
(2013) 04 MP CK 0023

In the Madhya Pradesh High Court

Case No : Writ Petition No. 10643 of 2012

Jila Sahkari Kendriya Bank

APPELLANT

Vs

Aleemuddin Ansari

RESPONDENT

Date of Decision : 24-04-2013

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Madhya Pradesh Co-operative Societies Act, 1960 — Section 55(2), 78(1)(b)

Citation : (2013) 4 MPHT 82 : (2013) 3 MPLJ 713

Hon'ble Judges : Shantanu Kemkar, J;J.K. Maheshwari, J

Bench : Division Bench

Advocate : Surendra Patwa, for the Appellant;

Final Decision : Dismissed

Judgement

Shantanu Kemkar, J.—Heard on the question of admission. This petition which though filed under Article 226 and under Article 227 of the Constitution of India, but it is essentially a petition under Article 227 of the Constitution of India.

2. The petitioner has filed this petition challenging the order dated 4-7-2011 passed by M.P. State Co-operative Tribunal, Bhopal (for short "the Tribunal") in F.A. No. 162/2007 affirming the order dated 7-9-2007 passed by the Joint Registrar, Ujjain.

3. The respondent who was employee of the petitioner since 1966 submitted a letter of resignation from service on 31-1-1977 making it effective from 1-4-1977. The said letter of resignation was accepted by the petitioner vide order dated 28-3-1977. Thereafter, the respondent submitted an application for taking back him in service. His prayer was accepted by the petitioner vide order dated 20-9-1979 and he was taken back in service treating him in service w.e.f. 1-4-1977, i.e., the date when the resignation was made effective. As regards salary of the period from 1-4-1977 to 20-9-1979 it was ordered that since he did not work from 1-4-1977 to 20-9-1979 he will not be entitled for any salary of the

said period on the principle of "no work no pay".

4. When the matter stood thus, on attaining the age of superannuation the respondent was retired from service w.e.f. 31-1-2003. However, as he was not paid the full retiral benefits, viz., gratuity and leave encashment as per his entitlement from the date of his appointment which was 19-1-1966, he raised a dispute u/s 55(2) of the M.P. Co-operative Societies Act, 1960 (for short, "the Act") before the Joint Registrar. The Joint Registrar, Ujjain rejected the preliminary objection raised by the petitioner about the maintainability of dispute under the Act by order dated 14-2-2005 and thereafter, vide order dated 7-9-2007 passed in Case No. C/06/2003-04 allowed the dispute in favour of the respondent-employee by directing the petitioner-Bank to pay the balance amount of gratuity to the extent of Rs. 62,930/- treating his period of employment w.e.f. 19-1-1966 and to pay the amount of leave encashment with interest as mentioned in the order.

5. The said order passed by the Joint Registrar was challenged by the petitioner by filing F.A. No. 162/2007 u/s 78(1)(b) of the Act. The Tribunal vide order dated 4-7-2011 dismissed the appeal. It also rejected the preliminary objection of the petitioner that the dispute filed before the Joint Registrar was not maintainable and only the Controlling Authority under the Payment of Gratuity Act is the Competent Authority. On merits also the Tribunal upheld the order passed by the Joint Registrar.

6. Learned Counsel for the petitioner has argued that the respondent was taken back in service w.e.f. 1-4-1977, therefore, his prior service period was rightly not taken into consideration for the purpose of calculation of period for grant of gratuity. He further submits that the dispute in question could not have been entertained by the Joint Registrar under the Act and as such the orders passed by the Joint Registrar and the Tribunal, are liable to be quashed.

7. We have considered the aforesaid contentions raised by learned Counsel for the petitioner.

8. In our considered view the petitioner's contention that the dispute about the gratuity as has been raised could not have been raised under the Act cannot be accepted in view of the clear provision of Section 55(2) of the Act providing for a dispute, including a dispute regarding terms of employment, working conditions and disciplinary action by a Society arising between a Society and its employees shall be decided by the Authority mentioned in it. In view of this wide scope of Section 55(2) of the Act in our view, this objection has rightly been rejected by both the authorities below. So far as the merits of the matter, we find that while passing the order dated 20-9-1979 regarding reinstatement in favour of the respondent, the petitioner had merely denied him the salary for the period from 1-4-1977 to 20-9-1979. The order does not reflect that the respondent has been given a fresh appointment nor does it contain that his past services will not be counted for any purposes. In the absence of any such mention in the order, the

respondent's past services cannot be said to be washed away depriving him all the consequential benefits arising out of it. In the circumstances, we are of the view that Joint Registrar and the Tribunal, have committed no error in passing the impugned orders. No case for interference is made out. The petition fails and is hereby dismissed.