

(2009) 12 BOM CK 0059

In the Bombay High Court

Case No : Writ Petition No. 2122 of 2001

Bhiwapur Taluka Shetki Sahakri Kharedi Vikri Samit Limited

APPELLANT

Vs

Abdul Salam Abdul Hafiz Sheikh and Assistant Registrar,
Cooperative Societies

RESPONDENT

Date of Decision : 07-12-2009

Acts Referred:

Maharashtra Co-operative Societies Act, 1960 — Section 91

Citation : (2010) 2 ALLMR 301 : (2010) 1 BomCR 111

Hon'ble Judges : Vasanti A. Naik, J

Bench : Single Bench

Advocate : V.D. Raut, for the Appellant; D.V. Chauhan, for respondent 1 and Sharda Wandile, A.G.P., for the Respondent

Judgement

Vasanti A. Naik, J.—By this petition, the petitioner challenges the order passed by the Assistant Registrar, Cooperative Societies, Umred on 17.3.2001 allowing the appeal filed by the respondent No. 1 and directing the petitioner to reinstate the respondent No. 1 in service.

2. The petitioner is a cooperative society registered under the Maharashtra Cooperative Societies Act. The respondent No. 1 was working as a Manager with the said society. After holding a departmental enquiry against the respondent No. 1, the respondent No. 1 was dismissed from service w.e.f. 11.1.2001. The respondent No. 1 challenged the order of dismissal in a departmental appeal before the Assistant Registrar, Cooperative Societies, Umred. After hearing the parties, the Assistant Registrar, Cooperative Societies, Umred allowed the appeal filed by the respondent No. 1 and directed the petitioner to reinstate the respondent No. 1 in service.

3. Shri V.D. Raut, the learned Counsel for the petitioner submitted that the Assistant Registrar, Cooperative Societies, Umred had no jurisdiction to entertain and decide the appeal. The learned Counsel for the petitioner submitted that against the order of his suspension, the respondent No. 1 had filed a dispute u/s

91 of Act before the Cooperative Court and it was necessary for the respondent No. 1 to file a dispute u/s 91 of the Act of 1960 before the Cooperative Court against the order of his dismissal. The learned Counsel for the petitioner relied on the decisions reported in Pralhad Vithalrao Pawar Vs. Managing Director and Another, and 2007 (12) SCC 764, to substantiate his submission. The learned Counsel for the petitioner submitted that there was no reason for the Assistant Registrar to interfere with the findings recorded by the Enquiry Officer. The learned Counsel for the petitioner then submitted that the Assistant Registrar, was not justified in holding that the respondent No. 1 was given only three days time to file reply and that the Enquiry Officer was not justified in deciding all the charges together.

4. Mrs. Wandile, the learned A.G.P., appearing on behalf of the Assistant Registrar, supported the order passed by the Assistant Registrar on 17.3.2001 and submitted that it was apparent from the record of the enquiry proceedings that there was a haste on the part of the petitioner to oust the respondent No. 1 from service and since the evidence on record clearly failed to point out to the guilt of the respondent No. 1, the appellate authority rightly held that the action of dismissal was arbitrary and illegal. The learned Assistant Government Pleader then submitted that the extract of the service rules annexed to the petition clearly show that the appeal against an order of dismissal would lie before the Assistant Registrar, Cooperative Societies, Umred and hence the respondent No. 1 had rightly filed an appeal before the Assistant Registrar. The learned AGP sought for the dismissal of the writ petition.

5. Shri D.V. Chauhan, the learned Counsel for the respondent No. 1 also supported the order passed by the Assistant Registrar on 17.3.2001 and submitted that though some of the reasons recorded by the Assistant Registrar for allowing the appeal may not be just and proper, it is clear from the evidence on record, particularly the evidence of the Cashier, as has been observed by the Assistant Registrar that the respondent No. 1 was innocent in the matter and the findings of the Enquiry Officer were perverse. The learned Counsel for the respondent No. 1 then submitted that though the order does not reveal that the evidence of all the witnesses was considered, on a perusal of the evidence of the star witnesses examined on behalf of the petitioner, it is clear that the respondent No. 1 was not guilty of the charges leveled against him and the findings recorded by the Enquiry Officer were arbitrary and illegal. The learned Counsel for the respondent No. 1 submitted that in case this Court is of the view that the evidence perused by this Court supports the ultimate finding recorded by the Assistant Registrar, this Court may not interfere with the order passed by the Assistant Registrar on 17.3.2001, merely because some of the reasons recorded by the authority are not reasonable and the evidence of some of the material witnesses was not considered or discussed by the Assistant Registrar. The learned Counsel for the respondent No. 1 sought for the dismissal of the writ petition.

6. I have considered the submissions made on behalf of the parties and also perused the impugned order along with other material which is placed on record. The first submission made on behalf of the petitioner challenging the jurisdiction of the Assistant Registrar, to decide the appeal is liable to be rejected for the simple reason that this ground or plea is an afterthought and the same is not raised by the petitioner in the writ petition. In fact it is averred in the writ petition that the respondent No. 1 had challenged the order of dismissal before the Assistant Registrar as per bye-laws on 18.1.2001. This averment in paragraph 1 of the writ petition clearly shows that the petitioner had no objection to the hearing of the appeal by the Assistant Registrar and has raised this ground for the first time at the time of hearing. Moreover, this Court had in Writ Petition No. 377/2001 directed the Assistant Registrar to decide the appeal of the respondent within a period of one month. The petitioner had initiated action against respondent No. 1 under the service rules and Clause 9 of the service rules, clearly provides for an appeal before the Assistant Registrar, Cooperative Societies, Umred. It appears that the appeal was filed before the Assistant Registrar, in view of the provisions of appeal under the service rules of the cooperative society. The submission made on behalf of the petitioner that initially the respondent No. 1 had challenged the order of his suspension before the Cooperative Court and therefore, he ought to have challenged the order of his dismissal also before the Cooperative Court is liable to be rejected, for the reason that the service rules do not provide for an appeal against the order of suspension and in such circumstances, the respondent No. 1 had no other alternative but to approach the Cooperative Court against the order of his suspension. Once having relied on the same service rules for the purpose of initiating enquiry against the respondent and for dismissing him from service, the petitioner cannot be permitted to canvass that the respondent No. 1 can not take the benefit of the provision of appeal under the service rules. Since the provisions of Rule 9(1) of the Employees Service Rules of the petitioner society provide for an appeal against the order of the dismissal of its employee before the Assistant Registrar, Cooperative Societies, Umred, the first submission made on behalf of the petitioner is liable to be rejected.

7. There is some force in the submission made on behalf of the petitioner that the Assistant Registrar, was justified in holding that that the Enquiry Officer could not have decided all the charges together as a combined reading of the charges results in one main charge of non payment of Hamali Charges amounting to Rs. 35,777.85 ps. The learned Counsel for the respondent No. 1 has also fairly conceded that the Assistant Registrar may not be right in allowing the appeal on this ground or also on the ground that the respondent No. 1 was granted only three days time to file reply.

8. On perusal of the order passed by the Assistant Registrar, it is clear that the Assistant Registrar has not considered the evidence of all the witnesses examined on behalf of the petitioner society to prove the charges against the respondent No. 1 or at least consideration of evidence of all the witnesses is not

reflected from the perusal of the order passed by the Assistant Registrar on 17.3.2001. Several witnesses were examined by the petitioner to prove the charges against respondent No. 1. The appellate authority has merely referred to the evidence of the Cashier for holding that the action of the dismissal was arbitrary and illegal. It was necessary for the Assistant Registrar to consider the evidence of the other witnesses along with the evidence of the Cashier before deciding the appeal filed by the respondent No. 1. Though there is some substance in the submission made on behalf of respondent No. 1, that there is hardly any material to prove the guilt of the respondent No. 1; it would not be proper for this Court to scrutinize the entire evidence in the enquiry proceedings in exercise of the writ jurisdiction. In such circumstances, in the interest of justice, it would be just and proper to remand the matter to the Assistant Registrar for deciding the departmental appeal afresh on merits and in accordance with law.

9. In the result, the writ petition is partly allowed. The impugned order passed by the Assistant Registrar, Cooperative Societies Umred on 30.3.2001 is hereby quashed and set aside. The matter is remanded to the Assistant Registrar Cooperative Societies Umred for deciding the same on merits and in accordance with law. The Assistant Registrar is directed to decide the appeal as early as possible and within a period of four months from the date of appearance of the parties before the Assistant Registrar. The parties undertake to appear before the Assistant Registrar on 21.12.2009 so that issuance of individual notices to the parties could be dispensed with. Rule is made absolute in the aforesaid terms with no order as to costs.