

(1996) 09 KAR CK 0028

In the Karnataka High Court

Case No : Civil Revision Petition No. 324 of 1993

Basavaraju

APPELLANT

Vs

Secretary, Sahakari Bhandara, Sira Town and Another

RESPONDENT

Date of Decision : 05-09-1996

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 101(1)(A)

Citation : (1997) 1 KarLJ 369

Hon'ble Judges : M. F. Saldanha, J

Judgement

1. Heard learned Advocates on both sides.

2. In this case, the petitioner who was an employee of the respondents, had been removed from service and he challenged that order and obtained an award in his favour from the Assistant Registrar of Co-operative Societies. The respondents appealed against that order unsuccessfully. Subsequently, since the petitioner had not been reinstated and the terms of that order had not been complied with, he filed execution proceedings before the Court of the Munsiff and J.M.F.C. at Sira. The respondents once again contested these proceedings on all sorts of technical and unsustainable grounds instead of having the good sense to comply with the order. They were successful in their attempts in so far as the Court upheld one of the pleas, namely that this was an order passed by the Assistant Registrar and even though a certificate under the Act had been obtained that the order or decree in question had not been formally transferred to the executing Court and that therefore, the executing Court was not obliged to act on that certificate. The present civil revision petition is directed against that order.

3. The petitioner's learned Advocate draws my attention to Section 101(1)(a) of the Karnataka Co-operative Societies Act which prescribes that the certificate which is signed by the Registrar shall be deemed to be a decree of a Civil Court and shall be executed in the same manner as a decree of such Court. He submits that this order was not passed by any other Civil Court and consequently, there

was no question of applying for any transfer of the decree. The learned Advocate submits that the respondents are obliged in law to reinstate the petitioner and that it is implicit, that the terms of the award which prescribed that the period from the date of removal up to the date when he is reinstated are required to be treated as duty period. He consequently submits that the respondents are obliged to pay to the petitioner his normal salary for this period.

4. The respondents' learned Advocate submitted that under the scheme of the Co-operative Societies Act, the Deputy Commissioner is empowered to execute the awards as though they were decrees and that consequently, the petitioner has approached the wrong forum. This is not the ground upheld against the petitioner, but the respondents' learned Advocate is certainly entitled to make this submission. The position that obtains however, is that the latter part of Section 101 is really concerned with recovery of amounts and sums and to my mind, therefore, a distinction will have to be drawn between clause (a) and the rest of the section. Clause (a) is very clear in so far as it specifies that the certificate representing the award shall be treated as being on par with a decree and that it shall be executed in normal course by the Civil Court. Under these circumstances, the plea that at this late stage, the petitioner should be redirected to the Deputy Commissioner, cannot be upheld.

5. The respondents' learned Advocate submitted that the petitioner ought to have applied for reinstatement and that the respondents would have reinstated him and that since he has resorted to these legal proceedings which have dragged on for all these years, that the respondents ought not to be held liable for the financial consequences during the interim period. Normally, I would have upheld this objection except for the fact that right at the beginning when the petitioner approached the lower Court, the respondents instead of raising all sorts of frivolous and unsustainable contentions, ought to have complied with the order in question in which case, they would not have been liable to pay the petitioner for all the further period of time. This is an aspect of the matter which goes against the respondents and the reason why I am unable to uphold the objection canvassed by the respondents' learned Advocate.

6. Having regard to the aforesaid position, the civil revision petition succeeds. The order of the lower Court is set aside. The parties are directed to appear before the lower Court on 10-10-1996. Having regard to the fact that this is an old proceeding, the lower Court shall complete the execution proceedings as expeditiously as possible. The lower Court shall however, ascertain on that date from the respondents as to whether they are willing to reinstate the petitioner as directed and pay him the amounts as per the award and if they agree to do so, then there shall be no need to take any further steps in the matter.

7. The civil revision petition succeeds. No order as to costs.