
(1994) 11 GAU CK 0014
In the Gauhati High Court
Case No : Civil Rule No. 499 of 1990

Ram Krishna Bhattacharjee	Vs	APPELLANT
State of Assam and Others		RESPONDENT

Date of Decision : 21-11-1994

Acts Referred:

Assam Co-operative Societies Act, 1949 — Section 63

Citation : (1995) 1 GLR 261

Hon'ble Judges : M. Sharma, J

Bench : Single Bench

Advocate : J.P. Bhattacharjee, P.K. Goswami, B.P. Bora and S. Mitra, for the Appellant; D.N. Choudhury, S. Medhi, H.N. Sarma, J. Singh and P.C. Dutta, for the Respondent

Final Decision : Dismissed

Judgement

M. Sharma, J.—This writ petition has been preferred by the Petitioner against the order dated 27.2.90 of the Commissioner and Secretary, Co-operation Department by which the earlier order of the Government passed on 2.9.88 was reviewed and set aside the order dated 5.9.86 of the Registrar of Co-operative Societies.

2. Petitioner is working as a Deputy Manager in the Respondent bank. He joined the service of the bank in 1957 as an Office Assistant. During the time of his appointment, the terms and conditions of appointment and service of the member of the establishment of the bank was governed by the Assam Co-operative Apex Bank Ltd. (Staff) Rules 1957 (for short the Old Staff Rules). Contention of the Petitioner was that under the said Old Staff Rub, there was no provision for departmental examination for further promotion from the rank of internal Auditor/Assistant Branch Manager/Superintendent. Promotion was made on the basis of merits, seniority and satisfactory record of service. Further contention of the Petitioner was that without making any amendment to the said Old Staff Rule, the bank by a policy decision, made departmental examination

compulsory to be promoted to the grade of Internal Auditor/Asstt. Branch Manager/Superintendent and on the basis of this a departmental examination was held on 12.2.72 and 20 eligible officers including the Petitioner submitted a joint appeal to the bank authority protesting the holding of departmental examination as no such provision was there in the Old Staff Rules. Thereafter the Petitioner was transferred and posted as Asstt. Branch Manager, in charge of Tinsukia Branch and he joined on 1.11.72 and continued till 7.3.78. Another departmental examination was held in 1973 wherein all the eligible officers except the Petitioner alongwith two others, namely, Sri Kalpanath Bordoloi and Bhabesh Goswami did not appear reiterating their earlier stand as their appeal made earlier, protesting the holding of departmental examination violating the provisions of the Old Staff Rule was not considered by the bank authority. The other officers who appeared in the examination were promoted to the rank of Branch Manager in due course. Meanwhile, due to pressures from all concerned, the authority by resolution dated 18.5.77 abolished the departmental examination and promoted the Petitioner alongwith the two others to the post of Branch Manager by order dated 7.3.78. As the seniority of the Petitioner was not maintained from 1.11.72- the date on which he was posted as Asstt. Branch Manager, the Petitioner made prayer to the concerned authority for his restoration of seniority from that date. The grievance of the Petitioner was that in the provisional select list Petitioner's name was shown at Sl. No. 21 which was not on the basis of the date of entry of the Petitioner in the bank and his subsequent promotions upto the post of Internal Auditor/Asstt. Branch Manager/Superintendent the rank of which there was no departmental examination for promotion. As the appeal for restoration of seniority was not considered by the bank authority, i.e., Managing Director, The Petitioner further appealed to the Board of Directors of the bank and thereafter to the Administrative Council of the bank as per provisions of the Old Staff Rules and the same was rejected. Admittedly, the Petitioner failing to get relief as aforesaid under the provisions of Old Staff Rules, preferred appeal on 10.5.85, in the capacity of a shareholder member of the bank, invoking the provisions of Section 63 of the Assam Co-operative Societies Act, 1949 (for short The Act) as the Respondent bank was registered under the said Act. The Registrar of Co-operative Society entertained the appeal u/s 63 of the Act and held that all matters which falls under the preview of the Old Staff Rules are concerned by the "business of the bank", which includes, according to him, all the matters relating to appointment/promotion and other related matters as incorporated in the said Old Staff Rules of the bank. Further view of the Registrar was that as the departmental examination has been abolished without specifying effective date, the prayer of the present Petitioner for restoration of his seniority stands on a strong footing for acceptance and accordingly the appeal was disposed of with a direction to the bank to take action to restore seniority of the Applicant/Petitioner. It is alleged inspite of repeated requests of the Petitioner to comply with the order/direction of the Registrar the same was not complied with-informing the Petitioner that the bank filed appeal before the Government, against the order of the Registrar.

Petitioner on enquiry, came to know that an appeal u/s 80 of the Act was filed before the Government by the Managing Director of the bank and the same was rejected as time barred as two month from the date of the order dated 2.9.86 was elapsed, with a direction to comply with the direction of the Registrar. Again the Managing Director of the bank informed the Petitioner that his case had been placed before the Board of Directors and it had decided to file writ petition before the Hon"ble High Court and immediately Petitioner filed caveat, but no writ petition had been filed, instead the Petitioner was informed that again a review petition was filed before the Commissioner and Secretary, Co-operation Department and the same had been admitted slaying the impugned order. Petitioner challenged the maintainability of the 2nd review petition on the ground of limitation and lack of jurisdiction and power of the Government to entertain a review petition as the Act has not conferred review jurisdiction to the Government. Further objection was that the review petition was filed after one year without praying for, condonation for delay and no satisfactory requirement for review could be established by the review Applicant.

3. From perusal of the impugned order of the Commissioner and Secretary, Co-operation Department dated 27.2.90 it appears that, the delay in filing the review petition was condoned considering the involvement of important point of law and in that view of the matter the objection of the Petitioner on the point of limitation is not sustainable.

4. The Respondents have filed application for modification/cancellation of the interim stay order alongwith the counter affidavits. One madan Ch. Buragohian filed application to be impleaded as necessary Respondent to the wit petition and of Co-operative Society to entertain the appeal. Respondents No. 4 and 5 filed joint counter affidavit through Sri H.L. Gogoi, Managing Director of the Bank. The averments made in the counter affidavit are that the appeal preferred by the Petitioner before the Registrar, Co-operative Society was without jurisdiction and not maintainable under the law and was also barred by limitation. The Registrar has no administrative control over the employees of the bank and therefore, appeal relating to a dispute regarding seniority of any employee of the bank including the Petitioner was beyond jurisdiction and not entertain able being not a dispute touching the business of a registered society and therefore any decision thereon given by the Registrar was ab initio void and nonest. Further averment was that the appeal before the Registrar, having been preferred against the decision of the Board of Directors of the bank wherein the Registrar was also a member of the Board, was not maintainable that white discussing the prayer of the Petitioner for restoration of his seniority, a sub committee was constituted, to examine the claim of the Petitioner and the Registrar of Co-operative Society was a member and that in that view of the matter the Register cannot be permitted under law to be a judge to decide a matter which was decided by himself in another capacity. From the above discussion, the gist point emerges is that whether the Register, Co-operative Society has jurisdiction to entertain an appeal of an employee of the bank involving Condition of service such.

5. The admitted position is that the Petitioner refused to appear in the departmental examination on protest alleging the violation of the Rule 26 of the Old Staff Rule, on two occasions, i.e., in 1972 and 1973. Further admitted position is that after the promotion of the Petitioner to the post of Asstt. Branch Manager after abolition of the departmental examination system and publication of the provisional seniority list in which his serial position was shown at No. 21, he preferred appeal before the Managing Director of the Respondent bank and there after to the Board of Directors and on rejection of the same to the Administrative Council, which is the supreme authority of the administration of the bank. Against the order of the supreme administrative authority of the bank, Petitioner did not file any appeal to the appropriate forum but preferred an appeal before the Registrar of Co-operative Society at the capacity of Shareholder u/s 63 of the Act.

6. The point for decision is whether the Registrar appointed u/s 3 of the Act has jurisdiction to entertain a petition u/s 63 of the Act to settle matter involving service condition of an employee of the bank. Admittedly appointment of the bank staff is not made by the Registrar and appointment of the staff of the Bank is made by the Board of Directors in respect of the employees under Officers Grade A to F and the Managing Director in respect of the other staff as provided u/s 3(b) of the Old Staff Rules. The Old Staff Rules of the bank are framed and adopted by the administrative council of the bank under Bye Law 29 of the Bank's Bye Laws which are to be duly approved by the Registrar, Co-operative Society. On the other hand the Registrar of Co-operative Societies is one of the members of the administrative council as well as the Board of Directors. Under the Staff Rule 47 and 48 appeal against the order of the Managing Director lies before the Board of Directors and before the Administrative council of the bank which is the supreme appellate authority. From that point of view, the Registrar cannot sit as a Judge in the matter which was earlier decided in appeal by a forum in which he was a member and which is the supreme appellate authority body. The Assam Co-operative Societies -Act under provisions of various sections, such as, Section, 36, 55, 14, 13, 33 (2), 56, 60 etc has given jurisdiction to the Registrar; Sec 14 confers jurisdiction to the registrar to direct amendment of Bye Laws or adopting of Rules of procedure. The provisions of Bye Law 43 of the bank provides that any dispute touching the "business of the bank" shall be referred to the Registrar of Co-operative Societies for disposal. Provisions of Bye Law 46 provides that the Administrative Council/Board of Directors etc, to whom powers have been delegated under the Assam Co-operative Apex Bank Ltd (Staff) Rules, 1980 (as amended) may make, modify, alter the rules for effective conduct of that portion of the business of the bank for which they are responsible. As per provisions of the Staff Rules (Rule 48) the supreme authority of the bank is the Administrative Council. Sec 63 of the Act read as follows:

63. Reference of dispute Any dispute touching the business of a registered society other than a dispute regarding disciplinary action taken by a society

against an employee of the society, or of the liquidator of a society shall be referred to the Registrar for decision if the parties thereto are among the following-

(a) the society, its past or present controlling or managing body, any past or present officer, agent or employee or the liquidator of the society.

Section 64 of the Act provides the manner by which the dispute referred u/s 63 be disposed of.

7. The admitted position is that, the staff of the bank their appointment and condition of service are controlled under the provisions of the Staff Rule which is adopted by the Administrative Council and recommended by the Registrar under, the Act. Mere recommendation under the provisions of Sec 14 of the Act, cannot give jurisdiction to the Registrar to overstep its power and function which is not, expressly given by the Act. The Registrar has not been given power of appointment under the Act nor under the Staff Rule. In that view of the matter the Registrar cannot counsel the administrative matter of the bank, particularly, condition of service of the employees of the bank. Being the supreme appellate authority any appeal regarding condition of service, lies before it to which the Registrar is a member of the appellate committee. The Act nowhere contemplates dual authority of the Registrar of Co-operative Societies, or of the bank which has been constituted under the guidelines and provisions of the Banking Regulation Act, 1949 and registered under the Co-operative Society Act, A co-operative bank raises working funds by floating debentures, the payment of which is to be guaranteed by the State Government which is the principal shareholder, Forum of appeal is contemplated u/s 63 of the Act to dispose of the dispute arising from the business of the Registered Society (Whether a financing bank or consumer society) and for decision of the service condition of the employees of the bank there is distinct and independent forum and jurisdiction of both the forum has been provided and ascertained under the Staff Rule. Hence cognizance of dispute by the registrar u/s 63 of the service condition of an employee of the bank has not been contemplated in the Act and therefore maintainability of the same cannot be sustained under the law.

8. From the above discussion I hold that the appeal u/s 63 of the Act by the Petitioner is misconceived and the entertainment of the same is beyond the jurisdiction of the Registrar, Co-operative Societies, as the Registrar is not the appointing authority nor the supreme appellate-authority and this jurisdiction is vested in the Administrative Council of the bank, in which the Registrar is one of the members, which decided the case of the Petitioner earlier.

9. Mr. Goswami, learned Counsel for the Petitioner submitted that as the Act has not given review power to the State Govt. the impugned order is not sustainable. Section 80 of the Act provides for appeal or review under which Registrar can entertain appeal against the decision made under the Act and Rules framed hereunder, by any Govt. officer liquidator or non official helpers appointed u/s

3(3) of the Act. The impugned order against which the appeal was preferred by the Petitioner as a shareholder was not passed by any govt. officer acted under the Act nor by any one as mentioned in the said section. The Petitioner filed appeal under the provisions of the Staff Rule and again subsequently filed appeal before the Registrar in the capacity of a shareholder when his appeal was rejected by the Administrative Council of the Bank. A shareholder has nothing to do with the administrative side of the bank more so when the Petitioner's grievance was regarding his service benefit/condition i.e., for restoration of seniority as an employee of the bank. Though Petitioner has questioned the power/jurisdiction of the State Government in entertaining the review application its order dated 2.9.86, the answer will be negative on the ground that Sub-section 3 of Section 80 of the Act provides that the State Government can entertain an appeal against the order of the Registrar when there is a question of law involved and thereby the State Government itself became an appellate authority and sub sec 4 also provides for jurisdiction of the appellate authority to pass stay order in appeal /review. In view of the reasons given above, the submission of Mr. Goswami learned Counsel for the Petitioner is not sustainable when jurisdiction is entertained by an authority (Registrar) which is not contemplated in the Act. Such entertainment of jurisdiction is ab initio illegal and any order/judgment passed thereon is automatically illegal and the entire proceeding is liable to be quashed. The ratio enunciated in R.N. Nanjundappa Vs. T. Thimmiah and Another, is applicable in this case wherein deciding an illegal appointment order, it was held by the Apex Court that, if the, appointment itself is in infraction of the Rules or is in violation of the constitution illegality cannot be regularized.

10. In the result the writ petition is dismissed.

No costs.