

**(2008) 10 SC CK 0076**

**In the Supreme Court Of India**

**Case No :** Civil Appeal No. 6161 of 2008 (Arising out of Special Leave Petition (Civil) No. 16541 of 2005)

Noharlal Verma

APPELLANT

Vs

District Co-Operative Central Bank Limited, Jagdalpur

RESPONDENT

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**Date of Decision :** 20-10-2008

**Acts Referred:**

Constitution of India, 1950 — Article 136  
Limitation Act, 1963 — Section 10, 11, 12, 13, 14  
Madhya Pradesh Co-operative Societies Act, 1960 — Section 55  
Madhya Pradesh Co-operative Societies Rules, 1962 &mdash

**Citation :** AIR 2009 SC 664 : (2009) 6 ALT 3 : (2008) 11 JT 621 : (2009) 1 MPHT 113 : (2008) 14 SCALE 193 : (2009) 2 SLJ 216 : (2009) 3 SLR 740 : (2008) 2 UJ 1313

**Hon'ble Judges :** D. K. Jain, J;C. K. Thakker, J

**Bench :** Division Bench

**Advocate :** Kamal Mohan Gupta, for the Appellant; Raj Kumar Gupta, Sunil Kumar Gupta and Praveen Chaturvedi, for the Respondent

**Final Decision :** Allowed

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## Judgement

C.K. Thakker, J.—Leave granted.

2. The present appeal is directed against judgment and order passed by the Division Bench of the High Court of Chhattisgarh on May 04, 2005 in Writ Petition No. 283 of 2001. By the said order, the High Court dismissed the Writ Petition filed by the appellant-petitioner and confirmed the order passed by the Madhya Pradesh State Co-operative Tribunal, Bhopal on January 22, 2001 in Second Appeal No. 560 of 1999.

3. Short facts giving rise to the present appeal are that the appellant herein was working as Manager in the Large Area Multi- Purpose Society ('LAMPS' for short). Between August, 1977 and August, 1981, the appellant was the Manager in the Schedule Tribe Service Co-operative Society, Kanker. He, at that time,

committed financial irregularities. Disciplinary proceedings were initiated against him and by an order dated April 29, 1982, passed by the Chairman, District Co-operative Central Bank Ltd., Jagdalpur (Bastar), he was removed from service. The appellant preferred a departmental appeal on April 30, 1982. Since he had not been communicated anything as to what had happened to the said appeal, the appellant on June 30, 1982 filed an application u/s 55 of the Madhya Pradesh Co-operative Societies Act, 1960 (hereinafter referred to as 'the Act') to the Joint Registrar, Co-operative Societies, Raipur. According to the appellant, the application was made to the Joint Registrar, Raipur as District Bastar/Jagdalpur was within the territorial jurisdiction of Raipur. As stated by the petitioner, Joint Registrar then came to be appointed for District Bastar for Jagdalpur Area. Another application was, therefore, made on October 08, 1985 by the petitioner before the Joint Registrar, Co-operative Societies, Jagdalpur. On February 19, 1986, the Joint Registrar, Jagdalpur dismissed the application filed by the petitioner as time barred. The appellant preferred an appeal against the said order before the Board of Revenue, Gwalior. However, the said appeal was also dismissed by the Board on June 14, 1990.

4. On October 22, 1990, the application filed by the petitioner on June 30, 1982 before the Joint Registrar, Raipur was forwarded to Deputy Registrar, Kanker for adjudication. The Deputy Registrar, Kanker treated the case as within the period of limitation, considered it on merits and set aside the order of removal vide his order dated May 18, 1994. He also directed the Bank to pay all dues to the applicant.

5. The respondent Bank challenged the said order by approaching the State Co-operative Tribunal. The Tribunal allowed the appeal filed by the Bank on the ground of res judicata observing that an application filed by the appellant was dismissed by Joint Registrar, Jagdalpur and the said order was confirmed by the Board of Revenue, Gwalior dismissing the appeal which had become final.

6. The appellant being aggrieved by the order passed by the Tribunal preferred Writ Petition No. 283 of 2001 in the High Court of Chhatisgarh, which as stated above, was dismissed by the High Court. The said order is challenged in the present appeal.

7. On July 06, 2006, notice was issued to the respondents. Affidavit-in-reply and affidavit-in-rejoinder were thereafter filed. An order was passed directing the Registry to place the matter for final hearing and that is how the matter has been placed before us.

8. We have heard the learned Counsel for the parties.

9. The learned Counsel for the appellant contended that the Tribunal as well as the High Court were wrong in dismissing the claim of the appellant. It was contended that the Tribunal was not right in holding that the appeal filed by the appellant was barred by res judicata. The High Court was, therefore, right in observing that the Tribunal committed an error of law in treating the appeal as

barred by res judicata. The High Court, however, went wrong in not allowing the writ petition and in coming to the conclusion that the application filed by the appellant/petitioner u/s 55 of the Act was barred by limitation and the Registrar had no power, authority or jurisdiction to entertain such dispute. The counsel contended that when the matter came up before the Tribunal, it was stated on behalf of the respondent-Bank through its counsel that the application was 'within time' and hence, it was decided on merits. Thereafter, it was not open to the Bank to contend that the application was beyond time and delay could not be condoned.

10. The learned Counsel submitted that even on merits, the case did not call for punishment of removal. Certain allegations were made and even if it is assumed for the sake of argument that all the allegations were true, the appellant could not have been removed from service. No financial loss has been caused to the respondent-Bank. The appellant has enormously suffered and he is out of employment since more than fifteen years. Hence, even if this Court comes to the conclusion that proceedings could have been initiated against the appellant and he could have been punished, on the facts and in the circumstances of the case, this Court may direct the Bank to re- institute the appellant without back wages so that the appellant as well as his family members would not be deprived of livelihood and would not starve.

11. The learned Counsel for the respondent-Bank, on the other hand, supported the order passed by the Tribunal and confirmed by the High Court. It was contended that the High Court was right in holding that the application filed by the appellant was barred by limitation. The counsel urged that the Act provides by laying down maximum period of limitation beyond which no application can be entertained by the Registrar. If it is so, no grievance can be made if the application filed by the appellant was treated as barred by time. The counsel did not seriously challenge the view taken by the authorities that the application could not be dismissed on the ground of res judicata but submitted that the application was time barred.

12. The counsel also submitted that the Deputy Registrar, Co-operative Societies, Kanker was not right when he stated that consent was given by the counsel appearing on behalf of the Bank that the application filed by the appellant u/s 55 of the Act be treated within time and the application was admitted. The counsel, however, stated that even if the counsel for the Bank had stated that the application submitted by the appellant could be treated within the period of limitation, such concession being concession against law would not bind the Bank. If the statute stipulates a particular period of limitation, no concession or order would make an application barred by time to be within the limitation and the authority had no jurisdiction to consider such application on merits.

13. On merits, the counsel urged that considering the totality of facts and circumstances, particularly, charges levelled against the appellant and proved at the inquiry which related to financial irregularities, if the appellant was removed

from service, it cannot be said that no order of removal could have been passed. The appellant was a Bank employee and holding the office of Manager, a position of trust. It is in the light of the said fact that his case was required to be considered which was done and punishment was imposed.

14. Having heard the learned Counsel for the parties and having applied our mind to the facts and circumstances of the case, in our opinion, the appeal filed by the appellant deserves to be dismissed. The High Court has not committed any error of law which requires to be interfered with in exercise of discretionary and equitable jurisdiction under Article 136 of the Constitution.

15. So far as *res judicata* is concerned, in our opinion, the appellant is right in submitting that the Tribunal was not justified in holding that the application filed by the appellant was barred by *res judicata*. It is clear from the facts stated hereinabove that the application was filed by the appellant to Joint Registrar, Raipur. It was pending. Meanwhile, however, District Bastar had its own Registry and hence, an application was submitted to District Registrar, Bastar. The application preferred by the appellant to the Joint Registrar, Raipur, in the circumstances, became infructuous. It was not decided on merits. As per settled law, such decision does not operate as *res judicata*. The High Court was, therefore, right in coming to the conclusion that the Tribunal was in error in dismissing the application on the ground of *res judicata*. That part of the order passed by the Tribunal was, therefore, rightly not approved by the High Court.

16. But so far as limitation is concerned, admittedly, the disciplinary proceedings culminated against the appellant in an order of removal. Such order was passed on April 29, 1982. An application against the said order was made for the first time by the appellant/ applicant on June 30, 1982, i.e. after more than two months.

17. Now, Section 55 of the Act empowers the Registrar to determine conditions of employment in societies. The said section, as it then stood, read 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.

Provided that in the case of co- operative credit structure, the Registrar may frame rules governing the terms and conditions of employment on the basis of the guidelines specified by the National Bank.

(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 provision, the time requisite for obtaining copy of the order shall be excluded.

18. Plain reading of the aforesaid provision makes it more than clear that when a dispute regarding terms of employment, working conditions and disciplinary action taken by a society and its employees arises, the officer specified therein will decide such dispute which shall be binding on the society and its employees. The first proviso to Sub-section (2) of the said section prohibits the Registrar from entertaining the dispute unless such dispute is presented to him within thirty days from the date of the order impugned. The second provision declares that in computing the period of limitation, the time requisite for obtaining copy of the order would be excluded. It is thus clear that if an employee, aggrieved by any decision taken by the society intends to approach the Registrar, he must invoke provisions of Section 55 of the Act by filing an application within thirty days from the date of such order or action.

19. In the instant case, admittedly, the order of removal was passed by the Bank against the appellant on April 29, 1982. Even the first petition u/s 55 of the Act was filed by the appellant/applicant on June 30, 1982, i.e. after two months which was time- barred. The High Court considered the first petition filed by the appellant herein before the Registrar, Raipur, but even that petition was barred by time. The High Court was, therefore, right in dismissing the writ petition holding that the application filed by the applicant was not within the period of limitation prescribed by Section 55 of the Act.

20. Learned Counsel for the appellant, however, submitted that the petition filed by the applicant ought to have been treated within the period of limitation. In support of such contention, he relied on two aspects.

21. Firstly, the provisions of appeals and revisions under the Act. Chapter X provides for filing of appeals and revisions. Referring to rule making power of the State (Section 95), the counsel submitted that the State Government has power to prescribe procedure in presenting and disposal of appeals [Clause (gg) of Sub-section (2) of Section 95]. In exercise of the said power, the State Government has framed rules known as the Madhya Pradesh Co-operative Societies Rules, 1962 (hereinafter referred to as 'the Rules'). Chapter IX as then stood provided procedure in "Appeals and Revisions". Rule 59 of the Rules laid down procedure in filing an appeal to the State Government or to the Registrar. Sub-rules (6), (7) and (8) to which our attention has been invited by the learned Counsel read thus;

(6) If the appellate authority finds that the appeal presented does not conform to any of the said provisions, it shall make a notice on the appeal to that effect and

may call upon the appellant or his agent to remedy the defects within a period of seven days of the receipt of the notice to do so or in case the appeal has not been presented within the prescribed time limit to show cause within the said period of seven days why it should not be dismissed as time-barred by the appellate authority.

(7) If the defect is remedied or the cause shown by the appellant or his agent satisfies the appellate authority, the appellate authority may proceed to consider the appeal.

(8) If the appellant or his agent fails to remedy the defects or to show cause to the satisfaction of the appellate authority within the said period, the appellate authority may, if the appeal is not presented within the time-limit, dismiss the appeal as time-barred. In cases where it is considered necessary to give a hearing, the appellate authority may fix a date for hearing, of which due notice shall be given to the appellant or his agent.

22. We are of the view that the aforesaid provisions do not apply to the case on hand. Apart from the fact that Rule 59 merely lays down procedure of appeals instituted within the period of limitation and provides for removal of defects, neither the provisions relating to appeals nor of revisions apply to the case on hand.

23. In our view, the scheme of the Act is clear. Chapter X of the parent Act which deals with appeals and revisions applies to those cases where orders have been passed by the authorities and officers under the Act and a person is aggrieved by such orders. In the present case, the action is taken not by an authority or officer under the Act but by the respondent-Bank. The appellant, therefore, rightly applied to the Registrar u/s 55 of the Act complaining against such action. The appellant could not have preferred an appeal under the Act either to the Registrar or to the State Tribunal. The provisions of Chapter X of the Act relating to appeals and procedure laid down in Chapter IX of the Rules, therefore, had no application. The first ground in support of the application that it should be treated as within the period of limitation has thus no force.

24. Secondly, the appellant contended that the learned Counsel appearing for the Bank conceded that the application filed by the appellant/applicant was within time and hence, the Registrar took up for consideration the said application and decided on merits. Thereafter, it was not open to the Bank to contend that the application was barred by limitation. The order of the High Court, therefore, deserves to be set aside. It was also submitted that had it been contended before the Registrar that the application was not within the period of limitation prescribed by law, the appellant could have satisfied the authority or would have taken other steps, but he was deprived by the concession on behalf of the Bank. It has caused serious prejudice to the appellant and the Bank cannot be allowed to 'blow hot and cold' by taking inconsistent pleas and by raising 'technical' defence of limitation.

25. The learned Counsel for the respondent-Bank rightly submitted that the plea raised by the appellant has no force. It was submitted that there was no concession by the Bank. Relying on Zimni, the counsel submitted that on July 06, 1993, i.e. the day on which the concession was said to have been made, the Presiding Officer was not present as he was on a tour. No proceeding took place on that day. It was, therefore, factually incorrect to state that a concession was made on behalf of the Bank and it did not object that the application was barred by time.

26. But even otherwise, according to the counsel, if the application was not within the period of limitation, the so-called concession would neither bind the Bank nor invest jurisdiction or power in the authority to entertain such application which was barred by limitation. In other words, according to the counsel, the concession was against the provision of law, which would not bind the Bank.

27. Now, limitation goes to the root of the matter. If a suit, appeal or application is barred by limitation, a Court or an Adjudicating Authority has no jurisdiction, power or authority to entertain such suit, appeal or application and to decide it on merits.

28. Sub-section (1) of Section 3 of the Limitation Act, 1963 reads as under;

(3) Bar of limitation.--(1) Subject to the provisions contained in Sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence.

29. Bare reading of the aforesaid provision leaves no room for doubt that if a suit is instituted, appeal is preferred or application is made after the prescribed period, it has to be dismissed even though no such plea has been raised or defence has been set up. In other words, even in absence of such plea by the defendant, respondent or opponent, the Court or Authority must dismiss such suit, appeal or application, if it is satisfied that the suit, appeal or application is barred by limitation.

30. As stated earlier, Section 55 allows an aggrieved party to approach the Registrar within a period of thirty days. There is no provision analogous to Section 5 of the Limitation act, 1963 allowing the Registrar to condone delay if "sufficient cause" is shown. In view of this fact, in our opinion, the contention of the learned Counsel for the Bank is well founded that the application submitted by the appellant was barred by time.

31. To us, the High Court was right in observing that the Tribunal was in error in allowing the appeal and dismissing the claim of the appellant on the ground of res judicata. The High Court, therefore, considered the said question independently and held that the Bank was right in submitting that the appellant had not approached the Registrar within the period prescribed by law and his

application was liable to be dismissed.

32. So far as the prayer by the appellant that he has sufficiently suffered and should be re-instated in service without back wages also cannot be accepted. The appellant was holding position of trust and was Manager of a Bank. The charges leveled against him were serious in nature concerning misappropriation of money. It is true that the amount was not big and it was also repaid and the Bank has not suffered. But even then the Manager of a Co-operative Bank was involved in financial irregularities. The Bank was satisfied that he should not be retained in service and passed an order of removal.

33. In our opinion, by no stretch of imagination, it can be said that such punishment is grossly disproportionate or excessively high. Normally in exercise of power of "judicial review", a writ court will not substitute its own judgment or decision for the judgment or decision of a disciplinary authority unless it comes to the conclusion that it has shocked the conscience of the Court or the punishment is such that no "reasonable man" would impose such punishment or in the words of Lord Scarman in *Nottinghamshire County Council v. Secretary of State* 1986 AC 240 : (1986) 1 All ER 199 that the decision is so absurd that one is satisfied that the decision maker at the time of making decision "must have taken leave of his senses".

34. In our considered opinion, the case does not fall in any of the categories enumerated by the Courts in several cases. We, therefore, see no infirmity even in the final decision taken by the Bank which deserves interference by this Court.

35. For the foregoing reasons, the appeal deserves to be dismissed and is dismissed, however, without any order as to costs.