

(1963) 04 MP CK 0008

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 11 of 1963

Krishna Chandra Gupta

APPELLANT

Vs

Registrar, Co-operative Societies

RESPONDENT

Date of Decision : 17-04-1963

Acts Referred:

Citation : AIR 1963 MP 298 : (1963) 7 FLR 324 : (1964) ILR (MP) 891 : (1963) JLJ 677 : (1963) MPLJ 631

Hon'ble Judges : P.V. Dixit, C.J.; S.P. Bhargava, J

Bench : Division Bench

Advocate : R.K. Pandey, for the Appellant; H.L. Khaskalam, Government Advocate for Respondent Nos. 1 and 2 and N.N. Pandey, for the Respondent

Final Decision : Dismissed

Judgement

Dixit, C. J.

By this application under Articles 226 and 227 of the Constitution of India, the petitioner, who was employed in the Dubey Co-operative Commercial Bank Limited, as Assistant Manager-cum-Accountant, prays for the issue of a writ of "certiorari" for quashing an order of the respondent No. 3, the Board of Directors of the said Bank, dismissing him from service.

The applicant was appointed to the post of Assistant Manager-cum-Accountant on 16th June 1959 by an order passed by the Chairman of the Board of Directors. He was appointed on a fixed salary of Rs. 200/- p. m. and placed on probation for a period of twelve months. Some months after his appointment, when certain mistakes and irregularities committed by the petitioner were brought to the notice of the Board of Directors, the petitioner was cautioned to be careful in the maintenance of accounts. In March 1960, Bhagwat Prasad, a peon of the Bank, made a complaint to the chairman that the petitioner had abused him and slapped him on 10th March 1960. In the same month, a complaint was made by Messrs. N. 6. Brothers, Bilaspur, against the petitioner

with regard to the settlement of a loan of Rs. 500/-. The Working Committee of the Bank, therefore, passed a resolution on 17th March 1960 suspending the applicant. On 18th March 1960 a letter was addressed to the petitioner communicating this resolution of the Working Committee, and asking the applicant to express his regret for his misbehaviour towards Bhagwat Prasad. In that letter a reference was also made to the complaint made by Messrs. N. G. Brothers and the applicant was asked to give his explanation with regard to all matters within ten days. The applicant did not give any reply. He, however, addressed a letter to the Chairman of the Board of Directors on 2nd April 1960 tendering his apology for having slapped Bhagwat Prasad. He also expressed his regret for the acts of his complained against by Messrs. N. G. Brothers. On 28th March 1960 the Working Committee passed a resolution dismissing the petitioner with effect from 18th March 1960, that is, from the date he was suspended.

Shri Pande, learned counsel appearing for the petitioner, argued that the order passed by the Working Committee dismissing the petitioner from service was invalid for the reasons: that the Working Committee had no power to dismiss or suspend him and the order of dismissal could not in any case be given retrospective effect as from the date of suspension, and that it was made by the Working Committee without giving to the applicant a reasonable opportunity of meeting the charges on which the Working Committee based its decision to dismiss the applicant from service. It was said that the petitioner was not given any notice to show cause against the punishment of dismissal; that no statement of allegations or charges was furnished to him and no enquiry of any kind, was held by the Working Committee; and that the order of dismissal was passed violating all rules of natural justice.

In our opinion, all these contentions are devoid of any substance and are based on a total misconception of the conditions of service of the employees of a body such as the Bank in which the petitioner was employed. The Dubey Co-operative Commercial Bank Ltd., Bilaspur, is a society under the Co-operative Societies Act, 1912. Its affairs are regulated by the bye-laws framed by the society subject to the provisions of the Co-operative Societies Act, 1912. The bye-laws framed by the Bank set out its object and provide for membership, capital, constitution of the Board of Directors, powers and duties of the Board of Directors, powers and duties of the Working Committee, and other matters. Clause (v) of Bye-law 36 gives to the Board of Directors the power "to appoint, confirm, terminate, accept resignation, dismiss, suspend or otherwise punish any officer or servant paid by the Bank or to remove or if necessary to proceed against any officer or servant of the Bank." Clause (xxi) of this bye-law empowers the Board of Directors to "delegate all or any of its powers to the Working Committee and to empower the Working Committee to further delegate any of its powers to the Chairman." Under Clause (9) of bye-law 37 the Working Committee has the power to "suspend any officer or servant of the Bank pending consideration of his case by the Board of Directors." The bye-laws do not anywhere lay down the conditions of service of any of the Bank's employees, whether temporary, permanent or

those on probation. They do not prescribe any procedure for any enquiry into the charges of misconduct against an employee and do not require that a certain procedure shall be followed before any of its employees is dismissed from service.

The conditions of service of the employees of the Bank must be ascertained from the bye-laws themselves. When the bye-laws do not provide any special procedure to be followed for the dismissal of an employee of the Bank, then the ordinary law of master and servant will apply. It is not the contention of the petitioner that the order of his dismissal is in breach of any provision of the Co-operative Societies Act, 1912, or of any statutory rule. The contention that the Working Committee had no power to dismiss him or suspend him cannot be accepted when as a matter of fact the Board of Directors had delegated their power under Clause (v) of bye-law 36 to the Working Committee and that Committee has expressly been given the power under Clause (9) of bye-law 37 to suspend any officer or servant of the Bank. Clause (xxi) of bye-law 37 authorised the Board of Directors to delegate their power under Clause (v) of that bye-law to the Working Committee and on 25th June, 1959 the Board of Directors did as a matter of fact delegate this power to the Working Committee by passing a resolution to that effect. This is evident from Annexure A to the return filed on behalf of the respondents Nos. 3 and 4. The validity of the resolution of the Working Committee dismissing the petitioner from service cannot, therefore, be assailed on the ground that it was "ultra vires" the powers of the Working Committee.

The objection that the petitioner could not be dismissed from the date of his suspension is of importance only in relation to the payment of salary to the applicant for the period of suspension. If the order of dismissal is validly passed, then there can be no doubt that the dismissal is effective at least from the date of the making of that order. As the Working Committee has the power of suspension and the petitioner was suspended, by the Committee in exercise of that power, the effect of the order of suspension was to suspend the contract of service as a whole and the petitioner can make no claim of pay during the period of suspension.

The point is covered by a decision of this Court in *Co-operative Central Bank, Daryapur v. Trimbak Narayan* AIR 1945 Nag 183 : ILR (1945) Nag 457. That was a case which related to the claim of an accountant employed by a co-operative bank for payment of salary during the period of suspension. Sen J. held that the rights between the bank and its servants are regulated by the ordinary law of master and servant; that the master has power to dismiss his servant, but has no power to suspend him, and if there are no grounds which justify his dismissal he is entitled to his pay during the period of his suspension; and that, if, however, there is a power of suspension and the servant is suspended by his master in exercise of his power, the effect of the order of suspension is to suspend the contract of service as a whole and the servant can neither insist on working nor claim his salary during the period of suspension.

In support of this proposition, the learned Judge relied on *Wallwork v. Fielding* 1922 2 KB 66 and *Secretary of State Vs. Surendra Nath Goswami*, . The same proposition was laid down by the learned Judge in another case, namely, *Debidutt v. Central India Electrical Supply Co.. Ltd.* ILR (1945) Nag 587 : AIR 1945 Nag 244. Relying on 1922 2 K B 66 (supra) the Bombay High Court has also, held in *Padmakant Motilal Vora Vs. The Ahmedabad Municipal Borough*, , that where the master has the power of suspension which he exercises upon a supposed misconduct of the servant, the suspension will inevitably mean the suspension of the entire contract and, therefore, of the obligations on both sides and so the servant cannot claim wages for the period of his suspension.

The contention of the applicant that he could not be dismissed from the date of his suspension so as to deprive him of the salary for the period, of his suspension is therefore untenable. The Working Committee had the power to suspend him, and if the Committee had that power, then under the ordinary law of master and servant, which governs the petitioner's case, the applicant cannot claim any pay during the period of suspension.

Coming now to the question whether under the bye-laws any show cause" notice or framing of charges or an enquiry is necessary to validate the dismissal of an employee of the Bank, it must first be noted that under Clause (v) of bye-law 36 the Board of Directors have the power to appoint, confirm, terminate, accept resignation, dismiss, suspend or otherwise punish any officer or servant paid by the Bank. Thus under this clause, the employees of the Bank hold their offices "at pleasure" and not during "good behaviour", that is to say, the tenure of their office is not terminable only for good and sufficient cause. If the employee of the Bank holds his office "at pleasure", then he is clearly subject to dismissal at any time without any cause being assigned and no notice, or framing of any charges is necessary. The holder of an office "at pleasure" is removable at the sole discretion of the appointing authority.

In *V. A. Chellam Aiyar Vs. Corporation Of Madras*, , the Madras High Court held that u/s 58 of the Madras City Municipal Act, 1904, the president had the power to appoint and dismiss subordinate officers and servants of the Corporation, and that these officers and servants hold their office at pleasure and where an office is held at pleasure no notice or framing of charges is necessary for the dismissal of the holder of such an office. Neither the Co-operative Societies Act, 1912, under which the Bank was registered nor the bye-laws of the society contain any provision regulating the manner of the exercise of discretion of the Board of Directors of the Bank in the matter of dismissal of the Bank's employees.

The argument, therefore, that the Working Committee should have furnished to the petitioner a proper statement of charges, held an enquiry and given an opportunity to the petitioner to show cause against his dismissal has no basis in the bye-laws or in any of the provisions of the Co-operative Societies Act, 1912. The rules of natural justice, which learned counsel for the petitioner, invoked, have no applicability here for the simple reason that the Board of Directors or the

Working Committee is not a body which discharges any quasi judicial duties when it makes an order dismissing any of the employees of the Bank. It is only when a non-judicial body or person is saddled by the Legislature with quasi judicial duties that it or he must first of all follow the procedure, if any, which the Legislature has prescribed for it or him, and if no procedure is prescribed, it or he must act in accordance with the principles of natural justice. The Board of Directors or the Working Committee of the Bank is not charged with the duty of deciding or adjudicating upon any dispute or rights of others. The Bank is no doubt registered under the Co-operative Societies Act and it has framed bye-laws and regulations for the management of its business, election, principles regarding conduct of meetings etc. The Bank is expected to act and conduct itself in accordance with these bye-laws. But merely because such bye-laws have been framed, the Bank or its Working Committee does not become a Judicial or quasi judicial authority required to act judicially in the discharge of its functions. The registration of the Bank by itself does not confer on it an authority to take decision on questions of rights or impose on the Bank the duty to act judicially in deciding any question under the bye-laws. Learned counsel for the petitioner was not able to refer us to any authority to support his contention that even under the ordinary law of master and servant, and enquiry and an opportunity of hearing were necessary before dismissing a servant holding office at the pleasure of the master.

In the present case, the petitioner was as a matter of fact informed by the letter dated 18th March 1960, addressed to him by the Working Committee, of the charges against him and given an opportunity to submit his reply within ten days of the receipt of the letter. He failed to do so. This is evident from the various annexures filed along with the return of the respondents Nos. 3 and 4 to support the statement in the return that the applicant failed to avail himself of the opportunity of hearing offered to him.

Learned counsel for the applicant referred us to the decision in *Abdullahai v. State* 1953 NLJ 256 : M. P. No. 265 of 1952, DA 13-3-1953. In that case, it has been held that as Section 42-D (1) of the Co-operative Societies Act, 1912, does not lay down any procedure for the making of an order thereunder, the principles of natural justice should be followed before making any person pecuniarily liable for a particular act. The observation in that case

"Where no procedure is prescribed by law, the principles of natural justice require that the person who is sought to be made pecuniarily liable for a particular act should be told as precisely as possible what that act is and also what the amount for which he is being made liable is."

has no applicability here. The reason is that the observation was made in relation to a matter u/s 42-D which under that section the competent authority was required to determine in a quasi judicial manner. That was a case of an authority required to function quasi judicially. As already observed, in the present case neither the Board of Directors nor the Working Committee is required to function

in a quasi judicial way while making an order of dismissal of any of its employees.

Reference was also made to Dukharam Gupta Vs. Co-operative Agricultural Association Ltd. and Others, , Dattatraya v. Janpad Sabha Burhanpur 1961 MPLJ 915 and Dukhooram Gupta Hari Prasad Gupta Vs. Co-operative Agricultural Association Ltd. and Others, . These cases have no relevancy here.

In the first case, namely the case of Dukharam Gupta Vs. Co-operative Agricultural Association Ltd. and Others, , the order of dismissal was assailed on the ground that under a bye-law framed by the Co-operative Agricultural Association of Kawardha the manager of the Bank could not be removed without the previous approval of the Registrar and that such approval had not been obtained. That was thus a case of an order of dismissal having been passed in breach of a bye-law. This is not the position here, as the order of the petitioner's dismissal was in conformity with the bye-laws.

The decision in 1961 MPLJ 915 was also with regard to the quasi judicial function of local bodies constituted under the Central Provinces and Berar Local Government Act, 1948, in regard to disciplinary action against its officers and servants, and it is thus distinguishable on that ground.

In Dukhooram Gupta Hari Prasad Gupta Vs. Co-operative Agricultural Association Ltd. and Others, , no question in any way similar to the one before us arose for consideration. On the other hand, the observation in that case that a co-operative society registered under the Cooperative Societies Act, 1912, must rely on some power granted by its bye-laws to support an order of suspension of any of its servants only goes to show that in the present case the order of suspension passed by the Working Committee which had that power was valid.

For the foregoing reasons, there does not appear to us any ground on which the order dismissing the petitioner can be assailed. This petition is therefore dismissed with costs of the respondents Nos. 3 and 4. Counsel's fee is fixed at Rs. 100/-. The outstanding amount of security deposit, if any after deduction of costs, shall be refunded to the petitioner.