

(1965) 02 MP CK 0001
In the Madhya Pradesh High Court

Ramcharan Bille

APPELLANT

Vs

Madhya Pradesh State Tad-Gud Co-operative Federation Ltd.
and Others

RESPONDENT

Date of Decision : 23-02-1965

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1967) ILR (MP) 509 : (1966) JLJ 422 : (1966) 2 LLJ 877 : (1966) 11 MPLJ 421

Hon'ble Judges : P.V. Dixit, C.J.; K.L. Pandey, J

Bench : Division Bench

Judgement

P.V. Dixit, C.J.

By this application under Articles 226 and 227 of the Constitution, the petitioner seeks a writ of certiorari for quashing an order passed by respondent 1, the Madhya Pradesh State Tad-Gud Co-operative Federation, Ltd., Ujjain, on 25 March 1963 terminating his services with effect from 10 May 1962.

The petitioner was employed by the federation in a temporary capacity as Tad-Gud guide. He was posted at Kareli. On 25 March 1963, the federation passed an order terminating the petitioner's services as from 10 May 1962. The order stated that on a previous occasion the petitioner had attended a conference in the Mysore State without permission and without obtaining any leave, that for this unauthorized absence and attendance at the conference he was warned that in the event of repetition of such a conduct, his service would be discharged, and that despite this warning the applicant was again found to be visiting Ujjain and other places without intimating the federation and obtaining its permission for the visits. The applicant then moved the Registrar of the Co-operative Societies u/s 55 (2) of the Madhya Pradesh Co-operative Societies Act, 1960, complaining that the federation had illegally terminated his services. The Joint Registrar of the Co-operative Societies, who heard the petitioner's complaint after giving notice to the parties, came to the conclusion that the applicant's services were

properly terminated, and accordingly dismissed the complaint made to him by the petitioner. The applicant then filed an appeal before the State Government against the decision of the Joint Registrar, The appeal was u/s 77(1) of the Act, That appeal was dismissed by the Government taking the view that u/s 55 (2) the decision of the Registrar of the Co-operative Societies was final and no appeal lay against that decision.

The petitioner contends that the order terminating his services was Illegal inasmuch as it was passed by the federation without framing any charges or holding any enquiry and without giving him an opportunity of defending himself against the charges, and that the action of the federation In terminating his services from a date anterior to the passing of the Impugned order was wholly illegal. His further contention Is that In discharging his functions u/s 55 (2), the Registrar has to function as a quasi-judicial authority and, therefore, when he approached the Registrar u/s 56 (2) an inquiry should have been held by the Registrar into the charges on the basis of which the federation dispensed with his services; that he should have been given an opportunity to show cause against those charges; that in deciding his complaint about the illegal termination of his services, the Joint Registrar should have acted in accordance with the principles of natural justice, and that the appeal, which he had preferred u/s 77 (1) of the Act to the State Government, was competent and it was wrongly rejected by the State Government on the ground that the decision of the Registrar u/s 55 (2) was final and no appeal lay against it.

It will be proper to deal first with the petitioner's contention that the appeal, which he had filed before the State Government against the decision of the Joint Registrar, was competent and the State Government should have decided it on merits. If this contention is upheld, then it would not be necessary for us to express any opinion on other contentions raised by the applicant. The material provisions to consider are Sections 55 and 77 (1)(b). They are as follows:

55. (1) the Registrar may from time to time frame rules governing the terms of employment and working conditions In a society or a class of societies and the society or the class of societies to which such terms of employment and of working conditions are applicable shall comply with the order that may be Issued by the Registrar in this behalf.

(2) Where a dispute Including a dispute regarding terms of employment, working conditions and disciplinary action taken by a society, arises between, a society, and its employees, the Registrar or any officer appointed by him, not below the rank of Assistant Registrar, shall decide the dispute and his decision shall be binding on the society and its employees.

(1) Save where it has been otherwise provided, an appeal shall lie from every original order under this Act or the rules thereunder--

(a) * * * (b) if such order Is passed by the Registrar, Additional Registrar or Joint Registrar--to the State Government.

It is obvious from the provisions contained In Section 55 that if the Registrar has framed any rules governing the terms of employment and working conditions in a co-operative society, then the employees of the society would be governed by those rules. If no such rules have been framed, then the general law governing master and servant will apply to the employees. Sub-sectionion (2) of Section 55, when it speaks of a dispute, including a dispute regarding terms of employment, work-ing conditions and disciplinary action taken by a society, arising between a society and its employees being determined by the Registrar or any officer appointed by him, does not restrict its operation only to disputes arising under the rules framed by the Registrar in the exercise of his powers u/s 55 (1). That Sub-sectionion, as it is worded, means that any dispute between a society and its employees, whether arising under the rules framed u/s 55 (1) or otherwise, shall be determined by the Registrar or any officer appointed by him. Sub-sectionion (2) further Bays that the decision of the Registrar or any officer appointed by him in any such dispute " shall be binding on the society and its employees."

Now, u/s 77(1)(b), an appeal lies from every original order passed under the Act or the rules thereunder by the Registrar, Additional Registrar or Joint Registrar, to the State Government. The decision, therefore, of the Registrar, Additional Registrar or Joint Registrar determining a dispute u/s 65 (2) would be appealable. But Sri Bhawe, learned Government Advocate, appearing for the State, argued that an appeal under 8.77(1) was subject to the condition embodied in the opening words, namely, " Save where it has been otherwise provided " ; that the provision in Section 55 (2) that the decision of the Registrar or any officer appointed by him "shall be binding on the society and its employees " was an " otherwise provision "; and that consequently there was no right of appeal u/s 77 (1) from a decision of the Registrar or any officer appointed by him deciding a dispute u/s 55 (2) of the Act. Learned Government Advocate suggested that the expression " decision shall be binding" meant that the decision shall be final and conclusive.

We are unable to accept this contention. It is no doubt true that Section 77 (1) precludes an appeal in cases where there is an "otherwise " provision. But the provision contained in Section 55 (2) that the decision of the Registrar or any officer appointed by him " shall be binding on the society and its employees " is not an " otherwise provision " taking away the right of appeal in cases determined u/s 55 (2). The expression " decision shall be binding on the society and its employees," as used in Section 55 (2), does not mean that the decision of the Registrar or any officer appointed by him determining a dispute shall be final and conclusive and not subject to appeal. The expression " decision shall be binding" only denotes that the decision shall affect the society and the employee concerned in a constraining or compulsory manner. The necessity for providing that the decision of the Registrar or any officer appointed by him in a dispute u/s 55 (2) shall be binding arises because of the fact that Section 55 (2) does not confer any judicial power upon the Registrar or any officer appointed by him, and

the function these officers discharge while determining a dispute are not judicial but are arbitral. u/s 55 (2), the Registrar or any officer appointed by him can decide a dispute only when a party raises a dispute and desires to have it determined." Thus the Registrar, or the officer appointed by him, in deciding a dispute u/s 55 (2), exercises a consensual jurisdiction. These executive authorities are no doubt required to act judicially while deciding a dispute u/s 55 (2), and. their decision is a quasi judicial act. But their decision is not a decision of a Court having the power by its decision to Impose a liability on, or affect the rights of, the parties to the dispute. The purpose of the expression " decision shall be binding " is not to grant judicial power to these authorities. But it is to make their decision binding in the sense of prescribing a rule which must be obeyed. The use of the expression " decision shall be binding on the society and its employees" means no more than this that the decision shall be binding on the society and its employees so that in any subsequent proceedings, as for example, proceedings for recovery of salary, it would not be open to the society or the employee concerned to agitate again any matter determined by the competent officer is a dispute u/s 55 and which was actually within his power to decide. It does not mean that the decision shall be final in the sense of not being open to appeal. In this connexion, it would be pertinent to refer to the decision of the Privy Council in *Shell Co. of Australia, Ltd. v. Federal Commissioner of Taxation* 1931 A.C. 275 where Lord Sankey, L.C., approved, at pp. 295-296, the definition given by Griffith, C.J., in *Huddart, Parker & Co. v. Moorehead* 8 C.L.R. 330 of "judicial power" as meaning--

...the power which every sovereign authority must of necessity have to decide controversies between its subjects or between itself and its subjects, whether the rights relate to life, liberty or property. The exercise of this power does not begin until some tribunal which has power to give a binding and authoritative decision (whether subject to appeal or not) is called upon to take action.

[Italics ours.]

This observation of Griffith, C.J., approved by the Privy Council, and the use therein of the words " whether subject to appeal or not" make it abundantly clear that to say that a determination of a Court or an award of an arbitrator shall be binding and authoritative Is not the same thing as saying that the decision shall be final and conclusive and not open to any appeal. A decision may be made binding and authoritative by a statutory provision, and yet it may or may not be subject to any appeal according to the provision contained In the statute dealing with appeals against that decision.

In our judgment, the expression decision shall be binding on the society and its employees" occurring in Section 55(2) cannot, therefore be treated as an "otherwise provision" prohibiting an appeal u/s 77(1) against a decision of the Registrar, or any officer appointed by him deciding the dispute under that provision. It follows, therefore, that the State Government was not right in rejecting the appeal preferred by the petitioner against the decision of the Joint

Registrar on the ground that it was final and no appeal lay against the decision. The petitioner desires that the appeal preferred by him should be entertained and disposed of by the State Government on merits. That being so, it is not necessary for us to deal with the petitioner's contention whether, when the applicant was a temporary employee, his services could be terminated without notice or framing of any charges against him; whether the order passed by the federation terminating his services was altogether Invalid inasmuch as by that order his Services were terminated retrospectively as from a date in the past, or whether while determining the complaint of the petitioner that his services had been illegally terminated, the Joint Registrar was required to frame charges and hold an enquiry against him. These are all questions, which must be decided by the authority hearing the petitioner's appeal with the help of cases decided by the Supreme Court, this Court and other High Courts.

For these reasons, this petition is allowed in part, and the order passed by the State Government, refusing to entertain the petitioner's appeal against the decision of the Joint Registrar is quashed. The State Government is directed to entertain the appeal and dispose it of in accordance with law. In the circumstances of the case, we leave the parties to bear their own costs. The outstanding amount of security deposit shall be refunded to the petitioner