

(2003) 06 MP CK 0051
In the Madhya Pradesh High Court
Case No : W. P. No. 5253 of 2002

Deshrath Singh

APPELLANT

Vs

Managing Director, M. P. State Co-operative Oil-seed
Growers' Federation Limited, Bhopal and Others

RESPONDENT

Date of Decision : 25-06-2003

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 10
Madhya Pradesh Co-operative Societies Act, 1960 — Section 55(2)

Citation : (2003) 06 MP CK 0051

Hon'ble Judges : S.P. Khare, J

Bench : Single Bench

Advocate : A.P. Shrotri, for the Appellant; K.S. Wadhwa List of cases referred, for the Respondent

Judgement

S.P. Khare, J.—This is a writ petition under Articles 226 and 227 of the Constitution of India challenging the order dated 8-4-2002 of the M. P. State Co-operative Tribunal and order dated 5-11-2001 of the Deputy Registrar, Cooperative Societies, Bhopal by which the application of the petitioner u/s 55(2) of the M. P. Co-operative Societies Act, 1960 (hereinafter to be referred to as the Act) has been rejected as barred by limitation.

2. The petitioner's services were terminated by order dated 14-8-1991 of the respondent No. 1. He is running from pillar to post to challenge this order but he is being shown outer door by every Court on one technical ground or the other. That is the travesty of justice. He raised the dispute and it was referred to the Labour Court on 6-5-1997 by the Assistant Labour Commissioner as per law then prevailing but the Labour Court by its order dated 20-4-2000 directed return of the "statement of claim" to the petitioner on the ground that it has no jurisdiction and the remedy should be pursued under the provisions of the Act. That was done in view of the change in the legal position as a result of the decision of the Supreme Court in R.C. Tiwari Vs. M.P. State Co-operative

Marketing Federation Ltd. and others, in which it has been held that the employee should seek his remedy under the Act and not by reference u/s 10 of the Industrial Disputes Act, 1947. The "statement of claim" was returned to the petitioner on 19-7-2000 and he presented the same on 5-8-2000 before the Deputy Registrar, Co-operative Societies, Bhopal u/s 55(2) of the Act. It has been rejected by a cryptic order as barred by limitation and the Deputy Registrar in the impugned order dated 5-11-2001 has held that he has no power to condone the delay. That order has been upheld by the M. P. Co-operative Tribunal.

3. After hearing the learned counsel for both the sides this Court is of the opinion that the impugned order must be set aside and the Deputy Registrar should be directed to decide the dispute on merits. The order directing the return of the statement of claim was passed by the Labour Court on 20-4-2000 but it was actually returned on 19-7-2000. The endorsement on the "statement of claim" for returning the same for presentation to the proper Court was made on 19-7-2000 (Annexure P-4). Order 7 Rule 10(2) CPC provides that on returning a plaint the Judge shall endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reasons for returning it. Though this provision of the CPC may not apply *protanto* the principle engrafted therein would apply. It is only after such endorsement the statement of claim could be returned for presentation to the proper Court. It has been held by Madras High Court in *Moneys Transports, Tiruchirapalli Vs. The Tanjore Co-operative Marketing Federation Ltd.*, that the requirements of Sub-rule (2) of Rule 10 of Order 7 are mandatory and without the endorsement required by the sub-rule the plaint cannot be returned and cannot be presented to the proper Court. The Allahabad High Court has also held in *Islam Shah Vs. Wali Mohammad Khan*, that on return of plaint the plaintiff is entitled to the exclusion of time till an endorsement of return is made under Order 7 Rule 10(2) Civil Procedure Code.

4. The proviso to section 55(2) of the Act lays down the limitation period of thirty days "from the date of the order sought to be impugned". In this case the order of termination which was impugned is dated 14-8-1991 but the petitioner has been prosecuting his remedy under the Industrial Disputes Act, 1947 in light of the law laid down by the Full Bench of this Court in *Rashtriya Khadan vs. Presiding Officer*, 1975 MRU 583 (F.B.) and reiterated in subsequent decisions. The legal position changed in 1997 after the decision of the Supreme Court in *R. C. Tiwari's* case. Therefore, as per Section 14 of the Limitation Act, 1963 the time during which the matter remained pending before the Labour Court is to be excluded as the petitioner must be held to have been prosecuting his remedy with due diligence and in good faith before the Labour Court as per legal position which existed at that time. Section 14 of the Limitation Act, 1963 is to be liberally construed as it is based on justice, equity and good conscience. That position has not been disputed even by the Deputy Registrar or the Co-operative Tribunal. They proceeded to count the limitation from the date of order of the Labour Court i.e. 20-4-2000 and not from the date the statement of claim was

actually returned to the petitioner i.e. 19-7-2000. The petitioner had submitted an application u/s 5 of the Limitation Act, 1963 before the Deputy Registrar for condonation of delay. This application could also be treated as u/s 14 of the Limitation Act, 1963 as the omission to mention that section in the application was not fatal. What was to be seen was the substance.

5. The view taken by the Deputy Registrar that he has no power to condone the delay in making the application u/s 55(2) of the Act in the absence of specific provision in the Act is not correct. In that situation section 29(2) of the Limitation Act, 1963 would be attracted which provides, inter alia, that for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only insofar as, and to the extent to which, they are not expressly excluded by such special or local law. In the present case the Act does not exclude the applicability of these provisions and therefore these would apply. The only question which arises is whether the Deputy Registrar acting u/s 55(2) of the Act is a "Court". It has been held by this Court in *K. G. Ansari vs. S. P. Agarwal*, 1989 MRU 36 that the Registrar, his nominee the Additional Registrar and the Deputy Registrar are all "Courts" when they exercise power u/s 64 of the Act. On the same reasoning they must be held to be Courts when they exercise the function u/s 55(2) of the Act for adjudication of the "dispute".

6. In *Brajnandan Sinha Vs. Jyoti Narain*, it has been observed that in order to constitute a Court in the strict sense of the term, an essential condition is that the Court should have, apart from having some of the trappings of a judicial tribunal, power to give a decision or a definitive judgment which has finality and authoritativeness which are the essential tests of a judicial pronouncement. Again in *Shri Virindar Kumar Satyawadi Vs. The State of Punjab*, it has been observed that it may be stated broadly that what distinguishes a Court from a quasi-judicial tribunal is that it is charged with a duty to decide disputes in a judicial manner and declares the rights of parties in a definitive judgment. To decide in a judicial manner involves that the parties are entitled as a matter of right to be heard in support of their claim and to adduce evidence in proof of it. And it also imports an obligation on the part of the authority to decide the matter on a consideration of the evidence adduced and in accordance with law. When a question therefore arises as to whether an authority created by an Act is a Court as distinguished from a quasi-judicial tribunal, what has to be decided is whether having regard to the provisions of the Act it possesses all the attributes of a Court. Following these decisions in *Thakur Jugal Kishore Sinha Vs. Sitamarhi Central Co-operative Bank Ltd.* and *Another*, the Assistant Registrar of Co-operative Societies functioning u/s 48 of the Bihar and Orissa Co-operative Societies Act, 1935 was held to be a Court for the purpose of the Contempt of Courts Act, 1952.

7. In *Mukri Gopalan Vs. Cheppilat Puthanpurayil Aboobacker*, it has been held that an appellate authority constituted u/s 18 of the Kerala Rent Act, 1965

functions as a Court and the period of limitation of 30 days prescribed u/s 18 governing appeals by aggrieved parties will be computed keeping in view the provisions of sections 4 to 24 of the Limitation Act, 1963. Such proceedings will attract section 29(2) of the Limitation Act and consequently section 5 would also be applicable to such proceedings. Appellate Authority will have ample jurisdiction to consider the question whether delay in filing such appeals could be condoned on sufficient cause being made out by the concerned applicant for the delay in filing such appeals. The Supreme Court has further held in this case that it cannot be said that unless such Courts functioning under special law or local law are constituted under the Civil Procedure Code, section 29(2) cannot apply to them. The express language of section 29(2) clearly indicates that such special or local law must provide for period of limitation for suit, appeal or application entertainable under such laws and for computing period of limitation under such special or local law the Legislature has made available the machinery of sections 4 to 24 inclusive as found in Limitation Act. Nowhere it is indicated that as per section 29(2) the Courts functioning under such special or local law must be governed whole hog by Civil Procedure Code.

8. In *P. Sarathy Vs. State Bank of India*, also it has been held that the word "Court" occurring in section 14 of the Limitation Act, 1963 includes any authority or tribunal having trappings of a Court and it need not be a Civil Court.

9. The Deputy Registrar while dealing with a dispute u/s 55(2) of the Act has the trappings of a judicial tribunal, has the power to give a decision or definitive judgment. It is charged with a duty to decide disputes in a judicial manner. Therefore, it is a Court for the purposes of the applicability of section 29(2) of the Limitation Act, 1963. It need not be full-fledged Civil Court governed by the Code of Civil Procedure. Section 29(2) of the Limitation Act, 1963 is attracted for computing the period of limitation for any suit, appeal or application to be filed before authorities under special or local law if the conditions laid down in the said provision are satisfied and once they get satisfied the provisions contained in section 4 to 24 shall apply to such proceedings meaning thereby the procedural scheme contemplated by these sections of the Limitation Act get telescoped into such provisions of special or local law. It amounts to legislative shorthand. (*Mukri Gopalan supra*). Therefore, the Deputy Registrar would have the power to condone delay by invoking the aid of Section 5 of the Limitation Act if sufficient cause for the delay is shown.

10. The learned counsel for the respondent No. I has cited two decisions. One is *Sakuru Vs. Tanaji*, . In that case section 93 of the A. P. (Telangana Area) Tenancy and Agricultural Lands Act had the effect of making sections 12 to 24 of the Limitation Act, 1963 applicable to the appeal or application before the Collector and therefore it was implicit that the applicability of section 5 of the Limitation Act was excluded. The other decision is *Ramjati vs. M. P. State Co-operative Tribunal*, 2001 (3) MPU 399. In that case the provisions of section 29(2) or section 5 of the Limitation Act were not invoked and therefore that aspect could

not be considered.

11. It is well settled that in construing Section 5 of the Limitation Act, 1963, the Court has to keep in mind that the discretion in the section has to be exercised "to advance substantial justice". The Court has a discretion to condone or refuse to condone the delay as is evident from the words "may be admitted" used in the section. The principle of advancing substantial justice is of prime importance when construing the expression. (M.K. Prasad Vs. P. Arumogam, and Vedabai @ Vijayanatabai Baburao Pateil Vs. Shantaram Baburao Patil and Others, . In the present case the petitioner has been prosecuting his remedy before the Labour Court and then the statement of claim was returned on 19-7-2000. The petitioner took sometime to draft another petition and present it before the Deputy Registrar. There was no unusual delay. It cannot be lost sight of that the petitioner is an unemployed person living in a village in Hoshangabad and he must have taken sometime to make arrangements, engage a lawyer and then submit the application before the Deputy Registrar at Bhopal. The delay deserves to be condoned.

12. In view of the foregoing discussion, the impugned orders are quashed. The delay is condoned. Twelve years have already passed since the order of termination of services of the petitioner was passed by the respondent No. 1. It is directed that the Deputy Registrar, Co-operative Societies will now decide the application of the petitioner u/s 55(2) of the Act on merits within six months from today. The parties are directed to appear before him on 14-7-2003.