(1969) 03 P&H CK 0041

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 2144 of 1968

Dharam Pal Soni APPELLANT

Vs

State Of Punjab and others RESPONDENT

Date of Decision : 26-03-1969

Acts Referred:
Punjab Co operative Socities Act, 1955 — Section 55

Citation : (1969) 03 P&H CK 0041

Hon'ble Judges : Bal Raj Tuli, J

Bench : Single Bench

Advocate : U.S. Wasu with Mr. L.S. Wasu, for the Appellant; H.S. Khoji for Respondent No.2 and Mr. Kuldip Singh, for Advocate General Punjab, for the Respondent

Final Decision : Dismissed

Judgement

B.R. Tuli, J.—The Petitioner Dharam Pal Soni was appointed Store Keeper of the Jullundur Central Cooperative Consumers'' Store Ltd., Jullundur, hereinafter referred to as the Store, by the Board of Directors of the Store by order dated 4th May, 1963.The scale of his pay was fixed as Rs. 125.5-175 inclusive of all allo-wances. He was to draw Rs 125/- p.m. from 11th April, 1963, to 30th April, 1963, and Rs. 150/- with effect from 1st May, 1963, onwards. He was promoted as Purchase and Sale Assistant in the grade of Rs. 200-10-300 with effect from 1st April, 1964, ut the stand of the Respondents is that he was appointed in the grade of Rs. 200-10-300 as Chief Store Keeper and Supply Officer and was made responsible for the supply line by a resolution of the Board of Directors dated 6th July, 1964. The office order was issued on 12th September, 1964, according to which Shri Dharam Pal Soni, Store Keeper, General Merchandise, was to take over as Purchase and Sale Assistant (new post) in the grade of Rs. 200-10-300. It is further stated that "Pay revision from 1st April, 1964. Arrears to be paid. Conveyance allowance is to be decided by the Board in the next meeting." On 10th October, however, another order was passed which is as under:

Shri Dharam Pal, Purchase and Sale Assistant.

In partial supersession of this office order No. 542-46 dated 14th September, 1964, you are informed that your appointment is approved as purchase and sale assistant in the grade of Rs. 200-10-300 w. e. f. 14th September, 1964 by the Board (vide resolution No. 9 dated 8th October, 1964). It is further to intimate to you that your pay is raised from 14th September, 1964. The amount of excess payment received by you, should please be paid in 4 instalments starting from October, 64 salary.

2. Bawa Narinder Singh was working as Assistant Manager (Stocks and Supplies) according to the return but as Stock and Supplies Officer according to the Petitioner and that post was abolished with effect from loth January, 1968, and the Petitioner was directed to take charge of the records etc from him. The Petitioner was required to perform the duties which were performed by Bawa Narinder Singh before that. The Petitioner, on 14th June, 1968 received a letter from the General Manager, No. 1286-87 dated 8th June, 1968, informing him that the post which he was holding in the establishment of Store had been abolished and thirty days'' notice was being given to him and he should hand over charge to Shri R. N. Shorey, Manager Super Bazar, after the expiry of the period of notice. According to the Petitioner, this notice was issued mala fide at the instance of the Minister for Co operation of the Punjab State. In a meeting of the Board of Directors held on 2nd March, 1968, there was an item on the agenda "To consider termination of services of Shri Dharam Pal Soni, Incharge Stock and Supplies, as desired by the Minister for Co-operation Department of Punjab" and the following resolution was passed:

It was enquired from the General Manager regarding the integrity and the work of Shri Dharam Pal Soni and he stated that he is a good worker and nothing is against him. It was, therefore, resolved that the reference may be made to the Minister for Cooperation through the Registrar Co operative Societies, Punjab to find out the special allegations against the individual and the reasons for which it was proposed to terminate his services.

3. Thereafter, a meeting of the Board of Directors was held on 3rd May, 1968, in which one of the items on the agenda was to consider D.O. letter No. Store/590 dated 19th March, 1968, from the Joint Registrar, Co-operative Societies, Punjab, Chandigarh, regarding termination of the services of Shri Dharam Pal Soni There was a note appended to the said item of the Agenda saving that "the Minister for Co-operation desired that the services of Shri Dharam Pal Soni should be terminated. the matter came up for consideration in the meeting of the Board of Directors held on 2nd March. 1968. in which it was resolved that a reference should be made to the Minister for Co-operation through the Re-gistrar, Co operative Societies to find out the special allegations against Shri Dharam Pal Soni and reasons for which it. was proposed to terminate his services Consequently a reference was made to the Registrar, Co-operative Societies, Punjab, who had intimated vide his aforesaid D. O letter that in view of the

increased operational cost the post of Purchase and Sale Assistant has become redundant and that the incumbent of the post was obviously responsible for the heavy purchases which had in many cases been made in disregard to the requirement of the Store and the past sales. He further desired that matter should be referred to the Board for orders and in case the Board was unable to comply with the orders of the Minister, the Chairman of the Board might discuss the matter with the Minister and have it clarified. The matter is submitted to the Board for consideration". Against this item, the following resolution was passed:

Resolution No 4-Considered. It was resolved that the Deputy Registrar Co-operative Societies should be requested to go into the whole case and the work of Shri Dharam Pal Soni and make a report to the Chairman tor taking further necessary action.

4. The next meeting of the Board of Directors was held on 13th June, 1968, and the relevant item on the agenda and the decision of the Board in respect thereof was To approve action taken against Shri Dharam Pal Soni in pursuance of Resolution No. 4 of previous meeting of the Board of Directors. Deputy Registrar of Co-operative Societies, Jullundur, made a report to the Chairman who has agreed with the former As the post held by Shri Dharam Pal Soni was found redundant, the same should be abolished Consequently 30 days'' notice should be issued to Shri Dharam Pal Soni that his services are no longer required after the expiry of 30 days'' notice. This proposal was approved by the Board. Shri Chander Parkash only disagreeing.

5. The Petitioner filed the present writ petition is this Court on 11th July, 1968, which came up for admission before the Motion Bench on 112th July 1968. The petition was admitted, but stay was not granted with the result that the Petitioner had to leave his post.

6. The return has been filed by the Jullundur Co-operative Consu-mers Stores Ltd. Jullundur, Respondent 2 and by the State of Punjab Respondent 1. Respondent 1 has mainly stated that the matters related to Respondent 2. The issuance of the D. O. letter by the Joint Registrar, Co operative Societies, Punjab, jullundur dated 19th March, 1968, is admitted, and it is further stated that the Petitioner was entitled to refer the case for arbitration u/s 55 of the Punjab Co operative Socities Act. 1955. In the return filed by Respondent 2, the following two preliminary objections have been raised:

(1) Respondent 2 is a Co operative Society registered under the Punjab Co-operative Societies Act 1961. It is a private body and not a public body and no writ petition lies against such a private body to challenge this order. As such, the writ is liable to be dismissed.

(2) u/s 55 of the Punjab Co-operative Socities Act, the Petitioner is bound to refer the dispute to the Registar, Copera-tive Societies or his nominee for arbitration and as such the writ petition is not maintainable.

7. On merits, it has been emphasized that the post held by the Petitioner was abolished in the interest of economy and therefore, his services were terminated. He had no lien on any other post. It is denied that he had been appointed a permanent Store Keeper. It is further stated that the Minister for Cooperation of the Punjab State came into the picture only at one stage. He visited the Cooperative Storers, Jullundur, in the months of January and February, 1968 and discussed the problems and working of the Store with the officials, management and some public men. He thereafter suggested that Respondent 2 should consider the desirability of withdrawing the duties of purchases from the Petitioner as he had found his work unsatisfactory on account of complaints received against him. Thereafter, the job of purchases was not assigned to the Petitioner and he was given other duties only. Thereafter, the Minister did not come into the picture and the order terminating the Petitioner''s services had been passed by the Board in the interest of the Store and not under the pressure of the Minister or anybody else. The Petitioner was given 30 days'' notice before terminating his services. At the hearing of the petition, the learned Counsel for Respondent 2, on my enquiry, stated that this notice had been issued u/s 22 of the Punjab Shops and Commercial Establishments Act, 1958. The Petitioner filed a replication and Respondent 2 filed a further affidavit in reply there to.

8. The first point argued by the learned Counsel for the Petitioner is that Respondent 2 is "State" within the meaning of Article 12 of the Co-stitution and, therefore, before terminating the services of the Petitioner, the procedure prescribed in Article 311 of the Constitution had to be followed. Since that procedure was not followed, the termination of his services is illegal and should be quashed. The reason in support of this argument is that the State Government holds twenty thousand shares of Rs. 10 each in the Cooperative Society Respondent 2 and under the Act the Registrar of Cooperative Societies exercises complete control on the business, management and affairs of the Cooperative Societies. In reply, it has been urged that Respondent 2 is an ordinary Cooperative Society registered under the Punjab Cooperative Societies Act, 1961 and cannot be termed as ''State'' as defined in Article 12 of the Constitution; The State Government is only one of the shareholders and it is admitted that it holds twenty thousand shares of Rs. 10 each. The members of the general public are stated to be holding seventeen thousand seven hundred and fifty-three shares. The management of the Society is in the hands of the Board of Directors which is elected according to the bye-laws of the Society. The Government has a right to nominate up to one-third members of the Managing Committee subject to a maximum of three. The other members of the Managing Committee consist of one representative for every one thousand individual shareholders under Class "A" subject to a minimum of six, one representative of ''B'' class shareholders, one representative of ''C'' class shareholders and General Manager and the Assistant Registrar, Cooperative Societies, are ex-offcio members. It is thus claimed that Respondent 2 is mostly being run by the Government and, in any case, strictly under its supervision and, therefore, it is a

"State". Reliance has been placed on a Division Bench judgment of the Madhya Pradesh High Court in Dukhooram Gupta Hari Prasad Gupta Vs. Co-operative Agricultural Association Ltd. and Others,), in which it was held that:

A cooperative Society under the Cooperative Societies Act, 1912, with which we are concerned in the instant case, has power to make byelaws. We shall refer to the relevant provisions of the Act and the byelaws later. These byelaws are binding on it as well as the public coming within the ambit of the byelaws. A society registered under the Act would thus fall within the meaning of "State" as defined in Article 12 and Chapter III would thus have application to such a society.

In this judgment, the learned Judges relied upon the judgment in Bramadathan Nambooripad v. Cochin Dewaswom Board(A.I.R. 1956 T.C. 19) in which it was held that "the expression referred to any authority or body of persons exercising the power to issue rules, byelaws or regulations having the force of law."

9. I Madan Mohan Sen Gupta and Another Vs. State of West Bengal and Others, , it was held (as per Head Note (a) that-

A Co-operative Society registered under the Bengal Cooperative Societies Act, 1940, or its managing committee is amenable to the writ jurisdiction of the High Court.

What constitutes a public authority cannot be precisely defined. Profit making is one of the distinguishing features of an authority not being a public authority. Commercial under-takings and Companies, which are profit making concerns are not generally public authorities.

The Management of the affairs and the activities of such Societies are entirely controlled by the Registrar of the Cooperative Societies who is a public authority. Such affairs cannot be private affairs. It is not necessary that a body in order to be a public body must always be constituted by a State though its powers and duties are created by an Act or the rules. The control which State Government and the Registrar have over such Cooperative Societies is one of the distinguishing features for the maintainability of an application under Article 226 of the Constitution. Even where the Society is a person, there cannot be any broad and general proposition that no writ lies against him. It depends on particular facts of each case

10. The learned Counsel for the Petitioner has then sought to get support for his argument from the judgment of their Lordships of the Supreme Court in Rajasthan State Electricity Board, Jaipur Vs. Mohan Lal and Others, , in which it was held that the Rajasthan Electricity Board is a "State". It was further held that "the expression ''other authorities'' in Article 12 is wide enough to include within it every authority created by a Statute and functioning within the territory of India, or under the control of the Government of India; and we do not see any reason to narrow down this meaning in the context in which the words "other

authorities" are used in Article 12 of the Constitution." This judgment in my opinion, is distinguishable in the sense that the Electricity Board is created under the provisions of the Electricity Supply Act.

11. As against these authorities, the learned Counsel for Respondent 2 has relied upon the judgment of D. Basu J. in, Kartick Chandra Nandi v. West Bengal Small Industries Corporation Ltd AIR 1967 Cal 261. in which the learned Judge held as under:

The residuary expression ''other authorities'' comes after ''local authority''. It is to be noted that the word ''authority'' is common to both local'' and ''other bodies'' referred to by the definition. The Dictionary meaning of the word ''authority'' is a person or bo:iy exercising power or having a legal right to command and be obeyed (Webster''s Dictionary; Odham''s Dictionary). From this, it has been held that the word ''authority'' in Article 12 refers to persons or bodies having the power to make rules, bye-laws etc. having the force of law Nambooripad v. Cochin Dewaswom Board2, and also the power to enforce them The University of Madras Vs. Shantha Bai and Another, The possession of these powers brings the ''other authorities'' on the same platform with the Government and Legislature of the Union or a State or a local authority, such as a Municipality and like bodies which come within the definition of the expression ''local authority'' in Section 3(31) of the General Clauses Act, 1897, which has been imported to interpret the expression ''local authority'' in Article 12 of. R. Sarangapani and Another Vs. The Port Trust of Madras, Kishan Singh and Another Vs. State of Punjab and Others, Though there has been some controversy as to whether the expression ''other authorities'' must be interpreted ejusdem generis with the expression '' The University of Madras Vs. Shantha Bai and Another, or It would comprise other statutory bodies which do not or it discharge functions similar to that of of local self-Government organ, e.g., a Mohan Lal Vs. State and Others, , there is an agreement on the following points:

(i) In order to constitute an ''other authority'' within the meaning of Article 12, the body must be a body created by statute and having the power to make regulations having the force of law Parmatma Sharan and Another Vs. Hon''ble the Chief Justice Rajasthan High Court and Others, or exercising statutory powers as a ''public authority (Mohan Lal Vs. State and Others,

(ii) A non-statutory body, such as a company (S.K. Mukherjee''s case.11 or a State-aided educational institution (Devdas v. Karnatak Engineering College AIR 1964 Mys (11) and exercising no statutory powers, cannot come within the definition of ''State'' in Article 12.

12. The learned Counsel for Respondent 2 has then relied upon a Division Bench judgment of Andhra Pradesh High Court in Narasimhan (K.V.) Vs. Chicacole Co-operative Central Bank Limited, in which it has been held (as per Head Note) as under:

A writ which is available to an aggrieved party could not be issued to private bodies or organization like companies or cooperative societies. It could be issued only to inferior Courts, tribunals and bodus entrusted with powers by the law of the land to affect the right of parties. Hence an order passed by a cooperative society dispensing with the services of one of its employee could not be challenged in a writ proceeding on the ground that such order was passed in violation of the bye-laws framed by the sociaty.

13. In C. Lakshmiah Redaiar v. The Sri Perumbadur Taluk Cooperative Marketing Society Ltd.(AIR 1964 Mys (11))., it has been held by a Division Bench as under:

The Board of Directors of a Cooperative Society in considering the objections to the nominations for the election of members of the Board of Directors is not & statutory Tribunal with authority to determine the rights of parties: No doubt the Directors at a meeting of the Board discharge the functions entrusted to them by the regulations, but these regulations are framed by the Society itself and have no statutory force. Clearly therefore an order of the High Court under Article 226 of the Constitution cannot issue to quash the proceedings of such a body.

14. After perusing the above-cited judgments I came to the conclusion that there was a judicial conflict on the point set out above and on the point whether a writ under Article 226 of the Constitution of India can be issued to the Cooperative Society. I was inclined to refer this petition to a larger Bench for decision, but I have| come across a decision of their Lordships of the Supreme Court in Praga Tools Corpora-tionv. C.A. Inamual and other C.A No 612 of 1966 decided on February 19, 1969, and reported as 1969 Supreme Court Notes 208. The facts, as given in the said note, are that the Union Government and the Government of Andhra Pradesh held 56 per cent and 32 per cent shares respectively and the balance 12 per cent shares were held by private individuals in the Petitioner Corporation. Being the largest shareholder, the Union Government had the power to nominate the company''s directors. On these facts, it was held-

Even so, being registered under the Companies Act and governed by the provisions of the Act, the company is a separate legal entity and cannot be said to be either a Government Corporation or an industry run by or under the authority of the Union Government. A mandamus lies to secure the performance of a public or statutory duty in the performance of which the one who applies for it has a sufficient legal interest. Thus, an application for mandamus will not lie for an order of reinstatement to an office which is essentially of a private character nor can such an application be maintained to secure performance of obligation owed by a company towards its workmen or to resolve any private dispute. The company being a non-statutory body and one incorporated under the Compaines Act, there was neither a statutory nor a public duty imposed on it by a statute in respect of which enforcement could be sought by means of a mandamus, nor was there in its workmen any corresponding legal right for enforcement of any such statutory or public duty.

15. These observations aptly apply to Respondent No. 2 in the instant case,

which is a Cooperative Society registered under the Punjab Coopera tive Societies Act, 1961, and is governed by the provisions of that Act.Respondent No. 2 being a non statutory body and one incorporated under the Punjab Cooperative Societies Act, there is neither a statutory duty nor a public duty imposed on it by a statute in respect of which the Petitioner can seek enforcement by means of mandamus. In view of this judgment of their Lordships of the Supreme Court, I am of the considered view that the writ petition is not competent.

16. Another point raised by the learned Counsel for the Petitioner is that even if the post held by the Petitioner was abolished, he should have been reverted to the post which he held before he came to the post of Stock and Supplies Officer and that was the post of Purchase and Sale Assistant. This matter can only be raised and decided if the Petitioner has the right to maintain the writ petition. Since I have held above that the writ petition is not maintainable, the Petitioner cannot lie granted any relief in this petition on any ground.

17. For the reasons given above, this petition is dismissed but without any order as to costs.

