitution of India, 1950 — Article 12, 226, 227

Citation : (2000) 2 PLJR 569

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : Anil Kumar Sinha, Sumir Prasad and T.N. Verma, for the Appellant; Baban Lal, Ashok Kr. Sinha for Respondents 3 and 7, V.P. Singh, A.K. Sinha and Satya Prakash for Respondents 4 to 6, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—The Petitioners, who are the employees of Bokaro Steel Employees Co-operative Credit Society, originally filed this writ application seeking issuance of appropriate writ directing the Respondents to release the full dearness allowances i.e. 0.67% and 0.55% respectively according to the index which has been withheld from November, 96 and further for payment of difference of the dearness allowance from November, 96. By amendment petition the Petitioners have challenged the decision dated 29.1.99 taken by the Respondents during pendency of the writ application by which the salary and dearness allowance has been annexed and marked as Annexure 10 to the writ application.

2. The Petitioners'' case is that the Bokaro Steel Employees Co-operative Credit Society was established by Bokaro Steel Plant with the object to encourage the benefit of society including the employees of Bokaro Steel Plant. A Managing Committee was constituted in which the Chief Personnel Manager of Bokaro Steel Plant has been nominated as Chairman of the Society. It is stated that by resolution dated 20.5.81 as contained in Annexure-1 a decision was taken that

the pay structure of the employees of the Society will be at par with the employees of Dhanbad Central Co-operative Bank Ltd. The said decision was approved and continued even after revision of scales upto 1994. In terms of the decision and in terms of the slab and on the basis of all India average consumer price index the deamess allowance payable to the Petitioners was assessed on 3 months average and 0.67% and 0 55% were being paid to all the employees. The person, whose scale was less than Rs. 2500/- got 0.67% and the person whose scale is above Rs. 2500/- got 0.55% and the same was followed by order dated 2.8.95 and further approved by the minutes of the meeting of the Committee held on 11.9.96. It is stated that for the reason best known to the Respondents the decision dated 11.9.96 has not been complied with in spite of several requests made by the Petitioners, who after having no alternative, filed the instant writ application. It appears that during pendency of the writ application the order dated 29.1.99 (Annexure 10) was passed by which the Respondents have reduced the scale and dearness allowance from 0.67% and 0.55% per slab to Rs. 2/- only per slab, which according to the Petitioners, is very less than the earlier decision which was being followed from the very beginning.

3. Two sets of counter affidavits have been filed by the Respondents. In the counter affidavit filed on behalf of the Respondent Nos. 1 to 3 and 7 i.e. the Steel Authority of India Ltd. and its officers, a preliminary objection was taken that the writ application is not maintainable for the reason that the Respondent is a society registered under Bihar and Orissa Co-operative Societies Act and its functioning is solely governed by the relevant bye-laws framed for the said society. It is stated that Steel Authority of India and its officers are neither necessary nor proper party and they have been impleaded only for the purpose of maintenance of the writ application. The Respondents quoted the relevant clauses of the bye-laws of ''the Society and stated that the management and the affairs of the society has been vested in the Committee of management and Society which will be responsible for the good management of the Society.

4. In the counter affidavit filed on behalf of the Respondent Nos. 4 to 6 namely the Society, they have raised the same objection with regard to maintainability of the writ application. The Respondents'' case is that the Petitioners have no statutory right to claim fixation of their dearness allowance on the basis of particular terms of, slab and index. The Cooperative Society being an independent body has every right to fix the pay scale and allowances for its employees. It is contended by the answering Respondents that in similar situation a writ application was filed before this Court for absorption of the employees of the Bokaro Steel City Central Consumer Cooperative Stores being CWJC No. 690/97(R) which was rejected as not maintainable. On the merit of the claim of the Petitioners it is stated in the counter affidavit that the pay scale of the Petitioners has been enhanced and new pattern of dearness allowance has been finalised with effect from 1.1.96 by virtue of Annexure 10 to the writ application. The Managing Committee of the Society in its 118th meeting held on

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29.1.99 has discussed and finalised the new wage structure, new pattern of dearness allowance and other allowances. The proposed wage structure and allowances was duly approved by the Joint Registrar, Co-operative Society Government of Bihar. North Chotanagpur Division, Hazaribagh vide memo No. 558 dated 19.6.99. A copy of the said memo No. 558 dated 19.6.99 has been annexed as Annexure B/4 to the counter affidavit. It is further stated that there are about 10 co-operative Societies for similar nature in Bokaro Steel Plant including Respondent No. 4. Out of the above 10 Co-operative Societies, 9 Co-operative Societies are not paying the enhanced pay as claimed by the Petitioners. So far one Co-operative Society is concerned i.e. Bokaro Steel Employees (Operation Mills Zone) Co-operative Society, it is giving enhanced payment to its employees. Last but not the least, it is contended that the Managing Committee of the Co-operative Society is full empowered to finalise the wage structure of its employees time to time.

5. I have heard Mr. Anil Kumar Sinha, learned Sr. counsel appearing on behalf of the Petitioners and Mr. Baban Lal and V.P. Singh, learned Counsels appearing on behalf of the Respondents.

6. After having heard the learned Counsels for the parties two questions emerge for consideration by this Court. Firstly whether the instant writ application is maintainable against the Society in the facts and circumstances of the present case and secondly whether the Petitioners are entitled to get relief from this Court under Articles 226 and 227 of the Constitution of India.

7. Mr. A.K. Sinha relied upon a series of decisions of the Apex Court and submitted that the writ application is maintainable against the Co-operative Society. Learned Counsel further submitted that the Respondents after passing the impugned order/decision took approval of the Registrar of the Co-operative Societies u/s 66B of the Co-operative Societies Act and in that view of the matter also the approval having been taken from the statutory authority, a writ is maintainable. Learned Counsel mainly relied upon the decisions of the Apex Court in the case of Administrator, Konch Sahkari Kraya Vikraya Samiti Ltd. v. Sarnam Singh JT 1998 (8) SC 281, U.P. State Cooperative Land Development Bank Ltd. Vs. Chandra Bhan Dubey and Others, and a decision passed by this Court in LPA No. 319/99 (R).

8. On the other hand, learned Counsel for the Respondents mainly relied upon the decision of the Apex Court in the case of Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, and in the case of Harendra Narain v. State of Bihar 1985 PLJR 1078 and submitted that the writ application against the society is not maintainable. Learned Counsel further submitted that the Respondent-society has been constituted and incorporated under the provisions of Bihar and Orissa Co-operative Societies Act and the rules made thereunder. The Society has also framed its own bye-laws and the funds of the society comes from the members of the society.

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9. For better appreciation of the case of the parties, it would be useful to look into some relevant documents annexed with the affidavits. Firstly I will refer the office order dated 3.2.78 issued by the Bokaro Steel Plant conveying the approval of the Board of Directors on certain affairs of the society. The letter reads as under:

Office Order

Sub : Assistance to Employees Cooperative Credit Societies

Approval of the Board of Directors vide its Resolution No. 3503 dated 24th January, 1978 is hereby conveyed to the following financial and managerial assistance to each of the proposed employees Co-operative Credit Societies:

(a) To provide a minimum of Rs. 1 lakh to each Society on its registration, towards initial working capital in the shape of interest free loan, with a total overall limit of Rs. 25 lakhs for all the Societies, with the option to convert the same into equity capital of each Society after the amendment of the Co-operative Act, 1935 in this regard.

(b) To nominate the Chairman and one additional member on the Committee of Management of each of the Societies so as to provide managerial support to the Society and safeguard the Company''s investment:

(c) To depute an employee of the Company to each of the Society to act as full time Secretary of the Society the emoluments of the incumbent being borne by the Company.

(d) To provide office accommodation to each of the Societies free of rent and other charges. This will include electricity, water and conservancy charges.

Sd/ S.C. Sachdev Dy Secretary

10. Again by office order dated 8.2.86 issued by the Steel Authority of India nominating the Chief Finance Manager of Finance and Accounts Division as Chairman of the Co-operative Credit Society. Another office order dated 9th September, 88 was issued by SAIL whereby the approval of the Managing Director regarding nomination of Deputy Chief Personnel Manager (Personnel Department) to act as a Chairman of the Society was conveyed. Similarly on 29th December, 97 another office order was issued by SAIL nominating Sri S.D. Jha, CPM 1/c (NW) as Chairman of the Co-operative Society. All these office orders have been annexed as Annexure 11 to the supplementary affidavit. From perusal of Annexure 13, which is another office order dated 15.2.96 issued under the signature of the Chief Personnel Manager (NW), it appears that to resolve the issue of wage revision and other allied matters of Co-operative Society, a Committee was constituted consisting of high officials of the SAIL and Bokaro Steel Plant.

11. From all these annexures, primafacie, it appears that although the society was registered under Co-operative Societies Act but all the controlling authorities

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of the society are the high officials of Steel Authority of India and Bokaro Steel Plant and all the controlling and financial aid and loss are being maintained by Bokaro Steel Plant. In such circumstances, in my opinion, the decision taken by the Respondents with regard to fixation of wages is amenable to writ jurisdiction. In this connection, I must refer to the decision of a Bench of this Court (where I am a party) in the case of Gunjan Mukherjee v. Union of India 1999 (3) All PLR 490 : 2000 (1) PLJR 759. In that case a similar question arose as to whether Council of Scientific and Industrial Research, a Society registered under the Societies Registration Act, is a State within the meaning of Article 12 of the Constitution. This Court, after considering the principle laid down by the Apex Court Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, , held that writ is maintainable against the said Society. Recently the Apex Court in the case of U.P. State Co-operative Land Development Bank Ltd. (supra) has taken the view that if the affairs of the Co-operative Society are controlled by the State Govt. though it functions as Co-operative Society then certainly it is an extended arm of the State and thus an instrumentality of the State or Authority as mentioned under Article 12 of the Constitution.

12. In the instant case, it is admitted case of the Respondents that the impugned decisions taken by the Respondent-Society regarding fixation of dearness allowance was sent to the Registrar under the Co-operative Societies Act for its approval under the provisions of Sections 66B of the said Act. In other words the Respondent-Society takes approval of the Registrar, who is the statutory authority under the Act. In that view of the matter also the impugned decision/ order can be challenged before this Court under its writ jurisdiction. In this connection, reference may be made to the decision of the Apex Court in the case of Administration, Konch Sahkari Kraya Vikraya Samiti (supra).

13. Taking into consideration all the facts of the case and the decisions referred above, I am of the opinion that the instant writ application is maintainable.

14. The next question, which falls for consideration, is whether the impugned order dated 29.1.99 (Annexure 10) passed by the Respondents reducing the scale and dearness allowance from 0.67% and 0.55% per slab to Rs. 2/- only per slab is justified. In this connection, some admitted facts are worth to be noticed here. In 1981 a decision was taken by the Respondents that the pay structure of the employees of the society would be paid and will be applicable to the same category of employees of Dhanbad Central Co-operative Bank, which is evident from the letter of the Society dated 20.5.1981 (Annexure 1). Thereafter in a meeting held on 19.6.81, the resolution taken by Annexure 1 was approved and the said decision was communicated to the concerned Society. A copy of the minutes of the Resolution is annexed as Annexure 2 to the writ application. Thereafter time to time scale has been revised by the authorities as and when the pay scale was revised by the State Authorities. In 1994 the Co-operative Department of the State Government issued office order dated 4.11.94 by which a direction was issued to all the societies all over Bihar including the Bank to fix

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the scale in terms of the pay scale which has been taken effect from 1.1.93. Accordingly the pay scale of the employees of 25 permanent society was revised and the dearness allowances was varied and assessed on three months average i.e. 0.67% and 0.55% respectively. From perusal of Annexure 8 to the writ application, it appears that after pay revision a decision was taken by the Society in 1995 with regard to payment of dearness allowance in terms of the slab and index i.e. 0.67% and 0.55% per slab. Not only that in the meeting of the Cooperative Society held on 11.9.96, the earlier decision of the Society regarding payment of dearness allowance at the aforesaid rate was confirmed. A copy of the decision dated 11.9.96 has been annexed as Annexure 9 to the writ application. In this way from 1981 till before the date of issuance of Annexure 10 the employees of the Co-operative Society were getting the pay scale and the dearness allowance in the manner indicated above. Surprisingly by virtue of the impugned order the rate of dearness allowance has been changed. No sufficient explanation has been given in the counter affidavit justifying the fixation of dearness allowance @ Rs. 2/- per unit. The said decision, vide Annexure 10, was taken by the Respondents during the pendency of the writ application. The impugned decision, in my opinion, does not appear to be in consonance with the earlier decision of the Society revising the pay scale and dearness allowance time to time at par with the employees of the other Societies. The impugned decision, therefore, cannot be sustained in law and the same needs reconsideration by the Respondent-Society.

15. In the result, I allow this writ application and quash the decision of the Respondent Society as contained in Annexure 10 and direct them to reconsider the claim of the Petitioners with regard to payment of dearness allowance and take a decision afresh in accordance with law.

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