
(2008) 09 AHC CK 0084
In the Allahabad High Court

Sahkari Ganna Vikas Samiti Ltd.

APPELLANT

Vs

Jitendra Mohan and The Presiding Officer, Labour Court

RESPONDENT

Date of Decision : 25-09-2008

Acts Referred:

Uttar Pradesh Co-operative Societies Act, 1965 — Section 135, 70
Uttar Pradesh Industrial Disputes Act, 1947 — Section 6H

Citation : (2009) 1 AWC 479

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.U. Khan, J.—Heard learned Counsel for the petitioner as well as Sri K.P. Agarwal, learned senior counsel assisted by Sri J.C. Bhardwaj, learned Counsel for workman respondent No. 1.

Facts:

2. Petitioner employer is a cooperative society. This writ petition is directed against award dated 25.01.1990 given by Presiding Officer Labour Court, Bareilly, U.P. in adjudication case No. 51 of 1987. The matter which was referred to the labour court was as to whether the action of petitioner employer terminating the services of its workman respondent No. 1 w.e.f. 13.12.1984 was legal and proper or not.

According to the petitioner employer, the workman was appointed on 22.07.1982 by Deputy Cane Commissioner, Bareilly. Services were also terminated by the same authority i.e. Deputy Cane Commissioner.

The case of the workman was that he was working as clerk with the petitioner since 1976 till 1982 and in July 1982 Deputy Cane Commissioner transferred him to another similar society and he was again transferred to another similar society on 29.06.1983 and thereafter through order of District Cane Officer Bijnor he was again transferred to the petitioner society. Petitioner contended that the

workman was temporary, however, workman contended that he was permanent. Workman admitted that since July, 1985 he was working with Sahkari Ganna Vikas Samiti, Bareilly.

3. Through the impugned award it was held that it appeared that workman was permanent clerk hence sudden termination of his service was illegal accordingly reinstatement was directed. However, in respect of back wages it was held that as the workman had admitted that since July 1985 he was working as seasonal clerk in another cane society hence he must be given back wages from the date of termination till date of his appointment in the other cane society i.e. for six months 17 days.

Legal Position

4. The main contention of learned Counsel for the petitioner is that in view of Supreme Court authority reported in Ghaziabad Zila Sahkari Bank Ltd. v. Additional Labour Commissioner and Ors. 2007(11) SCC 756, labour court has got no jurisdiction to entertain the cases relating to disputes between cooperative societies and its employees.

Sri K.P. Agarwal, learned senior counsel for workman respondent has argued that the said authority of the Supreme Court is per incurium as it has not taken into consideration various provisions of law and various earlier judgments of the Supreme Court. It has also been argued that some earlier judgments of the Supreme Court relating to similar Acts of other States have wrongly been relied upon in the aforesaid authority as Acts of other States are materially different from the U.P. Cooperative Society Act 1965.

5. In the aforesaid case of Supreme Court the facts were that the Cooperative Bank which was appellant before the Supreme Court had entered into an agreement with its employees regarding payment of ex gratia amount and one special increment. As the amount agreed to be paid to the employees through the agreement was not paid hence employees initiated proceedings for recovery u/s 6-H of U.P. Industrial Disputes Act. Additional Labour Commissioner allowed the claim and directed payment of rupees eleven lakh and odd as ex gratia payment to the employees. The said order was challenged by the cooperative Bank on the ground that Government as well as Registrar had issued circulars prohibiting payment of ex-gratia amount and such payment by all the Banking Cooperative Societies will erode public money (money deposited by the public in the said Banks).

6. The Supreme Court considered Section 135 of U.P. Cooperative Societies Act, 1965 which is quoted below:

Certain Acts not to apply to cooperative societies- The provisions contained in the Industrial Disputes Act, 1947 (Act 14 of 1947), and the U.P. Industrial Disputes Act, 1947 (U.P. Act 28 of 1947), shall not apply to cooperative societies.

It may be noted that Section 135 has not been enforced by the legislature.

Supreme Court also referred to Regulation 103 of U.P. Cooperative Societies Employees Service Regulations 1975 and Section 70 of U.P. Cooperative Societies Act. Supreme Court also considered Section 128 of U.P. Cooperative Societies Act.

After noting the facts of the case and arguments of the learned Counsel for the parties Supreme Court expressed its views in paras 61 to 65 in the aforesaid judgment on the question of applicability of U.P. Industrial Disputes Act 1947 in respect of disputes between Cooperative Societies/employers and its employees. Supreme Court held that U.P. Cooperative Societies Act 1965 being special Act and later in time will prevail upon U.P. Industrial Disputes Act 1947.

7. The arguments of Sri K.P. Agarwal, learned senior counsel for the workman may be summarised as follows:

1. u/s 70 of U.P. Cooperative Societies Act service disputes are exclusively excluded while under M.P. Cooperative Societies Act, it is not so. Accordingly, Supreme Court wrongly placed reliance upon its earlier judgment reported in R.C. Tiwari Vs. M.P. State Co-operative Marketing Federation Ltd. and others,

2. Section 135 of U.P. Cooperative Societies Act which excludes application of U.P. Industrial Disputes Act in case of disputes between Cooperative Societies and its employee has not yet been enforced by the legislature and courts including Supreme Court can not enforce a particular provision which is exclusively legislative function vide Union of India (UOI) Vs. Shree Gajanan Maharaj Sansthan,

8. u/s 122 of U.P. Cooperative Societies Act State Government has been authorised to constitute an authority for recruitment training and disciplinary control of the employees of Cooperative society and it may also require the said authority to frame regulation regarding terms and conditions of service including disciplinary control. However, this Section does not authorise the State Government to create an authority to provide forum for adjudication of service disputes. (In exercise of powers conferred by the said Section, the Government constituted service institutional board which framed regulations for employees of different types of cooperative societies including Uttar Pradesh Cane Cooperative Service Regulation 1975).

9. u/s 55 of M.P. Cooperative Societies Act Registrar is empowered to decide the disputes including disputes regarding terms of employment working conditions and disciplinary action. While u/s 70 of U.P. Act service disputes are exclusively ousted from the jurisdiction of Registrar on reference. Section 70 of U.P. Cooperative Societies Act 1965 is quoted below:

Notwithstanding anything contained in any law for the time being in force if any dispute relating to the constitution, management or the business of a cooperative society other than a dispute regarding disciplinary action taken against a paid servant of a society arises (a) to (d) not relevant such dispute shall be referred to the Registrar....

10. u/s 128 of U.P. Cooperative Societies Act Registrar may annul any resolution passed by the Committee of Management or the General Body of any cooperative society or cancel any order passed by an officer of a cooperative society if he is of the opinion that the resolution or the order is not covered by the objects of the society or is in contravention of the provisions of the Act, the rules or the bye laws of the society. Sri Agarwal has argued that orders of termination of paid employees are not covered either by Section 70 or Section 128 of U.P. Cooperative Societies Act.

Sri K.P. Agarwal, learned senior counsel has cited several authorities of the Supreme Court to contend that an earlier authority may not be binding if there is slight change in the facts of the two cases including U.P.S.E.B. v. P.C. Pandey 2007(11) S.C.C. 92, Dr. R.S. Dalai v. C.D.L. University 2008(6) SC 56, State of Rajasthan v. Ganeshi Lal 2008 (116) F.L.R. 180 and State of Orissa v. Mohd. Ilyas 2006 S.C.C. (L & S) 122.

11. If It has also been argued that in the aforesaid authority of Ghaziabad Zila Sahakari Bank, Supreme Court held that the claim was highly disputed hence recovery order u/s 6-H of U.P. Industrial Disputes Act could not be made. Accordingly, the finding that provisions of U.P.I.D. Act are not applicable to the disputes between Cooperative Societies and their employee in U.P. was unwarranted and is obiter dicta.

It has been held by the Supreme Court that under the service regulations framed under U.P. Cooperative Societies Act, 1965 complete machinery has been provided for adjudication of disputes and an employee is required to avail the forum provided under the service regulations for redressal of his grievances and he can not invoke the jurisdiction of labour court under U.P.I.D. Act.

12. In the aforesaid authority of Ghaziabad Zila Sahkari Bank Ltd. v. Addl. Labour Commissioner and Ors, the Supreme Court did not specifically base its judgment upon Sections 70 and 128 of U.P. Cooperative Societies Act. Relevant portion of para 61 of the said authority is quoted below:

The general legal principle in interpretation of statutes is that "the general Act should lead to the special Act". Upon this general principle of law, the intention of the U.P. Legislature is clear, that the special enactment U.P. Cooperative Societies Act, 1965 alone should apply in the matter of employment by cooperative societies to the exclusion of all other labour laws. It is a complete code in itself as regards employment in cooperative societies and its machinery and provisions. The general Act, the U.P. Industrial disputes Act, 1947 as a whole has and can have no applicability and stands excluded after the enforcement of the U.P. Cooperative Societies Act. This is also clear from necessary implication that the legislature could not have intended head-on conflict and collision between authorities under different Acts.

13. Accordingly, I do not agree with the learned Counsel for the workman that the aforesaid authority of the Supreme Court (Ghaziabad. Zila Sahkari Bank) can

be said to be per incurium by any stretch of imagination. Each and every relevant provision of U.P. Cooperative Societies Act has been considered and interpreted by the Supreme Court.

14. No one can be heard to argue before the High Court or Subordinate Court that an authority of the Supreme Court is per incurium as it has wrongly interpreted a particular provision of the statute or has wrongly followed and applied, an earlier authority of the Supreme Court.

Reference may also be made to a later authority of the Supreme Court taking the same view without even referring to the authority of Ghaziabad Sahkari Bank. The said authority is reported in Prabhu Dayal Vs. Sadhan Sahkari Samiti Mujuri Vikas Khand Paniyara and Others,

15. Sri K.P. Agarwal, learned senior counsel, for the workman has also argued that in any case retrospective application of the Supreme Court authority of Gaziabad Zila Sahkari Bank Ltd. will play havoc with the workers as thousands of awards given in their favour by the labour courts are sub judice in writ petitions in the High Court. An authority of the Court is always retrospective unless the Court itself directs that it shall be prospective.

16. Learned Counsel for the Co-operative Society employer petitioner has cited the following authorities of this Court, some of which were delivered before the aforesaid judgment of the Supreme Court reported in Ghaziabad Sahkari Bank Ltd. and in those authorities also the same view was taken as was later on taken by the Supreme Court, i.e. U.P. Co-operative Societies Act and the Regulations framed thereunder are complete code and labour court has got no jurisdiction to decide the disputes between Co-operative Societies and their employees.

1. Ghaziabad Zila Sahkari Sangh v. Industrial Tribunal 2003 (3) ESC 1517

2. Zila Sahkari Federation Ltd., Bulandshahr v. Labour Court, Ghaziabad 2-4 (2) SAC 321

3. U.P. Co-operative Spinning Mills v. Ram Magan 2007 (10) ADJ 4 (This case was decided after the Supreme Court authority of Ghaziabad Zila Sahkari Bank Ltd. and the said authority was relied upon in the said judgment.)

4. District Administrative Committee and Secretary/General Manager, District Cooperative Bank Ltd. and Jawahar Kapoor, Member Secretary District Administrative Committee and Secretary/General Manager, District Cooperative Bank Ltd. Vs. Presiding Officer, Labour Court and Pearay Lal Gangwar,

17. Accordingly, impugned award is set aside on the ground that Labour Court had no jurisdiction to adjudicate the dispute. Writ petition is allowed. However, through interim order dated 06.07.2001, this Court directed the petitioner to deposit half of the amount awarded by the impugned award by the labour court.

18. Learned Counsel for the petitioner offered to pay the said amount to the workman and a draft of the said amount was also brought in Court on the date of

arguments.

19. Accordingly, it is directed that aforesaid amount shall be paid by the petitioner to the workman within two months and in case workman does not accept the amount, then it must be deposited before the Presiding Officer of the Labour Court concerned for immediate payment to the workman.