(1996) 05 P&H CK 0159

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1344 of 1993

Punjab State Co-operative Bank Ltd. APPELLANT

Vs

Milkha Singh and Another RESPONDENT

Date of Decision : 03-05-1996

Acts Referred:

Citation : (1997) 89 CompCas 696 : (1996) 114 PLR 190

Hon'ble Judges : R.L. Anand, J

Bench : Single Bench

Advocate : Navkiran Singh, for the Appellant; Deepak Thaper and Y.P. Singla, for the Respondent

Final Decision : Dismissed

Judgement

R.L. Anand, J.—This defendant''s appeal has been directed against the judgment and decree dated April 19, 1993, passed by the District Judge, Gurdaspur, who affirmed the judgment and decree of the trial court dated October 15, 1990, passed by the Senior Sub-Judge, Gurdaspur.

2. The brief facts of the case are that Shri Milkha Singh, son of Shri Puran Singh, filed a suit for declaration against the Punjab State Co-operative Bank through its managing director, defendant No. 2, seeking a declaration to the effect that the order passed by defendant No. 1, vide endorsement No. CC/Sr. Acctt./EA 2/266-68, dated July 13, 1984, against the plaintiff for two years as resolved by the administrator of the defendant, vide resolution No. 731, dated June 25, 1984 is illegal, null and void, ineffective, without jurisdiction, unconstitutional, against the principles of natural justice in violation of the service regulations as contained in Common Cadre Rules 1970-71. The plaintiff also claimed consequential relief in the shape of promotion with effect from 1974 and other benefits. The other declaration which was sought by the plaintiff was that the order passed by defendant No. 2 on January 28, 1985, as conveyed to the plaintiff vide endorsement No. CC/Sr. Acctt. 33/3414-16, dated February 6, 1985, wherein the suspension period with effect from May 6, 1974 to April 19,

1978, was regularised as per the leave of the kind due was illegal, null and void, unconstitutional and against the principles of natural justice.

3. The case set up by the plaintiff was that he is in continuous service of the defendants since 1957, and was posted with defendant No. 2 till 1978. Defendant No. 1 is an apex co-operative society registered under the Co-operative Societies Act and certain employees of defendant No. 1 are governed under the Common Cadre Rules 1970-71, framed under the Co operative Societies Act The plaintiff being the senior accountant, the service condition was governed by the Government Cadre Rule. The plaintiff alleges that defendant No. 2 is a branch of defendant No. 1, got a false case registered against the plaintiff, as a result of which the plaintiff was placed under suspension, vide order dated May 6, 1974. One Gurdit Singh, assistant manager, working with defendant No. 2 was also challened along with the plaintiff in that criminal case in the court of the Chief Judicial Magistrate, Gurdaspur, who acquitted both the accused i.e., plaintiff and Gurdit Singh on November 26, 1977. During the pendency of the criminal trial, the plaintiff was charge sheeted along with Gurdit Singh on Decem ber 4, 1975. A detailed reply was given to the charge-sheet on January 21, 1976. During the pendency of the criminal case of the departmental proceedings, the case was also referred to an arbitrator who gave findings in his favour and the plaintiff was exonerated of the charges levelled against him. The department also filed an appeal against the decision of the arbitrator which was also dismissed by the Assistant Registrar of Co operative Societies. Defendant No. 2 filed a revision against the orders of the Appellate Authority and that revision was also dismissed by the Deputy Secretary on May 31, 1983. After the completion of the enquiry, .defendant No. 1 conveyed orders dated July 13, 1984, referred to above. Similarly, the orders dated January 28, 1985, were conveyed, vide endorsement No. CC/Sr. Acctt. 33/3414-16, dated, February 6, 1985, treating the suspension period of the plaintiff as a leave of kind due. The plaintiff alleges that these two orders are illegal because the joint enquiry was against the plaintiff and Gurdit Singh it was illegal and it was so held by the civil court in its judgment dated October 24, 1985, passed in Civil Suit No. 216 of September 18, 1984, decided by the court of Shri O. P. Goel, Additional Senior Sub-Judge, Gurdaspur. Further, the enquiry officer could not sit in judgment over the judgment of the criminal court. The charge-sheet issued to the plaintiff was illegal, without jurisdiction and was based on suspicion. That the enquiry officer was not appointed by a competent person ; even otherwise the enquiry officer conducted the enquiry against the principles of natural justice and in violation of the service regulations as contained in Common Cadre Rules. The plaintiff was not afforded reason able opportunity to defend, the enquiry officer had vice against the plain tiff and was bent on returning a finding against the plaintiff. The plaintiff further alleged that he was not afforded opportunity of cross-examination of the witnesses of the department. On the above allegations, the plaintiff prayed for the decree.

4. The suit was contested by the defendants. Some preliminary objections were

taken that the suit was not maintainable in the present form ; that it is bad for want of notice u/s 79 of the Punjab Co-operative Societies Act. On the merits, the defendants admitted that the service conditions of the plaintiff were governed by Common Cadre Rules. It was pleaded by the defendants that the enquiry was conducted in a rightful manner and no violation of the principles of natural justice was done.

5. The plaintiff filed replication to the written statement filed by the defendants and reiterated the allegations made in the plaint by denying those of the written statement. From the above pleadings of the parties the learned trial court framed the following issues :

1. Whether the impugned orders dated July 13, 1984, and February 6, 1985, ate illegal, null and void, not operative as alleged ? OPP.

2. Whether the plaintiff is entitled to the declaration as prayed for ? OPP.

3. Whether the suit is not maintainable as alleged ? OPD.

4. Whether the suit does not lie as the plaintiff has not filed departmental appeal ? OPD.

5. Whether the suit is bad for want of notice u/s 79 of the Punjab Co-operative Societies Act ? OPD.

6. Relief.

6. The parties led oral and documentary evidence in support of their case. Vide judgment and decree dated October 15, 1990, the suit of the plaintiff was decreed with costs.

7. Challenge was given by defendant No. 1, i.e., Punjab State Co-operative Bank Ltd., Gurdaspur, to the judgment and decree of the trial court in the court of the District Judge, Gurdaspur, i.e., the first appellate court, who affirmed the judgment and decree of the trial court, and dismissed the appeal of the appellant.

8. Two things I would like to highlight from the judgment of the first appellate court when it stated that in the absence of any resolution authorising the managing director to file the appeal, the same was not maintainable. Admittedly, no resolution was passed authorising the managing director to prefer the appeal. Thus, in the absence of any resolution, the appeal of defendant No. 1 would not be maintainable and it was bound to be dismissed on that short ground. The second aspect of the appeal was that in order to obviate the chances of remand, the learned first appellate court rightly dismissed the matter on the merits also and affirmed the findings of the trial court by holding that due to the registration of the criminal case, the plaintiff was placed under suspension and with the acquittal of the plaintiff, his suspension period was to be treated as the period spent on duty. Still aggrieved by the judgment and decree dated April 19, 1993, in the first appellate court, the present regular second appeal has been filed by the managing director.

9. I have heard Shri Navkiran Singh, advocate, on behalf of the appellant and Shri De''epak Thaper, advocate, on behalf of the respondents and with their assistance, have gone through the record of this case.

10. A preliminary objection has been taken by learned counsel for the respondents that the appeal was not maintainable, since there is no decision of the board of directors on behalf of the appellant, which is a body corporate, to file the present appeal against plaintiff, Shri Milkha Singh. I find force in the argument raised by learned counsel for the respondents. Order 29, Rule 1 of the Code of Civil Procedure, 1908, lays down :

"In suits by or against a corporation, any pleading may be signed and verified on behalf of the corporation by the secretary or by any director or other principal officer of the corporation who is able to depose to the facts of the case."

11. It is an admitted case of the parties that the Punjab State Co-operative Bank Ltd. is a body corporate registered under the Punjab Co-operative Societies Act, and it functions through its managing director and other officers. The managing director is a principal officer of the society but there must be a decision of the body-corporate/board of directors authorising the managing director to file the present appeal. The decision to file the appeal or not rests with the board of directors which is the heart and soul of the Punjab State Co-operative Bank. Strangely enough in spite of the fact that the first appellate court categorically held in para No. 6 of the judgment that the first appeal was not maintainable in the absence of any resolution passed by the board of directors authorising the managing director to prefer the appeal, still the appellant did not think it proper to pass any resolution before filing the second appeal in the High Court. Even I go to this extent that if the board of directors had passed a resolution deciding to file an appeal against the plaintiff, still such resolution could not revive the non-maintainability of the first appeal which was bad for want of the resolution of the board of directors. In other words, the dead hare could not be revived by flogging.

12. Shri Navkiran Singh, advocate, appearing on behalf of the appellant has drawn my attention to regulation No. 46.8 of the bye-laws of the appellant-bank and submitted that these bye laws being statutory in nature would give enough power to the managing director to institute the present appeal and no independent decision of the board of directors was required to be taken. I do not subscribe to the argument raised by the counsel for the appellant. Rule 46.8 of the bye-laws can be reproduced as follows :

"To institute, conduct, defend, compound or abandon any legal proceeding by or against the bank or its officers or otherwise concerning the affairs of the bank."

13. A perusal of the above would show that this regulation only gives powers to the managing director to institute, conduct, defend, any legal proceedings by or against the bank but the decision to institute or defend the proceedings has to be taken by the body corporate for functions of its managing director. In the

absence of that decision of the board of directors which is a decision taken by the body, the present appeal filed by the managing director alone would not be competent and maintainable.

14. It has been held in Nibro Ltd. Vs. National Insurance Co. Ltd., , that Rule 1 does not authorise persons mentioned therein to institute a suit on behalf of the company. Such suit can be filed by a director specifically empowered by the board to file suits. In the present case, no doubt the managing director, who is a member/officer of the bank, can sign and verify the pleading within the ambit of Order 29, Rule 1 of the Civil Procedure Code, 1908, but before doing so he has to derive the powers from the board of directors authorising the managing director to file the present appeal. There is a purpose behind Order 29, Rule 1 of the Civil Procedure Code, 1908, because the employing of a counsel for the institution of a suit or appeal entails financial implications for which the sanction of the board is required. In the Punjab Cooperative Societies Act, there is no provision which independently confers powers on the managing director to take a decision for the institution of the legal proceedings without the prior approval of the board of directors. It has also been held in Uddat Bhagat Ram Nazool Land Co-operative Society v. Leekal [1981] PLJ 79, that a co-operative society registered under the Punjab Co-operative Societies Act is a body corporate. Before any officer or a member can act on its behalf, authorisation is necessary. No officer or office holder can act on behalf of the co-operative society suo motu unless a resolution of the co-operative society authorises somebody to file an appeal on its behalf. No appeal can be presented on behalf of a cooperative society in the absence of any resolution authorising the president to file an appeal. Further, it has been held that if no properly constituted appeal has been filed on behalf of the co-operative society, such appeal is liable to be dismissed. The ratio of this authority is helpful to me and in determining the preliminary objection raised by the counsel for the respondents.

15. In the grounds of appeal also, it is nowhere alleged that any resolution was passed in favour of the managing director or that the managing director independently had the right to file the appeal without consultation or deriving power from the board of directors. The present appeal has been presented contrary to the provisions of law. In these circumstances, this court has no jurisdiction to decide the appeal on the merits and it is liable to be dismissed as incompetent. Support can be derived from Garib Chahd v. Municipal Committee [1979] PLJ 565.

16. Learned counsel appearing on behalf of the appellant has not been able to cite any case law contrary to the one relied upon by the contesting respondent Shri Milkha Singh.

17. In the light of the above discussion, I hold that the present appeal is incompetent by sustaining the objection of the contesting respondents. The appeal stands dismissed being incompetent, leaving the parties to bear their own costs.

