

(1994) 06 KAR CK 0006
In the Karnataka High Court
Case No : W.A. No. 120 of 1991

Krishnegowda

APPELLANT

Vs

Karnataka State Co-operative Apex Bank Ltd.

RESPONDENT

Date of Decision : 14-06-1994

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Karnataka Co-operative Societies Act, 1959 — Section 40, 54, 70

Citation : (1994) ILR (Kar) 2008

Hon'ble Judges : S.A. Hakeem, J;H.N. Tilhari, J

Bench : Division Bench

Advocate : H. Subrahmanya Jois, for the Appellant; K.L. Manjunath, for R-1 and C.M. Desai, for R-3, for the Respondent

Final Decision : Allowed

Judgement

Hakeem, J.—This Appeal by the Writ Petitioner is directed against the order dismissing his Petition on the ground of maintainability, since, according to him, an alternative remedy to raise a dispute u/s 70 of the Karnataka Co-operative Societies Act, 1959 ("the Act" for short) is available for seeking adjudication thereunder.

2. Brief facts leading to the dispute are as follows:-

The appellant was employed in the 1st respondent Bank to which nomination of certain Directors is made by the State Government to the Board of Directors. The appellant was appointed as a local candidate to the post of a Clerk on 31-7-1972. It is conceded that respondent Nos.3 to 5 were appointed earlier to the appellant as local candidates. The appointments so made are purely on an adhoc basis since the 1st respondent Bank could not make regular appointments at that time. In the year 1974, the 1st respondent Bank having decided to fill up the vacancies by regular recruitment, an interview was conducted by a Sub- Committee of the Bank to select the candidates for the posts in question which were also open for candidates who were already working as adhoc employees. In the interview held

on 20-1-1974, the appellant was selected as a Clerk along with several other candidates, including respondent Nos.3 to 5. It is not disputed that the appellant was shown at Sl.No. 1 while respondent Nos.3 to 5 were shown below him in the select list. Later, by a Resolution dated 3-6-1974, the selection of the candidates made by the Committee on the basis of the interview was approved. According to this Resolution also, the name of the appellant appears at the top of the list.

3. It appears that the 1st respondent Bank reopened the question of seniority and, pursuant to their Resolution dated 26-6-1975, the seniority list was sought to be reviewed and modified as per Annexure-C to the Writ Petition on the basis of an interview stated to have been held by the Screening Committee. However, a perusal of Annexure-C discloses that the Committee which selected the candidates earlier did not fix the seniority of the candidates which had necessitated the Bank to pass the Resolution on 26-6-1975 to the effect that seniority will have to be decided by the Selection Committee after interviewing the employees. In this view of the matter, the Screening Committee sought to interview the employees on 24-7-1982 in which seniority of 39 Clerks, Supervisors and Clerk-cum-Typists was fixed. In that list, the appellant has come down in ranking to SI.No. 4. The re-fixing of this ranking by the Screening Committee is challenged by the appellant on the ground that it is arbitrary, illegal and opposed to Articles 14 and 16 of the Constitution. According to the appellant, the Bank had no authority to disturb the ranking which had been assigned by the Selection Committee at the time of initial selection of the candidates to the posts in question. It is this list that was challenged in the Writ Petition, which was rejected on the ground that alternative remedy to raise and adjudicate the dispute u/s 70 of the Act was available.

4. Sri H. Subramhanya Jois, learned Counsel for the appellant, urged the following contentions:-

Firstly, that the alteration of the seniority enjoyed by the appellant could not have been made without valid notice and without following the normal procedure in this behalf;

Secondly, assuming that the dispute relating to fixation of seniority inter-se between the employees is covered within the disputes enumerated u/s 70(2)(d) of the Act, having regard to the efflux of time between the filing of the Petition and the date of hearing, it was inequitable and unjust to drive the appellant once again to pursue the alternative remedy u/s 70 of the Act;

Thirdly, it is urged that having regard to the short point involved in the dispute, the Court in its discretionary jurisdiction under Article 226 of the Constitution, can resolve the dispute and give a quietus to the same at this stage also;

Lastly, it is urged that no contention having been raised regarding maintainability of the Petition, it is not open for the other side to raise that question at this belated stage.

5. There appears to be considerable force in each of these contentions. In order to appreciate the last two contentions, it appears to be pertinent to note certain dates. Soon after announcement of the result of the interview, as per Annexure-C, the appellant preferred the Writ Petition in the month of October, 1982, in which notice of admission was issued for the first time on 4-3-1983. Later, the matter having come up in "B" group on 10-4-1985, Rule Nisi was issued and the Petition was being listed for hearing in due course. On 8-11-1990 when the Petition came up for final hearing, the Writ Petition was dismissed on the ground of availability of alternative remedy as stated earlier. The short question for consideration is whether having regard to the efflux of time during the pendency of the Writ proceedings, it is just and expedient in the circumstances to drive the appellant to seek the alleged alternative remedy available to him u/s 70 of the Act. On this point, strong reliance is placed upon the Decision in *Miss Raj Soni Vs. Air Officer in Charge Administration* and another, A similar contention regarding maintainability of a Petition under Article 32 of the Constitution having been raised in the said case, the Supreme Court has observed thus:-

"It is not necessary and we do not propose to go into the question in this case as to whether the petition is maintainable under Article 32 of the Constitution, because this petition has been pending in this Court since 1981. The petitioner's claim is just. It will, therefore, be a travesty of justice to send her to any other forum at this stage....."

In this connection, we may also refer to a similar Ruling of the Apex Court in *Assam Sillimanite Ltd. and another Vs. Union of India and others*, The question for consideration in the said case appears to be regarding the relief to be granted to the petitioner therein in respect of a lease. The contention was that if the petitioners are aggrieved because of the premature termination of the leases, it is open to them to file a suit or seek other appropriate remedies for obtaining compensation in respect of the unlawful termination. Meeting this contention, the learned Judges have observed thus:-

",.... We do not think that this is a fair course to be adopted in this case. The writ petition was filed by the petitioner company as early as in February, 1973 and has been pending in this Court for about 17 years. It is true that the petitioner could have filed a suit for the same purpose with a prayer for additional relief by way of compensation or damages. But we do not think that it should now be asked to go back to file a suit for compensation or damages which may be barred by limitation. After the lapse of such a long time, in our opinion, the proper course is to adopt some method for deciding the quantum of relief that could be granted to the petitioner by way of compensation and damages, which can at once be simple and expeditious and which will avoid further unnecessary litigation."

In that view of the matter, it appears to us that the dismissal of the Petition on the ground of maintainability in view of the availability of alternative remedy, in the circumstances, is erroneous.

6. On the merits of the case, we have to mention a few more facts. The 1st respondent Bank has, so far, not come up with a definite case by filing a statement of objections. It is, however, conceded that there are specific Rules governing selection and promotion of the employees in the Bank which are stated as Subsidiary Rules. None of the Counsel is in a position to point out any specific Rule as to the procedure to be adopted in the matter of according the ranking to the employees in various cadres. In the circumstances, it is stated that the ranking given at the time of recruitment itself indicates the ranking of the candidates. If that is the case, no scope will be left for the Management to review the case of seniority and alter the ranking of the candidates. However, it seems to us that the said power to the Management cannot be denied in the fitness of things, If, for instance, certain candidates had been appointed earlier on a certain basis and the question arises as to their ranking which becomes relevant at the time of promotion, it is necessary for the Management to fix the seniority. In that case, the well-known and normal procedure for fixing the seniority has to be adopted, viz., a Provisional List showing proposed ranking of the employees giving them an opportunity to file their representations and thereafter it is for the Management to consider these representations with or without hearing the concerned employees in accordance with law. It cannot be disputed that for the purpose of promotion, the seniority of employees, inter alia, is a relevant factor and hence an order fixing seniority has definitely civil consequences. In the absence of Rules in this behalf, after the publication of the Provisional List, the employees affected are entitled to file their representations/objections and upon consideration thereof, the competent authority may take a decision. A perusal of Annexure-C, which purports to be the Minutes of the interview held by Screening Committee on 24-7-1982, does not indicate that any such Provisional List was earlier published or as to whether any notice was given to the affected employees so as to enable them to represent their relative claims before the Committee. In fact, the learned Counsel for the 1st respondent Bank is not in a position to assert that any such notice was given either earlier or after the publication of the impugned List showing the ranking and calling upon the employees to file their representations or objections, as the case may be. In that view of the matter, as rightly urged by the learned Counsel for the appellant, the ranking given to him appears to be arbitrary and contravenes the Constitutional safeguards provided under Articles 14 and 16 of the Constitution. For this reason, the ranking as per Annexure-C cannot be sustained as final. However, Annexure-C may be treated as a Provisional List for the purpose of fixing the seniority in accordance with the normal procedure as indicated above.

7. At this stage, Sri Manjunath, learned Counsel for the Bank, has raised a plea that the respondent Bank is not an Authority within the purview of Article 12 of the Constitution and, as such, Writ Petition is not maintainable against the Bank. We are unable to agree with this contention in view of the admitted facts that not only the State has contributed funds towards the share capital of the Bank, but also by virtue of the provisions of Sections 40 to 54 of the Act, it is clearly an

instrumentality of the State which is amenable to the Writ jurisdiction of this Court coming within the purview of the expressions "other authorities" under Article 12 of the Constitution.

8. In the result, the Writ Appeal is allowed. The impugned order is set aside. The Writ Petition is also allowed. The impugned ranking as per Annexure-C is held to be only Provisional and not Final. It is open for the authorities to re-issue the said List with or without any modification calling upon the employees concerned to file their representation against the proposed ranking and to consider such representations/objections and thereafter issue a Final Seniority List in accordance with law.