

(2016) 11 RAJ CK 0059

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 389 of 2015

Mewasingh

APPELLANT

Vs

Ganganagar Central Cooperative Bank Limited

RESPONDENT

Date of Decision : 21-11-2016

Acts Referred:

Rajasthan Co-operative Societies Act, 1965 — Section 128

Citation : (2017) 1 WLN 351

Hon'ble Judges : Mr. Navin Sinha, CJ. and Vinit Kumar Mathur, J.

Bench : Division Bench

Advocate : Mr. Kuldeep Mathur, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

1. The present appeal arises from order dated 21/01/2015 allowing S.B. Civil Writ Petition No.2562/2001 setting aside order dated 20/03/2001 passed by the Minister, Department of Cooperative under Section 128 of the Rajasthan Cooperative Societies Act, 1965 (hereinafter to be referred as the Act") which in turn set aside the termination of "the Appellant dated 08/10/1994 as affirmed in appeal.

2. Learned Counsel for the Appellant submitted that there was no delay in preferring the revision application under Section 128 of the Act before the Hon"ble Minister. It is essentially an inherent supervisory power vested in the government and the Registrar to examine the legality and propriety of any decision or order passed. The order in S.B. Civil Writ Petition No.1330/2002 (Managing Director, Ganganagar Central Cooperative Bank Limited v. State of Rajasthan) is distinguishable on its own facts as in that case without preferring a statutory departmental appeal, the inherent jurisdiction of the Minister was sought to be invoked after an inordinate delay of ten years. In the present case, the Appellant had preferred an appeal and thereafter was bona fide pursuing remedies under Section 75 of the Act. After it was held that it was not a remedy available the revision application under Section 128 was preferred with alertness.

3. We have considered the submissions on behalf of the Appellant and find no reason to interfere with the order under appeal.

4. The Appellant was proceeded with departmentally on allegations of financial misdemeanor. The order of the appellate authority dated 12/02/1997 states that despite notice he did not appear in the departmental proceedings leading to dismissal on 08/10/1994. The appeal also was time barred. Section 75 of the Act deals with the disputes with regard to constitution, management and business of cooperative society, inter-se amongst members, past members, deceased members and those who are claiming through members etc. By any stretch of reasoning the termination order and the appellate order were not amenable to challenge under the same nor can it be held that it was a remedy being pursued bona fide.

5. The inherent power under Section 128 is statutory in nature and will have to be exercised strictly in terms of and within limits of the power conferred. The Hon"ble Minister exercising inherent powers is not a Court and has no inherent powers to condone delay. The Section itself provides that no application is maintainable after 90 days from the cause of action. There is no provision to condone delay. The Legislative intent is clear that the inherent power cannot be exercised at will at any time but only within the constraints of the time limit prescribed. The question of condoning any delay by filing an application under Section 5 of the Limitation Act simply does not arise. No Tribunal or body has the authority to condone delay unless it is specifically provided for and vested with the same. In (2003) 8 SCC 431 (Prakash H.Jain v. Marie Fernandes) it was observed as follows :-

"13.The competent authority constituted under and for the purposes of the provisions contained in Chapter VIII of the Act is merely and at best a statutory authority created for a definite purpose and to exercise, no doubt, powers in a quasi-judicial manner but its powers are strictly circumscribed by the very statutory provisions which conferred upon it those powers and the same could be exercised in the manner provided therefor and subject to such conditions and limitations stipulated by the very provision of law under which the competent authority itself has been created."

6. The application under Section 128 was preferred before the Hon"ble Minister after a delay of four years as noticed by the learned Single Judge. Delay has always been considered vital in service matters as after an employee is removed, the employer does not keep the post vacant to facilitate a dismissed employee to obtain orders of reinstatement at leisure and the vacancy created is filled up by another giving rise to third party rights and interests.

7. The Court finds no reason to interfere with the order under appeal. The appeal is dismissed.