

(2003) 06 MP CK 0003

In the Madhya Pradesh High Court

Case No : Writ Petition No. 480 of 2002

District Central Co-Operative Bank Ltd., Mandsaur and
Another

APPELLANT

Vs

Prahlad Mungar (dead) through L.Rs. Rajesh Kumar and
Another

RESPONDENT

Date of Decision : 23-06-2003

Acts Referred:

Madhya Pradesh Co-operative Societies Act, 1960 — Section 55(2)

Citation : (2003) 4 MPLJ 323

Hon'ble Judges : A.K. Gohil, J

Bench : Single Bench

Advocate : A.K. Sethi, for the Appellant; A. Nimgaonkar, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Gohil, J.

This order shall also govern the disposal of connected Writ Petition No. 1496 of 2002 (Prahlad Mungad (dead) through L. Rs. Smt. Chamelibai and others vs. District Central Co-operative Bank Ltd. Mandsaur and another) as in both the petitions the impugned order dated 28-11-2001, passed by the M.P. State Co-operative Tribunal, Bhopal is under challenge.

The brief facts of the case are that one Prahlad Mungad, now dead, was an employee of the petitioners' bank. At the relevant time he was working on the post of Branch Manager. His services were dismissed after charge sheet and holding Departmental Enquiry on 19-1-1988. Thereafter the respondent/employee filed a dispute u/s 55 (2) of the M.P. Cooperative Societies Act, 1960 (for short "the Act of 1960") before the Deputy Registrar, Co-operative Societies, Mandsaur. The Deputy Registrar by order dated 14-5-1999 (Annexure-"P/13") allowed the petition filed by the employee; quashed the order of dismissal and directed for payment of full backwages from 18-1-1988 to 7-10-1995, as during

the pendency of the dispute the respondent/employee attained the age of superannuation on 7-10-1995, therefore, the Deputy Registrar has not directed for reinstatement. It was further directed by the Deputy Registrar that the amount of backwages be recovered from erring officer.

3 Against this order of Deputy Registrar (Annexure-"P/13"), petitioners Bank preferred an appeal before the Joint Registrar, Co-operative Societies, Ujjain Division, Ujjain, challenging the quashment of the dismissal order and the order of awarding backwages. The employee had also preferred an appeal challenging the non-awarding of wages after 7-10-1995 and also non-awarding of interest and retiral benefits. The Joint Registrar, Co-operative Societies, Ujjain by order dated 24-5-2000 (Annexure-"P/15") disposed of both the appeals; quashed the order of recovery of backwages from the erring officer and maintained the rest of the order passed by the Deputy Registrar. He further directed that if the backwages shall not be paid within six months, then interest @ 12% p.a. would be required to be paid by the petitioner Bank.

Against this order of Joint Registrar in first appeal (Annexure-"P/15"), petitioner Bank preferred second appeal before the M.P. State Co-operative Tribunal, Bhopal. During the pendency of this second appeal, the respondent/employee died on 9-10-2001. His legal representatives were brought on record. The learned Tribunal by order dated 28-11-2001 (Annexure- "P/17") allowed the petitioners' appeal and instead of 100% backwages, awarded 50% backwages for the period from 18-1-1988 to 17-10-1995. Being aggrieved by the order of the Tribunal, petitioners Bank as well as legal representatives of the deceased employee both have preferred the aforesaid petitions. The petitioners Bank has challenged the order of awarding 50% backwages and the legal representatives have challenged the order of reducing the backwages and claiming the restoration of the order passed by both the Courts below.

I have heard learned counsel for the parties and perused the record.

In both the petitions, the submission of Shri A.K. Sethi, learned counsel for the petitioner Bank is that the dispute which was filed u/s 55(2) of the Act of 1960 was hopelessly barred by time and the application u/s 5 of the Limitation Act was not tenable as the provisions of Limitation Act were not applicable to the disputes filed u/s 55 of the Act and was also not decided. The respondent/employee has also failed to prove that he was not otherwise gainfully employed, therefore, the employee was not entitled for even 50% of the backwages and the Tribunal has wrongly awarded the same. In reply Shri A. Nimgaonkar, submitted that, the dispute was filed in time, it was not barred by limitation and submitted that by order dated 19-3-1988 the Deputy Registrar had directed the employee to file dispute and by order dated 25-1-89 (Annexure -"P/5") further directed the Bank authorities to decide the pending appeal of the employee and thereafter employee may file dispute. The revisional Court by order dated 25-7-1995 (Annexure-"P/7") on the joint request of the parties set aside the order dated 25-1-1989 and remanded the case to Deputy Registrar for deciding the dispute

on merits, with a direction that though the dispute is within time but the petitioners Bank may take objections in the reply and if any such objection would be taken, that would be decided along with other issues. Thereafter the matter was adjudicated on merits and the Deputy Registrar by order dated 14-5-1999 (Annexure- "P/13") decided the dispute and held that the dispute was filed in time and the dismissal order is illegal and directed for payment of backwages. Shri Neemgaonkar further submitted that the order was confirmed in first appeal by the Joint Registrar and also by the Tribunal in second appeal. He further submitted that even after confirming the orders in second appeal the learned Tribunal wrongly reduced the wages to 50%, which is liable to be set aside.

7 After hearing the learned counsel for the parties and on perusal of the record it is clear that in this case dismissal order was passed on 18-1-1988 and communicated on 19-1-1988 to the employee. Thereafter on 15-2-1988, within 30 days he preferred appeal before the Board of Directors and on 12-4-1988 issued reminder for disposal of the appeal. In the meantime on 19-3-1988 he received a letter dated 16-3-1988 from the Deputy Registrar to file a dispute u/s 55(2) of the Act and thereafter on 19-4-1988, he filed a dispute u/s 55(2) of the Act. When the petitioner Bank took an objection that the dispute has not been filed in time i.e., within 30 days from the date of the order of dismissal, the respondent employee also filed an application for condonation of delay. By an order dated 25-1-1989 (Annexure-"P/5") the Deputy Registrar directed the Competent Authority of the Bank to decide the appeal and also directed the employee to file the dispute after the order passed in appeal. The learned Joint Registrar in his revisional order dated 25-7-1995 (Annexure-"P/7"), which was more in the nature of consent order has clearly held that the dispute was filed in time. This order was not challenged by the petitioner Bank, which became final. In this order it was further observed that the petitioner Bank has deliberately delayed the dispute for about 7 years.

I have also perused the final order passed by the Deputy Registrar in dispute on 14-5-1999 (Annexure-"P/13"). While adjudicating the dispute, the Deputy Registrar framed an issue on the question of limitation and has held that the dispute was filed within time. It is clear that under the Service Rules framed by the Registrar u/s 55(1) of the Act of 1960, departmental appeal is provided. Normally in such cases the limitation for filing dispute u/s 55(2) of the Act of 1960 should start from the date of the decision given in the appeal and not from the date of order of dismissal. The period spent in the disposal of appeal is also liable to be excluded. In a dispute filed u/s 55 of the Act of 1960 u/s 65(3) of the Act, the Registrar has the power to admit a dispute after the expiry of limitation if the applicant satisfied the Registrar that he had sufficient cause for not referring the dispute within such period. This sub-section (3) of section 65 also applies to disputes filed u/s 55 of the Act of 1960 as it starts with a non-obstante clause. Thus on consideration of the provisions of law, in the case in hand, the Courts below have rightly held that the dispute was filed in time and there was not necessity to decide the application for condonation of delay. Learned counsel

for the petitioner Bank has also failed to show that why the Board of Directors have not decided the appeal of the employee continuously for 7 years. In fact a party is entitled to file a dispute, when departmental appeal is not decided within reasonable time, say at the most within six months by the Bank authorities and if dispute is filed during the pendency of appeal it cannot be rejected as filed prematurely and in that case also the authorities cannot be permitted to raise any objection about limitation in the dispute. In this connection I have also perused the impugned order of the Tribunal. The Tribunal has also confirmed the findings recorded by the Courts below on the question of limitation. The Tribunal has clearly held that the revisional order of the Joint Registrar dated 25-7-1995 (Annexure-"P/7") has become final as the same was not challenged by the petitioner Bank and, therefore, the Bank again cannot be permitted to raise such a plea of limitation in second appeal. After careful consideration of the matter, I find that the Tribunal was fully justified in rejecting the contention of the petitioner on the question of limitation. In fact the question of limitation stands concluded. Though petitioner attempted to raise the same in this petition under Article 227 of the Constitution of India, which is nothing but a futile exercise.

The next question involved in these petitions filed by both the parties is about the grant of backwages to the respondent/employee. In this case both the Courts below i.e. the Deputy Registrar and Joint Registrar, Co-operative Societies have awarded full backwages to the respondent/employee. Both the Courts below have clearly held that the allegations on which the service of the employee was dismissed were not found proved. The employee had not ordered for any change of place or site of godown, which was the charge against him in the charge sheet. The learned Joint Registrar in first appeal confirmed the order of the Deputy Registrar and also confirmed the order of grant of full backwages to the employee. But the learned Tribunal has reduced the backwages from 100% to 50% simply on the ground that the employee has failed to prove that he was not otherwise gainfully employed during the period of idleness. On this question the submission of Shri A.K. Sethi, learned counsel for employer Bank was that it was the burden on the employee to prove that he was not gainfully employed otherwise and Shri Neemgaonkar refuted this submission.

In this case I have carefully examined the order passed by the learned Tribunal in second appeal on the question of reducing backwages. In Para Nos. 10 and 11 of the impugned order, the learned Tribunal has clearly held that the construction of godown was not the responsibility of the deceased employee. He has further observed that the approach of the Bank in this matter was totally negative. The deceased employee had simply forwarded the letter to Gram Panchayat, Nalwa, for change of place and he had not made any comment thereon. Therefore, he was wrongly held guilty for the charges. The learned Tribunal further observed that the Bank has imposed severe penalty of dismissal of service, which cannot be treated either proper or legal. The Tribunal further observed that after appreciation of the bare facts on record on merits, the order of dismissal was contrary to the record and is an example of harassment. In Para No. 11 the

learned Tribunal further held that the findings recorded by the Enquiry Officer are absolutely perverse and erroneous. The enquiry conducted by the Enquiry Officer was contrary to Rule 58 of the Service Rules and was also contrary to the principle of natural justice and was absolutely faulty and thereafter has clearly held that on the basis of concurrent findings of facts recorded by the two Courts below no legal provision is available for interference in those findings.

Even after recording the aforesaid clear cut findings and after discussing the case laws available on the subject and placing reliance on the various decisions reported in the case of Bhopal Central Co-operative Bank Ltd. and another vs. Ramesh Chandra Saxena, 2000 R.N. 384; M.P. State Cooperative Marketing Federation Ltd. vs. Revenue Board, Gwalior and others, 1995 R.N. 168; S.C. Lokhande vs. District Central Co-operative Bank Ltd., Chhindwara, 1993 R.N. 62; Hindustan Tin Works Pvt. Ltd. Vs. The Employees of Hindustan Tin Works Pvt. Ltd. and Others, ; Manorama Verma vs. State of Bihar and others, 1995 SCC (L.S.) 193; Nand Kumar Kushwaha Vs. Board of Revenue and Others, ; Harish Chandra Gupta vs. District Central Co-operative Bank Ltd., Shahdol and others, 1998 R.N. 40 ; and Dr Ramesh Chandra Tyagi Vs. Union of India (UOI) and Others, reduced the wages of 50%.

In Para No. 15 of the impugned order, the learned Tribunal has further held that the question of awarding wages is a matter of discretion of the authority deciding the service dispute. After placing reliance on the decision in the case of M.P. State Co-operative Marketing Federation Ltd. (supra) he has further held that since the employee has expired and had already attained the age of superannuation, therefore, no case is made out for further enquiry. The Tribunal has further held that the appellant Bank neither before the trial Court (Deputy Registrar) nor in the first appeal before the first appellate Court (Joint Registrar) nor in the second appeal before the Tribunal has shown any fact that the deceased was in gainful employment during all this period of idleness or working on any post of profit or earning any financial benefits. Therefore, this fact was in the mind of the Tribunal that it was the burden on the petitioner Bank to prove that during the course of idleness or the pendency of the dispute, the employee was not otherwise in gainful employment and thus ignoring its own findings and its own assessment of the factual matrix of the case as well as of the law reduced the backwages simply stating that it would be judicious to award 50% of backwages and modified the orders of the Courts below to that extent. After carefully examining the impugned order of the Tribunal, I find that the order of reducing 50% backwages is not based on any logical conclusion and the Tribunal has wrongly reduced the wages without assigning any cogent reasons. When the Tribunal itself found that it was the burden on the petitioner Bank/employer to prove that the employee was not otherwise in gainful employment and the petitioner Bank has failed to prove or discharge its own burden, there was no occasion for the learned Tribunal to reduce to half of the wages. The Tribunal has categorically itself held that it is a case in which the employee was wrongly charge-sheeted and the findings recorded by the Enquiry Officer are perverse

and erroneous. From the record, charge could not be proved against the deceased employee on merits, he was illegally harassed by the officers of the Bank and it is a clear case of harassment. It was also found that the enquiry was not conducted in accordance with the service rules and as per the principle of natural justice and the same was illegal and he did not find any favour to interfere in the concurrent findings of facts recorded by the two Courts below then in such a case and in the second appeal the Tribunal was not entitled to reduce 50% backwages of the deceased employee who suffered at the fag end of his career from the ill hands of the officers of the employer.

I myself have perused the entire case and found that the action on the part of the employer was totally unjustified and it was a clear case of victimization by the employer. The employee was suspended on 15-10-1987 and thereafter his services were dismissed on 19-1-1988 and on 7-10-1995 he attained the age of superannuation and unfortunately died before he could get the fruits of his employment. He filed appeal as per the Service Rules before the Board of Directors but the Board of Directors did not bother to decide the same continuously for a period of 7 years. He filed the dispute but the Bank dragged on the same continuously for a period of 10 years in the Court of Deputy Registrar on the question of limitation, when the dispute was legally filed. These are some of the glaring instances of victimization and harassment by the employer towards his employee.

It is well settled that ordinarily, an employee whose services have been illegally terminated either by dismissal, discharge or retrenchment, will be entitled to full backwages, except to the extent he was gainfully employed during the enforced idleness. That is the normal rule, except in special circumstances, the Court where a dispute is raised may slice off a part, if an employee is not wholly blameless or there are some special circumstances placed on record by the person who objects to modify and to depart from, the normal rule. See the decisions of the Supreme Court in the case of Hindustan Tin Works Pvt. Ltd. Vs. The Employees of Hindustan Tin Works Pvt. Ltd. and Others, ; G. T. Lad and Others Vs. Chemical and Fibres of India Ltd., ; Division Bench decision of this Court in Singeshwar Prasad vs. General Manager, Bhilai Steel Plant, Bhilai and another, 1979 MPLJ 773 and State of M.P. vs. Harilal and another, 1992 JLJ 347.

In the case of Central Co-operative Consumers" Store Ltd. Vs. Labour Court, Himachal Pradesh at Shimla and another, it has been held that where the employee is not at fault and the litigation has been prolonged solely due to the fault of employer, backwages cannot be denied to the employee and this judgment was relied on by Hon"ble Shri Dharmadhikari, J. (as he then was) in the case of M.P. State Co-operative Marketing Federation Ltd., 1995 R.N. 168, in which he has held that the burden to prove gainful employment of the employee was on the employer.

Again in the case of S.L. Lokhande vs. Chindwara Jila Sahakari Bank Maryadit and others, 1993 R.N. 62, the Division Bench of this High Court, presided by

Hon"ble Shri Dharmadhikari, J. (as he then was), has held as under:

If during the intervening period of termination and the order of reinstatement, the employee was not working elsewhere gainfully, the back wages cannot be denied. In the instant case, however, there is no record to show that after his termination the petitioner was employed under any other employer. The principle of "no work no pay" cannot be made applicable in such a situation where an employee is forced and compelled to be away from his duties as a result of illegal orders of termination.

From the foregoing discussion, it is clear that the record of this employee was wholly blameless and no special circumstances were placed on record by the Bank who was objecting to modify or to depart from the normal rule before the Tribunal. From the perusal of the impugned order passed by the Tribunal, it is clear that the Tribunal recorded every finding in favour of the employee. Therefore, it is clear that it was the burden on the Bank to prove special circumstances and to place them on record who was objecting to modify the order in the second appeal. Thus, the Tribunal has wrongly exercised the discretion in this case and has wrongly reduced the wages. In fact orders passed by the High Courts are binding on the Tribunals and the Tribunal cannot ignore or by-pass the mandate of Law. The Tribunals can only exercise discretion when permitted by Law and that too when circumstances exist not beyond that. In any case this was not the case where it was required by the Tribunal to interfere in the clear mandate of Law.

Consequently in view of the foregoing discussion and on due consideration, Writ Petition No.480 of 2002 filed by the petitioners - District Central Co-operative Bank Ltd., Mandsaur, is hereby dismissed with costs of Rs. 10,000-00 payable to the legal representatives of the deceased employee and the Writ Petition No. 1496 of 2002 filed by the legal representatives of the deceased employee is hereby allowed to the extent indicated above. It is directed to the Bank to pay the entire backwages to the L. Rs. of the deceased employee from the date of suspension of the employee i.e. from 15-10-1987 till 7-10-1995 which is the date of attaining the age of superannuation with all consequential benefits flowing from it within a period of 30 days with interest thereon @ 12% p.a. It is further directed that the retiral benefits be also paid within a period of 60 days with 12% interest and if he is entitled for pension, then the same be also decided within a period of 60 days.