

(2014) 02 AHC CK 0219
In the Allahabad High Court
Case No : C.M.W.P. No. 51673 of 2012

North Eastern and East Central Railway Employees' Multi-State Primary Co-operative Bank Ltd.

APPELLANT

Vs

Central Registrar, Co-operative Societies, Department of Agricultural and Co-operation and Another

RESPONDENT

Date of Decision : 14-02-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 2
Multi-State Cooperative Societies Act, 2002 — Section 49, 49(2)(e), 84

Citation : (2014) 3 ADJ 755 : (2014) 103 ALR 564 : (2014) 3 AWC 3002 : (2014) 2 UPLBEC 1133

Hon'ble Judges : Manoj Misra, J

Bench : Single Bench

Advocate : Balwant Singh and P.N. Saxena, Advocate for the Appellant; K.M. Mishra, Suresh Kumar, H.R. Mishra and Abhishek Mishra, S.C, Advocate for the Respondent

Final Decision : Allowed

Judgement

Manoj Kumar Gupta, J.—Heard Sri P.N. Saxena, Senior Advocate assisted by Sri Balwant Singh, Advocate for the petitioner and Sri H.R. Mishra Senior Advocate assisted by Sri Abhishek Mishra for respondent No. 2. No one is present on behalf of respondent No. 1, though list has been revised. With consent of learned Counsel for the parties, this writ petition is being disposed of at the admission stage, as per rules of the Court.

2. The petitioner is a registered co-operative society within the meaning of Multi-State Co-operative Societies Act, 2002 (hereinafter referred to as "the Act") and is governed by its own bylaws.

3. The respondent No. 2 was employee of the petitioner society. It appears that disciplinary proceedings were drawn against the respondent No. 2 by the Board

of Directors of the petitioner society and he was served with a suspension order and a show cause notice. Later on, a charge-sheet was issued to him on 18.11.2011, to which the petitioner replied on 5.12.2011. The Board of Directors did not find the explanation satisfactory and terminated the services of respondent No. 2 vide order dated 30.12.2011. Aggrieved by the termination order, respondent No. 2 appears to have made representations dated 24.1.2012 and 21.4.2012 to the Central Registrar, Co-operative Societies, New Delhi. On receipt of the aforesaid representations, the Central Registrar, Co-operative Societies, New Delhi by impugned order dated 18.9.2012 held that the dispute raised by the respondent No. 2 vide its representations dated 24.1.2012 and 21.4.2012 does not fall within the ambit of section 84 of the Act. However, it proceeded to hold that personal hearing was not afforded to respondent No. 2 by the Board of Directors before dispensing with his service, thus, order of dismissal is in breach of principles of natural justice. It accordingly directed the Board of Directors to reconsider their decision, by following principles of natural justice and in the meantime, re-instate the petitioner with all consequential benefits. Aggrieved by the said order, the petitioner society has filed the instant writ petition.

4. Sri P.N. Saxena, Senior Advocate appearing for the petitioner vehemently contended that the dispute raised by the respondent No. 2 does not fall within the ambit of section 84 of the Act, 2002 and in fact, such a finding has also been recorded by the Central Registrar in the impugned order, thus it was not having any jurisdiction to go into the validity of the termination order or to direct the petitioner society to reinstate the respondent No. 2 or hold de novo proceedings. It is, thus, contended that the impugned order is wholly without jurisdiction.

5. Sri H.R. Mishra, Senior Advocate appearing on behalf of respondent No. 2 submits that u/s 49(2)(e) of the Act, it was incumbent upon the petitioner society to make provisions for regulating the appointment of employees of Multi-State Co-operative Societies. He further submits that until now, service regulations have not been framed and, therefore, the Central Registrar was fully justified in issuing the necessary directions. It is further contended that since finding has been recorded that the termination order is in breach of principles of natural justice and therefore, this Court in exercise of its writ jurisdiction under Article 226 of the Constitution should not interfere with impugned order, as it would amount to restoring an illegal order.

6. Countering the submissions made by Sri H.R. Mishra, counsel for the petitioner submitted that the framing of the regulations by the society u/s 49 is not mandatory. It is only an enabling provision and the mere fact that regulations have not been framed, will not invest jurisdiction in the Central Registrar which he otherwise lacks. It is alternatively contended that assuming the service regulations were in existence and the order of dismissal/termination has been passed in violation of the regulations or in breach of principles of natural justice, it would not have conferred jurisdiction on the Central Registrar

to proceed to adjudicate u/s 84 of the Act. He further submits that the contention of the respondent that the order is in breach of principles of natural justice and should not be interfered with, is also not correct, inasmuch as, the respondent No. 2 was duly served with a charge-sheet and was given full opportunity to submit his reply, which the respondent No. 2 did by filing his reply on 5.12.2011. He further submits that it was not mandatory to afford personal hearing to respondent No. 2, nor on such ground, can it be said that there has been violation of principles of natural justice.

7. I have considered the submissions of learned Counsel for the parties and perused the record.

8. Section 84, inter-alia, provides as under:

84. Reference of disputes.--(1) Notwithstanding anything contained in any other law for the time being in force, if any dispute (other than a dispute regarding disciplinary action taken by a multi-State Co-operative Society against its paid employee or an industrial dispute as defined in Clause (k) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947) touching the constitution, management or business of a multi-State Co-operative Society arises-

(a)

(b)

(c) between the multi-State co-operative society or its board and any past board, any officer, agent or employee, or any past officer, past agent or past employee, heirs or legal representatives of any deceased officer, deceased agent or deceased employee of the multi-State co-operative society, or

(d)

such dispute shall be referred to arbitration.....

(Emphasis supplied)

9. A bare perusal of section 84 reveals that a dispute regarding disciplinary action taken by multi-State co-operative society, against its paid employee has been excluded from purview of reference u/s 84 of the Act. It is not in dispute between the parties that the issues which have been raised by the respondent No. 2 by representations dated 24.1.2012 and 21.4.2012 were issues relating to the alleged illegal dismissal from service of the petitioner. It was thus a dispute covered by the exclusionary clause of section 84, namely, a dispute regarding the disciplinary action taken by multi-State co-operative society against its paid employee. Even the Central Registrar in its impugned order was fully conscious of the same and recorded a categorical finding that the dispute raised by the respondent No. 2 vide his representations dated 24.1.2012 and 21.4.2012 does not come within the purview of the section 84 of the Act.

10. The question which now arises for consideration is whether after holding that

the dispute raised by the respondent No. 2 does not come within the purview of section 84 of the Act, the Central Registrar could have gone into the question relating to validity of the termination order.

11. After considering the submissions of learned Counsel for the parties, I am of the considered opinion that once the Central Registrar came to the conclusion that the dispute does not come within the scope of its power, it could not have arrogated to itself the power to go into the validity of the termination order. Any finding recorded by the Central Registrar touching upon the validity of the termination order is non-est in the eye of law, as the entire proceedings were coram non iudice.

12. The contention of learned Counsel for the respondent that since service regulations have not been framed u/s 49(2)(e) of the Act, therefore, the Central Registrar was justified in going into the question of validity of the termination order does not appear to have any force. Section 49 of the Act, as is relevant to the controversy in hand, is reproduced below:

49. Powers and functions of board.--(1) The board may exercise all such powers as may be necessary or expedient for the purpose of carrying out its functions under this Act.

(2) Without prejudice to the generality of the foregoing powers, such powers shall include the power:

(a)

(b)

(c)

(d)

(e) to make provisions for regulating the appointment of employees of the multi-State co-operative society and the scales of pay, allowances and other conditions of service of, including disciplinary action against, such employees;

13. Section 49 spells out the powers of the board of a co-operative society registered under the Act. Sub section (2) thereof is illustrative in nature and specifies certain instances in which the board can exercise powers to effectively carry out its functions and duties under the Act. However, the mere fact that service regulations have not been framed so far, will not confer power in the Central Registrar to go into the validity of the termination order. As already held, dispute of present nature is expressly excluded from the scope of arbitration proceeding u/s 84, and therefore nothing can invest jurisdiction in a authority, which it inherently lacks. A fortiori, it is held that the impugned order passed by the Central Registrar is wholly without jurisdiction, and cannot be sustained.

14. The other submission of the respondent is that the Central Registrar having held that the order of dismissal is bad because personal hearing has not been

afforded to the respondent No. 2, and therefore this Court should not interfere with the impugned order. It is not been in dispute that a charge-sheet was served on respondent No. 2, to which he duly replied. The enquiry committee considered the explanation of the petitioner and submitted its report to the Board, which thereafter passed the termination order. The counsel for respondent could show any provision where under personal hearing was mandatory, before terminating the services of the respondent. However, I do not consider it necessary to express any final opinion on the issue, as findings recorded on the merits of the termination order being void and non-est in the eyes of law, no reliance can be placed on such findings. Accordingly, the second contention of the respondent, also, has no force, and is turned down.

15. In view of the discussion made above, the impugned order dated 18.9.2012 passed by respondent No. 1 cannot be sustained and is hereby quashed.

16. The writ petition succeeds and is allowed. No order as to costs.