

(2005) 11 J&K CK 0005

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 2130 of 2002

Kuldeep Raj Sharma

APPELLANT

Vs

Citizen Co-operative Bank Ltd. and Others

RESPONDENT

Date of Decision : 29-11-2005

Acts Referred:

Citizens Cooperative Bank Limited Employees Service Rules, 1981 — Rule 19, 19(2),
2.10, 21, 3
Constitution of India, 1950 — Article 226

Citation : (2006) 2 JKJ 564

Hon'ble Judges : Permod Kohli, J

Bench : Single Bench

Advocate : Ajay Abrol, for the Appellant; Vikram Sharma, for the Respondent

Final Decision : Allowed

Judgement

Permod Kohli, J.—Petitioner joined service of respondent- Bank as Peon-cum-Chow-kidar in the year 1980 and thereafter he came to be

promoted as Cashier-cum- clerk in the year 1988. In the year, 1991, petitioner claims to have applied for sick leave. It is alleged that despite

making such application, a charge sheet dated 22.10.1991 was served upon him seeking his explanation for his unauthorized absence. After

serving reply to the charge sheet, his services were terminated vide order dated 7.8.1992. He claims to have made some representations. It is

further stated that on the intervention of Staff Association of the Bank, management agreed to re- appoint the petitioner as Peon-cum- Chowkidar

and consequently fresh order of appointment dated 19.11.1992 came to be passed whereby petitioner was re-appointed as Peon-cum-

Chowkidar on temporary basis . It is claimed that petitioner joined his duty on 1.12.1992 though he was required to join on 28.11.1992. It is

alleged that petitioner again suffered illness and could not attend his duty from 18.12.1992 to 20.12.1992 for two days and submitted an

application for the grant of leave but leave was not granted and vide impugned order dated 7.1.1993 services of the petitioner were dispensed

with.

2. Aggrieved of the impugned order, petitioner preferred a civil suit, which was dismissed and a Civil Second Appeal preferred there-from also

failed. This Court in Civil Second Appeal preferred by petitioner being CSA No. 35/94 vide its judgment dated 24.11.1997 held that civil suit is

not maintainable being barred under the J&K Co-operative Societies Act 1960, though it was held that petitioners services are governed by SRO

233 of 1988 which is statutory in nature and the petitioner can avail remedy provided there-under. Against this judgment, respondent/Bank

approached the Apex Court and SLP preferred came to be dismissed.

3. Petitioner has stated in para-11 of the petition that after the aforesaid judgment by this Court, which was confirmed by the Apex Court, he

approached the Registrar, Co-operative Societies, Jammu for settlement of his dispute of termination through arbitration and the same was

dismissed in default of appearance by the Registrar, Co-operative Societies. Petitioner applied for copy of the order, however, the file was

misplaced from the office of the Registrar, Co-operative Societies and the same has not been traced till the date of filing of this petition. Petitioner

has accordingly approached this Court challenging the impugned order through the medium of this petition. It is stated that petitioners services

having been terminated in violation of SRO 233 of 1988, termination order is liable to be set- aside.

4. Mr. Ajay Abrol, learned Counsel for the petitioner has referred to SRO 233 dated 8.7.1988. Rule 19 of this SRO deals with imposition of

penalty which includes dismissal from service. Sub-rule 2 of Rule 19 specifically provides that no penalty shall be imposed on any member of the

service unless proper inquiry is held giving reasonable opportunity to the employee to be heard and thereafter he has been properly charge-sheeted

and reply sought thereto. The order imposing penalty is subject to appeal under Rule 21 of the aforesaid SRO.

5. Mr. Vikram Sharma, learned Counsel for respondent- Bank has argued that

SRO 233 has no application to the case of petitioner on account of the following reasons: (i) that the SRO is applicable to the members of service as constituted under Rule-3 (ii) that the impugned order is not an order imposing penalty upon petitioner for which enquiry was necessitated, even the SRO itself is in applicable. Rule-3 of SRO 233 reads as under:

Constitution of the service: The posts borne on the cadre of all Societies together shall constitute the J&K Co-operative Societies Service.

6. This rule clearly indicates that the service is constituted of the post borne on the cadre of all Societies together. It is nobodys case that any such common service in respect to the post borne on the cadre of all Societies was ever constituted. Apparently it appears that common service of all

the posts borne on the cadre of service of all the societies has not been constituted and therefore, SRO will have no application. Mr. Ajay Abrol,

learned Counsel in response to the argument of learned Counsel for respondent, has brought to my notice two judgments of this Court; (i) in case

of petitioner decided in Civil Second Appeal No. 34/95 dated 24.11.1997 wherein while dismissing the appeal preferred by the present petitioner

against the judgment of court below, the court observed that the services of the petitioner are governed by SRO 233 and Civil Suit is barred .

Admittedly against the judgment, the bank filed SLP and the same stands dismissed. The judgment has attained finality. Mr. Ajay Abrol has also

brought to my notice another judgment in case Ved Pal Sharma v. Citizen Coop Bank Ltd. reported as 2000 Srinagar Law Journal Volume 1

Page 117. wherein a Division Bench of this Court on consideration of the question of application of SRO 233, held as under:

In view of the factual and legal position, it can safely be concluded that the appellants case is to be dealt with in terms of SRO 233, therefore, it is

held:

(i) that the appellant is governed by the service condition as enumerated in SRO 233 i.e. the Rules of 1988.

(ii) that the appellant has a right to approach the Registrar under the under the aforementioned Rules.

(iii) that the direction given by the Registrar Co-operative Societies to held an inquiry was a direction which was perfectly justified. This was in line

with the decision given by the Supreme Court in the two cases referred to hereinabove.

Even though in terms of Rule, no common service of all the Societies having been constituted, application of this SRO seems to be doubtful.

However, in view of the finding of the Division Bench of this Court, I have no option but to accept the finding and hold that SRO 233 is applicable

to the service of the bank. This brings me to consider second argument of Mr. Vikram Sharma. Though his argument is that the termination by the

impugned order is not on account of any misconduct but termination is simplicitor under rules during the period of probation. However, reply filed

by the bank clearly indicates that the termination is on account of misconduct. The relevant extract from reply is noticed hereunder:

The termination of the service of the petitioner was on account of mis-conduct having been committed by the petitioner.

7. Mr. Vikram Sharma has further stated that termination of the petitioner is in terms of Rule 2.10 of the Citizens Cooperative Bank Limited

Employees Service Rules 1981 and in view of the fact that petitioners services have been terminated within the period of less than one year of his

re- appointment, petitioner can only claim one months salary which the bank is ready and willing to pay. Rule 2.10 is noticed as under:

Termination of Service

2.10. The services of a member of the Bank may be terminated by the Board after giving him one month notice.

Or immediately giving him pay for the said period in lieu thereof.

No such notice will be necessary:

(a) If he is removed from service on account of misconduct; or

(b) If he has been in the service of the Bank for a period of less than one year continuously.

8. Though Rule 2.10 empowers the Board of Directors of the bank to terminate the service of an employee on account of misconduct where the

service is less than one year by giving one months notice, the fact remains that the impugned order did not say anything about the exercise of power

under rules and even one months salary is not paid. There is another question which needs to be answered by the respondents. These Rules were

framed in the year 1981 and are not statutory in nature. These are service rules framed in exercise of the administrative functions of the Board of

Directors and have no statutory backing, whereas vide SRO 233, rules are framed in exercise of rule making power u/s 124 of the J&K

Cooperative Societies Act 1960. These rules are admittedly statutory in nature . In the event of conflict between the two rules, statutory and non-

statutory, statutory rules will prevail . Rule 19 of SRO 233 specifically require holding of an inquiry in case of misconduct and it speaks sense

because misconduct cause stigma to an employee, which cannot be allowed without holding proper inquiry and affording of an opportunity of being

heard . The impugned order and the reply filed by the respondent- bank show that termination of petitioner is on account of stigma.

9. Mr. Vikram Sharma, counsel for respondent has next argued that present petition is not maintainable because the petitioner had availed

alternative efficacious remedy available under SRO 233 i.e. by initiating proceedings before Registrar, Cooperative Societies, which proceedings

were dismissed due to the negligence of the petitioner on account of default of appearance and as such Petitioner cannot invoke extra ordinary writ

jurisdiction of this Court. Ordinarily, writ jurisdiction cannot be permitted to be invoked where the alternative efficacious remedy is available.

However, in case where the order is without jurisdiction and has been passed in gross violation of principles of natural justice, writ court can

exercise jurisdiction under Article 226 of the Constitution of India to entertain such petition. I do not agree with the submission of the learned

Counsel for respondent on the question of maintainability of writ petition. Otherwise also, the dispute between the parties is pending since 1993

and petitioner knocked the door of one forum or the other and relegating him to square one at this stage would not be justified. The main

contention of the petitioner is that the impugned order has been passed without affording an opportunity of being heard to him. It is stated in the

reply that no enquiry was required, as the services of the petitioner have been terminated on account of misconduct committed by him. This

admission clearly establishes that petitioner was required to be heard but principles of natural justice have not been observed at all. The impugned

order visits with civil consequences upon petitioner. Apart from that, it is a stigma as he has been terminated on account of alleged misconduct. The

order is not sustainable in law and the same is hereby quashed.

10. As a consequence of the quashment of impugned order, petitioner is directed to be reinstated forthwith. Admittedly, petitioner has not

performed his duty from the date of his termination till date. He will not be entitled to any salary during the period he remained out of service.

However, he will be entitled to the salary which was being paid to him or in revised pay scale from the date he is reinstated to service. Petition is

accordingly allowed.