
(1993) 02 GAU CK 0008
In the Gauhati High Court
Case No : Civil Rule No. 1160 of 1989

Risheswar Neog

APPELLANT

Vs

State of Assam and Ors.

RESPONDENT

Date of Decision : 01-02-1993

Acts Referred:

Assam Co-operative Societies Act, 1949 — Section 2(1), 2(1), 2(h), 2(h)
Assam Co-operative Societies Rules, 1953 — Rule 33, 33
Constitution of India, 1950 — Article 226, 226

Citation : (1993) 1 GLJ 157 : (1993) 1 GLR 184

Hon'ble Judges : R.K.Manisana Singh, J

Bench : Single Bench

Advocate : N.Choudhary, P.Prasad, G.N.Sahewalla, A.K.Goswami, A.Das Gupta, P.K.Barua, Advocates appearing for Parties

Judgement

1. In this application under Article 226 of the Constitution of India, the petitioner has challenged the order or decision removing him from his service made on 1.7.89.

2. Facts, The Salaguri Samabai Samity Limited (for short, Society) is a registered cooperative society. The petitioner Shri Risheswar Neog was appointed as Salesman of the society on 30.7.75. Thereafter, on 30. 12.87, by a resolution of the Managing Committee appointed the petitioner as Secretary in the office of the society on a salary. The petitioner was involved in Sibsagar PS Case No, 320 of 1987 under section 7 (i) (a) of the Essential Commodities Act and, therefore, the petitioner was placed under suspension by the Managing Committee of the society under order dated 16.9.87. After the petitioner was discharged by the Sessions Judge, Sibsagar on 19.1.88, the suspension order was revoked on 29.3.88. But the petitioner was not allowed to resume his duty. Therefore, the petitioner filed Civil Rule No. 2042 of 1988 before this Court. This Court disposed of the petition on 15.3.89 directing the petitioner to join duty on or before 20.3.89. The President and the Secretary of the society did not allow the petitioner to join duty and, therefore, Civil Original Contempt Application No. 57

of 1989 was filed and this Court on 2.5.89, issued notice to the contemnors. A meeting of the Annual General Meeting was to be held on 19.5.89, and one of the agenda was to discuss about the petitioner and decision thereof. The petitioner thereafter filed Misc Case No. 8 of 1989. That Misc Case was disposed of by this Court on 16. 5.89 with an observation that the society should decide the matter keeping in view the order passed by this Court. The petitioner went to the society but no action was taken by the society. The contempt petition was also disposed of on 27.6.89 by giving a warning order. On 6.7.89, the petitioner received a letter dated 1.7.89 from the society informing him that he had been removed from his service by the Managing Committee as per decision of the meeting held on 20.6.89 in compliance with the direction of the General Assembly held on 19.5.89. Hence this petition challenging the order of removal.

3. Mr. PK Baruah, learned counsel for the respondents, has contended that the present writ petition is not maintainable for the matter relates to enforcement of personal service or service contract.

4. The question which, therefore, arises for consideration is whether the present writ petition is maintainable.

5. Before dealing with the rival contentions of the parties, let me deal with the relevant provisions of the Assam Cooperative Societies Act, 1949 (for short, the Act) and Rules made thereunder, namely, the Assam Cooperative Societies Rules, 1953, and the byelaws of the society. Section 2 (h) of the Act defines "employee" to mean a person, not being an officebearer, employed by a registered society on a salary or similar form of remuneration other than advance patronage, dividend or payment for goods sold to or through such society. Section 2 (1) of the Act provides that "OfficeBearer* means a member duly elected by the appropriate body of a registered society according to its byelaws, to any office of such society, including the office of President, Chairman, ViceChairman, Secretary, Managing Director and Treasurer provided that any officer appointed by Government to hold charge of any office of a registered society shall be deemed to be an officebearer unless specifically stated to the contrary.

6. In view of the meaning of the words" employee" and "office bearer, there is a distinction between an officer and an office bearer of a cooperative society. The first is an employee employed by the Managing Committee and the latter is an elected person.

7 Rule 35 of the Assam Cooperative Societies Rules, 1953 (Rules, for short) provides

"(1) The Secretary or Treasurer of a society or any other officebearer may be removed from office by a resolution of a meeting of the General Assembly specially convened for the purpose.

(2) Unless otherwise provided in the byelaws or in the terms of appointment, any

officer of a society appointed by the Administrative Council or the Managing Body may be removed from his office by the said Council or Body." (emphasis added) Under Rule 33, officebearers, that is to say, members duly elected by the appropriate body of a registered society, can only be removed by a resolution of a meeting of the General Assembly. With regard to any officer of the society appointed by Managing Body, unless it is provided by the byelaws or in terms of appointment, he may be removed from his office by the Managing Body.

7 A. Rule 35 provides, inter alia, that Administrative Council or the Managing Body has, as may be provided in the byelaws, the power to appoint salaried or nonsalaried officers for proper conduct of the business, on such terms as to remuneration, security, etc and to dismiss, suspend or punish such an officer.

8. Byelaw 27 provides that the appointment and removal of the Secretary who shall be full time paid officer shall be made by the Managing Committee with the prior approval of the Registrar of Cooperative Societies and the Financial Bank. Byelaw 27 further provides that the Secretary so appointed shall be ex officio member of the Managing Committee with voting right.

9. On a reading of definition clauses, namely, sections 2 (h) and 2 (1) of the Act together with byelaw 27, makes it clear that the Secretary appointed in the office of a society is an employee officer and not the Secretary of a society, an office bearer.

10. Mr. Sahewalla, learned counsel for the petitioner, has submitted that the petitioner could not be removed from his services without prior approval of the Registrar of Cooperative Societies and the Financial Bank under Rules 33 (2) and 35 of the Rules read with byelaw 27 and, therefore, the petition is maintainable. Mr. Baruah, learned counsel for the respondents has contended that byelaws of the cooperative society have no force of law and, as such, the matter relates to enforcement of service contract or personal service.

11. In *Cooperative Central Bank vs. Additional Industrial Tribunal*, AIR 1970 SC 245, the Supreme Court has held that byelaws of the cooperative society framed in pursuance of the provisions of the Act cannot be held to be law or to have the force of law. The byelaws that are contemplated by the Act can be merely those which govern the internal management, business or administration of a society. They may be binding between the persons affected by them. In respect of byelaws laying down conditions of service of the employees of a society, any person enters the employment of a society those conditions of service will have to be treated as conditions accepted by the employee when entering the service and will thus bind him like conditions of service specifically forming part of the contract of service.

12. In view of the above discussions, the appointment of the petitioner as a Secretary in the office of the society and his removal from service shall be governed by Rules 33 (2) and 35 of the Rules read with byelaw 27. Under byelaw 27, appointment and removal of an employee of a society require prior approval

of the Registrar and the Financial Bank. Although, the appointment of a Secretary in the office of a society requires prior approval of the Registrar, it does not mean that the Secretary holds the post under the Registrar or the Government. Therefore, the relationship between the employee officer and the society is that of master and servant. As has been held by the Supreme Court, the condition requiring prior approval of the Registrar and the Financial Bank for removing an employee officer of the society under byelaw 27 is a part of contract of service. For these reasons the present writ petition is for enforcement of personal service or service contract of the petitioner. It is well settled that a contract of service or personal service cannot be specifically enforced because of the common law principle. The remedy in such a contractual relationship of master and servant is damages because personal service is not capable of enforcement. If any authority is required, I may refer to Sukhdev Singh vs. Bhagatram, AIR 1975 SC 1331.

13. For the foregoing reasons, the writ petition is not maintainable and is dismissed. No costs.