
(2014) 11 KAR CK 0240

In the Karnataka High Court

Case No : Writ Petition No. 15339/2014 (CS-RES)

Rayappa Gowda

APPELLANT

Vs

Additional Registrar of Co-Operative Societies (I and M)

RESPONDENT

Date of Decision : 06-11-2014

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 70

Citation : (2014) 11 KAR CK 0240

Hon'ble Judges : B.S. Patil, J

Bench : Single Bench

Advocate : Rajagopal M.R., Advocate for the Appellant; Laxminarayana, AGA and K. Srinivasa, Advocate for the Respondent

Judgement

B.S. Patil, J.—Petitioner was an employee of the Karnataka Road Transport Corporation Employees Credit Co-operative Societies Limited - 2nd respondent herein. On the allegations that he illegally substituted the names of two sureties for the loan availed by one Rehman Shariff in the place of two sureties who had earlier signed as such, a disciplinary enquiry was ordered to be initiated by issuing a charge sheet. In this regard, a resolution was passed by the Board of Directors of the 2nd respondent - Society authorizing the Vice President of the Society to issue the charge sheet. The Vice President issued the charge sheet on 23.05.2005. Petitioner replied denying the charges. An enquiry officer was appointed by the Board of Directors. After holding an enquiry, the Enquiry Officer submitted a report stating that the charge was partly proved.

2. Findings recorded by the Enquiry Officer as are evident from Annexure-F disclosed that it was the practice of substituting new sureties in the place of the old by striking out their names and mentioning the names of new sureties. But, in the instant case, petitioner had used whitener to remove the names of earlier sureties and had written the names of new sureties in that place and also that the petitioner had not submitted any explanation with regard to the new surety - Gopinath Panikar. As there was no application forthcoming from Gopinath Panikar

to stand as surety in the records, report of the Enquiry Officer was accepted by the Vice President of the Society and the petitioner was dismissed from service vide order dated 27.03.2006.

3. Petitioner raised a dispute under Section 70 of the Karnataka Co-operative Societies Act, 1959 (for short the Act"). The Deputy Registrar of Co-operative, Central Zone, Malleswaram, Bangalore allowed the dispute and set aside the order of dismissal directing reinstatement of the petitioner along with all consequential benefits. The Deputy Registrar recorded a finding that as per bye-law No. 36 of the Bye-laws framed by the Society, it was the Secretary who was entitled to initiate disciplinary proceedings against the employees including the petitioner herein and that neither the Vice President nor the Board of Directors had such power under the bye-laws to hold disciplinary enquiry. He, therefore, came to the conclusion that the enquiry conducted against the petitioner was without authority of law and hence, the entire proceedings were vitiated. The society preferred an appeal against this order before the Karnataka Appellate Tribunal.

4. The Karnataka Appellate Tribunal by its order dated 26.02.2014 has set aside the order passed by the Deputy Registrar by allowing the appeal. It is in this background, petitioner has filed this writ petition challenging the order passed by the Karnataka Appellate Tribunal.

5. I have heard the learned counsel for the petitioner - Sri Rajagopal. M.R. learned counsel for the 2nd respondent - Sri K. Srinivasa and the learned Additional Government Advocate for the 1st respondent - Sri Laxminarayana.

6. On perusal of the entire materials on record, particularly, the order passed by the Tribunal, it is seen that the Tribunal has not dealt with the question regarding the power, jurisdiction or authority of the Board of Directors to initiate disciplinary action against the petitioner and to dismiss him from service. In fact, this is the ground on which the Deputy Registrar set aside the order of dismissal passed by the Vice President of the Society. The 2nd respondent is a co-operative Society registered under the provisions of the Act. Its affairs are governing by the provisions of the Act, Rules and more particularly, the bye-laws framed by the Society. Bye-law No. 36 of the bye-laws framed by the Society confers upon the Secretary of the Society the power to take disciplinary action, in the event of any default or misconduct committed by the salaried staff of the Society and it is the Secretary who is held responsible for the administration of the Society subject to the control of the President.

7. It is not disputed by the learned counsel appearing for the 2nd respondent - Society that this power to initiate disciplinary action as per the bye-laws is conferred on the Secretary. There is no other bye-law nor is there any provision in the Act or the Rules which authorizes the Board of Directors to initiate such disciplinary action against the employees of the Society overlooking the express prohibition made by the bye-laws in this regard. Therefore, it is evident that as

per the bye-law, it is the Secretary who is competent to initiate action by issuing charge memo and by conducting an enquiry into the default, misconduct or irregularities, if any committed by the Staff of the Society. There is nothing to show that in this case the Secretary was also involved in the matter and therefore, enquiry was to be initiated not only against the petitioner but also against the Secretary. It is also not the case of the respondent - Society that the Secretary had refused to take any such action to initiate disciplinary enquiry against the petitioner. In such circumstance, initiation of the disciplinary enquiry by the Board, by authorizing the Vice President to frame the charges and serve the charge memo on the petitioner and by appointing an enquiry officer, is itself without authority of law. The Deputy Registrar was right and justified in returning this finding which is based on the bye-laws and the provisions of the Act.

8. In fact, learned Additional Government Advocate submits that there is no provision authorizing the Board of Directors to initiate disciplinary action against the staff. He also points out that when an express provision is made in the bye-law, the Society is bound by the same.

9. The Tribunal has glossed over this legal aspect. It has not referred to this crucial aspect on which the Deputy Registrar had passed the order of dismissal. Therefore, on this short point only, petitioner is entitled to succeed.

10. On merits, it is contended by the learned counsel for the petitioner that as rightly found by the Deputy Registrar by appreciating the evidence, particularly of the Secretary who has admitted that such a practice of substituting the sureties in the place of old sureties was in vogue in the Society and had been resorted to for the past in respect of several cases and that the action of the petitioner in so substituting new sureties has not caused any loss to the 2nd respondent - Society and therefore, the penalty of dismissal from service by holding that any misconduct was committed by the petitioner is unsustainable. It is true that no loss has been caused to the respondent -Society as admitted by the Secretary in his evidence. It is also true that there was practice of substituting new sureties in the place of old sureties wherever the situation so arose. In the present case, petitioner has not adopted any fraudulent or illegal procedure to substitute new sureties. In fact, the new sureties have not made any allegation that they have been forced to act as sureties against their will.

11. Therefore, even on merits, findings recorded by the Deputy Registrar did not suffer from any apparent illegality. However, it is unnecessary to dilate in detail into this aspect of the matter as the petitioner is entitled to succeed on the first point itself.

12. At this stage, learned counsel for the 2nd respondent submits that the Society would be seriously prejudiced, if it is saddled with the burden of paying the entire backwages. He points out that the Society being a co-operative society established for the benefit of its members would suffer in its business activities having regard to the huge financial burden. He also appeals to the Court that as

the petitioner has been out of employment and has not served the institution, there is no justification for him to demand the full backwages. In response to this, learned counsel for the petitioner and the learned counsel for the 2nd respondent were advised to settle down for a via media so far as the backwages are concerned.

13. Having due regard to the facts and circumstances of the case, learned counsel for both parties submit that they will agree for payment of back wages to the tune of 50% along with other benefits to which the petitioner is entitled as per law. This submission of the learned counsel for both parties is fair, just and reasonable in the facts and circumstances of the case.

14. Hence, to put an end to the controversy once for all, the following order is passed:

The impugned order passed by the Tribunal is set aside. The order passed by the Deputy Registrar of Co-operative Societies, Central Zone, Malleswaram, Bangalore, is restored with a modification that the petitioner shall be reinstated into service with immediate effect along with 50% backwages and all other consequential benefits.