
(1982) 02 MP CK 0008

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 537 of 1980 (Jabalpur)

Hemant Kumar Ganga Prasad Gupta

APPELLANT

Vs

President, District Co-Operative Central Bank Ltd.,
Ambikapur, Dist. Surguja and others

RESPONDENT

Date of Decision : 23-02-1982

Acts Referred:

Industrial Disputes Act, 1947 — Section 9A

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

Citation : (1982) JLJ 763 : (1983) MPLJ 461

Hon'ble Judges : G.P. Singh, C.J.; K.K. Dube, J

Bench : Division Bench

Advocate : Gulab Gupta, for the Appellant; Y.S. Dharmadhikari and S.L. Saxena, for the Respondent

Final Decision : Dismissed

Judgement

G.P. Singh, C.J.

The petitioner was employed as a confirmed Super-visor by the District Co-operative Central Bank Limited, Ambikapur respondent No. 1 in the petition. There were 32 other Supervisors who were similarly employed in the various branches of the respondent Bank. The Registrar, Co-operative Societies, in exercise of his powers conferred u/s 55 of the Madhya Pradesh Co-operative Societies Act, 1960, made the Madhya Pradesh Co-operative Central Bank Employees Services (Terms of employment and working conditions) Rules, 1977. These Rules were amended by the Registrar on 8th May 1980. By this amendment, the defini-tion of "cadre" contained in Rule 2 (n) was widened to mean a cadre of paid Managers, paid Samiti Sewaks, paid Managing Directors, paid Secretaries of Village Service Co-operative Societies, Large Sized Agricultural Credit Societies, Adimjati Seva Sahakari Samiti, Krishi Sewa Sahakari Samiti and other Societies affiliated to the Bank. Rule 4 (2) was also amended the effect of which was that the posts of Managing Directors/Managers

of Adimjati Sewa Sahakari Samiti, Krishi Sewa Sahakari Samiti were equated with Supervisor/Senior Cashier/Upper Division Clerk/Asstt. Accountant. On 12th June 1980, the Registrar issued an order directing the respondent Bank to treat the post of Supervisor as equal to the post of Manager and to post of Supervisors as Managers or Managing Directors of the Affiliated societies. It was also directed that the posts of Supervisors should be abolished. The respondent Bank in compliance with the order of the Registrar by order dated 30th August 1980 transferred the petitioner and other Supervisors to the Societies affiliated to it as Managers or Managing Directors. The petitioner then filed this petition under Article 226 of the Constitution for quashing of the rules made by the Registrar u/s 55 including the amendment made on 8th May 1980. The petitioner also prays for quashing of the order of the Registrar dated 12th June 1980 and the order of the Bank dated 30th August 1980.

The Madhya Pradesh Co-operative Societies Act, 1960 was enacted by the Madhya Pradesh Legislature. It received the assent of the President on 28th April 1961 and came into force on 12th May 1961 when the assent was first published in the Madhya Pradesh Gazette. Section 3 of the Act provides that the State Government shall appoint a person to be the Registrar of the Co-operative Societies for the State and may appoint one or more officers of the following categories to assist him, namely (a) Additional Registrar, (b) Joint Registrar, (c) Deputy Registrar, (d) Assistant Registrar and (e) such other categories of officers as may be prescribed. Section 54 provides that no society shall appoint a Manager, Secretary, Accountant or any other paid officer unless he holds such qualifications as may be prescribed. Section 55(1) which deals with the powers of the Registrar to regulate the terms and conditions of employment by making rules and issuing orders, reads as follows:

55 (1) the Registrar may, from time to time, frame rules governing the terms and conditions of employment in a society or class of societies and the society or class of societies to which such terms and conditions of employment are applicable shall comply with the order that may be issued by the Registrar in this behalf.

Section 95 confers rule making power on the State Government. Sub-section (2) (x) of this section enables the State Government to make rules to "prescribe qualifications for members of the committee and employees of a society or class of societies and the conditions of service subject to which persons may be employed by a society." Sub-section (3) of section 95 reads as follows:

(3) All rules made under this Act shall be laid on the table of the Legislative Assembly.

The rules made by the State Government u/s 95 are known as the Madhya Pradesh Co-operative Societies Rules, 1962. Rule 6 (2) (e) lays down that a society may make bye-laws on the following matters:

The method of recruitment, the conditions of service and the authority

competent to fix, revise or regulate the scales of pay and allowance of paid officers and employees of the society and the procedure to be followed in the disposal of disciplinary cases against them, in accordance with the rules or orders, if any, framed or issued by the Registrar u/s 55.

Section 93 provides that certain Acts will not apply to Co-operative Societies. This section reads as follows :

93. Nothing contained in the Madhya Pradesh Shops and Establishments Act, 1958 (25 of 1958), the Madhya Pradesh Industrial Workmen (Standing Orders) Act, 1959 (19 of 1959) and the Madhya Pradesh Industrial Relations Act, 1960 (27 of 1960) shall apply to a society registered under this Act.

Learned counsel for the petitioner has directed his challenge to the validity of the rules made by the Registrar u/s 55 by first contending that section 55 in so far as it confers on the Registrar powers to make rules governing the terms and conditions of employment in a society or a class of societies is itself ultra vires and void as it suffers from excessive delegation. Learned counsel argues that the power conferred is arbitrary as it contains no guidelines and provides for no hearing to the employees who cannot also appeal against the rules to any higher authority. In our opinion, the contention that section 55 suffers from excessive delegation and confers arbitrary power on the Registrar cannot be accepted. The Registrar is the highest in the hierarchy of officers appointed u/s 3 for administering the Act. He is expected to be well acquainted with the conditions prevailing in the Co-operative Societies and posted with the factual data necessary for formulating the terms and conditions of employment of employees of the societies. It is true that the rule making power does not oblige the Registrar to give any hearing to the employees and they have no right of appeal to any higher authority against the rules made by the Registrar. But from this alone, it cannot be said that the power conferred is arbitrary. We have already seen that the State Government has also been conferred power by section 95(2)(x) to prescribe qualifications for employees of a society or class of societies and the conditions of service subject to which persons may be employed by the society. Now as the State Government holds a higher position than the Registrar who is appointed by the Government, the rules made by the Government u/s 95(2)(x) will prevail over the rules made by the Registrar u/s 55(1). The State Government, therefore, has adequate check over the powers of the Registrar by making rules u/s 95(2)(x), in case it finds that the rules made by the Registrar require any modification. The State Government has so far made no rules under this provision except saying that the bye-laws made by the society relating to their employees must conform to the rules made by the Registrar u/s 55(1). The fact that the State Government itself has not made any rules u/s 95(2)(x) only goes to show that in the opinion of the State Government the Registrar has not exercised his power arbitrarily and the rules made by him are reasonable. The second check on the power of the Registrar is furnished by the laying requirement u/s 95(3). Although sub-sections (1) and (2) of section 95 relate to

the power of the State Government to make rules, sub-section (3) of section 95 is wider in scope which refers to all rules made under the Act and requires them to be laid on the table of the Legislative Assembly. Sub-section (3), in our opinion, will cover the rules made by the Registrar u/s 55. A provision for laying the rules made under an Act is a method of control exercised by the Legislature over the rule making authority and if such a control is kept it has been held that the power to make rules cannot suffer from excessive delegation : M.K. Papiiah and Sons Vs. The Excise Commissioner and Another, . We are deeply of opinion that the rule making power conferred on the Registrar by section 55(1) does not suffer from excessive delegation.

Learned counsel for the petitioner then submitted that the power of the Registrar to issue an order u/s 55(1) is wholly arbitrary and invalid. Section 55(1) says that the Registrar may from time to time frame rules governing the terms and conditions of employment in a society or class of societies and the society or class of societies to which such terms and conditions of employment are applicable shall comply with the order that may be issued by the Registrar in this behalf. We have already held that the power to make rules governing the terms and conditions of employment is not arbitrary and does not suffer from excessive delegation Now the order which the Registrar issues u/s 55(1) is only to the society or class of societies to which the terms and conditions of employment laid down by rules made by the Registrar apply and the order has also to be "in this behalf" which means that the order must be in the context of the terms and conditions of employment laid down by the rules. The object of conferring on the Registrar the power to issue orders to the societies appears to be to enable him to see that the rules relating to the terms and conditions of employment are complied with. The Registrar may also by issuing orders direct the manner of compliance of the rules made by him. Understood in this way, the power to issue orders to the societies is not uncanalised or arbitrary and cannot be held to be invalid.

The next contention of the learned counsel for the petitioner is that the change of service conditions by the rules made by the Registrar u/s 55(1) violates section 9A of the Industrial Disputes Act, 1947. In this connection, the learned counsel submitted that although section 93 of the Co-operative Societies Act makes the provisions of the Madhya Pradesh Shops and Establishments Act, 1958, the Madhya Pradesh Industrial Work-men (Standing Orders) Act, 1959 and the Madhya Pradesh Industrial Relations Act, 1960, inapplicable to a society, the section does not exclude the application of the provisions of the Industrial Disputes Act. Learned counsel has also relied upon a Full Bench decision of this Court in R. K. M. S. Samiti Durg v. Presi. Officer 1975 MPLJ 583 in support of his submission that the Industrial Disputes Act continues to apply to a society. We will assume for purposes of this case that the application of the Industrial Disputes Act to the Societies engaged in the industries to which this Act applies in this State is not abrogated by the Co-operative Societies Act and to the extent both these Acts do not conflict both will apply. On this assumption a

question may sometimes arise as to which of these Acts will prevail in case of conflict. That question, as we shall hereinafter point out, does not arise in this case. Section 9A of the Industrial Disputes Act restricts the right of an employer to make any change in the conditions of service applicable to any workman in respect of any matter specified in the IV Schedule without giving to the workman likely to be affected a notice of change or within twenty one days of giving such notice. The change contemplated by section 9A is one which the employer has volition to make or not to make. But if the employer is compelled to give effect to any statutory rule or order which has itself brought about the change in the terms of employment, such a change would not come within the ambit of section 9A. The proviso to section 9A makes the provisions of the section inapplicable to cases where the change is effect-ed in pursuance of any settlement or award or where the workmen likely to be affected by the change are the persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules etc. apply. The Government has also the power to include any other rules or regulations in this category making section 9A inapplicable to the employees to which such rules apply. The proviso, in our opinion, cannot be construed to mean that if an employee is governed by the rules other than those mentioned therein, the employer in such a case must give a notice of change before he complies with the statutory rule or order which has not been made or issued by him. It may be a different matter if the employer himself is the statutory authority to make rules or issue orders relating to conditions of service. In those cases, it may be possible to say that the employer has to comply with Rule 9A unless the case is brought within the exceptions contained in the proviso. In our opinion, the position is different, when the employer himself is not making any charge in the terms and conditions of employment but the change is brought about by a statutory rule or order made by a different authority, and the employer's duty is to comply with such rule or order. The words used in this section, "no employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change without giving the prescribed notice or without waiting for the prescribed period after such notice, imply that the change in the conditions of service is proposed by the employer. The language is wholly inappropriate for application to those cases where the change is not brought about by the employer but is brought about by a statutory rule or order not made by the employer. The Registrar is not the employer of the employees of the respondent Bank or the credit societies affiliated to the Bank. The petitioner is the employee of the respondent Bank. The impugned rules and order made by the Registrar u/s 55 have themselves brought about the change in the conditions of employment and they do not violate section 9A of the Industrial Disputes Act as it is not a change brought about by the employer. The respondent Bank has only given effect to the change already brought about by the rules and order of the Registrar by its order dated 30th August 1980. To such a case section 9A has no application.

Learned counsel appearing for the respondent Bank has also contended that the matters covered by the impugned rules and orders do not fall within the Fourth Schedule to the Industrial Disputes Act and for this reason also section 9A is not applicable. We do not find it necessary to go into this question as, in our opinion, for other reasons section 9A IS not applicable.

Learned counsel for the petitioner then contended that the impugned rules and orders have brought about a change of master which is not contemplated u/s 55(1). This argument proceeds upon a misconception. The petitioner and other supervisors were employees of the respondent Bank. By the impugned rules, the supervisors have been equated with the managers of the affiliated societies. The order issued by the Registrar directed abolition of the posts of supervisor and posting of the incumbents holding these posts as Managers or Managing Directors of affiliated societies. The petitioner and other supervisors who have been posted as Managers or Managing Directors of the affiliated societies will still remain the employees of the Bank. This is clearly stated in paragraph 3 of the return filed by the Bank. Indeed it is stated in the return that the petitioner and other supervisors started their career as Samiti Sewaks of the affiliated societies. Their appointment as Samiti Sewaks was by the respondent Bank. They were then promoted as supervisors. The supervisors have now been posted as Managers of the affiliated societies but the employer has throughout remained the Bank. Thus, there has been no change of master.

It was lastly contended that the rules and orders made by the Registrar u/s 55 are invalid because of the omission to follow the requirements of natural justice. This argument is also entirely misconceived. The principles of natural justice have no application when an authority is exercising legislative or quasi-legislative power. The power to make rules and issue orders u/s 55 conferred on the Registrar is in the nature of a legislative power which is delegated to him by the Act. The principles of natural justice are applicable when judicial or quasi-judicial power is exercised. They are also applicable in some cases where administrative power is exercised to the prejudice of a party. They have, however, no application to the exercise of legislative power.

The petition fails and is dismissed, but without any order as to costs. The security amount be refunded to the petitioner.