(1992) 05 MP CK 0013

In the Madhya Pradesh High Court

Case No : M.P. No. 68 of 1984 (J)

Kashi Prasad APPELLANT

Vs

District Central Co operative Bank Ltd , Tikamgarh and Others RESPONDENT

Date of Decision : 08-05-1992

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Madhya Pradesh Co-operative Central Bank Employees Services (Terms of Employment and Working Conditions) Rules, 1965 — Rule 51(v)

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

Citation : (1992) 1 MPJR 362

Hon'ble Judges : S.K. Dubey, J;K.K. Varma, J

Bench : Division Bench

Advocate : Shri K.K. Lahoti, for the Appellant; R.D. Jain, for the Respondent

Judgement

S.K. Dubey, J.

By this petition under Articles 226 and 227 of the Constitution of India, the Petitioner has prayed for issuance of a writ of Certiorari, Mandamus or any other suitable writ or direction for quashing the order of termination of the services dated 5 3-1979 (Annexure P/1) and the orders dated 3-1-1981, 27 2-1982 and 1-9 1983 (Annexures P/4, P/5 and P/6) passed respectively by the Assistant Registrar and Joint Registrar, Co-operative Societies, and the Board of Revenue.

Material facts leading to this petition are thus the Petitioner was appointed on 20-8-1968 as Samiti Sewak by the District Central Co-operative Bank Ltd., Tikamgarh (for short, the ''Bank'') temporarily in accordance with the M.P. Co-operative Central Bank Employees Services (Terms of Employment and Working Conditions) Rules, 1965, (for short, the ''Rules''), framed u/s 55 (1) of the M.P. Co operative Societies Act, 1960 (for short, the ''Act''). After a continuous service of 10 years, the Bank terminated the services under R. 51 (v) of the Rules vide order dated 5-3- 979 (A Axure P/1), as no longer required. The Petitioner raised a dispute u/s 55 (2 or the Act before the Assistant Registrar, Respondent No. 3 for declaring the termination order as illegal and void and for reinstatement with back wages. The bank contested the dispute After enquiry the Respondent No. 3 vide order dated 3-1-1981 (Annexure p/4, declared that after rendering service continuously for more than 3 years the Petitioner acquired the status of a permanent employee; therefore, his services could not have been terminaed by resorting to the powers under R. 51 (v) without following the procedure prescribed in R. 53 (1) of the Rules; the order of termination was declared illegal and the Petitioner was ordered to be reinstated without back wages on the principle of "no work no pay." The Petitioner, aggrieved of the order of refusal to pay back wages, preferred an appeal before Joint Registrar, Respondent No. 4. The Bank aggrieved of the order of reinstatement, neither preferred any appeal nor filed any cross-objections The Respondent No. 4 on perusal of the record made out a new case of loss of confidence on the ground of intermittent absence from duty and non-performance of duty and altered the order of reinstatement to one of appointment on probation for a period of one year by way of compensation in lieu of reinstatement vide order dated 27 2-1982 (Annexure P/5). The Bank aggrieved of this order preferred an appeal. The Board of Revenue, Respondent No. 5, disposed of the appeal along with three appeals against 3 employees, whose services were terminated along with the Petitioner by separate orders, by a common order dated 1-9-1983 (Annexure P/6), holding that the contract of personal service cannot be enforced and the remedy, if any, to the terminated employees was to claim demages by filing a suit.

Aggrieved of this order, the Petitioner preferred this petition on 9-2-1984, while two out of three employees, Ramdayal and Nathuram Yadav, preferred two separate writ petitions at the Main Seat, registered as M.P. Nos. 609 of 1984 and 610 of 1984, which were dismissed by the Division Bench in limine on 18-4-1984, holding that the claim for reinstatement to the service cannot be granted because the action of termination of services was not as a measure of punishment; no disciplinary action was ever proposed to be taken against the Petitioner.

The Bank in its return suppered the order of the Board of Revenue and raised an objection that the order of the Board of Revenue in respect of two employees has been maintained at the Main Seat, this petition also deserves to be dismissed.

In our opinion, the objection of the Bank that after dismissal of the two petitions at the Main Seat, a different view cannot be taken to avoid inconsistency, in the present fact of the case, has no merit for two reasons; firstly, law is settled that an opinion expressed in the order passed summerily rejecting a case, without notice to the other side, is not binding as a precedent. See Madhya Pradesh Transport Co (P) Ltd d. Tax Officer-cum-Regional Transport Officer, Raipur 1967 JLJ 790, (DB) Kewalchand v. Suganckand 1983 JLJ 302 , (SB), secondly, the order passed in the aforesaid petitions cannot bind the Petitioner, as the Petitioner was not a party to those petitions: hence, the grounds raised in the petition (which were not raised in the said petitions nor considered by the Division Bench at the Main Seat) have to be decided on their own merits. Merely because the Board of Revenue decided the four separate appeals arising out of four different disputes, by the common order dated 1-9 1983 (Annexure P/6) this Court will not be precluded from deciding the petition. Moreover, it is well settled that the observation in an order or judgment are to be understood in the context of the facts of that particular case. A decision as a precedent can only be cited if it decides a question of law See Municipal Corporation of Greater Bombay and Others Vs. Thukral Anjali Deokumar and Others, and State of Punjab and others Vs. Surinder Kumar and others,

On merits In the persent case, the Respondent No 3 while considering the length or service of the Petitioner and the definition of ''permanent employee'' in R 3(ii) of Chapter 2, which deals with classification of employees of the Bank, vz , Permanent. Probationary, and Apprentice, declared the Petitioner as a permanent employee, as the Petitioner did not remain a temporary employee, as defined in Clause IV of R 3, not was appointed for a limied period or work which is esentially of a temporary nature nor was employed temporarly and an additional employee in conncetraet(sic) with temporasy increase in work of a permanent nature; the services of the Petitioner who acquired the status of a permanent employee, were terminated in contravention of R, 53 (ii) which provides that if a permanent employee is found to be surplus, such employee shall be entitled to retrenchment compensation as per provisions of the Industrial Disputes Act, 1947 (for short, the ''ID Act''), The Bank aggrieved of this order did not prefer any appeal, or filed cross objections in the appeal preferred by Petitioner against the order of refusal of back wages Therefore, the declaration given by Respondent No 3 become final and binding on the Bank. In the appeal by Petitioner, Respondent No 4 was having no jurisdiction to pass a different order from the one passed by Respondent No. 3, except an order awarding back wages or not, as in the absence of any appeal or cross-objections, the rights of the Bank, if any came to an end to that extent, as on the strength if the first part of sub rule (1) of R. of 22 of Order 41, CPC, the Bank could have only supported the order not on (sic) grounds decided in in favour but also on the grounds decided against it, but could not have challenged the order of reinstatement passed by Respondent No 3).

Learned Counsel for the Bank contended that the Respondent No. 5 following a division Bench decision of this Court in Sagar Co-operative Central Bank Ltd, v. Board of Revenue and Ors. 1982 RN 131 , rightly observed that the remedy of a dismissed employee was to claim d damages for wrongful dismissal; to support that learned Counsel also cited few decisions of the apex Court in Union of India (UOI) Vs. All India Services Pensioners'' Association and Another, ; Ram Jivan Vs. Smt. Phoola (Dead) by Lrs. and Others, and Jaisri Sahu Vs. Rajdewan Dubey and Others,

In our opinion the contention, has no merit It is well settled that where a statute authorises either the Government or any other authority to frame rules and the rules are so framed, the rules would have the force of statute. They will be deemed to have been incorporated as part of the statute. The Rules in question are framed u/s 55 (1) of the Act and, hence, are statutory. Thereform, the Bank is bound to observe the rules which are statutory See Sewaram Totaram 1983 MPLJ 645 (FB).

The decision in Sewaram Totaram''s case (supra) has settled that the Registrar or his nominee hearing the dispute referred to him, u/s 55 (2) does have power to reinstate the employee as in the case of an industrial employce, in case the termination of the services is found to be in contravention of the statutory seavice rules and in such a case the person who comes to Court does not come for the enforcement of contract of persona) service, but clearly comes for the declaration of be statutory invalidity of the act done by the employer Therefore, the Registrar u/s 55 (2) has power and jurisdiction to direct reinstatement and award back wages on a finding that the dismissal or termination was illegal being in contravention of the Act or statutory rules, in the manner in which an employee engaged in an industry is given relief under the I. D Act for wrongful dismissal, removal or termination of services Recently, a Division Bench of this Court in M. P. No. 10/1983 (Sohanlal v. The Guna Central Co operative Bank Ltd) decided on 26-9 991, of which one of us (S K. Dubey,(sic) .) was a member, following the decision in Sewaram Totaram''s case (supra) has observed that as the terms and conditions are governed by statuory service rules, the employees governed by the rules cannot be treated at per with these who enter into contract of personal service and, therefore, cannot be directed to claim damages. In view of the above, as the order of termination was not only in contravention of the statutory rules but was also in violation of S. 25 F and S. 25G of the I.D. Act. the Respondent No 3 was right in declaring the order as illegal, null and void.

It was next contended of behalf of the Bark that the Petitioner was a temporary employee; threfore, the Bank was well within its power to terminate the service in accordance with the Rules, as no disciplinary action imposing any stigma or penalty was taken Reliance placed on Ravindra Kumar Misra Vs. U.P. State Handloom Corpn. Ltd. and Another, and Central Co-operative Bank Ltd , Raisen v. Shibbulal 1988 JLJ 20 (FB).

11 The contention has no merit, as the Petitioner was declared a permaneat employee by Respondent No. 3 and no appeal or cross-objections were preferred by the Bank and against that neither Respondent No. 4 nor Respondent No 5 gave any adverse finding; therefore, the cases relied in relation to temporary employees have no application.

The Bank further contended that on the finding by Respondent No. 3 even if the Petitioner acquired the statue of a permanent employee, his services could be dispensed with by paying three months'' salury in lieu of notice, as required under S 51 (i) and, therefore, Petitioner would be entitled to three months'' salary and not anything more than that.

This contention has also no merit, firstly, because the services were terminated in violation of Section 25 F and S. 25 G of the I D. Act and, secondly, the law is settled that the procedure prescribed by the Rules for terminating the services must be reasonable, fair and just and not arbitrary, fanciful and unjust. There cannot be unbridled, uncanalised and arbitrary power on the authority to terminate the seivces of a permanent employee without recording any reasons and without conforming to the principles of natural justice. Such a provision is opposed to public policy and void under S 23 of the Contract Act and is violative of Article 14 of the Constitution of India See Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, Central Inland Water Transport Corporation Ltd. v. Brojo Nath Ganguly AIR 1986 SC 1971 , and West Bengal State Electricity Board and Others Vs. Desh Bandhu Ghosh and Others,

14 As a result of the above discussion, the orders passed by Respondents No, 4 and 5 can not be sustained, have to be quashed and axe hereby quashed.

However, the submission of Shri K K. Lahoti that full back wages be awarded, cannot be accepted in the facts of the case, as the Respondent No. 3 did not award tack wages on the principle of " no work no pay" without holding any enquiry about gainful employment during the period of forced unemployment. In view of this, the matter has to go back to Respondent No. 3 for holding an enquiry for ward of back wages whether the Petitioner was gainfully employed or not during the period of his forced unemployment. As the dispute is pending since 1979, we direct the parties to appear before the Respondent No. 3 on 26-6 1992, who shall fix a date for holding the enquiry in the matter of gainful employment and award of back wages, which shall be completed positively within a period of three months.

In the result, the petition is allowed. The orders of Respondents No. 4 and 5 (Annexures P/5 and P/6) are quashed; the order of Respondent No. 3 so far as it relates to declaration that the order of termination is illegal, null and void, is maintained. Now, the Petitioner shall be reinstated forthwith with continuity of service and ail ancillary benefits thereon, except the back wages which he shall be entitled only in accordance with the result of the enquiry.

The petition is allowed with costs. Counsel''s fee Rs. 500/- if recertified.

