

(2018) 10 RAJ CK 0001

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No.510 of 2005

Chittorgarh Central Co-operative Bank Ltd @APPELLANT@Hash State of Rajasthan & Ors

Date of Decision : 01-10-2018

Acts Referred:

Rajasthan Shops and Commercial Establishment Act, 1958 — Section 2(5)
Rajasthan Co-operative Societies Act, 1965 — Section 4(1)
Cooperative Societies Rules, 1966 — Rule 41

Citation : (2018) 10 RAJ CK 0001

Hon'ble Judges : Pradeep Nandrajog, CJ;Dr. Pushpendra Singh Bhati, J

Bench : Division Bench

Advocate : A.K.Babel, Shalli Gajja

Final Decision : Dismissed

Judgement

1. The issue that arises for consideration in the present special appeal is whether the respondent No.3/writ petitioner Suresh Rawal is an employee of the appellant-Chittorgarh Central Cooperative Bank Limited or not.

2. Briefly put, the facts indispensable for the present adjudication, are that the respondent No.3/writ petitioner was working in the Large Agricultural Multipurpose Cooperative Society (LAMPS), upon being appointed by the Rajasthan Tribal

Area Development Cooperative Federation Limited, Udaipur on the post of Accountant on 17.03.1977.

3. The respondent No.3/writ petitioner was thereafter appointed as Manager by the Rajasthan Jan Jatiya Keshetriya Vikas Sahakari Sangh Limited (RAJAS), Udaipur with effect from 06.01.1978, and was thereafter transferred to Kulmipura

LAMPS, District Chittorgarh by RAJAS. The respondent No.3/writ petitioner was again transferred by RAJAS from Kulmipura LAMPS to the Office of Assistant Regional Manager, RAJAS, Pratapgarh on 05.03.1982. On 12.10.1982, the

RAJAS has again transferred the respondent No.3/writ petitioner from Pratapgarh

to Bhukhiya LAMPS, District Banswara. Thereafter, the respondent No.3/writ petitioner was transferred from Bhukhiya LAMPS, District Chittorgarh to

Dalot LAMPS, District Chittorgarh on 27.08.1983. The respondent No.3/writ petitioner was again transferred by the RAJAS from Dalot LAMPS to Deogarh LAMPS.

4. It is worthwhile to mention that the Cadre Authority vide its order dated 03.04.1984 has treated the respondent No.3/writ petitioner and other similarly situated persons as Loan Supervisors and were to discharge the duties with the appellant/Bank.

5. Learned Single Judge, in the impugned order passed in the writ petition filed by respondent No.3, held that the controversy involved in the writ petition is covered by a judgment rendered by this Honâ??ble Court in Sharad Joshi Vs.

Rajasthan Tribal Area Development Cooperative Federation Limited, Udaipur (S.B. Civil Writ Petition No.6649/1991 decided on 12.09.2005), whereby the writ petition was allowed, while declaring the petitioner/Sharad Joshi therein to be an employee of the Central Cooperative Bank Limited, Chittorgarh (the present appellant) in pursuance of an agreement dated 10.06.1987, and accordingly, petitioner/Sharad Joshi was held entitled for all consequential benefits flowing as a

consequence of such declaration.

6. In the aforesaid judgment rendered in Sharad Joshiâ??s case (supra), it has also been mentioned that by order dated 03.04.1984, the Loan Supervisors working with 44 LAMPS were taken on the cadre strength of the Loan Supervisors of

the Bank concerned. They were also ordered to be placed in the seniority list of the Loan Supervisors of the Bank concerned from the date of their appointment as Manager with the LAMPS. As a consequence of such an order,

petitioner/Sharad Joshi therein and other similarly situated persons, including the present respondent No.3/writ petitioner-Suresh Rawal, became the employees of the Central Cooperative Bank Limited and were also ordered to be placed in the

seniority list of the Loan Supervisors of the Bank concerned from the date of their appointment as Manager with the LAMPS.

7. Since the controversy involved in the case of the present respondent No.3/writ petitioner-Suresh Rawal is akin to the one involved in Sharad Joshiâ??s case (supra), therefore, the learned Single Judge vide the impugned order has allowed the writ petition filed by respondent No.3/writ petitioner-Suresh Rawal, in the same terms, while granting him the same reliefs, as were granted in Sharad Joshiâ??s case (supra).

8. The respondent No.3/writ petitioner and other similarly situated persons, therefore, are claiming to have become the employees of the Central Cooperative Bank Limited, the appellant herein, as they were also placed in the seniority list of the Loan Supervisors of the Bank.

9. Learned counsel for the appellant/Bank has submitted that the respondent No.3/writ petitioner had not claimed the relief of being an employee of the appellant/Bank, but had merely contested the writ petition on the ground of pay scales.

However, learned counsel for the appellant was unable to refute that the case of the present respondent No.3/writ petitioner was akin to Sharad Joshi's case (supra), which has been followed by the learned Single Judge in the impugned order.

10. Heard learned counsel for the parties as well as perused the record of the case, alongwith the impugned order passed by learned Single Judge, as also the order passed by this Hon'ble Court in Sharad Joshi's case (supra).

11. It is pertinent to note that in Sharad Joshi's case (supra), the writ petitioner therein had given up the other reliefs, and only prayed that he may be declared as an employee of the Central Cooperative Bank Limited, Chittorgarh. Since

the writ petition filed by respondent No.3/writ petitioner has been allowed by the learned Single Judge in terms of Sharad Joshi's case (supra), therefore, the present respondent No.3/writ petitioner as well has only prayed that he may be

declared to be an employee of the Central Cooperative Bank Limited, Chittorgarh, the appellant/Bank herein, while giving up other reliefs.

12. It is not in dispute that the writ petitioner in Sharad Joshi Vs. Rajasthan Tribal Area Development Cooperative Federation Limited, Udaipur (supra) was also similarly situated Loan Supervisor and also sought declaration to the effect that

he is an employee of the Central Cooperative Bank Limited, Chittorgarh, the appellant/Bank. Furthermore, the judgment rendered by this Hon'ble Court in the said case, which was followed by the learned Single Judge, while allowing the writ petition filed by the present respondent No.3/writ petitioner, has attained finality.

13. Learned counsel for the parties agree that the issue involved in the present case has already been dealt with finally by Division Bench of this Hon'ble Court in The Chairman, Chidabutter Village Service Cooperative Societies,

Padampur Vs. The State of Rajasthan & Ors. (D.B.Civil Special Appeal (Writ) No.883/2016 decided on 18.11.2017), wherein it has been observed as under:-

17. On the basis of the pleadings and documentary evidence available on record and the fact that the respondent petitioner was transferred from one place to another place by the appellant-Bank, it is well proved that respondent-petitioner was under direct control of the appellantBank. The appointment order and dismissal order of the respondent petitioner were issued by the Bank. The power of imposing punishment also vests with the appellant Bank.

18. Thus, it is clear that although the appointment of Vyavasthapak(Manager) is made by the State Level Selection Committee and payment of salary is made from a fund separately created for this purpose, the Vyavasthapak (Manager) is under control of the appellantbank in the context of scheme of Rule and various orders which have been placed on record. The term 'employee' as defined under Section 2(5) of the Rajasthan Shops and Commercial Establishment Act, 1958 is reads as under:-

(5) "employee" means a person wholly or principally employed in, or in connection with any establishment and includes an apprentice but does not include a member of the employer's family; it also includes any clerical or other staff of a

factory or industrial establishment who falls outside the purview of the Factories Act, 1948 (Central Act LXIII of 1948);

19. The Supreme Court in the case of Sahkari Samitiyan VyavasthapakUnion etc. Vs. State of Rajasthan & Ors. reported as JT 1996(3) SC 292 has held as under :

3. Paid Secretaries were recruited by the Rajasthan Credit Cooperative Institutions Cadre Authority Limited [for short, the 'Cadre Authority Society'] constituted under Section 4 [1] of the Rajasthan Co-operative Societies Act, 1965 [for

short, the 'Act']. They were appointed in the respective District Co-operative Banks initially under Recruitment and Service Conditions of the Managers of Agriculture Credit Cooperative Societies Rules, 1977 [1977 Rules] and thereafter

under Agriculture Cooperative Credit Societies Service Rules, 1969 [for short, the '1969 Rules'] by the Managers of the District Cooperative Banks and were sought to be posted to the Primary Agriculture Credit Cooperative Societies [for

short, the 'PACS'] fastening liability of their salary on the PACS who have challenged the validity of the constitution of Cadre Authority Society and also the power of the Registrar of the Cooperative Societies [for short, the 'Registrar] to

make the rules calling upon PACS to contribute to the Manager's Salary Fund under Central Cooperative Bank Rules, 1969 [for short, the 'Bank Rules']. The Division Bench has held that the Cadre Authority Society cannot be registered as a

cooperative society under Section 4 of the Act, the Bank Rules are ultra vires the powers of the Registrar under Rule 41 of the Cooperative Societies Rules, 1966 [for short, the "Rules"].

4. S/Shri R.K. Jain, Rajiv Dhavan and Jitendra Sharma, learned senior counsel appear for these Unions and Managers. Pending these appeals, pursuant to the permission granted by this Court, the Government framed the Conditions of Service

of the Managers/Assistant Managers of the Agricultural Credit Cooperative Societies Rules, 1995 and placed the same on record. The appellants are not agreeable to those Rules. Consequently, the learned counsel have contended that under

Section 4 [1], Cadre Authority Society is a society regulating facilitation of disbursement of the loans by the PACS in terms of cooperative movement for which PACS came to be registered under the Act. The Cadre Authority Society came

to be registered pursuant to the recommendation made by Datey Committee which has gone into the credit structure and proper utilization of the loans to the agriculturists made available by the State Government and distributed through the

State Central Cooperative Credit Bank to the District Societies who in turn distribute the loans to PACS. For their coordination, supervision and proper utilization thereof the Managers\Assistant Managers [hereinafter referred to as the paid

Secretaries] are competent persons to work as liaison between the PACS and their members and the District Banks and Central Bank. The Registrar under Rule 41 of the Rules read with Section 147 [2] and Section 148 [2] (xxx) of the Act

is empowered to regulate the service conditions of paid Secretaries and to prescribe qualifications. Consequently, the Cadre Authority Society registered under Section 4(1) of the Act is a valid society. It is also contended that the 1969 Rules

prescribe the mode of recruitment, method of appointment and control of the Managers. Bank Rules prescribe the amounts collected from PACS to pay their salaries. Therefore, the PACS are bound to contribute towards the salary and

allowances of the paid Secretaries. Shri Jitendra Sharma further contended that they are the members of the PACS and that, therefore, the PACS are bound by the Bank Rules. Shri Aruneshwar Gupta, learned counsel appearing for the State

contended that the Registrar has no power to make Bank Rules nor has he power to direct the PACS to contribute for the salary and allowances of the paid Secretaries. The High Court, therefore, was right in recording the findings in that

behalf.

5. The question, therefore, is: whether the appellants are right in their contentions? With a view to appreciate the contentions, the first question that arises is: whether Cadre Authority Society could be a cooperative society registered under

Section 4(1) of the Act. Section 4 [1] reads thus:

4 [1]. Societies which may be registered and classified under this Act: Subject to the provisions of this Act, a Cooperative Society which has its objects and accordance with the cooperative principles, or a cooperative society established with

the object of facilitating the operations of such societies, may be registered under this Act".

6. The marginal note indicates that the classified societies are to be registered under the Act. Subject to the provisions of the Act, a cooperative society which has its object the promotion of the economic interests of "its members" in

accordance with the cooperative principles, or a cooperative society established with the object of "facilitating the operations of such societies", may be registered under the Act. The Cadre Authority Society, admittedly, does not come under

the first limb of Section 4 [1]. The contention is that since the object of the Cadre Authority Society is to facilitate the operations of the PACS, it is a cooperative society registered under the Act. In support thereof, Sri Jain placed the model

bye-laws as part of the record. The model bye-laws would indicate that membership of a society consists of A Class members, viz., individuals who are above the age of 18 years and B Class members, viz., institutions who are admitted as

members of the society. The institutions are lending societies. One of the objects is to recruit paid Secretaries to the District Cooperative Societies. At this stage, it is necessary to mention that the cooperative structure is built upon three- tier

system, viz., PACS consisting of individual members, at the grass-root level within the area of operation of that society, the District Cooperative Societies and the Central Cooperative Bank.

It is not in dispute that the District Cooperative Societies and the Central Cooperative Bank got the Cadre Authority Society which is not a lending institution, registered and the paid Secretaries, who are otherwise a third agency, recruited by it.

They are appointed by the Managers of the District Cooperative Societies and are transferred by them to the PACS within the area of the operation of the District

Bank. It would, therefore, be clear that it does not come as a society to facilitate the PACS in funding them for disbursement of loan to the members of PACS.

7. The question is: whether the PACS are bound to take the services of the paid Secretaries? Rule 41 of the Rules reads thus:

41. Officers and employees of cooperative societies. - [1] Notwithstanding anything contained in the bye-laws of society no Cooperative society shall appoint any person as its paid officer or employee in any category of service, unless he

possess the qualifications and furnishes the security if so specified by the Registrar from time to time, for such category of service as the society, or for the class of society to which it belongs. The conditions of service of the employees of the

societies shall be as specified by the Registrar.

[2] No co-operative society shall retain in service any paid officer or employees, if he does not acquire the qualifications or furnish the security as is referred to in sub-rule [1] within such time as the Registrar may direct.

[3] The Registrar may for special reasons, relax in respect of any paid officer or employee, the provisions of this rule in regard to the qualifications he should possess or the security he should furnish.

[4] Where in the course of an audit under Sec.68 or an inquiry under Sec.70 or an inspection under 71 or Section 72 it is brought to the notice of the Registrar that a paid officer or servant of a Society has committed or has been otherwise

responsible for misappropriation, breach of trust or other offence, in relation to the society, the Registrar may, if in his opinion, there is prima facie evidence against such paid officer or servant and the suspension of such paid officer or servant

is necessary on the interest of the society direct the committee of the society pending the investigation and disposal of the matter, to place or cause to be placed such paid officer or servant under suspension from such date and for such period

as may be specified by him.

[5] On receipt of a direction from the Registrar under subrule [4], the committee of the society shall, notwithstanding any provision to the contrary in the byelaws, place or cause to be placed the paid officer or servant under suspension forthwith.

[6] The Registrar may direct the committee to extend from time to time the

period of suspension and the paid officer or servant suspended shall not be reinstated except with the previous sanction of the Registrar whose decision thereon shall

be final.

[7] If the committee fails to comply with the direction issued under servant under suspension from such date and for such period as he may specify in the order and thereupon the paid officer or servant, as the case may be, shall be under suspension.

20. In view of above, this Court is of the opinion that the respondent petitioner-Chad Singh is employee of appellant-Bank because the appointment order dated 12.2.1974 had been passed by the appellant Bank, Charge Sheet (Annex.1 of earlier

writ petition) had been issued by the appellant-Bank, the enquiry was conducted by the appellant Bank and thereafter the respondent petitioner-Chad Singh was dismissed from service by the appellant Bank vide its order dated 30.1.1993

(Annex.6). The departmental appeal was also dismissed by the appellant-Bank vide order dated 3.1.1994 (Annex.8). After allowing the earlier writ petition again charge sheet was served by the appellant Bank to the respondent petitioner vide

communication dated 19.1.2009 (Annex.4) and charges have been proved by the appellant Bank. Therefore, it is clear that he was working under the control of appellant Bank and it is to be held that there is relation of employer and employee

between the respondent-Chad Singh and appellant-Bank, therefore, the respondent-petitioner-Chad Singh is employee of appellant Bank.

21. The learned Single Judge has held that in the proceedings of District Level Enquiry Committee Society's representative appeared but never took a stand that the delinquent respondent-petitioner Chad Singh was not the Society's

employee and the charge sheet attributed to him was with regard to committing the misconduct while working as Manager of the Society, therefore, the argument advanced by Shri Godara that the respondent-petitioner was not employee of

the Society has no legs to stand, but merely on the ground that the Society's representative appeared in the proceedings of Enquiry Committee, it cannot be held that the respondent-petitioner is employee of the Society.

22. The findings of the learned Single Judge that the appellant respondent is employee of appellant-Society are not based on material available on record. The learned Single Judge has not properly appreciated the evidence such as completely

overlooked the material available on record. Mere presence of representative of

Bank alongwith all other consequential reliefs, and therefore, there is no reason why the respondent No.3/writ petitioner should be denied the same benefits.

15. In light of the aforesaid observations and the aforementioned precedent law, the present special appeal deserves dismissal and the same is accordingly dismissed.