(1986) 09 KAR CK 0019

In the Karnataka High Court

Case No : Writ Petition No''s. 16484 of 1979 and 1452 of 1980

Chandrasekharappa APPELLANT

Vs

State of Karnataka RESPONDENT

Date of Decision : 11-09-1986

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka State Co Operative Land Development Bank and Primary Land Development Banks Pool Officers Rules, 1966 — Rule 128A, 17A, 9

Citation : (1986) 09 KAR CK 0019

Hon'ble Judges : Chandrakantaraj Urs, J

Bench : Single Bench

Advocate : R.U. Goulay and S.L. Simha, for the Appellant; P.R. Ramesh, HCGP, Kadidal Manjappa, Kesvy and Co., T.S. Ramachandra, H.S. Jois and Desai, for the Respondent

Final Decision : Dismissed

Judgement

Chandrakantaraj Urs, J.—These two Petitions are being disposed of by the following common order as they involve the same substantial question of law though the prayers in the two petitions are differently worded.

2. In Writ Petition No. 16184 of 1979, the petitioner has prayed that this Court may issue a Writ or Direction or Order in the nature of a declaration declaring that Exhibit ''E'', the Government Order dated 22-2 1978, is illegal and unlawful. He has also prayed that a Writ of Prohibition may be issued to the Government prohibiting it from taking any action in respect of the petitioner, who is working under the third respondent in the first of the petitions, viz., The Karnataka State Co-operative Land Development Bank Ltd., Bangalore (hereinafter referred 10 as ''the KSCLD Bank''). The other prayers are general prayers for consequential reliefs, if any.

The prayer in Writ Petition No. 1452 of 1980 is to quash the Government Order dated 22-2-1978 produced at Exhibit ''G'', which is the same as Exhibit ''E'' in the other petition, There is also a prayer for a Writ of Prohibition prohibiting the respondents, including the KSCLD Bank, from taking any action pursuant to that order. The remaining prayers are consequential.

3. To summarise the pleadings, both in respect of the petitioners as well as the respondents, who have filed their statements of objections, the following facts may be stated, which are not in themselves in dispute :

As evidenced by Exhibit ''A'' in the first of the Petitions, the Government of India, Ministry of Food, Agriculture, Community Development & Co-operation, (Department of Co-operation), by its letter dated August 8, 1966, addressed to the Secretaries in-charge of Co-operation in the various State Governments, suggested that the question of constituting pools of key personnel at various levels of co-operative credit institutions, which was under consideration of the Ministry for some time, may be given effect to and, in order to increase the operational efficiency of the said credit institutions, Pool Officers may be created by the State Governments concerned.

Pursuant to that suggestion, the KSCLD Bank, in consultation with the State Government/respondent-1, amended its bye-laws providing for Administration of the KSCLD Bank and the Primary Land Development Banks (hereinafter referred to as ''the PLD Banks'') Pool Officers Scheme.

Pursuant to the amendment of Bye-law No. 37, relating to the Executive Committee, the KSCLD Bank was accorded sanction u/s 12(1) of the Karnataka Co-operative Societies Act, 1959 (hereinafter referred to as ''the Act''), on 22-3-1968, from which date it became effective.

In the meanwhile, the KSCLD Bank had framed the Rules known as ''The Karnataka State Co-operative Lard Development Bank and Primary Land Development Banks Pool Officers Rules, 1966'' providing for objects of establishing Pool Officers, fund for the pool, utilisation of the fund, management of the fund, powers of the committee, recruitment of staff, strength of the pool, utilisation of services of Pool Officers, maintenance of accounts, audit of accounts of the fund, training, pay and allowances of the Pool Officers, security to be furnished by the Pool Officers, travelling allowance, leave contribution fund, retirement etc.

4. It would be useful, at this stage, to state that the nature of these Rules has not been ascertained by the parties and there is no material placed before the Court to emphatically bold that these are Statutory Rules made by the Government of Karnataka in exercise of its powers under Clause (o) to Section 129 of the Act.

5. Though Shri P.R.Ramesh, learned High Court Government Pleader, drew my attention to a letter of the Government of India, addressed to the Reserve Bank of India, Wherein the draft rules have been referred to as having been forwarded to the Government of India by the Government of Karnataka, to be adopted as

the Model Rules by other State Governments, if the Reserve Bank of India approves the same, no material is placed to show as to whether the other State Governments have followed the same rules or similar rules or whether the Reserve Bank of India had approved the model rules forwarded to it by the Government of India, which were stated to have been framed by the Government of Karnataka. Therefore, this Court has only to proceed on the assumption that these Rules, whether statutory or executive, made by the Government of Karnataka or by the Bank, were the Rules under which the Pool Officers were actually recruited and appointments made. That fact is not in dispute.

6. However, it appears that these Pool Officers recruited under the said Rules as well as the Rules framed by the KSCLD Bank, with the approval of the Registrar of Cooperative Societies in Karnataka, know as ''the Rules Governing the Service Conditions of Pool Officers of the Karnataka Slate Co-operative Land Development Bank and the Primary Land Development Banks'', came to be employee both in the office of the KSCLD Bank and also deputed to work in the various PLD Banks in the Suite. At that point of time, there was no challenge to the recruitment made under the aforementioned Rules providing for the service conditions also under the earlier mentioned Rules by any member of the staff of the KSCLD Bank, who was not recruited in accordance with the Rules that prevailed for the recruitment of staff by the KSCLD Bank in its Bye-laws.

7. However, the Scheme of the Pool Officers, with their special training, special aptitude and specialised knowledge, does not appear to have been so much of a success as it was originally envisaged and the State Government, in that circumstance, was compelled to constitute a Committee, as is evidenced by Exhibit ''C'' to the first of the petitions, which was required to re-consider the question of merger of the Pool Officers with the PLD Banks. That Committee of three or four submitted a report as at Exhibit ''D'' to the first of the petitions, together with its recommendations. But, the recommendations at Exhibit ''D'' is by a Committee of four. The Summary of the recommendation was that the Government may kindly be moved to take such action as was necessary u/s 128A of the Act and constitute the Land Development Banks Employees Cadre and also constitute the Cadre Authority to look after the service matters, including recruitment, emoluments, terms and conditions of service including disciplinary control, training etc.

8. In para-9 of the said Report, read with para-5 of the Recommendations, the Committee suggested the merger of the Pool Officers who so opted to join the Common cadre for the PLD Banks and correspondingly fixation of their inter-se seniority etc.

9. It was in consideration of that report that the Government, by its impugned order, produced at Exhibit ''E''. dated 22-2-1978, directed (hat the staff of the Pool Officers for the KSCLD Bank and the PLD Banks shall be merged with the KSCLD Bank as a separate wing.

10. When all this was happening Section 128A of the Act came to be introduced by the Karnataka Co-operative Societies (Amendment) Act, 1975, (Karnataka Act No. 39 of 1975). In the year 1975, by insertion of that Section, the State Government was empowered to create a Common Cadre Authority to a class of societies in which it had certain amount of share capital or had otherwise financed the Societies in order to recruit and control matters of discipline and service conditions of the staff of such Co-operative Societies.

11. It may be useful to mention here that Section 128A of the Act itself came to be amended subsequently in 1984 by an ordinance, with which we may not seriously concern ourselves. What should be noticed is that on April 15, 1977, in exercise of the powers conferred u/s 128A of the Act, read with Rule 17-A of the Karnataka Co-operative Societies Rules, 1960, the Government of Karnataka appointed the Registrar of Co-operative Societies, Bangalore, as the Chairman, the Joint Registrar of Social Welfare (Sub-Plan), Bangalore, as the Member, the President of the Society as the Member, and the Managing Director of the Society as the Member-Secretary, to be the Authorities for recruitment in so far as the KSCLD Bank was concerned.

12. It is in the light of the power exercised u/s 128A of the Act, read with Rule 17-A of the said Rules, and the creation of a Common Cadre Authority for the purpose of Section 128A of the Act in so far as the KSCLD Bank is concerned, that the petitioner has questioned the legality of the order impugned as at Exhibit ''E'' to the first of the petitions.

13. The substance of the contention of the petitioners is that the order directing the merger of the Pool Officers with the KSCLD Bank as a separate Wing amounted to effecting recruitment for which the State Government had no power as it was not the recruitment authority in terms of the order made on April 15, 1977 creating the Common Cadre Authority for the purpose of recruitment.

14. The substance of the statement of objections filed by the KSCLD Bank as well as the State and the Registrar is that the Pool Officers were really the employees of the KSCLD Bank recruited in accordance with the Rules of 1966, by virtue of the power conferred on the KSCLD Back by Bye-law No. 37, as amended and approved by the Registrar and, as such, at all times, they had been recruited and employed by the KSCLD Bank and that the question of Common Cadre Authority or the Government recruiting them afresh did not at all arise for consideration.

15. Whatever may be the reason, all that the Government did by its order dated 22-2-1978 was no more than to accord sanction to the KSCLD Bank to absorb the Pool Officers as the staff of the KSCLD Bank though they are to be treated as a separate wing in terms of Rule 9 of the Karnataka State Co-operative Land Development Bank and Primary Land Development Banks Pool Officers Rules, 1966. Rule 9 of the said Rules reads :

"Strength of the Pool : The strength of the members of the Pool Officers should be so maintained that its cost of maintaining the same should not exceed 50% of the fund available for the purpose, if for any reason the Scheme is found to be not workable, such members of the Pool who remain unabsorbed at the time of closing the Scheme, should be absorbed by the Mysore State Co operative Land Development Bank Ltd., Bangalore."

16. From the above, it is clear that the Pool Officers were really the employees of the Pool constituted by the State Government; they were paid from the fund of the pool and were required to perform certain duties and functions in different categories in accordance with the postings given to them by the Pool Committee, as defined under Rule 2(i) of the Rules governing service conditions of Pool Officers. Some of the Pool Officers were assigned to work, as already noticed, in the KSCLD Bank while the others were deputed to work in the various PLD Banks in the State, as evidenced by the Report of the Committee, which went into the question of absorption etc. These officials were paid by the respective Banks where they were working, subject to absorption and adjustments that were envisaged in terms of the funds of the pool provided for under the said Pool Officers Rules, 1966.

17. As long as there is an obligation on the part of the KSCLD Bank to absorb them, in terms of Rule 9 of the said Pool Officers Rules, 1966, the absorption effected was not either by the Government or by the Common Cadre Authority; but it is by KSCLD Bank itself in terms of the earlier Rules. But, the Government giving direction as per the impugned order dated 22-2-1978 is not by itself an order of recruitment. Such a direction can be given by the Government in terms of Section 30B of the Act, as it was before its; amendment in 1978, as long as it is in public interest.

18. Mr. R.U. Goulay & Mr. S.L. Simha, appearing for the petitioners, contended that while the impugned order itself might not affect the employees of the KSCLD Bank, other than the Pool Officers, the effect of the order has been to merge the Pool Officers with the other staff and give them posting in the PLD Banks as well as the KSCLD Bank to which only the regular staff of the KSCLD Bank were entitled to. In evidence of the same, Exhibit ''G'' dated 14-9-1979 has been produced, which is styled as an ''Office Order''.

19. No doubt, prima facie, that is in derogation of the mandate of the Government Order which states that the Pool Officers merged with the KSCLD Bank should be kept as a separate entity. From that, two things follow, viz., (i) that the KSCLD Bank''s Management has disobeyed the Government directive contained in Exhibit ''E'' in not keeping the Pool Officers as a separate entity; and (ii) that the original staff, not being the Pool Officers of the KSCLD Bank, have, perhaps, suffered adversely in regard to their service conditions like promotions, pay-scales etc.

20. In the case of the first event mentioned above, it is a matter between the Government and the Society. This Court cannot take any punitive measure against the Society as the Co-operative Societies are not amenable to the

jurisdiction of this Court in regard to this matter.

In regard to the second event also, if the employee of the Society has suffered adversely on account of any alteration in service conditions by the order dated 14-9-1979, Exhibit ''G'' to the first of the petitions, then, his remedy lies not in seeking any remedy under Article 226 of the Constitution of India but in raising a dispute u/s 70 of the Act which provides for settlement of such disputes by arbitration to the exclusion of the jurisdiction of the Court to settle such disputes. Of course, the exclusion of jurisdiction is confined to Civil Court which certainly does not come in the way to exercise jurisdiction under Article 226 of the Constitution of India. But, as a matter of prudence, this Court rarely interferes with the internal constitution, management and employees relationship of the Co-operative Societies under Article 226 of the Constitution. Having regard to ail this, despite the hardships that may have been caused to the officers, this Court must hold that this is not a matter in which this Court ought to interfere.

21. Mr. P. R. Ramesh has pointed out that the petitioner in the first of the petitions has since retired from service of the KSCLD Bank and, therefore, that petition has in any way become infructuous as he has no cause of action which he may pursue in this Court.

22. It may be so. But, the matter was presented to this Court in 1979 and during the pendency of the proceedings he has retired from service. That does not disentitle him from a declaration of the true state of affairs. From the various events, to which references are made in the course of this order, this Court may not be in a position to give him any relief. But, this Court may declare the law having regard to the various views canvassed and the rules made etc.

23. In any event, the petitioners in the second of the petitions are still in service and are affected by the action of the KSCLD Bank as at Exhibit ''G'' in the first of the petition. For them, the remedy is still open u/s 70 of the Act. They may agitate the same if they have any dispute. The Registrar will take notice of the fact that this litigation was pending in this Court since 1979 and 1980 and, in spite of the delay in seeking the reference, he should exercise his discretion u/s 70A of the Act and refer the matter for adjudication of the dispute, if a dispute is raised. The petitioner, in the first of the petitions, in the event of his success in another Writ Petition filed in this Court for re-employment, should also be given the same benefit.

24. Subject to these observations, the petitions are dismissed holding that the petitioners are not entitled to move this Court under Article 226 of the Constitution of India. The rule is discharged in each of the petitions. No costs.