

(1976) 03 MP CK 0005

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 177 of 1973

Ramswarup Gupta

APPELLANT

Vs

Madhya Pradesh State Co-operative Marketing Federation
Ltd. and Others

RESPONDENT

Date of Decision : 02-03-1976

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : AIR 1976 MP 152 : (1977) 1 LLJ 271 : (1976) 21 MPLJ 376

Hon'ble Judges : Shiv Dayal Shrivastava, C.J;S.R. Vyas, J;J.P. Bajpai, J

Bench : Full Bench

Advocate : H.N. Upadhyaya, for the Appellant; R.D. Jain, for the Respondent

Judgement

Bajpai, J.

This reference stems from a humdrum case of an employee of a Co-operative Marketing Society, whose services have been brought to an end by accepting his resignation and thereafter the employee had taken practically all possible alternative stands by saying that firstly he had not at all submitted any resignation; or if there is any, the same must be forged or even if it bears his signature, he had simply written the same and kept it and never intended to submit it to the authority for acceptance. According to him, it was nothing but a surprise as to how the same could reach the authorities for further action. However, we are at present not concerned with the facts of the case inasmuch as only the following three questions of law have been referred : for being answered by us and we have to confine ourselves to the same :

(i) Whether Co-operative Society, registered under the M. P. Co-operative Societies Act is a statutory body ?

(ii) Whether a writ of mandamus, direction or order can be issued under Article 226 of the Constitution by a High Court against a Co-operative Society registered under M. P. Co-operative Societies Act, 1960 ?

(iii) Whether the High Court can issue an appropriate writ, direction or order against a Co-operative Society or its officer, who has, in violation of the Act or rules or bye-laws, dismissed its employee or terminated his services, for reinstatement and/or with back wages ? (sic)

The Division Bench of this Court was inclined to make this reference in view of certain observations in *Dukhooram Gupta Hari Prasad Gupta Vs. Co-operative Agricultural Association Ltd. and Others*, and *Ramnath Sharma Vs. State of M.B. and Others*, , which prima facie appear to be divergent. In *Dukhooram Gupta Hari Prasad Gupta Vs. Co-operative Agricultural Association Ltd. and Others*, it has been observed and held by the Division Bench of this Court that a Co-operative Society registered under the M. P. Co-operative Societies Act is an authority within the meaning of Article 12 of the Constitution of India- However, in *Ramnath Sharma Vs. State of M.B. and Others*, , it was held by another Division Bench of this Court that a Cooperative Society, registered in accordance with the provisions of the M. P. Cooperative Societies Act, cannot be treated as an authority within the meaning of Article 12 of the Constitution of India and as such will not be amenable to writ jurisdiction. According to the Division Bench, a Co-operative Society registered under the provisions of the Co-operative Societies Act is not a statutory body. In this back-ground, his reference has arisen and we shall deal with all the three questions referred to us for being answered.

Before any institution can be said to be a statutory body, it must be created by a Statute and must owe its existence to the Statute. This is the primary thing which has to be seen for deciding the first question. It will be necessary to mark a distinction between an institution which is not created by or under a Statute but is governed by certain statutory provisions for the proper maintenance and administration of its affairs, and the one which is created by the Statute and owes its existence to the same. We come across a number of institutions which though not created by or under any statute, are after formation governed by certain statutory provisions regulating their affairs. Simply by doing so, they do not become statutory bodies. For instance, a company being incorporated in accordance with the provisions of the Companies Act cannot be said to be a body created by the Companies Act. A company so registered and incorporated in accordance with the provisions of the Companies Act cannot be a statutory body because it is not created by the Statute. It is nothing but a body created in accordance with and governed by the provisions of the Statute. The same is the case of a Co-operative Society. According to the requirements of law, for the time being in force, certain number of persons form a Society with certain aims and objects. That Society requires registration in accordance with the provisions of the M. P. Co-operative Societies Act. After having been so registered, it becomes liable for following certain rules, regulations and directions framed and issued under the provisions of the Co-operative Societies Act. But such a Society is not created by the provisions of the M. P. Co-operative Societies Act itself. It still remains a body which, after having come into existence, is governed in

accordance with the provisions of certain statute. It does not have a statutory character like the Oil and Natural Gas Commission or the Life Insurance Corporation, which institutions owe their existence to the Statute itself and have been created by the Statute. For the aforesaid provisions, we rely on the observations made by their Lordships of the Supreme Court in Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, and Sabhajit Tewary Vs. Union of India (UOI) and Others, . An unreported decision D/- 12-12-1975 of the Supreme Court in Civil Appeal No. 1543 of 1974 = (since reported in Executive Committee of Vaish Degree College, Shamli and Others Vs. Lakshmi Narain and Others, also supports the aforesaid view.

As regards the second question whether a writ of mandamus, direction or order can be issued under Article 226 of the Constitution of India by a High Court against a Society registered under Madhya Pradesh Co-operative Societies Act, 1960, it is apparent that, as observed by us earlier, a Co-operative Society registered under the provisions of Madhya Pradesh Co-operative Societies Act does not fall within the definition of the term "other authorities" as stated in Article 12 of the Constitution and is not a statutory body. Therefore, it will suffice to observe that normally such societies will not be amenable to writ jurisdiction of the High Court except in cases where according to the provisions of the statute or rules or regulations framed under the Act by which the Society is governed, there is a statutory or public duty imposed on it, and the enforcement of which is being sought Article 226 of the Constitution provides that, every High Court shall have power to issue to any person or authority orders or writs in the nature of habeas corpus, mandamus etc. for the enforcement of any of the rights conferred by Part III of the Constitution and for any other purpose. It is well understood that a mandamus lies to secure the performance of public or statutory duty, in the performance of which one, who applies for it, has a legal right and interest. For the reasons stated above, the condition precedent for issue of a mandamus will be that there must be a legal right to the performance of a legal duty. An order of mandamus is nothing but a command directed to a person. Corporation or Tribunal requiring them to do a particular thing which pertains to their office and is in the nature of public duty. It is, however, not necessary that the person or the authority on whom the statutory duty is imposed, must be a public official or an official body. We rely on The Praga Tools Corporation Vs. Shri C.A. Imanuel and Others, in this respect. But if there is a statutory obligation in respect of any subject-matter on the society to carry out the same and the Society fails to do so, or acts in contravention of the same, it may be a proper subject-matter for issuing a writ in appropriate cases commanding compliance of the statutory requirements. In other words, so long as no case is made out of any breach of statutory provisions or existence of legal right in one, who claims the writ, and a legal obligation in the Society to do something, no writ can be issued against the Society. Whenever, it is pointed out

that any statutory provisions requiring the Society to act in a particular manner creates a right or interest in favour of the person concerned, it will be permissible for such person to approach the High Court for seeking the writ of mandamus to direct the Statute and not to commit breach of the same. Thus, we would like to make it clear that the Co-operative Society will be amenable to writ jurisdiction only in cases relating to performance of legal obligations and duties imposed by a Statute creating a corresponding legal right in one.

As regards the third question, whether the High Court can issue writ, direction or order against Co-operative Society or its officer, who has, in violation of the provisions of the Act or rules or bye-laws, dismissed its employee or terminated his service, the observations made in the context of the second question make it clear that in such cases, where the dismissal or termination of service is in contravention of the statutory provisions, writ can be issued if a proper case is made out for interference and the High Court is inclined to exercise its discretionary powers in the subject-matter before it. Whenever, there is a statutory requirement directing the Society to perform the same, and if the Society does not obey it and acts in violation of the same, the person who comes to the Court claiming a writ does not come for the performance of the contract of service, but virtually comes for the enforcement of his legal rights, created in his favour by virtue of the provisions of the Statute, directing the Society to act in a particular manner. It may be true that there might be a contract of service between the Society and its employee, but such aspects of the employment which are governed by the Statutory provisions will always be an appropriate subject-matter for issuing a writ, if there is any failure on the part of the employer-Society to perform the legal obligation or any action is taken in violation of the statutory provisions. Under the common law, the Court will not ordinarily force an employer to retain the services of an employee whom it no longer wants to continue in employment but this rule is subject to certain well recognised exceptions. It is always open to the Courts in appropriate cases to declare that as the dismissal from service was in contravention of the Statutory provisions, the person so dismissed continues to remain in service, even though by so doing the Court forces the employer to continue to employ the servant whom it does not desire to employ. Where the relationship between the employer and the employee is governed by Statute or subordinate legislation, the termination of service, which is the same thing as repudiation, may in given situation be null and void because it was done in violation of the statutory provisions. In that event, it will not have the effect of putting an end to the contract of service and the employee will be entitled to a declaration that his services would continue. The doctrine that "contract of personal service cannot be specifically enforced" will not stand in way to the employee because the termination itself being null and void, there was no repudiation at all in the eye of law and as such, there was no question of enforcing specific performance of the contract of employment. What the employee would be claiming in such a case is not the enforcement of a contract of personal service but declaration of

the statutory invalidity of the act done by the employer.

For instance, Section 55 of the M. P. Co-operative Societies Act envisages certain statutory obligations in respect of the terms of employment and working conditions. The Registrar has empowered to frame rules governing the terms of employment in certain cases of employment by the Society or class of societies. The provisions of Section 55, Sub-section (1) of the M. P. Co-operative Societies Act contain a mandate that the Society shall comply to such rules or orders issued by the Registrar. Section 55 (2) provides a forum for deciding a dispute regarding the terms of employment, working conditions and the disciplinary action taken by the Society which may arise between the Society and its employee. However, this does not mean that due to availability of this alternative remedy, the jurisdiction under Article 226 of the Constitution can never be invoked in proper cases where the violation of the provisions of Section 55 (1) is apparent. The text of Section 55 is reproduced below :--

"55. Registrar"s power to determine terms of employment in societies :--

(1) The Registrar may from time to time frame rules governing the terms of employment and worknig 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." (underlining is ours).*

Thus, when according to the rules framed u/s 55 (1) of the Act or directions issued by the Registrar in exercise of powers thereunder, there are provisions governing the terms of employment of any servant of the society and they prohibit the society from dismissing its employees without complying the requirements as stated in the rules and if the society terminates the services of its employee without complying the same, the employee concerned can always approach the High Court for enforcing the legal right, which has been created in his favour due to the corresponding legal obligation and duty imposed on the society to act in a particular manner. Such an employee will approach the Court not for enforcement of contract of service but for the enforcement of the legal right created in his favour by virtue of the provisions that he could not be dealt otherwise in the matter of his employment in violation of the provisions of the rules. However, if there is no such rule or statutory provisions regarding the terms of employment of a particular employee, the same will be definitely governed by the general law of master and servant and since it will not be a case of breach of any statutory provision or failure to perform legal obligation or legal duty imposed by law, such an employee cannot approach the High Court for

claiming a writ for reinstatement or directions to the Society to deal with him in any particular manner.

The decision reported in *Jai-prakash MudaKar v. A. C. Choubey* 1975 MPLJ 290 : (1975 Lab IC 750) (FB) also supports the view we have taken in the earlier paragraphs. A Full Bench of this Court in the aforesaid case had observed, while dealing with the case of a Principal of a private college affiliated to Ravi-shankar University, that appointment and termination of services of a Principal or teacher of the private college was not a pure matter of contract but was also an item covered by the College Code which has the force of law. If any action was taken by the Governing body of the affiliated college in breach of the provisions of the college Code, the aggrieved person could have recourse to have an action by a writ petition.

For these reasons, we answer the first question in the negative, the third question in the affirmative and the second question as follows :--

"Writ can be issued in such cases where the Society has not carried out any legal obligation or has acted in violation of any statutory provisions."