
(1986) 04 KAR CK 0014
In the Karnataka High Court
Case No : W.P. No. 42580 of 1982

Raibag Taluk Co-operative Primary Land Dev. Bank Ltd.

APPELLANT

Vs

J.G. Suryavanshi and Others

RESPONDENT

Date of Decision : 08-04-1986

Acts Referred:

Citation : (1986) 1 KarLJ 381

Hon'ble Judges : R. S. Mahendra, J;K. S. Puttaswamy, J

Judgement

Puttaswamy, J.-At Raibag Town, the Taluk Headquarter of the same Taluk, Belgaum District, there is a Co-operative Society, now called as "Agricultural and Rural

Development Bank of Raibag" ("ARD Bank"), formerly called as "The Primary Land Development Bank Ltd., Raibagh", constituted and functioning under the Karnataka Co-operative Societies Act of 1959 (Karnataka Act No. 11 of 1959 ("the Act")) which is the petitioner before us. Prior to 3-9-1976, respondent-1 was working as its Secretary.

2. On 3-9-1976, the petitioner placed respondent-1 under suspension and commenced disciplinary proceedings against him for alleged misappropriation of its funds and various other misdemeanours. After holding an inquiry into the charges levelled against respondent-1, the General Body of ARD Bank by its order made on 29-1-1977 (Annexure-B) dismissed him from service and sought for the approval of the Joint Registrar of Co-operative Societies, Belgaum Division, Belgaum ("Registrar") under Rule 18(b) of the Rules. On an examination of the said proposal, the Registrar by his order made on 20-7-1979 (Annexure-A) accorded his approval to the same, which was formally communicated by the petitioner on 16-8-1979 to respondent-1. On 10-8-1979, respondent-1 challenged the said order of the Registrar before this Court in W.P. No. 12031 of 1979. On 14-8-1979, this Court directed issue of notices in the said writ petition to show-cause as to why Rule Nisi should not be issued.

3. Even before the Registrar examined the proposal of the petitioner and accorded his approval, respondent-1 commenced proceedings before the Labour Court at Hubli ("Labour Court") for grant of monetary reliefs under Section 33(c) (2) of the Industrial Disputes Act, 1957 ("I.D. Act"). On 28-10-1978 and 18-2-1981 respectively, the Labour Court made two orders in favour of respondent-1, the validity of which was challenged by the petitioner before this Court in W.P. No. 651 of 1979 and W.P. No. 8843 of 1980. On 2-11-1981 and 4-8-1981, this Court has disposed of them substantially in favour of respondent-1.

4. On and from 24-8-1978, the Common Cadre Authority ("CCA") for ARD Banks constituted by Government came into being in the State.

5. In its order No. CCA/JGS/22861/ 873/79-80 dated 17-11-1979 (Annexure-C), the CCA made a curious and astonishing order withholding the order made by the Registrar on 20-7-1979 and posting respondent-1 as the Secretary of the ARD Bank, Laxmeshwar, Dharwad District.

6. When W.P. No. 12031 of 1979 filed by respondent-1 came up for hearing before Rama Jois, J., on 4-12-1979, he wisely and quietly sought to withdraw the same which was opposed by the petitioner. But, Rama Jois, J., over-ruling the objection of the petitioner, dismissed the same as withdrawn by respondent-1.

7. In view of the above order and the orders made by this Court in W.P. No. 651 of 1979 and W.P. No. 8843 of 1980, the petitioner has approached this Court under Article 226 of the Constitution challenging the order made by the CCA on 17-11-1979.

8. The petitioner has urged that the order made by the CCA on 17-11-1979 setting at naught the order of dismissal which had become final approved by the Registrar, was without jurisdiction and illegal.

9. The respondents without filing their returns have resisted the writ petition.

10. Sri H. Thipperudrappa, learned counsel for the petitioner, contends that as on the dates respondent-1 was placed under suspension and dismissed from service, the petitioner was competent to do so and the CCA had no competence to undo the same.

11. Sri S.B. Adi, learned counsel for respondent-1, in supporting the order of the CCA, contends that its legality upheld by this Court in the earlier proceedings cannot be examined by this Court. As the latter contention urged by Sri Adi goes to the root of the matter, it is necessary to examine the same first. Sri S.S. Ujjannavar, learned counsel appearing for respondent-2, also sought to support the impugned order.

12. In W.P. No. 651 of 1979 and W.P. No. 8843 of 1980, the challenge of the petitioner was to the two orders made by Labour Court under the I.D. Act and not to the order impugned in this writ petition. At the highest, the passing

observation made by Bopanna, J., on the validity of the order of dismissal made by the petitioner in W.P. No. 651 of 1979, the correctness of which also is in serious dispute, had to be confined to those proceeding only. In any event, those proceedings do not operate as *res judicata* and preclude the petitioner from challenging the order of the CCA, which had not been earlier challenged. We see no merit in the preliminary objection of Sri Adi and we reject the same. With this, we proceed to examine the merits.

13. When the petitioner placed respondent-1 under suspension and dismissed him from service, it is not disputed that the petitioner was his employer. As employer, the petitioner was competent to make those orders. In other words, those orders were within the competence and jurisdiction of the petitioner. The post-facto approval by the Registrar does not alter that position and only confirms the same if that was necessary. We do not see any illegality in the order of the Registrar.

14. In *P.L.D. Bank v State of Karnataka* (I.L.R. 1986 Karnataka, 427) and *Basavaraj Nagappa Mylawwa v Common Cadre Authority* (I.L.R. 1986 Karnataka 701), we have traced the history of legislation, the constitution of CCA for ARD Banks and the regulations made by it and the powers that can be exercised by that authority.

15. As noticed earlier, the CCA was constituted by Government on 24-3-1978, at any rate, was empowered to regulate the recruitment conditions of officers including disciplinary control of the employees of ARD Banks from 1-10-1978 under and in accordance with the Regulations framed by it and sanctioned by Government.

16. We have examined every one of the provisions touching on the constitution of the CCAs and the Regulations and the powers conferred thereunder. But, we find that none of them empowered the CCA to undo what had become final prior to its constitution. In the absence of specific power, it was not open to the CCA to interfere with the order made by the petitioner and also approved by the Registrar. We are clearly of the view that the order made by the CCA is without jurisdiction and illegal.

17. We are somewhat surprised and distressed at the cavalier fashion in which the CCA had made its order 17-11-1979 and has conferred unknown rights and benefits on respondent-1 to which he was not entitled to in law. We do hope and trust that the CCA will not do at least in future.

18. On the foregoing discussion, it follows that the impugned order made by the CCA is liable to be quashed. We, therefore, quash the impugned order of the CCA.

19. Rule issued is made absolute But, in the circumstances of the case, we direct the parties to bear their own costs.