

(1978) 10 MP CK 0013

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 176 of 1976

Gwalior District Co-operative Bank Ltd., Gwalior

APPELLANT

Vs

Ramesh Chandra Mangal and others

RESPONDENT

Date of Decision : 26-10-1978

Acts Referred:

Constitution of India, 1950 — Article 12, 226, 311

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

Citation : (1979) MPLJ 631

Hon'ble Judges : K.K. Dube, J;A.R. Naokar, J

Bench : Division Bench

Advocate : R.S. Bajpai, for the Appellant; R.D. Jain, for the Respondent

Final Decision : Dismissed

Judgement

K.K. Dube, J.

The main question that requires to be considered in this petition under Article 226 of the Constitution is whether or not an employee of a Cooperative Bank can seek a declaration to the invalidity of the termination of his contract of service when the employer acted in violation of the rule made by the Registrar of the Co-operative Societies governing the service conditions of the employees of the Bank.

Briefly stated, the facts relevant for the purpose of this petition are these:--

The respondent No. 1 was appointed as an Agent of the petitioner Bank which is a Co-operative Society registered and governed by the provisions of the M.P. Co-operative Societies Act, 1960. The respondent No. 1 took charge on 30-9-1963. On 7-12-1964 he was confirmed. He applied for two days casual leave. It appears that he left Ghatigaon where he was posted and went to his home at Morar. The respondent No. 1 then applied for earned leave for a period from 3-4-1968 to 18-4-1968. Thereafter, he applied for extension of the earned leave up to 4-5-1968. The respondent No. 1 wanted to attend the law classes at

Gwalior and he stated that he had been granted permission by the Chairman to attend the law classes. The petitioner Bank did not extend the leave. The respondent No. 1 reported on duty on 6-5-1968. On 13-5-1968, he was served with a charge-sheet for leaving the head quarters without permission and for acting in discharge of his duties in an irresponsible manner. A departmental enquiry was instituted against him and he was found guilty. After a show cause notice, he was dismissed from service by an order dated 5-6-1968.

The respondent No. 1 aggrieved by the decision raised a dispute u/s 55(2) of the M.P. Co-operative Societies Act, 1960 before the Deputy Registrar, Co-operative Societies. After a due trial of the dispute, the Deputy Registrar passed an order dated 27-2-1972 allowing the claim of the respondent No. 1, holding that the dismissal order was not in accordance with rules 44 and 45 of the Co-operative Bank Employees Service Rules and ordered reinstatement of the respondent No. 1 with back salary and allowances. The petitioner Bank then took up the matter in appeal which was heard by Additional Registrar, Co-operative Societies. The Additional Registrar, respondent No. 3, allowed the appeal of the Bank and set aside the order of the Deputy Registrar. The Additional Registrar was of the view that the remedy of the respondent No. 1 lay in a claim for damages and reinstatement could not be allowed. The respondent No. 1 then filed a second appeal before the Board of Revenue. The learned President, Board of Revenue allowed the appeal on 28-8-1974 holding inter alia that the respondent No. 1 was protected by statutory obligations which were mandatory and binding on the petitioner-Bank. He further held that Shri S.P. Jain, the Officer-in-charge could not be delegated the powers by the Apex and, therefore, the order of dismissal of respondent No. 1 was illegal. He set aside the order and remanded the matter to the Bank for disposal in accordance with law. The petitioner now seeks to challenge this order by this petition.

The petitioner-Bank contended that it was not a statutory body and the relationship of its employees was solely governed by the general law of master and servant. The Cooperative Central Bank Employees Service Rules, framed in exercise of powers u/s 55 of the Co-operative Societies Act by the Registrar, merely regulated the conditions of contract of service. There was no statutory obligation to reinstate the respondent No. 1 in service nor such a declaration could be obtained by him. If at all the removal was wrongful the respondent No. 1 could only obtain damages as no contract of personal service could be specifically enforced. As regards the second contention, it was urged that S.P. Jain, Officer-in-charge stepped into the shoes of the State Co-operative Bank and an order passed by him was not as a delegate but by the proper functionary vested with the power of management, superintendence and control. The Central Co-operative Bank which was appointed the functionary in place of the superseded Board of Directors under the Co-operative Societies Act could only act through an officer-in-charge who, in the instant case, was Shri S.P. Jain. Lastly, it was a practising lawyer and would not be entitled to back wages in case the Court was inclined to order reinstatement. It may be mentioned here that the

Board of Revenue was of the opinion that the respondent No. 1 was granted leave upto 18-4-1978 although the sanction reached him late. The petitioner-Bank had condoned the fact that the respondent No. 1 proceeded on leave without waiting for formal sanction and without handing over charge. The Board was thus of the opinion that there was no misconduct in terms of the rules. Secondly, the impugned act of the respondent No. 1 did not amount to gross misconduct and he could not be punished with dismissal for that.

In *Executive Committee of Vaish Degree College, Shamli and others v. Lakshmi Narain and others* (1962) 2 SCC 580, it was pointed out that before an institution could be considered a statutory body; it must be established that it was created under the statute and owed its existence to the statute. A distinction has to be made from an institution which is created by or under a statute from the one which is merely governed by certain statutory provisions for proper maintenance and administration of the institution. It was observed in paragraph 18 as under:

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On a consideration of the authorities mentioned above, it is, therefore, clear that a contract of personal service cannot ordinarily be specifically enforced and a Court normally would not give a declaration that the contract subsists and the employee, even after having been removed from service can be deemed to be in service against the will and consent of the employer. This rule, however, is subject to three well recognised exceptions-- (i) where a public servant is sought to be removed from service in contravention of provisions of Article 311 of the Constitution of India; (ii) where a worker is sought to be reinstated on being dismissed under the Industrial Law; and (iii) where a statutory body acts in breach or violation of the mandatory provisions of the Statute.

A Full Bench of this Court in *Ramswarup Gupta Vs. Madhya Pradesh State Co-operative Marketing Federation Ltd. and Others*, held that a Co-operative Bank registered under the Madhya Pradesh Co-operative Societies Act is not a statutory body. A Co-operative Society or a Co-operative Bank was merely governed by the provisions of M.P. Co-operative Societies Act and was not a statutory body for the purposes of Article 12 of the Constitution. It is clear from the two decisions that the present petitioner is not a statutory body.

Under section 55 of the Madhya Pradesh Co-operative Societies Act, the Registrar is given power to frame rules regulating the conditions of employment in Co-operative Societies. In exercise of the above power, the Registrar framed the Co-operative Central Bank Employees Service Rules. In *Co-operative Central Bank Ltd. and Others Vs. Additional Industrial Tribunal and Others*, , the Supreme Court while considering the character of the bye-laws framed by a Co-operative Society observed that if the statute gave power to the Government or other authority to make rules, the rules so framed would have the force of statute and are deemed to have been incorporated as part of the statute. The principle does not apply to bye-laws which the Co-operative Society is empowered to frame for regulating its internal management and business. The bye-laws may be binding

between the persons affected by them but they do not have the force of a statute. The Supreme Court held as under :

In respect of bye-laws laying down conditions of service of the employees of a Society, the bye-laws would be binding between the Society and the employees just in the same manner as conditions of service laid down by contract between the parties. In fact, after such bye-laws laying down the conditions of service are made and any person enters the employment of a Society, those conditions of service will have to be treated as conditions accepted by the employee when entering the service and will thus bind him like conditions of service specifically forming part of the contract of service.

The present rules are not bye-laws but have been framed in exercise of powers vested in the Registrar u/s 55 of the Act. They would, therefore, be statutory rules. The question, however, arises whether for the non-compliance of these rules, the employee could obtain a declaration that the order terminating the service of an employee was invalid and he ought to be reinstated. In Executive Committee of Vaish Degree College's case (*supra*), the Supreme Court held that a contract of personal service cannot ordinarily be specifically enforced and a Court normally would not give declaration that the contract subsists and the employee even after having been removed from service can be deemed to be in service against the will and consent of the employer. This rule, however, is subject to three well recognised exceptions-- (i) where a public servant is sought to be removed from service in contravention of the provisions of Article 311 of the Constitution of India; (ii) where a worker is sought to be reinstated on being dismissed under the Industrial Law, and (iii) where a statutory body acts in breach of violation of the mandatory provisions of the statute [see *S.R. Tewari Vs. District Board Agra and Another*, *Executive Committee, U.P. Warehousing Corporation Vs. Chandra Kiran Tyagi*, *Bank of Baroda Ltd. Vs. Jeewan Lal Mehrotra*, ; *Indian Airlines Corporation Vs. Sukhdeo Rai*, and *Sirsi Municipality by its President Sirsi Vs. Cecelia Kom Francis Tellis*,

In the present case, the petitioner is not a statutory body but the rules governing the service conditions are statutory. The case, therefore, would not fall under the third exception contemplated by the Supreme Court. The statutory rules merely took the place of the conditions of the contract of service which in the nature of things had to be uniformly applicable to all the employees. Essentially, such a contract between the Bank and the employee was in no way different from a service contract between two private parties except that the conditions of contract were now provided by the statute. For the breach of such conditions, no declaration could be obtained even if the employer terminates the service in violation of the statutory rules.

We may advert to the decision in *Kulchinder Singh and Others Vs. Hardayal Singh Brar and Others*, although the Supreme Court dealing with a question whether a Cooperative Bank would be included in the definition of "State" under Article 12 of the Constitution and thus amenable to writ jurisdiction under Article

226, did not specifically decide the question, it was observed that the employee of a Co-operative Bank was merely seeking to enforce a contractual right. The question which would have to be considered in such cases was to be whether the employee was seeking to enforce a statutory duty or sovereign obligation or public function of a public authority. Private law may involve a State, a statutory body or a public body in contractual or tortious actions "but they cannot be siphoned off into the writ jurisdiction". The employee here was merely seeking the enforcement of a simple contract between the staff and the Society acting upon certain terms and conditions regulating the conditions of service and the case was, in no way, different than a business man supplying chalk to a Government school or cheese to a Government hospital. Weighty observations have also been made in *The Nayagarh Co-operative Central Bank Ltd. and Another Vs. Narayan Rath and Another*,

Our attention was drawn to a decision by this Court reported in *Jagmohan Singh v. Board of Revenue and others* 1978 Revenue Nirnaya 109. In that case the Registrar and the Board of Revenue found that the termination of service of the employee was not made in good faith. There was, however, no violation of the service conditions or any rules or bye-laws governing such service conditions. The employee there was appointed temporarily until further orders and his service could be terminated at any time by the Society. In such circumstances, the Deputy Registrar had no jurisdiction to declare the termination of service invalid and the order of reinstatement u/s 55(2) on the ground that the order of termination was passed in bad faith was bad. It was observed that the question of good faith or bad faith does not arise when the termination of service did not contravene any provision of the Act or rules or bye-laws or the contract of service. The Bench, however, referred to two cases, namely, *Rashtriya Khadan Mazdoor Sahakari Samiti, Ltd., Durg. Vs. Presiding Officer, Central Government Industrial Tribunal-Cum-Labour Court. Jabalpur and others*, and *Ramswarup v. M.P. Cooperative Marketing Federation Ltd.* In the Durg case, while the Bench considered that they were bound by the observations to the effect that the Registrar who was deciding the dispute u/s 55(2) according to law of master and servant, it was observed that the employee in such a case can claim only damages. No declaration can be obtained even if the employer terminates or repudiates the contract of service in bad faith. "However, if the termination of service contravenes any statutory provision, the order of termination would be invalid". The Bench then followed the decision in *Ramswarup v. M.P. Co-operative Marketing Federation Ltd.* (supra).

In *Ramswarup's* case (supra), it was held that where a marketing society dismisses its employee or terminates his service in violation of the Co-operative Societies Act or the rules or statutory bye-laws, the order of termination would be invalid and the employee would be entitled to reinstatement. With due respect to the Hon'ble Judges deciding *Ramswarup's* case, it may be stated that the above quoted observations are not in line with the observations of the Supreme Court. The Supreme Court has clearly held that the bye-laws framed by the Co-

operative Society did not have the statutory force. Then again, the Co-operative Societies not being statutory bodies, they do not fall under the third exception indicated earlier so as to declare the contract of employment as invalid entitling the employee to be reinstated.

It would be seen that the decision in Jagmohan Singh's case (supra) is not an authority on the question of reinstatement of an employee for violation of the rules framed by the Registrar, even if they be termed as statutory and that the order of termination should be declared invalid, in a dispute between the employee and the Co-operative Society and a declaration can be given as to the invalidity of the contract of service. The above decision, in fact, reiterates that the dispute u/s 55(2) has to be decided according to the law of master and servant, the provisions of the Act and rules and bye-laws applicable to the Society. It is expressly stated that the Registrar does not possess the wider jurisdiction exercised by the Industrial Tribunals or Courts under the Industrial Disputes Act. Under the law of master and servant, an order terminating the service of an employee cannot be declared to be invalid even though it may be in breach of the contract of service. The employee in such a case can claim only damages. No declaration can be obtained even if the employer terminates or repudiates the contract of service in bad faith. "However, if the termination of service contravenes any statutory provision the order of termination would be invalid."

We would agree with the Board of Revenue that the order passed by S.P. Jain was liable to be struck down as he was not competent to pass the order of dismissal against the respondent No. 1. It is undisputed that only the Board of Directors of the Bank was competent to dismiss the respondent No. 1. The Board of the Bank had been superseded and all its powers at the time were vested in the M.P. State Co-operative Bank Ltd. Shri S.P. Jain was appointed as Officer-in-charge to manage the affairs of the Bank by the Madhya Pradesh State Co-operative Bank Ltd. It cannot be said that S.P. Jain stepped into the shoes of the Board of Directors of the Bank. After supersession it was the M.P. State Co-operative Bank who became the Officer-in-charge and who would be said to have stepped into the shoes of the Board of Directors. S.P. Jain was merely a delegate of the M.P. State Cooperative Bank Ltd. The power of dismissal exercised by S.P. Jain could not be delegated to him and, therefore, the order.

To sum up the position in this case, we are of the opinion that S.P. Jain was not competent to order dismissal of respondent No. 1. We agree with the finding of the Tribunals below that the misconduct against the respondent No. 1 was not proved. We have, come to the conclusion that though the Co-operative Central Bank Employees Service Rules are statutory rules as they have been framed by the Registrar in exercise of powers u/s 55 of the Act, they merely regulated the relations of the employer and the employee and were binding on both the parties. The petitioner, Cooperative Central Bank, not being a statutory body, the worker or the employee of the Bank could not as of right claim a declaration that

the order of dismissal was illegal and that he should be reinstated. The Tribunals, however, could consider the quantum of damages to which the employee was entitled as a result of wrongful dismissal. A contract of personal service cannot ordinarily be specifically enforced and the Court normally would not give a declaration that the contract subsists and the employee even after having been removed from service can be deemed to be in service against the will and consent of the employer. However the dismissal of the respondent No. 1 being wholly unauthorised and illegal would be a nullity. The respondent No. 1 employee could even ignore such an order.

In this view of the matter, it would be difficult to hold otherwise than to reinstate the employee. This would come under the exceptional circumstances attending the case. In *Arya Vidya Sabha, Kashi and Another Vs. Krishna Kumar Srivastava and Another*, the Supreme Court did not approve of the theme propounded in the minority judgment by Bhagwati J. in *Executive Committee of Vaish Degree College, Shamli and Others Vs. Lakshmi Narain and Others*, The present case, however, is taken out of the line of cases dealt with in *Arya Vidya Sabha* and *Vaish Degree College* case. The order of dismissal here is non est and the result would be that the employee would be deemed to be in employment. We, therefore, do not see any reason to interfere in this case.

In the result, the writ petition fails and is hereby dismissed though in the peculiar circumstances of the case without any order as to costs. The outstanding amount of security deposit be refunded to the petitioner.