

(1995) 09 SHI CK 0002

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 282 of 1994

Dina Nath

APPELLANT

Vs

The Kangra Central Co-operative Bank Ltd. and Others

RESPONDENT

Date of Decision : 08-09-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 10, Order 7 Rule 11, 80
Himachal Pradesh Co-operative Societies Act, 1968 — Section 76

Citation : (1995) 4 ILR HP 2465

Hon'ble Judges : Kamlesh Sharma, J

Bench : Single Bench

Advocate : K.D. Batish, for the Appellant; Rakesh Kanwar, for the Respondent

Final Decision : Allowed

Judgement

Kamlesh Sharma, J.—This appeal is directed against the decree and judgment dated 12.5.1994 passed by Additional District Judge (I), Kangra at Dharamshala, whereby the appeal of the Appellant-Plaintiff was dismissed and the cross-objections of the Respondents-Defendants were allowed to the extent that the suit is not maintainable for want of notice u/s 76 of the Himachal Pradesh Co-operative Societies Act, 1968 (hereinafter called the Act), and the decree of the trial court was confirmed whereby the suit of the Appellant-Plaintiff was dismissed.

2. The brief facts are that the Appellant-Plaintiff was selected as , Peon-cum-Chowkidar in the scale of Rs. 375-600 by Respondents-Defendants 1 and 2 and was offered appointment as such"vide letter dated 10.10.1983, in pursuance of which he submitted his joining report, character certificate and deposited the security amount of Rs. 250/- in the Branch Office, Gagret, where he was posted. On 19.10.1983, Respondent-Defendant No. 3, the Branch Manager asked him to produce educational certificate. The Appellant-Plaintiff produced Certificate Grade III in Hindi, equivalent to middle standard, which he had acquired being Ex-serviceman. According to the Appellant-Plaintiff, he fulfilled the educational

qualification and the condition of his ability to handle a gun. Thereafter the Respondent-Defendant No. 3 did not permit the Appellant- Plaintiff to join his duties. The grievance of the Appellant-Plaintiff is that number of persons, who were originally impleaded as Defendants No. 4 to 15 but later on their names were deleted vide order dated 17.9.1993, were allowed to work as Peon-cum-Chowkidar, though they were less qualified than the Appellant-Plaintiff. He had filed Civil Writ Petition No. 224 of 1985 before this Court to agitate his grievance, in reply to which the then Registrar, Co-operative Societies filed his affidavit that action would be taken against the original-Defendants No. 4 to 15. In view of the affidavit of the Registrar, Co-operative Societies, the Appellant-Plaintiff withdrew his writ petition. His allegations are that no action was taken to terminate the services of original Defendants No. 4 to 15, instead they were regularised. In this background, the Appellant-Plaintiff filed civil suit on 27.12.1988.

3. The Respondents-Defendants contested the suit and raised number of preliminary objections that the Appellant-Plaintiff has no cause of action to file the suit; it is barred by limitation; the court has no jurisdiction to try it; it is barred u/s 76 of the Act and it is bad for non-joinder of the Registrar, Co-operative Societies. On merits, it was admitted that the Appellant-Plaintiff was offered a temporary post of Peon-cum-Chowkidar on 10.10.1983 and was posted in Branch Office, Gagret subject to fulfilment of conditions as specified in the appointment letter. Since he failed to produce the certificate for the minimum educational qualification, he was not allowed to join his duties. It is also admitted that enquiry was conducted by this Registrar, Co-operative Societies and on the basis of his report show cause notices were issued to original Defendants No. 4 to 15 as to why their services be not terminated but they filed civil suits which were ultimately decreed in their favour and having failed in the first appellate court, the Respondents-Defendants have regularised their services., According to them, original Defendants No. 4 to 15 were appointed earlier to the Appellant-Plaintiff under the old rules, as such, their case is not comparable with that of the Appellant-Plaintiff. Original Defendants 4 to 15 had also filed written statement opposing the suit and took almost similar stand. According to them, they were already working with Respondents-Defendants 1 & 2 and were entitled to be regularised and the educational qualification prescribed vide letter dated 26.4.1982 was not applicable in their case.

4. On the pleadings of the parties, the following issues were framed:

1. Whether the Plaintiff is entitled to the appointment as Peon-cum-Chowkidar with Defendants as alleged? OPP.
2. Whether the suit is not maintainable as alleged ? OPD.
3. Whether the Plaintiff is estopped to file the present suit by his act and conduct? OPD.
4. Whether the suit is time barred ? OPD.

5. Whether the suit is bad for mis-joinder of parties ? OPD.

6. Relief.

5. Before the trial court Issues No. 2, 3 and 5 were not pressed. Issue No. 4 was decided against the Appellant-Plaintiff and the suit was held time barred. Issue No. 1 was also decided against the Appellant-Plaintiff holding that he did not possess the educational qualification prescribed for the post of Peon-cum-Chowkidar, as such, he was not entitled for appointment to the said post.

6. The Appellant-Plaintiff has also failed before the first appellate court, who considering the grounds of appeal and the cross-objections framed the following points for determination:

1. Whether suit was maintainable in absence of notice u/s 76 H.P. Co-operative Societies Act, 1968?

2. Whether the suit was within limitation?

3. Whether the judgment and decree passed by the Trial Court requires interference by this Court ?

4. Relief.

7. All these three points were decided against the Appellant-Plaintiff holding that his suit was not maintainable in the absence of notice u/s 76 of the Act; it was time barred having been filed after three years of the cause of action which arose to him on 10.10.1983 and also that he is not entitled for appointment to the post of Peon-cum-Chowkidar having not possessed the minimum educational qualification. It is also held that he is not discriminated against original Defendants 4 to 15, who were governed by different rules.

8. This Court has heard the learned Counsel for the parties and gone through the record. Sh.K.D. Batish, learned Counsel appearing for the Appellant-Plaintiff, has vehemently urged that in the facts and circumstances of this case Section 76 of the Act is not a bar for filing the suit by the Appellant-Plaintiff. According to him, the Respondent-Defendants very well knew the grievance of the Appellant-Plaintiff which he had been agitating since long by filing writ petition in this Court and by making representation to the Registrar, Co-operative Societies, as such, not serving them notice u/s 76 of the Act, has not adversely affected them in any manner. Moreover, the dispute raised by him does not pertain to "touching the constitution, management or the business of the society", for which notice is required as provided u/s 76 of the Act. On the other hand, Shri Rakesh Kanwar learned Counsel appearing for the Respondents-Defendants, has supported the findings of the first appellate court and has urged that Section 76 of the Act is mandatory and for failure of its compliance, the suit of the Appellant-Plaintiff must fail. He has urged that the dispute pertaining to appointment to a post in the Society is a dispute touching the management or the business of the society, for which notice is must as provided u/s 76 of the Act:

Section 76 of the Act is:

76. Notice necessary in suits: No suit shall be instituted against a society or any of its officers in respect of any act touching the constitution, management or the business of the society, until the expiration of two months after notice in writing has been delivered to the Registrar or left at his office, stating the cause of action, the name, description and place of residence of the Plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.

9. After giving its best consideration, this Court has no hesitation to hold that in view of the language of Section 76 of the Act, which is couched in negative terms, it is mandatory and its compliance is must, and does not permit any exception. Its language is similar to that of Section 80 CPC , which fell for consideration of the Supreme Court of The State of Madras Vs. C.P. Agencies and Another, , wherein the learned Judges have held that:

...S. 80 is express, explicit and mandatory and admits of no implications or exceptions.... The object of Section 80 is manifestly to give the Government or the public officer sufficient notice of the case which is proposed to be brought against it or him so that it or he may consider the position and decide for itself or himself whether the claim of the Plaintiff should be accepted or resisted. In order to enable the Government or the public officer to arrive at a decision it is necessary that it or he should be informed of the nature of the suit proposed to be filed against it or him and the facts on which the claim is founded and the precise reliefs asked for.

10. Similarly, notice of two months as provided u/s 76 of the Act is required to be delivered to the Registrar, Co-operative Societies or left at his office stating the cause of action, name, description and place of residence of the Plaintiff and the relief which he claims, so that the Registrar may look into the matter and issue appropriate directions to the Management of the co-operative society either to contest the claim or to accept it in the interest of the society. From the scheme of the Act it is clear that the Registrar, Co-operative Societies is a statutory authority who exercises overall control in respect of constitution, management and business of a co-operative society, as such, he plays a vital role in respect of disputes touching the constitution, management and business of the society. Section 76 of the Act further provides that the plaint shall contain a statement that such a notice has been so delivered or left. In this regard reference to Order 7 Rule 11 (d) CPC is relevant, which prescribes that a suit shall be rejected where from the statement in the plaint it appears to be barred by any law. Therefore, the first appellate court has rightly held that Section 76 of the Act is mandatory and its compliance is necessary before a suit is entertained in respect of a dispute touching the constitution, management or the business of the society. (Also see Gangappa Gurupadappa Gugwad Gulbarga Vs. Rachawwa Gugwad and Others, and The Jawali Harijan Co-operative Agricultural Society Vs. Maghu etc. etc.,

11. The next question arises whether appointment of an employee of a society is an act touching the constitution and the business of the society, as stated in Section 76 of the Act, for which notice is required. This Court may hold without any contradiction that it is not an act touching the constitution and the business of the society, as held-by the Supreme Court in *Deccan Merchants Co-operative Bank Ltd. Vs. Dalichand Jugraj Jain and Others*, ; *Co-operative Central Bank Ltd. and Others Vs. Additional Industrial Tribunal and Others*, and *The Allahabad Dist. Co-op. Ltd. v. Hanuman Dutt Tewari* AIR 1982 SC 120, that since the word "business" is equated with the actual trading or commercial or other similar business activity of the society, the dispute relating to conditions of service of the workman employed by the society cannot beheld to be a dispute touching the business of the society. However, so far the expression "management" used in this Section is concerned, interpreting almost similar provisions in *Rajasthan Co-operative Societies Act, 1965*, the learned Judges of Rajasthan High Court have held that:

...The ambit and import of the word "touching" is very wide and it includes any matter which relates to the management of the society more particularly when the Legislature deals with the matters relating to officers and employees in the provisions of the Act and the Rules then it can be said that the matters of suspension or termination of service of officers and servants touches the management of the society. Having regard to the provisions of the Rajasthan Act and the Rules made thereunder, in our opinion, a wider meaning has to be given to the expression touching the management of the society so as to cover within its encompass officers and employees of the society....

The learned Judges have considered the Judgments in *Deccan Merchants Co-operative Ltd. v. Dalichand Jugraj Jain* and *Co-operative Central Bank Ltd. v. Additional Industrial Tribunal, Andhra Pradesh (supra)* and *Gujarat State Co-operative Land Development Bank Ltd. Vs. P.R. Mankad and Others*, and observed that the attention of the learned Judges of the Supreme Court was not drawn to the provisions of Section 76 under Chapter VII of the Gujarat Act and the Rules made thereunder and it did not fall for their consideration whether any dispute between a society and its officers or servants relating to service, touches the management of the society or not. In *Deccan Merchants Co-operative Ltd. v. Dalichand Jugraj Jain (supra)* the dispute was between a tenant and member of the bank in respect of the building, which was acquired by the co-operative bank and it was held that it is not a dispute touching the business of the bank and the word "business" was held to be used in narrower sense in Sub-section (1) of Section 91 of *Maharashtra Co-operative Act, 1961*.

12. Similarly, in *Co-operative Central Bank Ltd. v. Additional Industrial Tribunal, Andhra Pradesh (supra)* the dispute was with regard to alteration of conditions of service, which was held to be not a dispute touching the business of the society. Only in *The Gujarat State Co-operative Land Development Bank Ltd. v. P.R. Mankad and Anr. (supra)* the expression "management of the society" used in

Section 96(1) of the Gujarat Co-operative Societies Act, 1961, has been interpreted and it is observed that:

...Grammatically, one meaning of the term "management" is: "the Board of Directors" or "the apex body" or Executive Committee at the helm which guides, regulates, supervises, directs and controls the affairs of the Society". In this sense, it may not include the individuals who under the overall control of that governing body or Committee, run the day-to-day business of the Society... Another meaning of the term "management", may be: "the act or acts of managing or governing by direction, guidance, superintendence, regulation and control the affairs of a Society"....

A still wider meaning of the term which will encompass the entire staff of servants and workmen of the Society, has been canvassed for by Mr. Dholkia. The use of the term "management" in such a wide sense in Section 96(1) appears to us, to be very doubtful...

Thus considered, a dispute raised against the Society by its discharged servant claiming reliefs such as reinstatement in service with back wages, which are not enforceable in a Civil Court is outside the scope of the expression "touching the management of the Society" used in Section 96(1) of the Act of 1961, and the Registrar has no jurisdiction to deal with and determine it. Such a dispute squarely falls within the jurisdiction of the Labour Court under the B.I.R. Act.

13. In view of these clear observations of learned Judges of the Supreme Court, this Court finds itself unable to agree to the reasoning of learned Judges of Rajasthan High Court and holds that a dispute in respect of appointment of an employee of a co-operative society does not pertain to an act touching management of the co-operative society. In view of these findings, the compliance of the provisions of Section 76 of the Act was not necessary.

14. Be that as it may, in the present case though notice u/s 76 of the Act was not given, yet in the facts and circumstances on record the Registrar, Co-operative Societies knew about the dispute in question, as he was party to the writ petition which was withdrawn by the Appellant-Plaintiff on the assurance of the Registrar, Co-operative Societies that he would look into his grievance. In compliance to his assurance, the Registrar, Co-operative Societies did hold an inquiry and set aside appointments of original Defendants 4 to 15 but ultimately their services were regularised as the decision of the Registrar, Co-operative Societies was quashed by the Civil Court. It was in this background that the Appellant-Plaintiff has filed his suit without giving notice to the Registrar, Co-operative Societies as provided u/s 76 of the Act.

15. Though strictly speaking, notice u/s 76 of the Act was not given by the Appellant-Plaintiff, yet the Registrar, Co-operative Societies had full knowledge of the dispute in respect of the appointment of the Appellant-Plaintiff as Peon-cum-Chowkidar and if he wanted, he could give necessary directions to the Respondent-Defendant co-operative society in this regard. Therefore, this Court

holds that the suit of the Appellant-Plaintiff is maintainable and it is not barred u/s 76 of the Act.

16. The next hurdle in the way of the Appellant-Plaintiff is that his suit has been held time barred. Admittedly, cause of action arose to him when he was not permitted to join the post on 19.10.1983 and he could not file his suit within three years from the date, whereas, he has filed it on 27.12.1988. It is not in dispute that within the period of three years he had challenged the order dated 19.10.1983 in C.W.P. No. 224 of 1985, which was later on withdrawn by him on the assurance given by the Registrar, Co-operative Societies by way of his affidavit that he would look into the grievance of the Appellant-Plaintiff that he had been discriminated against original Defendants No. 4 to 15, who were similarly situated to him. When decision dated 12.12.1985 of the Registrar, Co-operative Societies went against original Defendant 4 to 15, they filed civil suits which were dismissed by the trial court in June/July, 1991 but were decreed in their favour by the first appellate court on 1.4.1992. The Appellant-Plaintiff first became party in those suits by filing application under Order 7 Rule 10 CPC but thereafter filed a separate suit on 27.12.1988. In this background it can be held that cause of action arose to him on 19.10.1983 when he was not allowed to join the post of Peon-cum-Chowkidar and thereafter on 12.12.1985 when the Registrar, Co-operative Societies gave his decision holding that neither the Appellant-Plaintiff nor original Defendants 4 to 15 were qualified to be appointed against the post of Peon-cum-Chowkidar and thereafter on the dates when stay order was granted in favour of original Defendants 4 to 15 permitting them to continue in service, whereas, the Appellant-Plaintiff was not taken into service, from which date the suit of the Appellant-Plaintiff is within limitation.

17. So far the case of the Appellant-Plaintiff on merits is concerned, it has been rejected by both the courts below on the ground that he did not possess the minimum qualification prescribed for the post of Peon-cum-Chowkidar by order dated 26.4.1982. Both the courts below have not applied their mind to the important point in issue that even original Defendants 4 to 15 were appointed, though on daily wages, on 14.12.1982 i.e. after coming into force of the Rules prescribing minimum educational qualification, and were regularised at the same time when offer of appointment was made to the Appellant-Plaintiff, as such, it cannot be said that the original Defendants No. 4 to 15 were not required to possess the minimum qualification under the Rules dated 26.4.1982. Moreover, the Appellant-Plaintiff was Ex-serviceman and had Grade-III Certificate in Hindi, which according to him was equivalent to Middle Standard besides proficiency in handling the gun, as such, he was better qualified than original Defendants 4 to 15. In these circumstances, the management of the Respondent-society was required to allow the Appellant-Plaintiff to join his duty at least on the date when they had regularised the services of Appellants-Defendants- 4 to 15 which they had done by accepting the decree and judgment dated 1.4.1992 passed by Add. District Judge (I), Kangra Division at Dharamshala Ex.P-1. Therefore, this appeal is accepted and the decree and judgment dated 12.5.1994 passed by Add.

District Judge (I) Kangra at Dharamshala and decree and judgment dated 27.7.1992 passed by Senior Sub Judge, Kangra at Dharamshala are set aside and the suit of the Appellant-Plaintiff is decreed to the extent that Respondents No. 1 and 2 are directed to consider the case of the Appellant-Plaintiff for appointment to the post of Peon-cum-Chowkidar without insisting upon the educational qualification, against a post which may fall vacant in future, if he is found otherwise fit. In the facts and circumstances of the case, the parties are left to bear their own costs.