

(2001) 09 MP CK 0008
In the Madhya Pradesh High Court
Case No : Writ Petition No. 1025 of 2001

Ramjati Sharma

APPELLANT

Vs

M.P. State Co-operative Tribunal, Bhopal and others

RESPONDENT

Date of Decision : 28-09-2001

Acts Referred:

Madhya Pradesh Co-operative Societies Act, 1960 — Section 55(2), 86

Citation : (2001) 2 MPJR 359 : (2001) 3 MPLJ 399

Hon'ble Judges : S.S. Jha, J

Bench : Single Bench

Advocate : C.S. Dixit, for the Appellant; Ramji Sharma, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Jha, J.

This petition under Article 227 of the Constitution of India is filed against the order passed by M.P. State Co-operative Tribunal, Bhopal.

Petitioner was an employee of respondent No. 4-District Co-operative Central Bank Limited, Bhind. Petitioner was posted as Samiti Prabandhak and Sewa Sahakari Samiti. Petitioner was a cadre employee of respondent No. 4-bank. While the petitioner was posted at Sewa Sahakari Samiti Pawai, district Bhind, a show-cause notice dated 29-11-1984 was served upon him levelling three charges. The charges were as under:--

- (i) non-compliance of order of transfer dated 22-10-1984;
- (ii) remaining absent from duty in an unauthorised manner from 4-10-1984 onwards; and,
- (iii) defalcation of Rs. 2,032/-.

The petitioner later deposited the amount of Rs. 2,032/- with the respondent No. 4-bank. Petitioner's services were terminated vide order dated 16-3-1985.

Petitioner filed a dispute, u/s 55(2) of M.P. Co-operative Societies Act (hereinafter referred to as the "Act"). This dispute was filed on 14-3-1986. Admittedly, the dispute was filed beyond thirty days from the date of termination.

Petitioner contended that his application u/s 55(2) of the Act was well within thirty days from the date of communication of the order. Petitioner contended that the order was communicated to him by letter dated 14-2-1986, which was received by him on 15-2-1986, therefore, dispute filed on 14-3-1986 is well within time. The Assistant Registrar Co-operative Societies and Joint Registrar, Co-operative Societies held that dispute is well within time and period shall commence from the date of communication of the order and not from the date of passing of the order. Assistant Registrar as well as Joint Registrar allowed the application and set aside the order of termination. In second appeal before Co-operative Tribunal, the Co-operative Tribunal has held that the period for filing dispute shall commence from the date of termination order and there is no provision for condoning the delay in filing the dispute. Therefore, Tribunal held that the dispute was filed beyond limitation and application u/s 55(2) of the Act was dismissed as barred by limitation.

Counsel for the petitioner submitted that in second appeal finding of fact on the question of limitation could not be set aside by the Tribunal. Secondly, it was contended that the limitation shall commence from the date of communication of the order and not from the date of passing of the order. Counsel for petitioner further submitted that until and unless the order is communicated to the petitioner, petitioner will not acquire knowledge of the order of termination. Therefore, the order which was not communicated to the petitioner itself is bad in law. Counsel for the petitioner further submitted that the finding has been recorded by the Assistant Registrar as well as Joint Registrar that notice of termination was not served upon the petitioner in accordance with law. Counsel for the petitioner invited attention to section 86 of the Act and submitted that notice is required to be served in a manner provided u/s 86 of the Act. Petitioner also invited attention to Rule 75 of M.P. Co-operative Societies Rules, 1962 (hereinafter referred to as the "Rules") for procedure for service of notice upon respondents. Counsel for petitioner, therefore, submitted that period of limitation shall commence from the date order was communicated. Counsel for petitioner placed strong reliance upon second proviso to section 55, Sub-section (2) of the Act.

Counsel for respondent No. 4 supported the order and submitted that period of limitation shall commence from the date of passing of the order and shall not commence from the date of communication of the order. Counsel for respondents further invited attention to para 12 of the impugned award, wherein finding is recorded that the petitioner was informed on 17-4-1985 that his services have been terminated and thereafter if petitioner wanted to raise the dispute, he ought to have raised the dispute immediately thereafter. Petitioner cannot get benefit of communication of order once he has acquired knowledge of the order

of termination from service.

To appreciate the controversy, section 55(2) of the Act is reproduced below:--

55(2) Where a dispute regarding disciplinary action taken by a society arises between a society and its employees, it shall be referred to the Registrar or any other officer appointed by him not below the rank of Assistant Registrar, the Registrar or such officer as the case may be shall decide the dispute and his decision shall be binding on the society and its employees:

Provided that the Registrar or the officer referred to above shall not entertain the dispute unless presented to him within thirty days of the date of order appealed against:

Provided further that in computing the period of limitation under the foregoing proviso, the time requisite for obtaining copy of the order shall be excluded.

In the case of Jange Singh and others. vs. Board of Revenue and another reported in 1978 RN 28, the Court interpreted the scope of section 50 of M.P. Land Revenue Code, and has held that if the party aggrieved having no notice of the order either actual or constructive, limitation starts from the date of communication of the order while considering the scope of Order XXII, Rule 1 of the CPC and this judgment was referred while considering the scope of Section 17 of the Indian Forest Act.

Counsel for the petitioner then referred to the judgment in the case of Sher Khan Vs. The State of M.P. and Others, . In this case, it is held that limitation for filing appeal against the order cancelling fire-arm licence shall commence from the date of communication of the decision in writing to the licensee. The Division Bench of this Court has considered the scope of Rules 55 and 46 of the M.P. Arms Rules. Language of rule 55 of the M.P. Arms Rules is clear, wherein it is provided that the person aggrieved by such order may, within thirty days from the date of issue of the order, prefer an appeal. Thus, in the facts of the case, Legislature has intended that limitation shall commence from the date of issue of the order under rule 55 of M.P. Arms Rules.

In the case of Barkatkhan vs. Board of Revenue and others reported in 1979 RN 118, Division Bench of this Court considering the scope of section 77(3) of the Act has held that when order is not formally communicated, starting point of limitation shall commence from the date of formal communication of the order. Thus, it is held that there should be communication of the order. The Division Bench was examining the scope of sub-section (3) of section 77 of the Act. section 77 relates to an appeal.

While interpreting the scope of section 50 of M.P. Land Revenue Code, Division Bench of this Court had an occasion to consider the scope of section 50 of M.P. Land Revenue Code in the case of Amirtlal vs. Board of Revenue reported in 1966 RN 31, wherein third proviso to section 50(1) of M.P. Land Revenue Code was considered and it was held that time shall start running "from the date of the

order". It is further held that on no principle of construction, this expression can be construed as meaning "from the date of the communication of the order to the party concerned". Division Bench considered the intention of Legislature and observed that u/s 47 of the Code specific provision is made regarding commencement of limitation from the date of communication of the order appealed from but no such provision has been made in regard to revision u/s 50 of the Code, therefore, it was held that period shall commence from the date of passing of the order.

In the case of Dhar Central Co-operative Bank vs. Board of Revenue reported in 1985 WN, 28, it is held that the dispute shall be filed within thirty days from the passing of the order and not from the date of communication of the order.

Counsel for petitioner has placed reliance upon the judgment in the case of Smt. Saraswatidevi and Another Vs. Krishnaram Baldeo Bank Limited and Another, , wherein the Court considering the scope of section 100 of Code of Civil Procedure, held that conclusion about limitation is a finding of fact and is not open for interference in second appeal.

From bare perusal of section 55(2) of the Act it is clear that limitation shall commence from the date of passing of the order. The language is clear and unambiguous. Second proviso to section 55(2) excludes the period of limitation for the time requisite for obtaining copy of the order. Thus, when copy of order is applied, time required for obtaining copy shall be excluded in computing the period of limitation. Proviso No. (1) is specific and prohibits Registrar from entertaining the dispute unless presented to him within thirty days from the date of order sought to be impugned.

Contention of counsel for the petitioner that the order must be communicated in the manner provided u/s 86 of the Act, shall have no force if the petitioner has acquired knowledge of the order. If the petitioner has acquired knowledge of the order, it was his duty to apply for copy of the order and he was entitled for exclusion of time for the period required in obtaining copy of the order. Service of notice will be immaterial in the case where intention of Legislature is that the employee must raise the service dispute from the date of passing of the order. In para 12 of the impugned award, it is apparent that the order was communicated and noted by the petitioner that his services have been terminated on 17-4-1985 and this fact is admitted by the petitioner in his evidence, which is filed as Annexure P/6 with the petition. This witness has categorically stated that when he went to join his duty after leave on 16-4-1985 at Branch Umri, he has noted the order that his services have been terminated. Thus, it is apparent that the order was communicated to the petitioner in person and he has noted the order. Even u/s 86 of the Act, it is provided that the acknowledgment purported to be signed by such person is a prima facie proof of service. In the present case, petitioner himself has admitted that he has noted the order of termination on 16-4-1985. Thus, from the statement of petitioner himself second appellate Court has not committed any error in holding that the petitioner has acquired

knowledge of order of termination of his services. Once the employee has acquired knowledge of termination of his service, it is for him to apply for copy of the order to claim exclusion of time in getting the copy of order under second proviso to section 55(2) of the Act. The petitioner cannot take benefit of the order sent to him by post and take advantage of the time. First Proviso to sub-section (2) of section 55 is clear, wherein it provides that Registrar shall not entertain the dispute unless presented to him within thirty days from the date of the order sought to be impugned.

Limitation of thirty days has been introduced in the Act by Act No. 14 of 1976 with effect from 5-12-1975 and word "order" is very much significant in first proviso to sub-section (2) of section 55 of the Act.

In the case of Rajendra Vipnan Sahakari Samiti Ltd. Vs. Harcharan Kada and Another, , it is held that the cause of action shall accrue to the employee on the date when he was not allowed to rejoin the duties and it is this date which is material and limitation should be computed from the date when he was not allowed to join, but considering the scope of first proviso to section 55(2) of the Act it is very clear that the limitation shall commence from the date of order. The petitioner had cause of action twice. Firstly, when the order is passed and secondly when he was not permitted to join on 16-4-1985 and on that date he has noted the order about termination of his service. As such, from the date from 15-4-1985 the dispute ought to have been filed within thirty days from that date. The petitioner cannot take advantage of the letter communicating him order of termination. As such, no error is committed by the Co-operative Tribunal in dismissing the application u/s 55(2) of the Act as barred by limitation.

In the result, petition fails and is dismissed without any order as to costs.