

(1978) 10 MP CK 0029

In the Madhya Pradesh High Court

Case No : Miscellaneous Peta. No. 188 of 1972

Ishaq Mohammad Ashiq Mohammad

APPELLANT

Vs

Bunkar Sahkari Samiti Maryadit, Chanderi and others

RESPONDENT

Date of Decision : 25-10-1978

Acts Referred:

Constitution of India, 1950 — Article 226, 311

Madhya Pradesh Co-operative Societies Act, 1960 — Section 64, 77, 77(2)

Citation : (1979) MPLJ 691

Hon'ble Judges : S.J. Surana, J;K.K. Dube, J

Bench : Division Bench

Advocate : K.N. Gupta, for the Appellant; K.S. Shrivastava, for the Respondent

Final Decision : Dismissed

Judgement

K.K. Dub, J.

By this petition, the petitioner seeks to challenge the order of his removal from service of the respondent No. 1, Co-operative Society.

The petitioner was appointed on three months probation in the year 1963. On 10-2-1964, he was appointed on the post of Store-keeper as a temporary servant. The respondent No 1 is a duly registered Society. The service conditions of the employees of the respondent Society are governed by certain rules called "KARMACHRIYON KE SEVA NIYAM" Rule 28 of the said rules prohibits the employee of the respondent Society from doing any business in which the Co-operative Society is engaged. Under Rule 17, the probationary period of any employee could not extend beyond one year. If the services of the employee were not found suitable, they could be dispensed with at the end of the probationary period. The petitioner, as already stated, after completing the probationary period was appointed as a temporary servant. On 13-5-1968, the Co-operative Society terminated the services of the petitioner under Rule 28 as he was engaged in doing the same business as was being done by the Co-

operative Society. He was given one-month's salary in lieu of notice.

The petitioner has challenged the order of removal as the termination was done without a show cause notice, without any enquiry and without affording any opportunity to the petitioner to explain his conduct. The petitioner contends that the removal was in violation of the rules governing the service conditions of the petitioner and was against the principles of natural justice. The petitioner then filed an appeal before the Additional Registrar, Co operative Societies, Guna as provided by the rules. This appeal was treated as a dispute u/s 64 of the Madhya Pradesh Co-operative Societies Act. The Additional Registrar allowed the appeal and set aside the order of removal from service. The Co-operative Society then filed an appeal u/s 77 before the Registrar, Co-operative Societies, Bhopal. The Co-operative Society's appeal was allowed by the Registrar who, by an order dated 24-10-1970 maintained the order of dismissal. Thereafter, a second appeal was filed by the petitioner before the State Government u/s 77(2) of the M. P. Co-operative Societies Act. The appeal was rejected by the State Government and this is how the petitioner has now come up before this Court.

In the return, the Co-operative Society has taken a stand that the petitioner was a temporary servant. The services of the petitioner were terminated because the Society had lost confidence in him and the President of the society had full powers to terminate his services under bye-law No. 40. The order of termination by the President was ratified by the Managing Committee. The petitioner had been given one month's salary in lieu of notice. Their stand is that it was not necessary to give any charge-sheet or hold a formal departmental enquiry against him. The petitioner was conducting himself in a manner which was detrimental to the interest of the Society and they could no longer continue him in employment. The society was engaged in the manufacture and sale of Chanderi Saries which was a special type of work. The petitioner was privately carrying on the same business of manufacturing and selling the Chanderi Saries. The Society, therefore, did not think it proper to continue him in their employment. In terms of contract of service, the Society could terminate the services of the petitioner since the petitioner was carrying on the same business privately as it was against the interest of the Society and the business of the Society suffered. The order of removal was not punitive but was in terms of employment. The Co-operative Society was satisfied that continuing of the petitioner in the service was detrimental to their interest. Hence, they were constrained to terminate his services. The order of termination of services could not be said to be one casting any aspersion on the petitioner.

The short question that arises for consideration in this case is whether the petitioner could enforce the contract of service against the Co-operative Society and claim reinstatement. 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. It is

now well settled by a number of decisions of the Supreme Court that the above rule is subject to three well recognised exceptions, namely: (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 or 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, ; Sirsi Municipality by its President Sirsi Vs. Cecelia Kom Francis Tellis, and Executive Committee of Vaish Degree College, Shamli and Others Vs. Lakshmi Narain and Others,

The petitioner can only lay his claim to reinstatement if his case falls under the third category enumerated above, namely, if the respondent Society could be held to be a statutory body and had acted in violation of any mandatory provision 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 Society registered under the Cooperative Societies Act, is not a statutory body. A Co-operative Society is not created by any statute but is merely a body governed by the provisions of the M. P. Cooperative Societies Act. Following the Full Bench decision, we hold that the petitioner was not an employee of a statutory body.

For regulating the service conditions of the employees of the Cooperative Society, certain bye-laws have been framed which are annexed as Annexure-II to the petition. These rules are called "KARMA CHARITYON KE SEWA NIYAM" of Bunkar Sahkari Samiti Maryadit, Chanderi. The above rules have not been framed by the Registrar but are bye-laws approved by the Registrar. They are in the nature of bye-laws regulating the service conditions of its employees. Under Rule or bye-law 28, it is enjoined on an employee not to carry on the business privately which was being undertaken by the Society itself. The petitioner was found to have violated this condition of service and his service has, therefore, been terminated. The Supreme Court in Co-operative Central Bank Ltd. and others v. Additional Industrial Tribunal, Andhra Pradesh and others (1969) 2 S C C 436 considered the character of bye-laws of a Co-operative Society framed in pursuance of the provisions of an Act. The Supreme Court pointed out that if the statute gave powers to the Government or other authority to make rules, the rules so framed have the force of statute and are to be deemed to have been incorporated as part of the statute. The principle does not apply to bye laws that a Co-operative Society is empowered by the Act to make. The bye laws that are contemplated by the Act are merely those which govern the internal management, business or administration of a society. They may be binding between the persons affected by them but they do not have the force of a statute. The Supreme Court observed 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.

Since the bye-laws do not have the force of a statute, the violation of a bye-law would be like the breach of a condition of service. The breach of a condition of service would render a Co-operative Society for damages and would be a matter which would be regulated by ordinary law of master and servant for breach of conditions of contract. But the contract of personal service could not be specifically enforced and this rule would ordinarily apply. We may usefully refer to a decision of the Supreme Court in *Kulchinder Singh and Others Vs. Hardayal Singh Brar and Others*, . We think the petitioner could not invoke the jurisdiction of this Court for enforcing the conditions of a contract. The Board of Revenue as also other Tribunals found that the petitioner had violated the bye-law and thereby lost the confidence of the Society. All that the petitioner could claim was damages and not reinstatement. For reasons stated above, we would not interfere in the instant case as the respondent Society is not a statutory body nor are the service rules such the infringement of which could be enforced under Article 226 of the Constitution.

The writ petition is accordingly dismissed. In the peculiar circumstances of the case, there shall be no order as to costs. The outstanding amount of security shall be refunded to the petitioner.