
(1994) 03 MP CK 0037

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No's. 351 of 1984 and 86 of 1994

Rajendra Vipnan Sahakari Samiti Ltd.

APPELLANT

Vs

Harcharan Kada and Another

RESPONDENT

Date of Decision : 04-03-1994

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Madhya Pradesh Co-operative Societies Act, 1960 — Section 55(2)

Citation : (1995) 1 MPJR 162 : (1994) 39 MPLJ 851 : (1994) MPLJ 851

Hon'ble Judges : S.K. Dubey, J;J.G. Chitre, J

Bench : Division Bench

Advocate : R.D. Jain, for the Appellant; Party-in-Person, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Dubey, J.

Both these petitions are disposed of by this common order.

The petitioner, a Co-operative Society, is aggrieved of the order dated 8-3-1984 (Annexure P/7 in M. P. No. 351 of 1984) and order dated 2-12-1993 (Annexure P/ I in M. P. No. 86 of 1994) both passed by the Board of Revenue, has filed these two separate petitions under Article 227 of the Constitution of India, has prayed for issuance of a writ of certiorari and/or other suitable direction or order for quashing the aforesaid two orders.

Brief facts leading to the petitions are thus. Petitioner is a co-operative society, registered under M. P. Co-operative Societies Act, 1960, for short, the Act", which is a consumer society, wherein the respondent No. 1 was employed as a salesman and of which one Amrit Lal Mishra is the Manager. On inspection and audit of stocks, the respondent No. 1 was found guilty of shortage and defalcation, hence, the society passed a resolution No. 3 on 8-4-1972 to terminate the services of the respondent. In pursuance of the resolution, the President of the Society terminated the services of the respondent No. 1 vide

order dated 11-4-1972 (Annexure P/I in M. P. No. 351 of 1984). The respondent No. 1 raised a dispute u/s 64 of the Act, against the order of surcharge, ultimately, the Joint Registrar in appeal No. 77/42/81 vide order dated 10-2-1982 set aside the order of surcharge and recovery holding that the respondent No. 1 was neither guilty of shortage nor of any defalcation. After this order, which became final, the respondent No. 1, raised a dispute u/s 55(2) of the Act, for declaration of his termination as illegal. That dispute was dismissed by the Assistant Registrar vide order dated 19-10-1982 as not raised within the period of 30 days from the date of the order of termination. This order was confirmed by the Joint Registrar in appeal vide order dated 28-6-1983. The Board of Revenue, in second appeal, vide order dated 8-3-1984 (Annexure P/7 in M. P. No. 351 of 1984), allowed the appeal observing that though the dispute raised was beyond the period of limitation, but under inherent powers, directed reinstatement of the respondent by fresh appointment holding that the cause of termination is embezzlement in the surcharge proceedings, which, having been wiped out, there is no cause for not appointing the respondent. Hence, the petitioner, aggrieved of the order of the Board of Revenue, filed the M. P. No. 351 of 1984. As this Court did not grant any stay of the execution of the order of the Board of Revenue, the respondent was reinstated by giving a fresh appointment from 18-7-1984.

The respondent worked for a period of three years, thereafter was served with a charge-sheet dated 20-7-1987 wherein a charge of defalcation to the extent of Rs. 12,996.28 was levelled. Respondent No. 1 objected to issuance of charge-sheet contending that it is the Manager, who is responsible for defalcation, if any. Holding of the enquiry was also objected. An ex parte domestic enquiry was held wherein, the respondent having been found guilty of the charges, his services were terminated vide order dated 22-2-1988, Annexure P/I 2 in M. P. No. 86 of 1994. Respondent raised the dispute u/s 55(2) of the Act, which was contested by the petitioner Society by its written statement (Annexure P/I4) filed on 30-5-1988. Petitioner Society produced the record of enquiry; the Assistant Registrar, Co-operative Societies, vide order dated 26-12-1989 (Annexure P/I 6 of M. P. No. 28 of 1994) dismissed the dispute; that order was confirmed in appeal by the Additional Registrar vide order dated 6-10-1990. Respondent preferred a second appeal before the Board of Revenue. After perusing the records of the enquiry, and after hearing parties, the Board of Revenue, set aside the order of termination holding that during enquiry, no evidence was produced by the Society to prove embezzlement. Only because the employee did not file the reply denying charges, and did not participate in the enquiry, the charges cannot be said to be proved without any evidence. The Board also observed that the principles of natural justice were not observed, nor the enquiry was held in accordance with Rule 34(3) of the Rules framed u/s 55(1) of the Act governing the terms and conditions of the employment. This order of the Board of Revenue (Annexure P/I, dated 2-12-1993) which is the subject-matter of challenge in M. P. No. 86 of 1994.

On issue of notice, respondent appeared in person and stated that he has no means to engage a lawyer. He submits that he was employed in the Society in his prime youth and because of the litigative attitude adopted by the Society, his prime period of his life of 22 years has already passed. He submits that in fact, the Manager of the Society who was responsible for all the embezzlement is dragging him in litigation to save himself, making him a scapegoat. The earlier surcharge proceedings of 1972 were not only against the respondent employee, but also against the Manager and both were found guilty, but only his services were terminated, ultimately when the order was set aside and which became final wherein the respondent was not found to be guilty, the Society wrote off the debt instead of realising it from the Manager vide Resolution No. 7 dated 29-6-1982 (certified copy produced before us). After fresh appointment as directed by the Board of Revenue, the Manager and the Society started finding fault with the respondent so that the respondent who is a low-paid employee, getting in all about less than Rs. 800/- per month, could be chucked off again. During enquiry, vide Annexures P/6, P/7 and P/8, the respondent raised objections and submitted that if enquiry is not dropped, he shall take recourse to the Court of law. But, the Manager, who was holding the enquiry, vide Annexure P/9, gave a last opportunity to produce evidence in defence and then gave a report (Annexure P/10) finding the employee guilty of defalcation, embezzlement, thereon the society passed the order of termination dated 22-2-1988 which was rightly set aside by the Board of Revenue.

Shri R. D. Jain, learned counsel for the petitioner Society contended that u/s 55(2) of the Act, the Registrar or any Officer appointed by him, not below the rank of Assistant Registrar, is empowered to decide the dispute provided such dispute is filed and entertained within thirty days from the date of order sought to be impugned. Admittedly, the first order of termination was passed on 11-4-1972 and a dispute was raised on 4-6-1982. Therefore, the Assistant Registrar and the Joint Registrar rightly did not entertain the dispute as barred by time, but the Board of Revenue, though held that the dispute was raised beyond 30 days, in exercise of inherent powers, illegally passed the order directing reinstatement.

The contention of Shri Jain that the order of the Board of Revenue, under inherent powers of entertaining a time-barred dispute and of reinstatement by fresh appointment is illegal and without jurisdiction, has no force in the facts of the case. We say so because, the termination order was based on the surcharge proceedings against the respondent, which could not have been challenged by the respondent unless the order of surcharge is set aside. When the order of surcharge was set aside, and the ground on which the order of termination was upset the respondent applied for allowing him to join his duty, but was refused, hence the respondent raised the dispute u/s 55(2) of the Act. The Co-operative Courts and the Board of Revenue proceeded in wrong premises holding that the dispute being barred by time, not raised within 30 days from the date of the order. The Society did not terminate the services of the respondent by holding a

departmental enquiry, but passed the termination order on surcharge. Therefore, when the order of surcharge was set aside, cause of action arose to the respondent to join his duties, but, he was not allowed to do so. Therefore, respondent rightly raised the "dispute" which, in the circumstances, cannot be said to be barred by time as the case of the respondent is similar to that of an employee who is kept under suspension or terminated because of a criminal prosecution against him and when the criminal prosecution culminates in favour of such employee, he gets a cause for his entitlement to be reinstated with or without back wages, as the case may be. In the present case, the Board of Revenue did not award any back wages, but directed reinstatement by a fresh appointment, on that the petitioner was reinstated. The petitioner after keeping the respondent in employment for a period of about 3/4 years, again terminated the services of the respondent. In the circumstances, in our opinion, nothing survives to decide this petition (M. P. 351 of 1984).

However, even assuming, for argument's sake, the order of the Board of Revenue to be illegal, this Court will not interfere as proceedings by way of certiorari under Article 226 are "not of course" and as we are satisfied that there was no failure of justice and if the writ is issued its effect would be restoring an order of surcharge which is not in existence and that order is the only ground of termination of the services of the respondent. Therefore, in our opinion, it would not be appropriate to exercise our jurisdiction under Article 226 of the Constitution of India to assist the petitioner to achieve injustice which has been caused to respondent by the acts of the petitioner and its Manager and for that, we rely on A.M. Allison Vs. B.L. Sen, and two Division Bench decisions of this Court in Punjab Sikh Regular Motor Service, Bilaspur v. Union of India 1987 MPLJ 776 and Banu Singh v. State of M. P. 1989 MPLJ 322 . Reliance of Shri Jain on the decisions of the Supreme Court in State of Punjab and Others Vs. Gurdev Singh, ; Binod Bihari Singh Vs. Union of India, is inappropriate which are distinguishable on facts of this case.

Shri Jain, in the next petition further contended that the respondent was afforded an opportunity to defend the charges, but that opportunity was not availed of by the respondent, therefore, the enquiry could not have been held to be illegal and even if the enquiry was illegal, there ought to have been a direction to proceed with the enquiry from the stage, the enquiry was held to be illegal or a fresh enquiry ought to have been directed. As such, the petitioner be granted liberty to proceed with the enquiry with a direction that the respondent shall be entitled to his due monetary benefits after conclusion of the enquiry. It was also contended that the respondent was holding the post of Salesman, a post requiring confidence. It is difficult to exercise day-to-day supervision on the respondent; and when the respondent was found involved in the acts of misappropriation, such an employee should not be thrust on by the Society. Shri Jain, in support of his contentions, placed reliance on P. Joseph John v. State of Travancore AIR 1956 SC 160 and Ghanshyamdas Srivastava Vs. The State of Madhya Pradesh, ; Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., ; Union of India

and others Vs. C.L. Verma, ; Khem Chand Vs. Union of India (UOI), S. P. Vishwanathan (1991) 17 A T C 923 ; The Binny Limited Vs. Their Workmen, ; O.P. Bhandari Vs. Indian Tourism Development Corpn. Ltd. and Others, ; Francis Klein and Co. (P) Ltd. Vs. Their Workmen and Another, and Kayastha Pathshala, Allahabad and Another Vs. Rajendra Prasad and Another,

The services of the respondent were terminated on the misconduct of the charges of embezzlement proved against him in the domestic enquiry. The Enquiry Officer, without considering the objections raised by the respondent about the involvement of the Manager who, to save his misdeeds, got issued the charge sheet, proceeded with the enquiry. In the enquiry, Society did not lead any evidence to prove the charges. The respondent was held guilty merely because the respondent did not participate in the enquiry. The enquiry should not be an empty formality, even in an ex parte enquiry, Management, to prove charges, has to make out a prima facie case by evidence to hold the delinquent guilty of the charges. But, for that, there was no material, no evidence, no documents. Therefore, the Board of Revenue, in our opinion, was right in setting aside the order of dismissal.

The petitioner's submission that the Board ought not to have directed reinstatement, being not conducive as the petitioner has lost confidence in the respondent, but, this plea cannot be entertained in these proceedings for the first time, as it was not raised before the co-operative Courts and the Board of Revenue in second appeal. Besides, law is well-settled that when an employer who believes or suspects that his employee, particularly, holding a post requiring confidence, has betrayed that confidence, can terminate the services without any stigma attaching to the discharge. But, such belief or suspicion of the employer should not be a mere whim or fancy. It must rest on some tangible basis and the power has to be exercised by the employer objectively in good faith, honestly with due care and prudence. See L. Michael and Another Vs. Johnson Pumps Ltd., Michael's case. Besides, when there is a dispute of such a nature, it is the Court, trying the dispute, while exercising the discretion judicially, can direct reinstatement with or without back wages or in lieu of reinstatement, grant compensation.

In this case, facts are eloquent. In fact, it is a case of marathon legal battle between a workman and the employer wherein, the workman is a victim of Management's exploitation and is an instance where the respondent workman has been forced by the petitioner Society in endless litigation. It is an unequal fight between the workman and his employer which is being fought more than 22 years wherein the respondent has passed his prime youth and is now nearing advanced age. He will not be able to get any alternative employment. Therefore also, we refuse to entertain the plea of loss of confidence. However, we do not express any opinion whether the petitioner can still proceed with the enquiry into the charges or not. It is open to the petitioner to take proceedings which they may be advised in accordance with law. The respondent shall also be at liberty to

challenge the order of surcharge.

In the result, the petitions are dismissed with costs. Petitioner is directed to comply the order of the Board of Revenue. They shall pay the costs of these two petitions to respondent, which we quantify as Rs. 1,500/-.