
(2010) 07 AHC CK 0004
In the Allahabad High Court
Case No : Writ (C) No. 50785 of 2006

M.D./Member Secretary, U.P. Co-operative Union	APPELLANT
Vs	
Appellate Authority and Others	RESPONDENT

Date of Decision : 02-07-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Payment of Gratuity Act, 1972 — Section 14
Uttar Pradesh Co-operative Societies Act, 1965 — Section 123

Citation : (2011) 1 LLJ 188

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prakash Krishna, J.—These are eight writ petitions which were heard together and as agreed by the learned Counsel for the parties are being disposed of by a common judgment.

2. The learned Counsel for the parties jointly agreed that the controversy factual and legal in all these petitions are identical. On the request, the Writ Petition No. 50785/2006 was considered as leading case and the facts from that writ petition are being noted.

3. The present writ petitions arise out of proceedings under the Payment of Gratuity Act, 1972, and are directed against the orders passed by the Prescribed Authority and the Appellate Authority, U.P. under the said Act in favour of the contesting Respondent No. 3, Sri Sushil Chandra Sharma, in the leading writ petition. The private contesting Respondents who were the employees of the Petitioner after reaching the age of superannuation moved the Prescribed Authority under the Payment of Gratuity Act by raising a grievance that the amount of gratuity paid to them is deficient/short. The said plea has found favour with the two authorities below.

4. The Respondent No. 3 entered into service on July 20, 1960 and retired as cooperative supervisor on December 31, 1976 on attaining the age of superannuation. According to the Petitioner, a sum of Rs. 75,000/- was payable to him towards the gratuity which was, in fact, paid to and received by him. The Respondent No. 3 filed an application under the Payment of Gratuity Act claiming a sum of Rs. 89,286/- towards the gratuity and thus, demanded the balance amount amounting to Rs. 14,286/- towards the balance gratuity. The application was contested by the Petitioners on the pleas that the application is belated one and same is not maintainable. The said pleas having been rejected by the two authorities, the present writ petition has been filed on the pleas inter alia that the U.P. Cooperative Union and U.P. Co-operative Federal Authority are two different and distinct bodies where one is apex body and another is "authority" declared u/s 123 of the U.P. Cooperative Societies Act, 1965 and both have no connection with each other. It was pleaded that the provisions of the Gratuity Act, 1972 are not applicable in the matter of supervisor who are members of the Co-operative Federal Authority and governed by the Service Regulations framed thereunder.

5. Along with the writ petition, the Petitioners have not enclosed a copy of their objections filed in opposition to the application for payment of gratuity by the Respondent No. 3. However, the copies of the objections against the delay condonation in filing the application and containing the pleas that such an application is not maintainable, have been annexed as Annexures-4 and 5 to the writ petition. Through these objections, the Petitioners have urged that the application is barred by Sections 70 and 117 of the Co-operative Societies Act, 1965 as also by Section 80 Code of CPC. It has been stated that a provision namely Cooperative Federal Authority (Business) Regulations, 1976 (hereinafter referred to as Business Regulations, 1976) for cooperative supervisor and Kamdars have been made to govern their service conditions."

6. In the counter affidavit it has been stated that the Respondent No. 3 was in service with the Provincial Cooperative Union which is a registered apex society and the employees of the same are not governed by the U.P. "Cooperative Federal Authority (Business) Regulations, 1976 and as such, the provisions of the Gratuity Act, 1972 are applicable. Further, it has been stated that the Provincial Cooperative Union is an Apex Society under the provisions of the U.P. Cooperative Society Act, 1965, thus an industry and also an establishment which are governed under the Payment of Gratuity Act, 1972 vide para 8 of the counter affidavit. It has been stated, without giving the particulars of any decision, that the controversy in question has been set at rest by various pronouncements of the High Court which shall be produced at the time of argument. In the rejoinder affidavit, the pleas raised in the writ petition have been reiterated. In addition, reference of the judgment of the Apex Court in the case of Ghaziabad Zila Sahkari Bank Ltd. Vs. Addl. Labour Commissioner and Others, holding that the provisions of the U.P. Industrial Disputes Act, 1947 and/or the other labour laws are basically meant for application to a factory and such establishment, are not

applicable to the cooperative societies and organizations: constituted under the U.P. Cooperative Societies Act, 1965.

7. Sri K.N. Misra, learned Counsel for the Petitioner submits that in view of the aforesaid judgment of the Apex Court in the case of Ghaziabad Zila Sahkari Bank Ltd. v. Deputy Labour Commissioner (supra), and provisions of Business Regulations, 1976, the provisions of Gratuity Act are not applicable to the employees such as Respondent No. 3 herein. His argument proceeds on the basis that the Respondent No. 3 was an employee of the Cooperative Federal Authority which is declared as "authority" u/s 123 of the U.P. Cooperative Societies Act. On that assumption the argument proceeds that services of the Respondent No. 3 are governed by the provisions of the Business Regulations, 1976. Elaborating the argument, it was submitted that the Petitioner being an "authority" within the meaning of Section 123 of the U.P. Cooperative Societies Act, the provisions of the Payment of Gratuity Act stand excluded.

8. In reply, Sri Rajesh Tiwari and Sri Raj Singh, learned Counsel for the Respondents, submit that the Petitioner wants to raise a new controversy through the present writ petition. It was submitted that the case of the contesting Respondent No. 3 that he was an employee of the U.P. Cooperative Union was not in dispute before the authorities below. Having failed to raise any such dispute which is being sought to be raised herein that the U.P. Cooperative Union and U.P. Cooperative Federal Authority are two independent, separate and distinct entities, the said controversy cannot be allowed to be raised in the present writ petition which is otherwise also a question of fact. It was submitted that the controversy sought to be raised by the Petitioner is no longer res Integra and has been set at rest by this Court in favour of the contesting Respondents in the case of Parmeshwar Dayal Shukla v. Deputy Registrar, Cooperative Societies, U.P. Allahabad Region, Allahabad and Ors. 1982 UPLBEC 398.

9. Considered the respective submissions of the learned Counsel for the parties and perused the record.

As noticed herein above, the argument of the Petitioner proceeds on the assumption that the Respondent No. 3 herein was an employee of the U.P. Cooperative Federal Authority. The entire argument was built up on the said supposition. On a careful examination of the pleadings in this regard as were placed before the authorities below, it would appear that no such plea was put forward in specific term by the Petitioner. Annexure-3 is the copy of application for gratuity filed before the Controlling Authority under the Payment of Gratuity Act, 1972. In the said petition, the U.P. Cooperative Union is the sole Respondent/ opp. party therein. It does not appear that anybody else was impleaded being U.P. Cooperative Federal Authority as one of the Respondents. In para 1 of the application it has been stated that the applicant (Respondent No. 3 herein) was an employee of the above noted opposite party, in addition to other things. The above noted opp.party in the application is obviously U.P. Cooperative Union, 14, Vidhan Sabha Marg, Lucknow. It does not appear that the fact that the

application (Respondent No. 3) was an employee of the U.P. Co-operative Union was disputed seriously by the present Petitioner. The Petitioner has not cared, to annex a copy of the objection, if any, filed to the above referred application of the Respondent No. 3 herein. From the orders of the two authorities below it does not appear that any such controversy which is being sought to be raised herein was raised in so many words before them. Interestingly, in the objection with regard to the maintainability of the application, no such plea appears to have been taken by the Petitioner in specific terms. Against the order of Prescribed Authority, an appeal was preferred and the Appellant has been described therein as Manager, Director/Secretary, Sachiv, U.P. Cooperative Union/ Cooperative Federal Authority, Lucknow. Had there been two distinct authorities, such as U.P. Cooperative Union and U.P. Cooperative. Federal Authority, these persons should have been impleaded as Appellant Nos. 1 and 2 in the array of the parties. Even in the writ petition, these two persons have not been impleaded separately as Petitioner Nos. 1 and 2. All these go a long way to show that before the authorities below no serious dispute that the Respondent No. 3 was an employee of Co-operative Federal Authority which is quite distinct and separate from the U.P. Cooperative Union, was urged. It is apt to note that besides raising the said plea which is a sort of factual controversy, no material in support thereof has been placed along with the writ petition even. The Petitioners could have filed the appointment letters and other service records easily to show that the contesting Respondent No. 3 was an employee, of the Cooperative Federal Authority. Therefore, foundation that Respondent No. 3 was an employee of the "Federation" has not been laid in the pleadings, nor there is any supportive material thereof.

10. The upshot of the above discussion is that even assuming for a moment that there is any substance in the aforesaid plea of the Petitioner, the said plea in absence of any material evidence is liable to be rejected.

11. Taking into consideration the entire gamut of the material on record, it is not possible for this Court to come to conclusion that the Respondent No. 3 was in the employment of the U.P. Co-operative Federal Authority as was alleged by the Petitioners. This being so, it is not necessary to examine the argument of the Petitioners that in view of the provisions of Business Regulation, 1976, the provisions of the Gratuity Act stands necessarily excluded.

12. It is also important to place on record that the learned Counsel for the Petitioners did not urge that the provisions of the Payment of Gratuity Act are not applicable to the employees of the U.P. Cooperative Union. Sri K.N. Misra, advocate, fairly accepts that the provisions of the Payment of Gratuity Act are applicable to the U.P. Cooperative Union. There being no dispute, the said issue was not examined by me.

13. Strong reliance was placed by the learned Counsel for the Respondents that the controversy stands concluded in his favour in view of the Division Bench judgment of this Court in the case of Parmeshwar Dayal Shukla v. The Deputy

Registrar, Cooperative Societies, U.P. Allahabad Region, Allahabad and Ors. (supra). I have gone through the entire judgment but it does not appear that the controversy on hand is covered by the aforesaid decision. The said decision was rendered under a different factual matrix and whether the provisions of the Gratuity Act are applicable or not, was not up for consideration therein. Challenging the termination order, passed by the Deputy Registrar, Cooperative Societies, writ petition was filed, which was allowed on the ground that the Deputy Registrar had no jurisdiction, authority or power to terminate the services of the Petitioner therein. Reference was also made to Municipal Board, Khurja, Bulandshahar v. Appellate Authority and Additional Labour Commissioner 1986 ACJ 416 wherein it has been held by this Court that Section 14 of the Gratuity Act has an overriding effect over the other enactments. Strikingly, Section 14 provides overriding effect to "instrument or contract" also. It has been so held that the expression "instrument" in Section 14 covers trust deed vide Som Prakash Rekhi v. Union of India AIR 1981 SC 212: 1981 I LLJ 79. Similar view has been taken in Calcutta Dock Labour Board v. Sandhya Mitra 1993 III LLJ(Suppl) 412(SC).

14. The learned Counsel for the Respondents also referred (1) M.S.R. Murthy v. Arya Somayajulu Yagneswara Chenulu 1985 L.J.C. 189, (2) Chanan Lai v. Municipal Committee 1986 L.I.C. 638 and (3) Municipal Corporation of Delhi Vs. Dharam Prakash Sharma and Another, It is not necessary to discuss them individually as they are not directly on the point and distinguishable on facts.

15. Lastly, strong reliance was placed by the learned Counsel for the Petitioners on the Apex Court judgment in the case of Ghaziabad Zila Sahkari Bank Ltd. v. Deputy Labour Commissioner (supra). It was submitted that the cooperative law provides for a complete machinery, the industrial laws are not applicable and as such the provisions of the Gratuity Act are also not applicable. No doubt, the Supreme Court in the above case has held that in the matter of the employee of cooperative society, the provisions of industrial law/labour law are not applicable. On the basis of the principle that the Cooperative Societies Act being Special Act would prevail over the industrial law. On a careful consideration of the above submission, it may be found that there is no material before this Court to hold the U.P. Cooperative Federal Authority is a Cooperative Society under the U.P. Cooperative Societies Act. No such plea appears to have been taken in the writ petition or before the authorities below. For the first time, in the rejoinder affidavit, in the second part of paragraph 4, reference of the aforesaid decision without laying factual foundation, has been made. On the pleadings as they stand today, the said issue cannot be adjudicated upon. The pleadings are deficient in this regard. There is no opportunity to the contesting Respondents to put forward his say on this issue. It may be noted that only a small amount of around Rs. 15,000/- is involved which too has been paid to the Respondent No. 3 who has retired way back in the year 1996. Looking to the smallness of the amount involved and coupled with the fact that the said amount has been received by the Respondent No. 3 who is a retired employee, retired about 14

years back, it is not a fit case to permit the Petitioners to raise the aforesaid plea. It is also not a fit case to exercise discretion in favour of the Petitioners.

There is no merit in the writ petition. All the writ petitions are hereby dismissed. But no order as to costs.