

(1998) 07 BOM CK 0020

In the Bombay High Court

Case No : Writ Petition No's. 1048 and 1805 of 1998

Pralhad Vithalrao Pawar

APPELLANT

Vs

Managing Director and Another

RESPONDENT

Date of Decision : 21-07-1998

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 2(13)
Civil Procedure Code, 1908 (CPC) — Section 9
Constitution of India, 1950 — Article 12, 226, 311
Industrial Disputes Act, 1947 — Section 2
Specific Relief Act, 1963 — Section 14, 34

Citation : (1998) 4 ALLMR 636 : (1999) 1 BomCR 840 : (1998) 3 MhLj 214

Hon'ble Judges : N.P. Chapalgaonker, J;B.H. Marlapalle, J

Bench : Division Bench

Advocate : G.M. Jadhav, A.B. Bajpai and S.A. Dhumal, for the Appellant; A.M. Kanade, Government Pleader and V.D. Solunke, for the Respondent

Judgement

B.H. Marlapalle, J.—Heard learned Counsel appearing for the respective parties.

"Rule". Taken for final hearing forthwith.

Both the petitions involve common question of law and hence, are Being disposed of by a common judgment. The points for decision, which are raised by the parties, are as under :

(a) whether a writ petition, filed under Article 226 of the Constitution of India, is tenable against a Co-operative Society registered under the Maharashtra Co-operative Societies Act, 1960.

(b) whether the termination of service of an employee who is not covered under the provisions of the Industrial Disputes Act, 1947 or the Bombay Industrial Relations Act, 1946, amounts to a dispute touching the management or business of a Society, within the meaning of section 91(1) of the Maharashtra Cooperative Societies Act and

(c) whether the petitioners are entitled to claim the relief of reinstatement in service with back wages and continuity, in an appropriate legal proceeding.

2. In Writ Petition No. 1048/98, the petitioner was employed as Deputy Chief Engineer with the Kannad Co-operative Sugar Factory Ltd. at Kannad and by an order dated 21-7-1997, he was removed from the service, for the reasons stated therein. In Writ Petition No. 1805/98, the petitioner was working as Branch Manager with the Osmanabad District Central Co-operative Bank Ltd, and he was removed from service by an order dated 25-3-1998, for the reasons stated therein. It is an admitted fact that both the petitioners do not fall within the ambit of the term "Workman", as defined u/s 2(s) of the Industrial Disputes Act, 1947 or "Employer", as defined u/s 2(13) of the Bombay Industrial Relations Act, 1946. Both have prayed for the relief of reinstatement in service with continuity and back wages and both were employed with a co-operative society registered under the Maharashtra Co-operative Societies Act, 1960. (Hereinafter referred to as Co-operative Societies Act).

3. The first question posed for our decision is no more res integra. A Full Bench of this Court in the case of Hindustan Petroleum Corporation Ltd., by Deputy General Manager Vs. The Inspector of Labour, , held thus :

"A Co-operative Society, registered under the Maharashtra Cooperative Societies Act, 1960 and under the Multi-State Cooperative Societies Act, 1984 which carries on the business of Banking and is therefore, governed by the Banking Regulations Act, 1949, does not thereby fall within the expression "State" under Article 12 of the Constitution of India."

4. Following the law laid down by the Full Bench in Shamrao Vithal Bank's case (supra), a Division Bench of this Court, in the case of Dayandeo Dattatraya Kale and Others Vs. State Of Maharashtra and Others, held that a Co-operative Society registered under the Maharashtra Co-operative Societies Act, 1960 is not a "State" within the meaning of Article 12 of the Constitution of India. We are bound by the decision of the Full Bench and we are in respectful agreement with the subsequent judgment in the case of D.D. Kale (supra). We, therefore, hold that no writ of certiorari quashing the termination order nor a writ of mandamus directing reinstatement in service can be issued under Article 226 of the Constitution.

5. The learned Counsel for petitioners vehemently submitted that if the petitions are held to be not tenable under Article 226 of the Constitution of India, the petitioners are left with no remedy as they cannot approach the Co-operative Court u/s 91(1) of the Maharashtra Co-operative Societies Act, 1960. In support of these submissions, the learned Counsel have relied upon a judgment of this Court in the case of Maharashtra Co-operative Housing Finance Society Ltd. and Others Vs. V.S. Loni and Anrs., and the judgment of the Supreme Court in the case of Gujarat State Co-operative Land Development Bank Ltd. Vs. P.R. Mankad and Others, . In the case of Gujarat State Land Development Co-operative Bank

Ltd. (supra), the Apex Court, inter alia, held that an industrial dispute challenging the termination of service and claiming reinstatement did not amount to a dispute touching the constitution or business of the society within the meaning of section 96 of the Gujarat Co-operative Societies Act, 1961. In the case of Maharashtra Co-operative Housing Finance Society Ltd. (supra) this Court, inter alia, held that a claim by an employee for reinstatement in service of his previous employer (Co-operative Society) which is not entertainable by a Civil Court u/s 9 of the CPC cannot also be entertained by an authority u/s 91-A and such claim will include reinstatement in service with back wages. In short, it is the case of the petitioners that as the claim for reinstatement with back wages does not amount to dispute touching the management or business of a Co-operative Society, they have no remedy to approach the Cooperative Court and as they are out of purview of the Labour Jurisprudence, a writ petition is the only remedy for them.

6. The provisions of section 91 of the Societies Act have been amended from time to time and the proviso to section 91(l)(c) has been incorporated by the Maharashtra Act, 20 of 1986. The said proviso reads as under :

"Provided that an industrial dispute as defined in Clause (k) of section 2 of the Industrial Disputes Act, 1947, or rejection of nomination paper at the election to a committee of any Society other than a notified society u/s 73-C or a society specified by or u/s 73-G, or refusal of admission to the membership by a society to any person qualified therefore [or any proceeding for the recovery of the amount as arrear of land revenue on a certificate granted by the Registrars under sub-section (1) or (2) of section 101 or sub-section (1) of section 137 or the recovery proceeding of the Registrar or any officer subordinate to him or an officer of Society notified by the State Government, who is empowered by the Registrar under sub-section (1) of section 156] not be deemed to be a dispute for the purpose of this section."

7. By the above referred added proviso legislature has specifically excluded the industrial disputes from the ambit of section 91 of the Act. As observed earlier, both the petitioners are out of the purview of the Industrial Disputes Act, 1947 and/or Bombay Industrial Relations Act, 1946. Hence, their grievance against the termination order shall not amount to an industrial dispute, as defined u/s 2(k) of the Industrial Disputes Act, 1947 or u/s 2(17) of the Bombay Industrial Relations Act, 1946.

8. In the case of Rambhau Jairam Dhamange and Others Vs. The President, Vinkar Co-operative Society Ltd., Chanda and Others, , a Full Bench of this Court, while interpreting the provisions of section 91(1) as it stood at the relevant time, held that though the words "touching the constitution or business of the society" were unqualified and extremely wide and comprehensive, still the legislature did not intend to include in this expression "industrial dispute", as defined in the Industrial Disputes Act or the Bombay Industrial Relations Act. It was further held as under :

"The dispute referred to the Registrar under sub-section (1) of section 91 must be such as a Civil Court can take cognizance of and try. Like a Civil Court, the Registrar cannot grant any relief outside the contract of employment. He cannot, therefore, try any matter in which a demand is made for a change in the conditions of service or for reinstatement of an employee whose services had been terminated."

9. In the case of Maharashtra Co-operative Housing Finance Society Ltd. (supra), a Branch Manager of the petitioner Society was terminated from service and the Registrar of the Co-operative Society had held that the dispute relating to the dismissal of the respondent from the service of the petitioner-society was a dispute within the meaning of section 91(1) of the Cooperative Societies Act, and directed that it should be referred to the Cooperative Court for disposal according to law. This Court observed thus :

"The claim, such as the one made by the respondent in the instant case viz. claim for damages on the allegations that society wrongly terminated his services; cannot be said to be outside the ambit of the term "Management" in section 91 of the Cooperative Societies Act. A society or for that matter any institution itself works through human beings and in the case of the co-operative society, management of the society must be carried on through and with the help of the employees of the society, it may not be even touching the business of the society, but employing persons is necessarily a part of the management of the society and therefore, when a dispute involves a claim which could be granted by an authority under the Co-operative Societies Act, that dispute must be held to be touching the management of the co-operative society. It will be a total misunderstanding of the judgment to hold that the claim made by an employee of a co-operative society for wages could not be included in the dispute u/s 91 of the Co-operative Societies Act. Clause (1) of section 91(1) of the Co-operative Societies Act includes "any past or present servant". If interpretation suggested by Mr. Rane is accepted, these words will be rendered redundant. For the same reasons, we are of the opinion that the claim arising out of the contract between a co-operative society and its employee or a claim based upon a breach of such contract, which could have been taken cognizance of by a Civil Court can also be a dispute touching the management of the society u/s 91 of the Co-operative Societies Act."

10. In the case of Shetkari Sahakari Sakhar Karkhana v. N.B. Tulpule 1979 M. L.J. 210, plaintiff-employee was compulsorily retired on 1st August, 1966 and he challenged the said order being illegal, unjust and claimed for monetary benefits by filing Special Civil Suit before the Joint Civil Judge, Sr. Division. The maintainability of the suit was challenged by the employer on the ground of jurisdiction and it was contended that only forum for adjudication of such dispute including disputes with regard to illegality of termination or termination being ultra vires to the rules of Society, was one set up u/s 91 and 91(A) of the Maharashtra Co-operative Societies Act, 1960. This contention was rejected by

the Civil Court.

11. In appeal, this Court held that the Civil Judge acted without jurisdiction in entertaining the suit, ignoring the mandatory provisions of section 91 of the Act and it was held that the dispute was certainly within the ambit of section 91(1) (a) in as much as it was a dispute "touching the business of the society" between the society and its employee. This Court further held that when no other statutory or labour law entitles the plaintiff to claim the above reliefs, in any other special Court or tribunal and there are no rules governing the plaintiff's reinstatement in the employment, as contended by him, ordinary law of Master and Servant would apply and termination would, at the worst, be only a breach of the contract of employment, which would certainly fall within the scope of the words "touching the management or business of the society", contained in section 91(1) of the said Act.

12. In the case of Gujarat State Co-operative Land Development Bank Ltd. Vs. P.R. Mankad and Others, , an employee working as Additional Supervisor was removed from service by giving one month's pay in lieu of Notice under the Staff Regulations. He had issued an approach notice under the Bombay Industrial Relations Ad, 1946, as he was an employee as defined u/s 2(13) of the said Act. One of the questions that was considered by the Supreme Court in this case was whether a dispute raised by the said employee for setting aside his removal from service on the ground that it was an Act of victimization and for reinstatement in service with back wages, was one "touching the management or business of the society", within the contemplation of the Co-operative Societies Act. The Apex Court held that the expression "any dispute" referred to in section 96 of the Gujarat Co-operative Societies Act, 1961 did not cover a dispute of the kind raised by the respondent employee against the Bank.

13. Thus, the Supreme Court in the case of Gujarat State Co-operative Land Development Bank Ltd. v. P.R. Mankad (supra) and the Division Bench of this Court in the case of Maharashtra Co-operative Housing Finance Society Ltd. (supra) concluded that a claim which is not entertainable by Civil Court u/s 9 of the CPC cannot be allowed to be entertained u/s 91 of the Co-operative Societies Act. This is a restraint on the exercise of jurisdiction by the Co-operative Court u/s 91. It really deals with the reliefs which can be granted. It does not lay down the proposal that the dispute between a terminated employee of a Cooperative Society and the Society or a dispute about any of the service condition of such an employee is not entertainable u/s 91. If the employee is covered by the definition of "Workman", dispute will have to go before the Labour Court and if the employee is not covered by the term "Workman", then the dispute will have to go before the Co-operative Court. If the parties are Co-operative Society and its employee, Co-operative Court will have all the jurisdiction but will not grant a relief that the Civil Court would not have granted. The Supreme Court in the case of Co-operative Central Bank Ltd. and Others Vs. Additional Industrial Tribunal and Others, and in the case of Gujarat State Co-operative Land Development

Bank Ltd. (supra) came to the conclusion that a claim based upon contracts between the employees of the Co-operative Society and the society or the claim for damages arising out of the breach of such contracts can be a part of a dispute touching the "Management" of the Co-operative Society within the meaning of section 91 of the Co-operative Societies Act and such a claim would be entertained and decided by the machinery provided under the said Act. This view is strengthened after the amendment of section 91(1)(a) by incorporating the proviso, referred to hereinabove.

14. We are, therefore, of the considered view that the law laid down by this Court in the case of *Shetkari Sahakari Sakhar Karkhana v. N.B. Tulpule* 1979 M.L.J. 210, and *Maharashtra Co-operative Housing Finance Society Ltd. (supra)* holds the field and, rightly so. Therefore, the challenge to the termination orders, as in the instant cases, for claim of damages or for declaration that termination order was null and void or did not exist in the eyes of law, is a dispute "touching the management of the society" and the remedy for such a relief is available to the petitioners u/s 91(1) of the Cooperative Societies Act.

15. It is well established that the remedy u/s 91(1) of the Cooperative Societies Act is a substitute for the remedy which could have been available before the Civil Court. In this regard, it will be appropriate to refer to a recent judgment of the Supreme Court in the case of *Ashok Kumar Srivastav Vs. National Insurance Company Limited and Others*, . The employees who were working in managerial category were removed from service and the same action of the employer was challenged under the Specific Relief Act, 1963. The suit was resisted by the employer on the ground that it was not tenable u/s 14 of the said Act. The Apex Court held that section 34 of the Specific Relief Act was wide enough to open the corridors of the Civil Court to admit suits filed for variety of declaratory reliefs. Even in the instant case, same ratio would apply in as much as the remedy which would otherwise be available before a Civil Court will be available before a Co-operative Court, u/s 91(1) of the Co-operative Societies Act as the forum created u/s 91-A of that Act is a substitute for the Civil Court and created under a special legislation. The remedy available under a special piece of legislation must override the remedy available under the general law and employees covered under such special law shall have to seek a remedy provided under such special statute.

16. The Supreme Court in the case of *Executive Committee, U.P. Warehousing Corporation Vs. Chandra Kiran Tyagi*, , following the decision in the case of *S.B. Dutt Vs. University of Delhi*, and *S.R. Tewari Vs. District Board Agra and Another*, held that no declaration to enforce a contract of personal service or for alterations of conditions of service will be granted except in the following well recognised cases :

(a) in the case of a public servant who has been dismissed from service in contravention of Article 311 of the Constitution of India;

(b) in the case of an employee who could be reinstated in an industrial adjudication by the Labour Court or an Industrial Tribunal, and

(c) in the case of a statutory body, its employee could be reinstated when it has acted in breach of the mandatory obligations imposed by the statute.

It was further held that in the case of an employee who did not fall in any of the above mentioned three exceptions, an order passed by the employer in breach of their staff regulations could be merely a breach of terms and conditions, but would not be a breach of any statutory obligations and therefore, such employees are not entitled for the relief of reinstatement in service. This ratio has been reiterated by the Apex Court, subsequently, in a more recent case of *Integrated Rural Development Agency v. Ram Pyare Pandey* 1995(I) C.L.R. 781 and held that in the absence of the statutory requirements, the Court should not ordinarily force an employer to recruit or retain in service an employee not required by the employer when the three exceptions laid down in the case of *Uttar Pradesh Warehousing Corporation Ltd. (supra)* are not there. It is also well established that by affording the relief of reinstatement or back wages, the Court will, in fact, be granting specific performance of contract of service which can be done only in three exceptions cited above.

17. In the case of *Co-operative Central Bank Ltd. v. Additional Industrial Tribunal (supra)*, the Supreme Court, inter alia, held that the Co-operative Society registered under the Co-operative Societies Act, though governed by its bye-laws duly approved by an authority created under the Co-operative Societies Act, is not a Statutory Authority and a Co-operative Society would stand on the same footing as a company which is governed by its Articles of Association and Memorandum of Association, as are framed by following the provisions of the Companies Act, 1956. In addition, the employees working in a Co-operative Society registered under the Co-operative Societies Act are not public servants and they do not have the protection of Article 311 of the Constitution of India. In the instant cases, both the petitioners do not belong to any of the three categories as they are neither government public servants nor "Workman", "Employee", as defined under the Industrial Disputes Act or Bombay Industrial Relations Act, and therefore, remedy, if any, available to the petitioner is to move the Co-operative Court by filing a dispute u/s 91(1) of the Co-operative Societies Act, and claim the relief for damages for wrongful termination of services or for the declaration that termination order was illegal and they continued in service.

18. On the basis of the above referred legal pronouncements, we sum up our findings as under :

(a) The termination of service of an employee like the petitioners (who do not fall within the purview of either the Industrial Disputes Act or Bombay Industrial Relations Act) by their employer (a Registered Co-operative Society) is a dispute touching the management and business of the Society, as defined u/s 91(1) of the Co-operative Societies Act.

(b) The order of termination can be challenged before the Cooperative Court which has the powers to grant declaratory reliefs akin to the powers of the Civil Court u/s 34 of the Specific Relief Act, 1963 viz. to give declaration that the termination order was illegal and the disputant continued to remain in service, and

(c) It could be inappropriate for a Co-operative Court to grant the relief of reinstatement with back wages where the petitioners do not fall in any of the three exceptional cases as laid down by the Supreme Court in the case of Uttar Pradesh Warehousing Co-operation Ltd. (supra). In addition, petitioner's service conditions are not governed by any Statute which empowers a Tribunal/Court to grant the relief of reinstatement.

In the result, petitions are rejected as not maintainable under Article 226 of the Constitution of India. It is made clear that we have not expressed any opinion on the challenge to the impugned orders of termination of the petitioners from service.

19. Petitions rejected as not maintainable.