
(2000) 08 AHC CK 0107

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 5054 of 1998

Devendra Dutta Bahuguna

APPELLANT

Vs

The Secretary, Co-operative Development Federation and
Others

RESPONDENT

Date of Decision : 02-08-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 3 UPLBEC 2639

Hon'ble Judges : Dev Kant Trivedi, J; D.S. Sinha, J

Bench : Division Bench

Advocate : C.D. Bahuguna, for the Appellant; S.C. and M.P. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

D.S. Sinha, J.—Heard Shri C.D. Bahuguna, the learned Counsel appearing for the petitioner and Shri M.P. Gupta, the learned Counsel appearing for the respondents.

2. The services of the petitioner an employee of the respondents, were terminated in connection with the alleged embezzlement of an amount of Rs. 31,588.99 and prolonged absence from duty.

3. However, the petitioner was reinstated in pursuance of an adjudication by the Labour Court vide its order dated 21.5.1996 in his favour.

4. The Labour Court had left open to the respondents to hold an enquiry against the petitioner in respect of the alleged embezzlement. It transpires that an enquiry was held by the respondents wherein it was found that the petitioner had embezzled the amount of Rs. 31,475.49. Then the matter was referred to the Deputy Registrar, Co-operative Society, Garhwal Mandal, U.P. who passed an order dated 25.6.1988 u/s 68 of the U.P. Cooperative Societies Act, 1965 (hereinafter called the "Act") directing the recovery of an amount of Rs.

31,588.99 with interest at the rate of 18% per annum.

5. In pursuance of the above order dated 25.6.1988 the recovery proceedings were initiated on 13.8.1991. The petitioner challenged the recovery proceedings before this Court in Civil Misc. Writ Petition No. 13275 of 1991. He prayed for stay of recovery proceedings. The Court vide its order dated 29.5.1991 called upon the respondent/respondents to show cause why the petition be not admitted or heard and disposed of at admission stage.

6. At this stage it is relevant to notice that the Court did not grant any interim order staying the recovery proceedings. The Writ Petition remained pending.

7. There is no material on record of the Civil Misc. Writ Petition No. 13275 of 1991, aforesaid, to indicate that the petitioner took steps to serve notice on the respondents in pursuance of the order of the Court dated 29.5.1991.

8. The petition remained pending and it was eventually dismissed in default on 31.1.1998. The order of dismissal is still intact.

9. During the pendency of the Civil Misc. Writ Petition No. 13275 of 1991, in the absence of any interim order staying the recovery proceedings, the respondents issued afresh demand notice which is the subject-matter of challenge in the present Writ Petition. In the present Writ Petition, the Court permitted the petitioner to serve the respondents personally in addition to normal mode of service. The respondents have filed the counter-affidavit. It is not disputed that the copy of the counter-affidavit was served on the learned Counsel for the petitioner on 16.3.1998. More than 2-1/2 years have elapsed, no rejoinder-affidavit has been filed.

10. In the counter-affidavit on behalf of the respondents, inter-alia, it is pointed out that for redressal of his grievance raised herein the petitioner has got an effective statutory alternative remedy of appeal u/s 128 of the Act besides remedy of approaching the District Magistrate and the Recovery Officer.

11. The learned Counsel appearing for the petitioner has not been able to dispute the position that the petitioner has got an effective statutory alternative remedy of appeal u/s 128 of the Act.

12. Ignoring the factum of availability of statutory alternative remedy of appeal, u/s 128 of the Act, the petitioner approached this Court on the wrong assertion in para 29 of the petition that no alternative efficacious speedy remedy was available to him. It cannot be gain-said that invoking the extraordinary jurisdiction of this Court under Article 226 of Constitution of India on wrong averments disentitles the petitioner for the benefit of any discretionary relief from this Court. Such a conduct of the petitioner renders his petition liable to be dismissed at the thresh-hold.

13. On the facts and circumstance noticed above, in the opinion of the Court, the petitioner is not a fit person in whose favour this Court may exercise its

discretionary and extraordinary jurisdiction under Article 226 of Constitution of India.

14. Thus, the Writ Petition is dismissed summarily. The interim order dated 12.2.1998 shall stand vacated.