(2003) 12 MP CK 0027

In the Madhya Pradesh High Court

Case No : Letters Patent Appeal No. 658 of 2003 with L.P.A. No. 659 of 2003

Narayan Prasad Tamrakar APPELLANT

Vs

M.P. State Co-operative Land Development Bank Ltd. and Others RESPONDENT

Date of Decision : 15-12-2003

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2004) ILR (MP) 154 : (2004) 1 MPHT 114

Hon'ble Judges : Kumar Rajaratnam, C.J;Dipak Misra, J

Bench : Division Bench

Advocate : M.S. Bhatti, for the Appellant; R.P. Agrawal, for the Respondent

Final Decision : Allowed

Judgement

Kumar Rajaratnam, C.J.—In both the appeals, the short but interesting question that arises for consideration is whether an employee, who has been terminated from service, can raise a dispute beyond the period of 30 days by filing an application for condonation of delay under the provisions of the Indian Limitation Act before the Registrar under the provisions of the Madhya Pradesh/ Chhattisgarh Cooperative Societies Act, 1960 (hereinafter referred to as the ''Act'').

2. The learned Single Judge was of the view that there is no power for Registrar of Co-operative Societies to condone any delay, wherein employee raises a dispute u/s 55 of the Act since the section itself provides for the period of limitation. Section 55 of the Act reads as under:--

"55. Registrar''s power to determine conditions of employment in Societies.-- (1) The Registrar may, from time to time, frame rules governing the terms and conditions of employment in a society or class of societies and the society or class of societies to which such terms and conditions of employment are applicable shall comply with the order that may be issued by the Registrar in this behalf.

(2) Where a dispute, including a dispute regarding terms of employment working conditions and disciplinary action taken by a society, arises between a society and its employees, the Registrar or any officer appointed by him not below the rank of Assistant Registrar shall decide the dispute and his decision shall be binding on the society and its employees :

Provided that the Registrar or the officer referred to above shall not entertain the dispute unless presented to him within thirty days from the date of order sought to be impugned :

Provided further that in computing the period of limitation under the foregoing proviso, the time requisite for obtaining copy of the order shall be excluded."

3. In this context, Section 65 of the Act has to be read carefully, which reads as under :--

"65. Limitation.-- (1) Notwithstanding anything contained in the Indian Limitation Act, 1908 (9 of 1908), and subject to the specific provisions made in this Act, the period of limitation for referring the disputes mentioned below to the Registrar u/s 64, shall,--

(a) when the dispute relates to the recovery of any sum including interest thereon due to a society by a member thereof, be six years from the date on which such member dies or ceases to be a member of the society;

(b) when the dispute is between a society or its committee and any past committee, any past or present officer, or past or present agent, or past or present servant or the nominee, heir or the legal representative of a deceased officer, deceased agent or deceased servant of the society, or a member or past member of the nominee, heir or the legal representative of a deceased member and when the dispute relates to any act, or omission on the part of either party to the dispute, be six years from the date on which the act or omission with reference to which the dispute arose, took place;

(c) when the dispute is in respect of any matter touching the constitution, management or business of a society which has been ordered to be wound up u/s 69 or in respect of which a nominated committee or a person or persons has or have been appointed u/s 53, be six years from the date of the order issued u/s 69 and Section 53, as the case may be;

(d) when the dispute is in connection with the election of any officer of a society, be forty five days from the date of declaration of the result of such election.

(2) The period of limitation in case of any other dispute except those mentioned in Sub-section (1) which are required to be referred to the Registrar u/s 64 shall be regulated by the provisions of the Indian Limitation Act, 1908 (9 of 1908), as if the dispute were a suit and the Registrar a Civil Court.

(3) Notwithstanding anything contained in Sub-sections (1) and (2) the Registrar may admit a dispute after the expiry of the limitation period if the applicant satisfies the Registrar that he had sufficient cause for not referring the dispute within such period."

5. In Section 65 of the Act, specific periods of limitation have been given with regard to each occasion for raising a dispute in connection with recovery of money, inter se dispute between the society and the member, constitution and management of the society and election of members.

6. Even with regard to Clauses (a) to (d) of Sub-section (1) of Section 65 of the Act, the Registrar has power to admit a dispute after the expiry of the limitation period, if the applicant satisfies the Registrar that he had sufficient cause for not referring the dispute within such period. In other words, even with regard to Clauses (a) to (d) in Section 65 (1) of the Act, the Registrar has power to condone delay. Section 65 (3) of the Act is important. It indicates that notwithstanding anything contained in Sub-sections (1) and (2), the Registrar may admit the dispute after the expiry of limitation period, if the applicant satisfies the Registrar that he had sufficient cause for not referring the dispute within such period. Thus, Sub-section (3) of Section 65 of the Act will have to be read along with Section 55 of the Act. If Sub-section (3) of Section 65 of the Act is read along with Section 55, there is no dispute that the Registrar has power to condone the delay.

7. It is no doubt true that if the Legislature has given specific period in the statute for raising a dispute, then by inference the power to condone the delay is ruled out. But in this case, we are dealing with the termination of a workman who has come to the Court beyond the period of 30 days. He can not be shut out merely on the question of delay. That is why we have to read the power of the Registrar u/s 65 (3) of the Act. The non-obstante clause in Section 65 (3) of the Act would indicate to us that any dispute filed by the employee belatedly u/s 55 of the Act can be entertained by the Registrar if sufficient cause is shown. Section 65 (3) of the Act has to be read in conjunction with Section 55 of the Act. It can not be the intention of the Legislature to vest the power of condonation of delay with the Registrar, only with regard to the disputes mentioned in Section 64 of the Act and not giving the Registrar power of condonation of delay for a major penalty like termination of service, for which a dispute can be raised u/s 55 of the Act.

8. The workman is barred from filing a suit or raising a dispute under the Industrial Disputes Act, 1947 [R.C. Tiwari Vs. M.P. State Co-operative Marketing Federation Ltd. and others, and Sagarmal v. Distt. Sahkari Kendriya Bank Ltd., Mandsaur and Anr., (1997) 9 SCC 354 . The only recourse left to the employee is to raise a dispute u/s 55 of the Act and if the right to that dispute is shut out by giving him just one month''s time for raising a dispute, then such a right will become illusory and unmeaningful. The workman''s right to raise a dispute against the order of termination must be enshrined in the legislation and such

legislation must provide for the power of the Registrar to condone the delay if sufficient cause is shown. Otherwise, the employee will be cornered and will have no recourse in law to protect his interest if it can be shown that the termination was unlawful. That is why the Legislature intended by Section 65 (3) of the Act to give power to the Registrar to condone the delay in raising a dispute in a serious matter like termination. We are of the considered view that a workman can not be shut out from raising a dispute if sufficient cause is shown that he has not approached the Registrar within time.

9. Section 64 deals with disputes that can be raised before the Registrar. It is a matter of regret that Section 64 of the Act does not include dispute of termination of service. In all other Legislations on Co-operative Societies in other States, disputes that can be raised include dispute with regard to termination of service.

10. Be that as it may, if a person, who was employed in the Co-operative Society, is terminated from service, he has recourse to Section 55 of the Act. We have already extracted Section 55 above.

11. We shall briefly deal with facts of the case. The appellant was employed by the respondent-Bank as Assistant Manager and was subsequently terminated from service on 20-6-1974. The appellant raised a dispute u/s 55 of the Act. The respondent-Bank raised a preliminary objection before the Deputy Registrar that the dispute raised by the employee was not within time. The Deputy Registrar allowed the application preferred by the appellant and directed the respondent-Bank to reinstate the appellant without back wages. The Bank unsuccessfully preferred first and second appeals.

12. Aggrieved by the order passed by the Registrar, Co-operative Societies, reinstating the appellant without back wages, the respondent-Bank preferred Writ Petition No. 5251/1999. Equally, aggrieved by the order of the Registrar in not granting back wages, the employee (appellant) preferred a Writ Petition No. 6128/2000.

13. The learned Single Judge, as stated earlier, allowed the writ petition filed by the respondent-Bank on the ground that the dispute raised by the employee was belated and that there was no power for the Registrar to condone the delay. Consequently, the writ petition filed by the employee became futile and was disposed of accordingly.

14. The appellant, being aggrieved by the common order passed by the learned Single Judge dated 14-8-2003, has preferred these two appeals.

15. There is no dispute, as stated by us earlier, that there was power for the Registrar to condone the delay under Sub-section (3) of Section 65 of the Act. In that view of the matter, the order of the learned Single Judge is erroneous.

16. In any event, the order of termination was passed on 20-6-1974. The period of limitation u/s 55 was introduced on 5-1-1977. Since the termination was in

the year 1974, the period of limitation of one month will not apply to the facts of this case. This very question was answered by a Division Bench judgment of this Court in the case of District Co-operative Central Bank Ltd., Narsinghpur v. Yashwant Singh Ruhela, reported in 1993 RN 12. The Division Bench of this Court in Para 5 of the said judgment held:--

"The second submission of the learned Counsel for the petitioner is that the amendment in provision of Section 55 (2), providing the prescribed period of limitation, would be applicable to the case of the respondent No. 1, who filed the dispute u/s 55 (2) of the Act on 5-1-1977, much after the amendment to Sub-section (2) of Section 55 of the Act had already come into force. The second contention also has no merit. The cause of action for raising a service dispute arose first in 1969 when respondent No. 1 was dismissed from service and for the second time in the year 1974, when he was acquitted by the Criminal Court. As the state of law existed then, under the unamended provisions contained in Section 55 of the Act, there was no period of limitation prescribed. The subsequent amendment introduced to the said provisions in the year 1976, which provides for the period of limitation for preferring a dispute, can not take away the vested right of respondent No. 1 to approach the Deputy Registrar by raising service dispute u/s 55 without any restriction about the period of limitation. Any other interpretation so as to give retrospective effect to the amend provision would destroy or nullify the vested right of an employee of raising service dispute on the basis of the existing law at the time the cause of action arose for raising dispute. The provision introduced in Section 55 (2) of the Act providing for a period of limitation, has, therefore, to be held prospective in its operation and thus can not be applied to the past cases in which the right of raising dispute arose prior to the amendment. A similar view has been taken by this Court in the case of Som Singh v. M.P. State Road Transport Corporation1979 MPLJ 750. See the following observations contained in Para 6 of the said decision:--

''The law of limitation can be classified as a law of procedure only when it does not have the effect of destroying vested rights or has the effect of reviving barred rights. Where the new law of limitation has the effect of destroying vested rights then the Court when invited to hold that the new such interpretation unless there is clear cut indication that the legislature intended to destroy existing rights without notice that penalizing innocent litigants. 19 IC 793, 1992 Cal. 491, AIR 1935 Raj 97, AIR 1962 Raj 43 and New India Insurance Co. Ltd. Vs. Smt. Shanti Misra, Adult, Rel."

17. We are not inclined to go into the facts of the case since the Registrar and the Appellate Tribunals have held that the termination was illegal. Any finding recorded on this aspect of the matter can not be interfered with unless it is shown that it is based on no evidence or perverse or contrary to law. The Bank has not been able to produce any material to show that the order of the Registrar, confirmed by the Appellate Tribunal is based on ''no evidence''. It is

settled law that this Court will not interfere on findings of fact recorded by the Tribunals while exercising powers under Article 226, Constitution of India unless such findings are perverse.

18. In that view of the matter, we set aside the common order dated 14-8-2003 passed by the learned Single Judge and the award passed by the Registrar u/s 55 of the Act is restored. We direct the respondent-Bank to reinstate the appellant without back wages with continuity of service within a period of eight weeks from the date of receipt of this order.

19. Both the appeals are disposed of accordingly. No order as to costs.

