

(2008) 03 AHC CK 0207
In the Allahabad High Court

District Administrative Committee and Secretary/General
Manager, District Cooperative Bank Ltd. and Jawahar Kapoor,
Member Secretary District Administrative Committee and
Secretary/General Manager, District Cooperative Bank Ltd.

APPELLANT

Vs

Presiding Officer, Labour Court and Pearay Lal Gangwar

RESPONDENT

Date of Decision : 18-03-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11

Citation : (2008) 2 AWC 1881

Hon'ble Judges : D.P. Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.P. Singh, J.—Heard Sri S.K. Rai, learned Counsel for the petitioner, learned Standing Counsel for the respondent No. 1 and Sri A.R. Dube, learned Counsel appearing for the respondent workman.

2. The leading petition No. 36355 of 2007 is against an award dated 29.3.2007 rendered by the labour court and the connected petition is against an order dated 24.1.2008 passed for execution of the aforesaid award. With the consent of the parties, both the petitions are being disposed of and the necessary facts of the leading petition are being considered.

3. The respondent workman was appointed a Cadre Secretary and the Chief Executive of the Co-operative Society in 1976. He was placed under suspension on 11.3.1992 whereafter a charge sheet levelling several charges, including for financial misdemeanour was served on him on 23.3.1993 and after holding a domestic enquiry, the District Administrative Committee, after examining the record, the report of the enquiry officer etc., passed a resolution on 23.4.1994 for his dismissal whereafter by order dated 31.5.1994 he was dismissed.

4. The respondent preferred a statutory appeal before the Regional

Administrative Committee which was dismissed vide order dated 28.3.1998. He, thereafter, caused an industrial dispute to be referred to the labour court u/s 4K of the U.P. Industrial Disputes Act, 1947 (here-in-after referred to as "the Disputes Act"), as to whether his termination dated 31.5.1994 was justified. The Labour Court, Bareilly registered the dispute as Adjudication Case No. 19 of 1999 and after the parties had entered their defence, had accepted the reference holding that the dismissal was not justified and reinstated him with continuity of service but with 20% back wages vide its award dated 29th March 2007 and published on 4.7.2007 which is impugned in this petition.

5. The learned Counsel for the petitioner has urged that the U.P. Co-operative Societies Act, 1965 (here-in-after referred to as "the Societies Act") is special, enactment and a complete Code under which the dispute even with regard to the termination of an employee can be decided and in fact has been decided and the statutory appeal has been rejected and therefore the entire proceedings under the Disputes Act stood vitiated and therefore the award has to be quashed. In support of his contention he has relied upon a decision rendered by the Apex Court in the case of Ghaziabad Zila Sahakari Bank Ltd. v. Addl. Labour Commissioner and Ors. 2007 3 ADJ 25 which has also been followed by learned Single Judges of this Court in several cases including in the case of U.P. Co-operative Spinning Mills v. Ram Magan and Anr. 2007 (Vol. X) ADJ 4.

6. Learned Counsel for the workman, however, has contended that the judgment in Ghaziabad Zila Sahakari Bank Ltd. (Supra) was rendered by the two learned Judges of the Apex Court without considering the effect of a Constitution Bench judgment rendered in Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, and therefore the judgment has to be ignored and this court has to follow the decision rendered by the Constitution Bench.

7. No doubt if there are conflicting decisions of the Apex Court, then the High Court is obliged to follow the ratio laid down by the Larger Bench as held in Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., and State of Orissa and Others Vs. Titaghur Paper Mills Company Limited and Another, However, the Court firstly has to examine the ratio laid down by the Apex Court in the two respective cases and find out the point of conflict between the two ratios, if any.

8. In Ghaziabad Zila Sahakari Bank case (supra) the workman had approached the Labour Court for payment of ex-gratia u/s 6H of the Disputes Act and the Labour Court had accepted the claim which was upheld by this court. It was urged on behalf of the Bank before the Apex Court that under the Societies Act read with the regulations, a full fledged remedy had been provided to the employees of the Co-operative Society to agitate their grievances and it being a special enactment, would prevail over the U.P. Industrial Disputes Act and therefore its provision would not apply. The Apex Court, even taking notice of Section 135, held that the Societies Act was a special Act and therefore would override the provisions of the Disputes Act. It also relied upon its earlier decision

rendered in the case of R.C. Tewari v. M.P. State Cooperative Marketing Federation Ltd. and Anr. 1997 SCC (L&S) 1128.

9. In Bangalore Water Supply case (supra) the Apex Court was considering the definition of the word "industry" as defined under the Disputes Act and it considered its import and laid down parameters which are to be considered to find out whether a establishment is an industry for the purposes of the Disputes Act.

10. The issue before the Apex Court in the Ghaziabad Zila Sahakari Bank Ltd.'s case (supra) was whether with regard to the service conditions of the employees of the bank, the Societies Act was special Act or the Disputes Act would govern it. In Ghaziabad Bank's case the Apex Court proceeded on the basis that the bank is an industry and it did not advert itself to the issue settled in Bangalore Water Supply's case.

11. Thus, from the above, it is apparent that there is no conflict between the two decisions and in fact the ratio of Ghaziabad Zila Sahakari Bank Ltd. (supra) and R.C. Tiwari's case (supra) is fully applicable to the facts of the present case. A learned Single Judge of this Court in the case of U.P. Co-operative Spinning Mills (supra) considering the ratio of Ghaziabad Zila Sahakari Bank (supra) and Himanshu Kumar's case AIR 1973 SC 3657 has went on to hold that the State Government had committed a manifest error in referring a dispute u/s 4-K of the U.P. Industrial Disputes Act in the case of an employee of a cooperative society. This view has also been followed by another learned Single Judge of this Court in the case of District Administrative Committee v. Labour Court, Kanpur Writ Petition No. 45448 of 1993 decided on 7.12.2007.

12. There is yet another facet to the issue. Admittedly the workman had availed the statutory remedy of appeal which has been decided against him. This decision would act as res judicata and therefore, the Labour Court could not have proceeded with the reference. The Apex Court in the case of Pondicherry Khadi and Village Industries Board v. P. Kulothangan and Anr. 2003 (99) FLR 1175 has held that where the issue was substantially the same in earlier proceedings and has been decided by the competent authority, even though the entire CPC is not applicable to industrial adjudication, the principles of Section 11 C.P.C. including the principles of constructive res judicata will apply.

13. Thus, in the opinion of the court, the reference itself was beyond jurisdiction and therefore the writ petitions succeed and are allowed and the award dated 24-3-2007 DP is hereby quashed. The consequential order in the connected petition is also quashed.