

(1994) 09 KAR CK 0012
In the Karnataka High Court
Case No : Writ Petition No. 8300 of 1994

M. Hanumanthappa

APPELLANT

Vs

Executive Director, Kolar District Milk Co-operative Producers
Society Union Ltd.

RESPONDENT

Date of Decision : 12-09-1994

Acts Referred:

Constitution of India, 1950 — Article 12, 226
Karnataka Co-operative Societies Act, 1959 — Section 70

Citation : (1994) ILR (Kar) 3725 : (1994) 5 KarLJ 54

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : M.S. Bhaghawath and A. Venkataswamy, for the Appellant;
Siddappa, for R-1, H.G. Vasanthakumar, for R-2 and N.K. Ramesh, H.C.G.P. for
R-3, for the Respondent

Final Decision : Dismissed

Judgement

Hari Nath Tilhari, J

1. This Petition is directed against the Notification dated 16.2.1994 issued by the Respondent No. 1 for appointment on the post of Technical Officer. The post of Technical Officer had been advertised calling upon the applications from the candidates who possess requisite qualifications viz., B.E. (Electrical), (Mechanical) and Dairy Engineering.

2. The petitioner claims that he is a Diploma holder in Mechanical Engineering and he had been appointed as Dairy Supervisor (Grade-II) on 2.5.1985 vide Annexure "B" to the Writ Petition. The petitioner's further case is that, some time in June 1991, the petitioner was granted time bound promotion on the post of Senior Dairy Supervisor. The petitioner has pleaded that the next promotion from the post of Senior Dairy Supervisor is to the cadre of Technical Officer/Manager. The petitioner has further averred that he has been holding the post of Technical Officer/Manager of Gowribidanur from 24th October 1991. But, instead

of placing the petitioner on the independent charge of the post, the opposite parties have issued the advertisement for the recruitment on the post of Technical Officer. According to the petitioner's case, there are no Service Rules and that they are following the C & R Rules of Karnataka Milk Federation. The petitioner's case is that it is irregular. The petitioner has stated that there has been need for framing uniform C & R Rules under Rule 17(1) of K.C.S.R. The petitioner has further taken the plea that the Notification issued for appointment on the post of Technical Officer/Manager is illegal and without jurisdiction.

3. The Statement of Objection has been filed on behalf of opposite party No. 1.

4. I have perused the same. One of the pleas taken is that the petitioner has got remedy u/s 70 of the Karnataka Cooperative Societies Act and so, the Petition is not maintainable. It has also been taken as a plea that Respondent No. 2 is not a State and so, the Writ Petition is misconceived and not maintainable. On the merits of the case, it has been alleged in the objection that the necessary qualifications mentioned in the Notification is B.Sc.(DT) or B.E(EL) or B.E. (Mechanical), Dairy Engineering, It has been further averred that the petitioner is a Diploma holder as mentioned in the -Writ Petition and he does not have the necessary qualification. It has further been asserted that the 1st respondent-Union is empowered to fill up the posts which are empowered to be filled up by the Registrar. In para-7, it has been stated that the Union has not at all framed Rules and the 1st respondent is contemplating to get the approval of the authority. In para-8 of the reply, it has been stated that the petitioner is holding the post of Dairy Supervisor (Grade-M) in the pay scale of Rs. 1400-00 to Rs. 2750-00. However in between Grade-II and Technical Officer, there is another grade called Senior Dairy Supervisor Grade-I in the pay scale of Rs. 1720-00 to Rs. 3170-00 and it is further stated that unless he is placed in that grade, he cannot claim the post of Technical Officer in the pay scale of Rs. 1900-3650. While effecting promotion from Grade II to Grade I thereafter to Technical Officer, the confidential reports are main factors to be considered in the matter of promotion. It is further subject to the screening by the Expert Committee and with these allegations, it has been stated that the Writ Petition is liable to be dismissed.

5. I have heard Sri M.S. Bhagwath for the petitioner and Sri S. Siddappa for respondent No. 1 at length.

6. Sri Siddappa on behalf of respondent challenged the maintainability of the Writ Petition and urged the respondent No. 2, under which Respondent No. 1 functions, is not a State nor a State authority within the meaning of Article 12 of the Constitution of India He further submitted that in view of remedy available u/s 70 of Karnataka Co-operative Societies Act, this Petition is liable to be dismissed on the ground of alternative remedy.

7. It was also asserted on behalf of opposite party-1 that Respondent No. 2 is not State, because it is only a Federation and is mentioned as Karnataka Milk

Federation.

8. The learned Counsel for petitioner replying these objections submitted that in view of Full Bench Decision of this Court in R.V. PANDURANGA RAO's case 1994(1) KLJ 149 Co-operative Milk Producers Co-operative Federation, popularly called by short name Karnataka Milk Federation is State under Article 12 of the Constitution. Sri Bhagwath further submitted Section 70 of Cooperative Societies Act does not apply to present case. So, there is no alternative remedy available to petitioner.

9. I have applied my mind to respective contentions and have perused the record, and a perusal of Annexures "B" and "D" per se shows that Karnataka Co-operative Milk Producers Federation Limited, Bangalore is at times described in a short form as Karnataka Milk Federation. So, there can be no dispute about the fact that Karnataka Milk Federation or Karnataka Co-operative Milk Producers Federation Ltd. is one and same thing. In the Official Memorandum-Annexure "D", it is mentioned that the following candidates have been selected by the Karnataka Co-operative Milk Producers Federation Ltd., Bangalore and are appointed as Dairy Supervisor Grade-11 and in which, the name of the petitioner finds place at SI.No.7. A perusal of the petitioner's own document and the documents really issued by the 2nd respondent per se show that the Karnataka Milk Federation and Karnataka Co-operative Milk Producers Federation is one and same entity or body. The body being the same, in my opinion, the question whether it is the State or not is fully covered by the Full Bench Decision of this Court in the case of K.V. Panduranga Rao v. Karnataka Dairy Development Corporation, Bangalore, wherein the Full Bench of this Court has been pleased to hold and observe after a detailed discussion as under: -

"We therefore answer the reference in the affirmative and hold that the Karnataka Co-operative Milk Producers" Federation Ltd., is State within the meaning of that expression in Article 12 of the Constitution."

10. This observation of the Full Bench Decision is clear cut reply to the arguments raised on behalf of Respondent No. 1 as regards the challenge to the maintainability of the Writ Petition on the ground that Respondent No. 2 is not the State. Thus, the 1st preliminary objection, in my opinion, has got no substance and it is held that Respondent No. 2 is the State. The second contention that has been raised challenging the maintainability of the Writ Petition is to the effect that the dispute is covered by Section 70 of the Karnataka Co-operative Societies Act. This contention of the respondent's Counsel has been attempted to be met by the petitioner's Counsel by submitting that here is the question of jurisdiction to the effect that opposite parties are, without framing the necessary Rule, entitled to issue Notification inviting application for the post and to go to make the appointment and therefore, alternative remedy is no bar. The learned Counsel for the petitioner further submitted that there is a Division Bench Decision of this Court, that, alternative remedy u/s 70 does not create a bar to the maintainability of the Writ Petition.

11. I have applied my mind to the contentions of the learned Counsel for the petitioner. Before proceeding to answer the question of alternative remedy, I may mention it here that the learned Counsel for the petitioner has not been able to place any Case Law before me in support of his contention that the authority is not competent to issue Notification calling application for appointment on the post of Technical Officer/Manager without framing Rules and as such, at this juncture, he has not been able to substantiate his arguments. These observations which have been made are only confined to the question of alternative remedy or exception thereto and it is kept open to the petitioner's Counsel for being raised on behalf of petitioner later on before the competent authority. But so far as the alternative remedy is concerned, until it is clearly shown that the order per se is without jurisdiction or it is illegal or bad on account of breach of principle of Natural Justice, this Court has refused to exercise its powers under Article 226 taking it to be just and proper to relegate the party to alternative remedy as provided under the law. It is well settled principle of law as laid down by the Supreme Court as well to the effect that except in a very exceptional cases where the order per se appears to be illegal, null or void being without jurisdiction or appears to be, in breach of Principles of Natural Justice, in which case it is open to this Court to exercise its power under Article 226, otherwise, when the law provides specific remedy, the party has got to be relegated to that remedy provided by statute, Reference may be made to the Decision of the Supreme Court in the case of Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others,

In that case, Their Lordships" of the Supreme Court have been pleased to lay down as under:-

"Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations, as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to by-pass the alternative remedy provided by statute."

12. So, it is the settled principle that where statutory remedies are available, ordinarily the Court refuses to exercise the jurisdiction vested in it except in very exceptional cases. In the present case, it has been contended that Section 70 of the Karnataka Co-operative Societies Act provides the remedy. Section 70 of the Act provides and reads as under:-

"70. Disputes which may be referred to Registrar for decision.-

(1) Notwithstanding anything contained in any law for the time being in force, if any dispute touching the constitution, management, or the business of a co-operative society arises-

(a) (b) xxx xxx xxx (c) between the society or its committee and any past committee, any officer, agent or employees, or any past officer, past agent or past employee or the nominee, heirs, or legal representatives of any deceased officer, deceased agent, or deceased employee of the society, or

(d) xxx xxx xxx such dispute shall be referred to the Registrar for decision and no court shall have jurisdiction to entertain any suit or other proceeding in respect of such dispute."

(2) For the purposes of Sub-section (1), the following shall be deemed to be disputes touching the constitution, management or the business of a co-operative society, namely -

(a) (b) (c) xxx xxx xxx (d) any dispute between a co-operative society and its employees or past employees or heirs or legal representatives of a deceased employee, including a dispute regarding the terms of employment, working conditions and disciplinary action taken by a co-operative society.

(e) xxx xxx xxx Sub-section (3) is not relevant for the purpose.

13. A reading of Sub-section (1)(c) of Section 70 of the Act along with Sub-section 2(d) of Section 70 of Co-operative Societies Act per se shows and indicates that, if a dispute between Co-operative Society and its employee relates to terms or conditions of employment or service, then such a dispute has to be referred to the Registrar for decision and his decision shall be final. I may make it clear that Section 70 by itself does not bar the jurisdiction of this Court under Article 226 of the Constitution of India, but it being one of the well settled principles controlling and guiding the exercise of jurisdiction under Article 226 of the Constitution that if the statute provides alternative remedy and the case is not of exceptional nature, this Court should not ordinarily exercise its Writ Jurisdiction under Article 226. The petitioner as per his case mentioned at paragraph-3 is working as Senior Supervisor in the scale of Rs. 1720-3170/- and according to him, no advertisements should have been issued particularly in view of the non-framing of the Rules as well as on account of the petitioner being placed on the post of Technical Officer can be said to be a dispute and such a dispute is covered within frame work of Section 70 of the Karnataka Co-operative Societies Act read with Sub-section (1)(c) and Section 2(d) thereof. In this view of the matter, I am of the opinion that the petitioner has got alternative statutory remedy to place his grievance before the competent authority. I am not making any observations really on the merits of the case one way or the other nor any observation should be taken to debar the petitioner from raising any question relating to legality or illegality of the Notification before the competent authority u/s 70 of the Act.

14. The learned Counsel has referred to the Division Bench Decision of this Court in the case of KRISHNEGOWDA v. KARNATAKA STATE CO-OPERATIVE APEX BANK LTD, in support of his contention that, in this case, the Division Bench has held that Section 70 will not operate as alternative remedy or bar the jurisdiction of

the Court to entertain the Writ Petition. As I have mentioned earlier, Writ Jurisdiction, so far as alternative remedy is concerned, is not a bar by itself as a Rule of Law, but as a principle of guidance for exercise of jurisdiction it will be established that the Courts shall refrain from exercising jurisdiction under Article 226 where alternative remedy is available to the party. The Court will ordinarily refuse to exercise its jurisdiction. The authority referred to above reported in Krishnegowda Vs. Karnataka State Co-operative Apex Bank Ltd., is not applicable to present case and is distinguishable in view of the observations made in para-5 of the above Judgment:-

"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."

According to the facts of that case, the Writ Petition had been filed some time in October 1982. Then Rule Nisi was issued and in November 1990, the Petition was dismissed, not on merits, but on the ground of alternative remedy. This Court, (Division Bench) in that case, took the view that dismissal of the Writ Petition on that ground was not correct after such a long time by eight years taking in view that the Writ which had been filed in 1982 and was dismissed in 1990 and the Division Bench referred to the Decision of the Hon'ble Supreme Court in the case of Assam Sillimanite Ltd. and another Vs. Union of India and others, and quoted the observations from that Judgment, which per se shows that in the Assam Sillimanite Ltd's case, Writ Petition has been filed in 1973 and remained pending for 17 years. In that context, the Supreme Court had been pleased to observe that:-

"It is true that the petitioner could have filed a suit for the same purpose with a favour 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."

15. These observations per se will show that Writ on the ground of alternative remedy should not be dismissed if the matter had been kept pending for good many years and should be decided on merits to avoid unnecessary litigations. So far the present case is concerned, the Writ Petition had been filed before this Court some time in March 1994 and definitely it is open to the respondents to raise the contention and ask the Court to refuse the jurisdiction vested particularly when alternative remedy is available to the petitioner and no injury is going to be caused by relegating him to the alternative remedy provided under the statute law, as such, Krishnegowda's case is not applicable to the facts of the present case nor can it be read as precedent applicable to the present case.

16. In the circumstances mentioned above, I think it will be just and proper to refuse to interfere with the Notification under Article 226 of the Constitution without making any observation on merits of the case. It is open to the petitioner to raise his dispute u/s 70 of the Act and avail that remedy. Thus, on the ground of availability of alternative remedy, this Writ Petition is dismissed without making any observations on the merits of the case.