(2014) 04 KAR CK 0084

In the Karnataka High Court

Case No : W.P. No. 14111/2014 (CS-RES)

Devoji Rao APPELLANT

Vs

The Tumkur Co-Operative Milk Producers Societies Union Ltd. RESPONDENT

Date of Decision : 07-04-2014

Acts Referred:
Karnataka Co-operative Societies Act, 1959 — Section 70

Citation : (2014) 04 KAR CK 0084

Hon'ble Judges : B.S. Patil, J

Bench : Single Bench

Advocate : Pradeep H.S., Advocate for the Appellant; Ramachandar Desai, Advocate for C/R1, Advocate for the Respondent

Final Decision : Dismissed

Judgement

B.S. Patil, J.—This writ petition is filed challenging the order dated 26.02.2014 passed by the Karnataka Appellate Tribunal (for short, ''the Tribunal) allowing the revision petition filed by the 1st respondent-Tumkur Co-operative Milk Producers Societies Union Limited (for short, ''the Union'').

2. The case of the petitioner is that he was earlier an employee of a Federal Society and later on, his services were transferred to the 1st respondent-Union in the year 1994 as a helper. He was terminated from service on 28.12.1996 on the allegations of misappropriation of Rs. 1,14,480-80ps. Order of termination was challenged before the Labour Court. The claim made before the Labour Court was dismissed on 30.10.2003 in view of the judgment rendered by this Court holding that the Labour Court did not have jurisdiction to entertain the dispute between a Co-operative Society and its employee and that he had to raise a dispute as per Section 70 of the Karnataka Co-operative Societies Act, 1959 (for short, the Act'').

3. Petitioner did not take immediate steps to raise such'' a dispute. He kept quiet till the year 2011 and raised a dispute only after the expiry of nearly eight years.

An application seeking condonation of delay was filed. The Joint Registrar of Co-operative Societies allowed the application and condoned the delay. The 1st respondent-Union preferred a revision petition before the Tribunal challenging the order condoning the delay. The Tribunal has passed the impugned order allowing the Revision Petition and setting aside the order passed by the Joint Registrar condoning the delay. In this background, the petitioner is before this Court.

4. I have heard the learned counsel for the petitioner and the learned counsel appearing for the Caveator-respondent No. 1.

5. It is contended by the counsel for the petitioner that explanation offered for condonation of delay made out sufficient cause and the Joint Registrar had rightly accepted the same while condoning the delay, but the Tribunal has erroneously interfered with the said order. It is his submission that the Tribunal has failed to take note of the evidence on record while passing the impugned order.

6. As can be seen from the order passed by the Tribunal, I find that the Tribunal has examined the evidence led in by the petitioner in support of his prayer for condonation of delay. It has recorded a specific finding holding that as back as in the year 2003, petitioner''s claim was dismissed by the Labour Court stating that it had no jurisdiction to entertain his claim. Petitioner was also directed to approach the appropriate authority, but he approached the Joint Registrar by raising a dispute only during the year 2011. The Tribunal has rightly come to the conclusion that petitioner was required in law or atleast was expected, in the facts and circumstances of the case, to raise a dispute u/s 70 of the Act within a reasonable period soon after the Labour Court dismissed his claim for want of jurisdiction during the year 2003, but without any justification, he kept quiet till the year 2011.

7. The Tribunal has also considered the fact that even if it is to be stated that petitioner had the limitation period of six years to raise a dispute, there was no justification for him to further delay filing of the petition u/s 70 of the Act after the expiry of the said period of six years.

8. It is not in dispute that even after the expiry of six years from the date of dismissal of the claim by the Labour Court, there is a further delay of 508 days. This delay is sought to be explained by the petitioner stating that since he had lost his wife and mother, he was disturbed and was not in a position to take immediate steps. It is true petitioner has lost his wife in the year 2005 and mother during the year 2008. In fact, this aspect has been considered by the Tribunal in paragraph 10 to come to the conclusion that for the purpose of further delay, particularly the delay of 508 days in presenting a petition u/s 70 of the Act during the year 2011, there was no explanation. Evidence of the petitioner is considered by the Tribunal. After re-appreciating the entire matter, the Tribunal has come to the conclusion that reasons given by the petitioner

asserting that there was financial crisis and that there was death of his family members which prevented him from availing the remedy could not be accepted. These findings recorded by the Tribunal after analyzing the evidence on record cannot be characterized as one suffering from non-application of mind to the relevant facts, nor can the findings be termed as illegal warranting interference in exercise of the writ jurisdiction.

9. Learned counsel for the petitioner has placed reliance on the judgment in the case of Improvement Trust, Ludhiana Vs. Ujagar Singh and Others, to contend that justice can only be done by considering the matter on merits and not by dismissing the petition on technical grounds. The facts and circumstances of case as analyzed by the Tribunal and the decisions on which the Tribunal has placed reliance while coming to such conclusion make it very clear that the findings recorded by the Tribunal are unexceptional. The judgment on which reliance is placed by the learned counsel for the petitioner cannot be made applicable to the facts and circumstances of the present case.

10. Hence, this writ petition being devoid of merits is dismissed. However, it is made clear that dismissal of the writ petition will not have any bearing on the disposal of the matter on merits pertaining to recovery of the alleged misappropriated amount.