
(2001) 05 J&K CK 0022

In the Jammu And Kashmir High Court

Case No : Writ Petition Nos. (S) 1648 of 1998 and 1371 of 1998

Ashok Kumar and others

APPELLANT

Vs

State and ors.

RESPONDENT

Date of Decision : 31-05-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Industrial Disputes Act, 1947 — Section 25F

Jammu and Kashmir Cooperative Societies Act, 1960 — Section 104(2), 65, 66

Citation : (2002) 3 SCT 1063

Hon'ble Judges : Tejinder Singh Doabia, J

Bench : Single Bench

Advocate : N. Goswami, K.S. Johal, Advocates appearing for the Parties

Judgement

Tejinder Singh Doabia, J.—Petitioners submit that they were working as Salesmen with the Cooperative Societies at Hiranagar. Vide order

27th July 90, the Cooperative Societies where the petitioners were engaged as Salesmen were wound up. Liquidation proceedings were taken

exercising power under Sections 65 and 66 of the Jammu and Kashmir Cooperative Societies Act of 1960. As indicated above, an order was

passed whereby Cooperative Societies were ordered to be wound up and liquidators were appointed. In pursuance of the order passed under

Sections 65 and 66, further steps were taken. The Registrar Cooperative Societies directed that the registration of these Societies be cancelled.

Orders to this effect was passed on 21st Sept '90. Annexure A is the order by which winding up of the Societies was directed and Annexure B is

the order of the cancellation of registration of these Societies.

2. petitioners submit that in terms of the order dt. 21st Sept '90, the Societies

which were ordered to be wound up were ordered to be

amalgamated with other Societies. On the happening of this event, a writ petition bearing No. OWP 691/90 came to the preferred in this Court. It

was pleaded that the employees of these Cooperative Societies should be adjusted. This petition is said to have been disposed of on 31st March

'95. It is further stated that number of writ petitions on the same subject came to be preferred in this Court. These are referred to in para 7 of the

petition. The judgment passed in one of these petitions i.e. OWP 691/90 has been placed on the record as annexure 'D'. An agreed order was

passed. The spirit of this agreed order can be culled out as under :

i/ That an effort would be made to revive the Societies which were ordered to be liquidated;

ii/ That so far as the employees of these Societies are concerned, some of them have become overage, therefore, humane approach has to be

adopted and possibility would be explored so that these employees are given employment in other Cooperative Societies.

3. The petitioners submit that they participated in the proceedings which were held thereafter by the authorities. The Registrar, Cooperative

Societies agreed to make adjustment in the manner indicated in para 8 of the petition. For facility of reference, para 8 of the petition is being

reproduced below :

That the petitioners participated in the proceedings. The Registrar, Cooperative Societies after holding meetings, came out with the proposal for

the consideration of the petitioners cases for adjustment against the posts in the manner indicated herein below :

a) 15% of the available vacancies in the Cooperative institutions, shall be reserved for one year exclusively for petitioneremployees eligible to apply

for those posts subject to relaxation in age in pursuance of the Hon'ble High Court orders;

b) Registrar shall order one time amendment with regard to the relaxation of age in the service rule of these institutions effective for a limited period

of one year only;

c) Notification for filling up of vacancies issued during the year shall contain the direction/orders of the Registrar, Cooperative Societies, as laid

down above and any appointment of these employees their merit shall be

considered inter se.

4. Petitioners further submit that a detailed report was also submitted to this Court. In para 10 of the petition it is submitted that one of the

Cooperative Societies by the name of Rural Electric Cooperative Society, Samba, was also wound up and in its place a different organisation

namely Electric Maintenance and Rural Classification Division, came into existence. It is submitted that the petitioners were making all out efforts to

get them adjusted. It is further submitted that the employees of another Society located in VijaypurSamba area, which was ordered to be wound

up vide Cabinet decision No. 237/24 dt. 18th Oct '97, were adjusted in the newly created Division namely Electric Maintenance and Rural

Electrification Division, Vijaypur. It is submitted that almost all the employees of Rural Electric Cooperative Society, Samba, were adjusted in the

newly created Division, referred to above. Petitioners submit that they should also be given the same treatment. Their prayer is that the

recommendations made on 17th June '95, which recommendations have been noticed above, do not meet the ends of justice and something more

is required to be done. In particular, it is submitted :

i/ That the order by which the Cooperative Societies were put into liquidation and were later on wound up should be set aside so that the Societies

be revived;

ii/ That the respondents be directed to give the petitioners same benefit as has been given to the employees of Rural Electric Cooperative Society,

Samba.

5. The prayer made in the connected petition i.e. 1371/98 is similar.

6. A perusal of file, SWP No. 1648/98 indicates that the writ petition stands admitted. Counter has not been filed.

7. The writ petition 1371/98 shall also stand admitted. So far as the prayer of the petitioners that the order by which the Cooperative Societies

were directed to be wound up in terms of Sections 65 and 66 of the Act, referred to above is concerned, no direction can be issued by this Court

to revive the same Societies. However, an order passed by the Registrar Cooperative Societies under Section 65 of the Cooperative Societies

Act, 1960, is appealable. Where an order is passed by the authority aforementioned, the appeal lies to the Government.

8. Again, under Section 104(2) of the Act referred to above, the Government can call for and examine the record of any inquiry or the proceedings of any officer subordinate to it for the purpose of satisfying itself as to the legality or propriety of any order passed and as to the regularity of the proceedings of such officer. In case the Government is of the view that the order or proceedings so called should be modified, annulled or reverse, it may pass such order thereon as it may deem fit. Therefore, the appeal would be maintainable under Section 103 and even if it be urged that the remedy of appeal has become barred by limitation, then suo moto jurisdiction as conferred on the State Government in terms of Section 104(2) can always be invoked. With regard to exercise of suo motu power, this Court in the case of Indroo and ors v. Special Tribunal and ors., 2001 KLJ 70, has made following observations :

There can be no dispute that when some illegality is brought to the notice of the State Government by a third person, and action is taken then even that action would be an action taken in exercise of suo motu jurisdiction. Such was the view expressed by Punjab and Haryana High Court in Jaswant Singh v. State of Punjab, (1986) 1 Pb Legal Reports and Statutes (PB) 314. What was being interpreted was Section 69 of the Punjab Cooperative Societies Act, 1961. This Section confers suo moto powers on the State Government. It was observed that there is no difference in the exercise of the powers when action is taken by the State Government itself or when action is taken when a third person brings some illegality to the notice of the State Government.....

9. In para 7 of the judgment in the above case, it is further observed as under :
In this regard, reference to be made to the decision given by the Supreme Court in the case of Everest Apartments Cooperative Housing Society Ltd Bombay v. State of Maharashtra Cooperative Societies Act, 1960 was under consideration. The Supreme Court was of the view that the State could exercise suo motu jurisdiction on even where the Government was moved by a person not a party to the dispute.

10. In paras 8 and 9 of the judgment it was further observed as under :
Reference be also made to the decision of the Privy Council in the Commissioner of Income Tax West Punjab v. The Tribune Trust, Lahore AIR 1948 PC 102. In the above case, the Privy Council has observed (at p. 107 of

AIR) :

It is possible that there might be a contest in which words so inapt for that purpose would create a duty, but in the present case there is no such

context. On the contrary section 33 follows upon a number of Sections which determine the rights of the assessee and is itself as its language

clearly indicates intended to provide administrative machinery by which a higher executive officer may review the acts of his subordinate and take

the necessary action upon such review. It appears that as a matter of convenience, a practice has grown up under which the Commissioner has

been invited to act of his own motion under the section and where this occurs a certain degree of formality has been adopted. But the language of

the section does not support the contention which has at the root of the third question and is vital to the respondent's case that it affords a claim to

relief.

9: To the same effect is a decision given by a Full Bench of Punjab and Haryana High Court reported as Gurnam Kaur v. State of Punjab, 1993(1)

RRR 383 (P&H) : (1993) 13 Legal Reports and Statutes 254. The Full Bench concluded as under :

The aforesaid provision does not specifically mention that such powers could be exercised by the Commissioner or by the Financial Commissioner

suo motu or at the instance of the interested or the phraseology, it cannot be said that the Financial Commissioner or the Commissioner could not

act under the provision aforesaid. Rather the statute is to be interpreted in such a manner that it fulfils the object for which the same is framed.

11. Therefore the State Government is directed to consider the prayer of the petitioners in terms of the Section 104(2) of the Act. This is one

aspect of the matter. The second aspect of the matter is that the petitioners were the employees of the Cooperative Societies. It is by now settled

law that such employees are workmen within the definition of Industrial Disputes Act. If this be the position then they can invoke provisions of

Industrial Disputes Act of 1947 also. It is again settled law that if a workman has completed 240 days of service in one calender year, then he can

seek resort to Industrial Disputes Act of 1947 and once he is able to demonstrate that he has completed more than 240 days of service, then he

can always seek reinstatement and can also claim backwages. Such a legal

position can be spelled out from the decision given a Division Bench of this Court in *Daya Krishan and ors. v. State of J&K and ors.*, 2000 SLJ 364, wherein the position of law regarding those who have completed 240 days of service had been noticed. In para 14 of the judgment, it was observed as under :

Law is well settled that in case these employees complete more than 240 days of their service in one calendar year and their services are terminated without compliance of Section 25F of the Act, then they are entitled to reinstatement with back wages. See following decisions :

- i/ *Bank of India v. N. Sunder Moni*, AIR 1976 SC 1111.
- ii/ *Hindustan Steel Ltd. v. Presiding Officer Labour Court Orissa*, 1976(4) SCC 222.
- iii/ *Santosh Gupta v. State Bank of Patiala*, 1980(3) SCC 340.
- iv/ *Mohan Lal v. Bharat Electronics Ltd*, 1981(1) SCC 225.
- v/ *Karnataka SRTC v. Baraiah*, AIR 1981(1) SC 2445.
- vi/ *Punjab Land Development and Reclamation Corporation Ltd. Chandigarh v. Presiding Officer, Labour Court, Chandigarh and ors.*, 1990(3) SCC 682".

12. The State Government, as indicated above would examine this aspect of the matter and would take appropriate decision and would not force the petitioners to take recourse to Industrial Law.

13. Independently of the above, the prayer of the petitioners for adjustment in the manner as has been done in the case of Rural Electric

Cooperative Society Samba would be considered and they would be given the same treatment as done in the case of the employees of the

aforementioned Cooperative Society. This direction given is in terms of Articles 14 and 16 of the Constitution of India. This aspect of the matter

was considered in LPA No. 449/99, *Surinder Singh v. State and ors.*, disposed of by this Court of 1st May '2000, which judgment has been

upheld by the Supreme court of India. In the above case, benefit was given to one employee and it was denied to another. The view expressed

was that in these circumstances, directions can be given to accord similar treatment. As indicated above, this view has been upheld by the Supreme

Court and a Special Leave Petition preferred by the State Government has been

dismissed. This bears No. Appeal Civil No. 5266/2001. In view

of the above, this petition is disposed of with the following directions :

i/ That the State Government would examine the legality of the order impugned passed under Sections 65 and 66 of the Cooperative Societies Act

and thereafter pass such order as it may deem fit.

ii/ That the State Government would also examine the case of the petitioners under Section 25 of the Industrial Disputes Act and would settle the

issue in the light of the judgment given in Daya Krishan's case (supra), a copy of which judgment would be made available to the concerned

authorities by the petitioners.

iii/ That the State Government would also consider the claims of the petitioners in the same way as has been done in the case of employees of

Rural Electric Cooperative Societies, Samba, and would accord same treatment to the petitioners;

iv/ Let the needful be done within a period of six months from the date of copy of this order is made available to the concerned authorities by the

petitioners. An immediate action on the part of the State Government is hoped and it is further hoped that the respondent authorities would not wait

till the period expires and would not get active only in the last month and the authorities would not force the petitioners to resort to other legal

remedies.

14. Disposed of accordingly.