

(1972) 08 SC CK 0042

In the Supreme Court Of India

Case No : Civil Appeal No. 1047 of 1968

Deokinandan Parashar

APPELLANT

Vs

The Agra Distt. Co-operative Bank and Others

RESPONDENT

Date of Decision : 23-08-1972

Acts Referred:

Citation : AIR 1972 SC 2497 : (1972) LabIC 1622 : (1973) 3 SCC 303

Hon'ble Judges : K. S. Hegde, J;D. G. Palekar, J;A. N. Grover, J

Bench : Full Bench

Advocate : S.T. Desai, R.V. Pillai, Manik Lal Waghray and R.K.P. Shankardass, for the Appellant; S.S. Shukla and H.S. Marwaha, for the Respondent

Final Decision : Allowed

Judgement

D.G. Palekar, J.—This is an appeal by special leave from the judgment and Order dated October 25, 1967 passed by the Allahabad High Court in Civil Miscellaneous Writ No. 3713 of 1967.

2. The petitioner Deoki Nandan Parashar was an employee of the Agra District Co-operative Bank Agra. He joined service as an Office Assistant in 1963 and was confirmed in that post a year later on May 14, 1964. On October 16, 1964 the petitioner was promoted as Executive Officer and was confirmed in that post after one year's probation expiring on 16-10-1965.

3. The Annual General Meeting of the Bank was fixed on August 25, 1966. An emergency meeting of the Board of Directors was called on the previous day for disposing of urgent business in connection with the proposed Annual General Meeting. At that meeting one A. P. Sharma, who was a Director, moved a resolution for terminating the services of the petitioner. It was passed. A letter was issued to the petitioner on August 25, 1966 intimating to him the termination of his services. A cheque was also issued for two months salary in lieu of notice.

4. Aggrieved by this Order which was passed without previous notice, the

petitioner went in appeal to the Registrar, Co-operative Societies under Rules 101 of the Agra District Co-operative Bank Ltd. Agra Service Rules, 1958 hereinafter described as the "service Rules". The Registrar held that the termination of the petitioner's services all of a sudden in an emergent meeting of the Board of Directors on the eve of the Annual General Meeting without giving him an opportunity for submitting his explanation was in utter disregard of Rule No. 21 of the Service Rules. Such an action on the part of the Board of Directors was against all canons of equity justice and good conscience and, therefore, the Order required to be set aside. He further added that the resolution of the Society terminating the. Petitioner's service was foreign to the objects of the Society and was, therefore, inoperative and liable to be deleted from the records of the Society.

5. The result of this decision was that the petitioner resumed service on September 4, 1966 and the intermediate period during which he was absent due to the Order passed by the Board was treated as on duty.

6. More than a year later, that is, on October 17, 1967 a new officer who had become the Registrar of the Co-operative Societies passed the following Order:

The Order of my predecessor issued vide this office endorsement No. 1749-54/8-1(8) Bkg. dated September 3, 1966 in which resolution No. 28 of the meeting of the Board of Director of the District Co-operative Bank Ltd. Agra held on 24-8-1966 was declared ultra vires under Rule 175 of the U.P. Co-operative Societies Rules, 1936 (amended upto date) is hereby with drawn.

No reasons were given why the previous Order had been withdrawn. But the Administrator of the Bank, who was now exercising the powers of the Board of Directors, issued an Order that to view of the withdrawal Order passed by the Registrar, the services of the petitioner stood terminated with effect from 24-10-196 and, therefore, he should hand over all papers and charge concerning the bank.

7. The petitioner thereupon approached the High Court under Article 226 complaining that the new Registrar had no jurisdiction to with draw the quasi judicial Order passed by his predecessor and that the Order of withdrawal had been passed at the instance of the Minister concerned who bore grudge against the petitioner.

8. We are informed that no return was filed on behalf of the several respondents including the Registrar and the Minister.

9. The principal contention oil the petitioner was that the withdrawal Order of the Registrar dated October 17, 1967 was illegal and without jurisdiction and the principal relief that he claimed was that the same be quashed and set aside. The High Court, however, addressed itself to the question as to whether the Order passed by the previous Registrar on September 3, 1966 was a correct Order, It came to the conclusion that the Order terminating the petitioner's services was

passed either under Rule 28 or Rule 22 of the Service Rules and since neither Rule required that notice to show cause against the contemplated action be issued, the Registrar was wrong in holding that the termination Order could not stand because no explanation was called for. Then the learned Judges proceed to say: "This wrong Order of the Registrar has been withdrawn by the present Registrar, Counsel for the petitioner submits that the present Registrar has no power to withdraw an Order of his predecessor. Assuming that that is so, the main question is whether we should exercise discretion for interference in the circumstances of this case. We have already held that the, Order of the former Registrar is palpably wrong. The impugned Order of the present Registrar withdraws that Order. His Order, therefore advances manifest justice. Accordingly, we decline to interfere." In that view the High Court dismissed the petitioner's writ petition.

10. It is contended before us on behalf of the petitioner/appellant that the former Registrar had passed an Order in favour of the petitioner in due exercise of his powers and as a result of that, Order the petitioner had actually resumed his service on September 4, 1966 and continued to be in service for more than a year thereafter, when, all of a sudden he was removed from service on the ground that the previous Order passed by the Registrar in his favour had been withdrawn by his successor on 17-10-1967. The allegation of mala fides made by the petitioner had not, been controverted. But for the purpose of this appeal Mr. Setalvad for the petitioner does not want to make any capital out of it. He is prepared to show that the view of the High Court that the Order was either under Rule 28 or 22 of the Service Rules and that neither required a reasonable opportunity being given is quite erroneous. But he says that it is not necessary for Mm to press even that point because his chief grievance was that the successor of the Registrar had no authority whatsoever either under the Act or the Rules to withdraw an Order passed by his predecessor by which certain rights and obligations had been created. The predecessor's Order had set aside the resolution of the Board terminating the petitioner's service and the petitioner had been reinstated. The successor Registrar simply purported to withdraw his predecessor's Order without giving any reasons for his action; nor was the petitioner given an opportunity to show cause against the purported withdrawal. The Order made by the first Registrar, whether on merits it was right or wrong was an Order made with jurisdiction under Rule 101 of the Service Rules, and such a quasi judicial Order passed by a statutory authority like the Registrar in exercise of his jurisdiction was not liable to be simply withdrawn by an officer who succeeds him.

11. We think there is considerable force in this contention. The petitioner's complaint was against the Order of the successor Registrar. He was not interested in having the first Registrar's Order set aside. Only the Bank might have been interested in setting aside that Order. But the Bank had not taken any steps either by way of appeal to the Government or by any Writ Petition to have the Order of the Registrar dated September 3, 1966 set aside. Since no return

was filed, we cannot even assume that the Bank had asked for setting aside that Order. In these circumstances, the High Court was not justified in dealing with the merits of that Order. Mr. Setalvad contends that Rules 28 and 22 on which the High Court relied do not support the conclusion of the High Court. It was obvious from the resolution passed by the Board of Directors on August 24, 1966 that though two months salary had been paid in lieu of notice, Rule 28 was not applicable because that Rule comes into force only in case of retrenchment. Nor could the Order be regarded as one under Rule 22 because Rule 22 speaks of a dismissal without notice and without compensation in lieu of notice. Moreover, in his submission, when Rule 22 provided for dismissal without notice or any compensation in lieu of notice for a grave misconduct, it did not do away with the necessity of showing cause against the Order of dismissal but only emphasised that the dismissal could take effect immediately, and in such a case, neither notice nor compensation in lieu of notice, as was required in other types of termination of service, was essential. We do not, however, want to deal with this argument here because it is clear to us that the learned Judges were plainly in error in determining the correctness or otherwise of the Order passed by the first Registrar because there was no challenge to it. The High Court had to deal only with the complaint of the petitioner as made out, in his petition. But so far as that is concerned, it has refused to enter into an investigation of the matter on the ground that the withdrawal Order had advanced manifest justice. We asked Mr. Shukla, appearing on behalf of the respondent Bank, to point out to us any authority statutory or otherwise, which enabled the successor Registrar to set aside, without notice to parties, a quasi judicial Order passed by his predecessor more than a year previously. Mr. Shukla was unable to invite our attention to any statute or legal authority in this connection. The petitioner had alleged mala fides. But for the purposes of disposing of this appeal is not necessary for us to deal with it in this appeal. The Registrar had no jurisdiction whatsoever "to withdraw" his predecessor's Order and his action in withdrawing it must be regarded as a nullity and of no effect. The consequence will be that the former Order of the Registrar passed on September 3, 1966 will continue to hold the field.

12. Mr. Shukla, however, sought to support the Order of the High Court on two grounds. First he contended that the Service Rules were non-statutory domestic Rules governing relations between master and servant and that being so the effect of cancel ling the withdrawal Order would be to thrust an employee upon the Bank which did not want him. In this connection he relied on Indian Airlines Corporation Vs. Sukhdeo Rai, . We are afraid, this ground is not open in appeal. It was never contended that the service Rules were domestic Rules and non-statutory. As a matter of fact the High Court has proceeded on the basis that these are statutory Rules. Under one of them namely Rule 101 an employee was given the right of appeal against the decision of the Board of Directors to the Registrar who is a statutory authority of the Government under the Co-operative Societies Act, 1912. The action of the Registrar in withdrawing his predecessor's

Order has been challenged on the ground that the statutory authority had acted without jurisdiction and the case was heard on that basis. We cannot, therefore, permit Mr. Shukla to contend before us that the Rules were non-statutory. Indeed that really makes no difference. There were Rules governing the dismissal of an employee and the Bank was bound by these Rules. One of these Rules namely Rule 101 gave an employee a right of appeal to the Registrar who is a statutory authority and the Order of the Registrar was final. It was not only fully binding upon the employer and the employee but also upon the Registrar himself, in the sense, that once it was made by him it could not be reviewed except in due course of the law.

13. The second ground of Mr. Shukla was that even assuming that the Rules were statutory and the Registrar is a statutory authority liable to act under the Rules, the Order passed by the first Registrar on September 3, 1966 was an Order passed without jurisdiction and was a nullity. Being a nullity it was open to the successor Registrar to withdraw it, that is to say, to declare that it was a nullity. This point again was not taken in the High Court it was not contended that the Registrar had no appellate jurisdiction from the Order passed by the Board. Rule 101 which comes under the heading "XI Miscellaneous" is as follows:

Any matter not covered by these Rules shall be disposed of at the discretion of Board of DirectOrs. Appeal against the decisions of the Board of Directors will lie with the Registrar and must be made within three months from the date the Order of the Board of DirectOrs. is communicated to the employee. The decision of the Registrar on the appeal shall be final.

It is contended that Rule 101 does not apply to an Order terminating the services of an employee because other provisions have been made for appeal under the Rules. In this connection, reference was made to Rule 26 which says that an employee aggrieved by an Order of punishment may appeal to the Board of DirectOrs. Prima fade this Rule will apply when the authority is subordinate to the Board of DirectOrs. Where a Subordinate authority passes an Order of punishment an appeal is provided against that Order to the Board of DirectOrs. Where the Board of Directors passes an Order of dismissal it will be, prima facie, incongruous to say that an appeal from the decision of the Board of Directors shall be to the Board of Directors only. Rule 101 refers to all matters relating to an employee not covered by the other Rules. Rule 26 does not cover the case of an appeal against the Order made by the Board of Directors against an employee. That is specifically provided under Rule 101. We do not want to give a final decision on that point because it was not raised before the High Court and we do not have the benefit of the views of the High Court in that respect. All the parties before the High Court apparently proceeded on the basis that the appeal to the Registrar lay under Rule 101, and that the Order dated September 3, 1966 was passed by the Registrar in exercise of his powers under Rule 101. The Registrar acted under that Rule as giving him authority to entertain the appeal of an employee against his dismissal. His authority to entertain the appeal was not

challenged either before him or the High Court. We cannot, therefore, permit the second ground also before this Court.

14. In the result the appeal is allowed, the Order of the High Court is set aside and it is directed that the Order of the Registrar dated 17-10-1967 and the consequential Order dated 21-10-1967 passed by the Administrator of Respondent Bank should be treated as null and void and as of no effect. The Appellant shall get his costs throughout from respondent No. 1.