

(2010) 04 MP CK 0090

In the Madhya Pradesh High Court

Case No : Writ Petition No. 683 of 2009 (S)

Mithilesh Kumar Dubey

APPELLANT

Vs

Brahattakar Krishni Saakh Sahakari Samiti Mydt., Atari Khejda

RESPONDENT

Date of Decision : 06-04-2010

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2010) 3 MPLJ 242

Hon'ble Judges : S.K. Gangele, J;A.K.Shrivastava, J

Bench : Division Bench

Advocate : Raghvendra Dixit, for the Appellant; Sushri Deeksha Mishra, for the Respondent

Final Decision : Allowed

Judgement

A.K. Shrivastava, J.

By this petition under Article 227 of the Constitution of India the petitioner has challenged the validity of the impugned order dated 13-1-2009 passed by M. P. State Co-operative Tribunal, Bhopal, whereby orders dated 21-7-2006 and 10-1-2007 passed by Deputy Registrar, Cooperative Societies, Vidisha, and Joint Registrar, Co-operative Societies, Bhopal, respectively have been set aside.

The petitioner by this petition has sought following reliefs :-

1. That, the impugned order dated 13-1-2009 (Ann. P/1) passed by the M. P. State Co-operative Tribunal Bhopal may kindly be quashed. That, respondent society may kindly be directed to reinstate the petitioner with full backwages w.e.f. 14-10-2004 till today along with all consequential benefit.

That, respondent society may kindly be directed to pay salary to petitioner w.e.f. 21-7-2006 when deputy registrar had ordered to reinstate the petitioner along with 18% interest per annum.

Cost and any other relief which this Hon'ble Court may deem fit kindly be

awarded.

In brief the case of petitioner is that he is working in the establishment of respondent/Society on the post of salesman with effect from 1984-1985. On account of certain charges framed against him, he was relieved from his duty vide letter dated 16-10-2004 which was given in pursuance to resolution dated 14-10-2004 passed by the Managing Committee of the respondent/Society in which a decision, to suspend the petitioner after relieving him, was taken and an enquiry was also directed to be ordered. The resolution dated 14-10-2004 is placed on record as Annexure P-2. Vide letter dated 16-10-2004, it was intimated to the petitioner that in pursuance to the resolution dated 14-10-2004 (annexure P-2), he has been relieved from the work of Society.

The petitioner feeling aggrieved by the letter (annexure P-3) dated 16-10-2004 and resolution (annexure P-2) dated 14-10-2004, submitted a service dispute u/s 55(2) of the Co-operative Societies Act, 1960 (hereinafter referred to as the Act) before Deputy Registrar, Co-operative Societies, on 18-11-2004. Copy of memorandum of dispute has been placed on record as annexure P-4. In the memorandum of dispute, it has been prayed by the petitioner as under:-

The respondent/Society submitted written statement (annexure P-5) and refuted the averments made in the dispute. Learned Deputy Registrar after framing necessary issues and recording the evidence of the parties, allowed the dispute of the petitioner vide order dated 21-7-2006 (annexure P-6) and directed the respondent/Society to reinstate the petitioner in service. However, learned Deputy Registrar did not pass any order in respect to backwages.

Against the order of the Deputy Registrar dated 21-7-2006 (annexure P-6), both the parties preferred separate appeals before the Joint Registrar. The respondent/Society challenged the order of Deputy Registrar on merit directing to reinstate the petitioner, while in his appeal the petitioner challenged that part of the order of Deputy Registrar by which backwages were not directed to be paid. The learned Joint Registrar, Co-operative Societies, vide order dated 10-1-2007 dismissed both the appeals, against which the Society-respondent preferred second appeal before the Co-operative Tribunal constituted under the Act. The writ petitioner also filed cross-objections under Order 41, Rule 22 of Civil Procedure Code. The learned Tribunal allowed the appeal of the Society by setting aside the orders passed by Deputy Registrar and Joint Registrar.

In this manner, this petition has been filed by the petitioner.

At the outset, Sushri Deeksha Mishra, learned counsel for the respondent/Society, submitted that she does not want to file any return and the petition be heard finally and accordingly we have accepted her prayer and heard the matter finally.

The contention of Shri Raghvendra Dixit, learned counsel for the petitioner, is that although in para 3 of the impugned order the Tribunal framed question for

determination as to whether the Courts below have committed illegality in deciding the dispute finally while considering the issue of limitation as preliminary issue, but deviating from the question so framed decided the appeal by giving finding that on account of misconduct committed by the petitioner, validly he was relieved from his work. The contention of learned counsel is that admittedly no departmental enquiry was set up although the services of the petitioner have been terminated by casting a stigma on him and therefore even if for the sake of argument it is held that the petitioner was a daily wager, in arbitrary manner his services could not have been terminated. Further, it has been contended by learned counsel that in the memorandum of dispute (annexure P-4), it has been specifically pleaded by the petitioner that he is serving on the post of salesman in the Society with effect from 1984-1985 but a very vague reply in para 2 of the written statement has been given that the averments in para 2 are related to the record and hence denied. Hence, it has been contended by learned counsel that one fine day by a stroke of pen, the dry bread of the petitioner cannot be snatched arbitrarily by terminating his services by quoting the words that he is relieved from his work charge. The contention of learned counsel is that the Deputy Registrar and Joint Registrar both of them have recorded a categorical finding that indeed without holding any departmental enquiry the petitioner was terminated from his services and therefore learned Tribunal erred in allowing the appeal of the respondent/Society by setting aside the order of reinstatement passed by Deputy Registrar and Joint Registrar.

Per contra, Sushri Deeksha Mishra, learned counsel for the respondent, submits that in order to attract the provisions of section 55(2) of the Act, a person should be an "employee" and because the writ petitioner was not a permanent employee and was only a daily wager, indeed the dispute itself was not maintainable before learned Deputy Registrar and therefore if on the basis of some other approach, the learned Co-operative Tribunal has allowed the appeal of the Society by setting aside the orders of Deputy Registrar and Joint Registrar, no illegality has been committed by the said authorities. Further, it has been propounded by her that the petitioner did not file any document in order to establish that he was in service or is an employee of the Society and therefore the dispute which was raised by him u/s 55(2) of the Act was not maintainable.

It has been further contended by learned counsel for the respondent that although question of limitation has not been decided by the Tribunal though it was framed in para 3 of the impugned order, but since resolution is dated 14-10-2004 and in pursuance of it, order annexure P-3 dated 16-10-2004 was passed by the Manager relieving the petitioner from his work and since the dispute was filed on 18-11-2004, the same is beyond the prescribed period of limitation which is 30 days and hence for this another reason also the order of learned Tribunal cannot be set aside by restoring orders of learned Deputy Registrar and Joint Registrar.

An alternative submission has also been put forth by learned counsel that looking

to series of misconducts committed by the petitioner, liberty be given to the Society/respondent to hold an enquiry against him. On these premised submissions, it has been argued by learned counsel that this petition be dismissed.

In reply, Shri Raghvendra Dixit, learned counsel for the petitioner, submitted that the order of Manager of the Society dated 16-10-2004 was communicated to the petitioner on 21-10-2004 and therefore when the dispute was filed on 18-11-2004, the same cannot be said to be barred by prescribed period of limitation in view of second proviso to section 55(2) of the Act.

Having heard learned counsel for the parties, we are of the view that this petition deserves to be allowed in part.

On going through the memorandum of dispute (pleading) of the petitioner filed u/s 55(2) of the Act, we find that there is a specific pleading of the petitioner in para 2 that he is serving with effect from 1984-1985 in the Society on the post of Salesman. In para 5, he has also so pleaded that he had been serving for the last 19 years and his work was found to be satisfactory. Again it has been repeated in para 6 that he had been serving for the last 19 years. The factum of serving since 1984-1985 or the pleading of the petitioner that he had been serving for the last 19 years at several places in the memorandum of dispute, has not been specifically denied by the respondent/Society. Very vaguely in para 2 it has been pleaded that averments made in para 2 of the dispute are related to the record. Hence, according to us, on account of evasive and vague denial by the respondent/Society in its written statement, it would be deemed that the averments of the petitioner made in his pleading in respect of serving for the last 19 years are admitted to the respondent/Society.

We do not find any force in the submission of learned counsel for the respondent/Society that no document has been filed by the petitioner in order to demonstrate that he is an employee of the Society. This fact has not at all been pleaded in the written statement, nor in any of the Courts below. Hence, this point which is having (no) nexus with the facts cannot be raised before this Court for the first time. Apart from this, on going through the written statement filed by the Society/respondent, we find that allegations are made against the petitioner in respect of committing several misconducts while serving as salesman including misappropriation of money, kerosene etc. and therefore such objection that the petitioner is not an employee, which has been raised for the first time before this Court, is totally misconceived. The stand which has been taken by the Society in its written statement is based on the status of petitioner as salesman of the Society which would mean that they are accepting the petitioner to be its employee. Apart from this, the Society is estopped from raising such a plea for another reason that in the proposal which is mentioned in the resolution of the Society (annexure P-2) dated 14-10-2004, by naming the petitioner and his post as salesman, the said resolution was passed and it was resolved that from the services of the Society he be relieved and be also

suspended. In the order of the Manager of the Society (annexure P-3) dated 16-10-2004 also the petitioner has been denoted, by mentioning his status, as salesman and therefore for these additional reasons also, we do not find any merit in the contention of learned counsel for the respondent that petitioner was not the employee of the Society.

True, there is no averment of petitioner in his memorandum of dispute filed before the Deputy Registrar as to whether he is a permanent employee or a daily wager, but it has been specifically pleaded by him that he is serving in the Society since 1984-1985 as salesman and this fact has not been denied by the Society in its written statement. Similarly, the Society also in its written statement has not pleaded that the petitioner is a daily wager. Be that as it may, since it is borne out from the record that petitioner was in service for the last 19 years in the Society may be either as a permanent employee or a daily wager, according to us, he was an employee of the Society. We also do not find any merit in the contention of learned counsel for the respondent/Society that petitioner being a daily wager, was not an employee. Even if for the sake of arguments it is held that petitioner was a daily wager, since in the definition clause of the Act the word "employee" has not been defined, therefore, we cannot accept the argument of learned counsel for the respondent/Society that section 55(2) of the Act is applicable only for the permanent employee. According to us, the term "employee" used in section 55 of the Act would also include even a daily wager.

Since the term "employee" has not been defined under the Act, hence, we are borrowing the meaning of word "employee" from different dictionaries. In Black's Law Dictionary, the term "employee" has been explained as under :-

One who works for an employer; a person working for salary or wages; applied to anyone so working.

According to Prem's Judicial Dictionary, the word "employee" contemplates the existence of a relationship of master and servant. As per Webster's third New International Dictionary Volume I, "employee" would mean one employed by another usually in a position below the executive level and usually for wages, in labour relations, any worker who is under wages or salary to an employer. The term "employee" has also been elucidated in the Legal Glossary published by Government of India. According to which, employee means one who is employed by another, especially by a business concern or government; one employed in a position below the executive level. Hence, according to us, the term "employee" means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment.

In the present case, the respondent has also not pleaded that the petitioner was a daily rated employee and therefore we are not expressing our view on this point and leave this point open. But for all practicable purposes under the Act, the petitioner was an employee of the Society as he was working for the Society

on the post of salesman for the wages.

On going through the resolution of the Society dated 14-10-2004 (annexure P-2), we find that it was resolved that by relieving the petitioner from the services of the Society, he be suspended with a further direction that he should submit the record about the articles which he had received and the irregularities committed by him will be inquired and thereafter recovery will be made against him. In pursuance to the resolution dated 14-10-2004 (annexure P-2), a letter was written by the Manager of the Society to the petitioner on 16-10-2004 intimating him that he has been relieved from the work of the Society. A copy of the resolution dated 14-10-2004 was also sent along with this letter, in the resolution dated 14-10-2004, we find that it was resolved that petitioner be relieved from his services and be also suspended by giving direction to submit all the record and further it was resolved to hold an enquiry against irregularities and illegalities committed by him in respect to business affair of sale of fertilizer and thereafter recovery be made against him by passing an order. But, admittedly no enquiry was conducted against him and without holding any enquiry he was relieved from the work of the Society which would impliedly mean that his services have been terminated by casting stigma on him. In the written statement of the Society also, allegation of committing several misconducts by the petitioner has been pleaded that he has committed certain financial irregularities and also misbehaved with senior members of the Society etc. Admittedly, no departmental enquiry was conducted against the petitioner and therefore the action of the respondent/Society terminating his services by clothing it very cleverly with the nomenclature (Shri Mithilesh Kumar Dubey is relieved from the services of the Society by suspending him) is bad in law.

There is no pleading of the Society that before terminating the services of the petitioner any departmental enquiry was held. According to us, even if for the sake of arguments, it is held that petitioner was a daily wageer, even then his services cannot be terminated arbitrarily by casting a stigma on him. According to us, even if it has been resolved by the Society and accordingly the Manager wrote a letter to the petitioner that by relieving the petitioner, he is suspended, we have to put emphasis whether such type of order is stigmatic or not by uplifting the veil. According to us, in order to ascertain whether the order is stigmatic or not, one of the test is that if the order is allowed to remain stand, it will occasion in evil consequences. The answer of question why the enquiry is necessary if the services are required to be terminated by whatever naming it, is that in absence of holding any departmental enquiry of the stigmatic charge, a person would carry label of guilty employee for which he was not given any opportunity to explain that he is innocent and therefore certainly he would be in difficulty to have any other employment on account of the label of an ex-employee who has committed some misconducts. The Supreme Court in certain decisions has laid down the law that even temporary servants are entitled for protection and their services cannot be terminated by a stigmatic order without holding any enquiry. *Dipti Prakash Banerjee Vs. Satvendra Nath Bose National*

center for Basic Sciences, Calcutta and Others, is the case in which the petitioner was a probationer, the Supreme Court has held that if findings are arrived at in an enquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, simple order of termination is to be treated as founded on the allegations and will be bad. In earlier decision Hardeep Singh Vs. State of Haryana and Others, the same principles were elucidated by the Supreme Court.

Learned Deputy Registrar on the basis of evidence led by the parties, came to hold that without holding any departmental enquiry, the services of the petitioner were terminated and this order was affirmed by the Joint Registrar in appeal. According to us, the finding of learned two authorities below is based on appreciation of evidence holding the termination of services of the petitioner to be bad in law since it was passed without holding any departmental enquiry and according to us, the finding of Deputy Registrar and Joint Registrar should not have been lightly brushed aside by the Tribunal. The Tribunal in para 8 has held that what were the terms and conditions of the services and whether his services were regularized or not, it has also not been pleaded by the petitioner in his memorandum of dispute. True, this has not been so pleaded by the petitioner, but it is also equally true that respondent/Society also did not plead in his written statement about the status of the petitioner as salesman whether he is a temporary, daily wager or permanent employee or whether his services were regularized or not. Without any evidence on record in para 8, the Tribunal has held that post of salesman is temporary and daily rated and is not a regular post and therefore in order to relieve the petitioner, there was no necessity to hold any departmental enquiry. According to us, the said finding is perverse for the simple reason that there is no pleading of the Society in its written statement that petitioner was a daily rated employee or his services were temporary in nature or he was appointed on contractual basis. The Tribunal also found and held that the petitioner has committed misconduct and therefore according to Tribunal since he was not a permanent employee, there was no necessity to hold any departmental enquiry. We have already held hereinabove that by casting a stigma, the services of even a daily rated/temporary/contractual employee cannot be terminated and therefore according to us, the order passed by learned Tribunal cannot be affirmed.

So far as the question of limitation is concerned, suffice it to say that resolution (annexure P-2) is dated 14-10-2004 and on the basis of resolution, a letter (annexure P-3) was written by the Manager of the Society to the petitioner on 16-10-2004 relieving him from his services. On going through annexure P-3, we find that there is an endorsement of receiving this letter by the petitioner on 21-10-2004. However, in para 4 of memorandum of dispute filed by the petitioner before the Deputy Registrar there is a pleading of the petitioner that after 3 days of 16-10-2004 he received copy of the letter (annexure P-3). Even if we hold that after three days viz. on 19-10-2004 a copy of letter (annexure P-3) dated 16-10-2004 was received by the petitioner, since dispute was filed on 18-11-2004, the same cannot be said to be time barred looking to second

proviso to section 55(2) of the Act. The averments made in para 4 of memorandum of dispute have been very vaguely replied in the written statement by the Society by pleading that whatever has been done by the management against the petitioner is legal and further it has been pleaded that averment made in para 4 of memorandum of dispute relates to law and the special pleas may be seen, in the special pleas of written statement also, nothing has been pleaded that letter dated 16-10-2004 was not received by the petitioner after 3 days viz. 19-10-2004 and therefore for all practicable purposes, it is hereby held that the same was received by the petitioner on 19-10-2004 and because the dispute u/s 55 of the Act was filed on 18-11-2004, the same is within limitation.

So far as award of backwages is concerned, it has not been pleaded by the petitioner whether he was a regular appointed employee or a daily rated employee, however, for a considerable long period the petitioner has fought and because he is a low paid employee as he was serving on the post of salesman, if by a stroke of pen his dry bread is snatched contrary to the law, certainly he must be starving and therefore it would be appropriate to direct the respondent to reinstate the petitioner with 75% backwages.

By accepting the prayer of learned counsel for the respondent/Society, we hereby observe that the Society/respondent shall be free to hold departmental enquiry against the petitioner and may pass necessary orders.

For the reasons stated hereinabove, this petition is allowed in part. The order of learned M. P. State Co-operative Tribunal, Bhopal dated 13-1-2009 is hereby set aside. The respondent/Society is directed to reinstate the petitioner with 75% backwages w.e.f. 16-10-2004. No costs.