

(2022) 03 MP CK 0134
In the Madhya Pradesh High Court
Case No : Writ Petition No. 3035 Of 2001

Shiv Charan Verma

APPELLANT

Vs

M.P. State Co Operative Tribunal And Others

RESPONDENT

Date of Decision : 14-03-2022

Acts Referred:

Madhya Pradesh Co-Operative Societies Act, 1960 — Section 53(3), 53(10)

Citation : (2022) 03 MP CK 0134

Hon'ble Judges : Ravi Malimath, CJ;Purushaindra Kumar Kaurav, J

Bench : Division Bench

Advocate : Sanjay Ram Tamrakar, Vijayendra Singh Choudhary

Final Decision : Dismissed

Judgement

Ravi Malimath, CJ

The case of the petitioner is that he was appointed as a Peon in the respondent-bank on 02.04.1986 on probation for a period of one year. His performance was not found satisfactory during the period of probation. His services were terminated vide order dated 10.03.1987. He raised a dispute before the Assistant Registrar, Co-operative Societies, Satna. By the order dated 17.11.1995, it was held that the termination order was without approval of the Assistant Registrar as was required under Section 53(10) of the Madhya Pradesh Co-operative Societies Act (for short "the Act of 1960") and therefore, the impugned order cannot be sustained. Consequently, he directed reinstatement of the petitioner without backwages.

Seeking backwages, the employee preferred an appeal before the Joint Registrar, Co-operative Societies, Rewa and seeking to set aside the order of reinstatement, the bank also approached the very same authority. By order dated 25.04.1997, the Joint Registrar dismissed the appeal of the bank and confirmed the findings of the Assistant Registrar while holding that without prior approval of the Assistant Registrar, the termination order was illegal.

The Workman as well as Bank preferred second appeals before the Madhya Pradesh State Co-operative Tribunal. By the order dated 09.01.2001, the appeal preferred by the bank was allowed. The impugned orders of both the authorities below were set aside. The appeal filed by the employee was dismissed. Questioning the same, the employee has filed the present petition.

Shri Sanjay Ram Tamrakar, learned counsel for the petitioner contends that there is no material to indicate that prior approval has been obtained from the Assistant Registrar, Co-operative Societies before terminating the petitioner. That the same is a pre-requisite. That Section 53(10) of the Act of 1960 clearly postulates that without approval of the concerned authority, no orders could have been passed. There is no material to indicate that such an order has been passed. Only based on the evidence of one S.K.Jain, namely the Manager of the Bank, the approval was held to be granted. Therefore, the finding of the Tribunal to that extent is erroneous. Hence, he pleads that the petition be allowed by reinstating the petitioner back to his service.

Shri Vijayendra Singh Choudhary, learned counsel for respondent No.2 disputes the same and supports the impugned order.

Heard learned counsels.

The primary contention of the petitioner is based on Section 53(3) of the Act of 1960. The same would read as follows:

"53(3) The Administrator so appointed, shall subject to the control of the Registrar and to such instructions as he may, from time to time give, have power to exercise all or any of the powers and to discharge all or any of the functions of the Board of Directors or of any officer of the society and to take all such actions, as may be required in the interest of the Society."

It is therefore contended that no material has been produced in the instant case to indicate that such prior approval has been obtained. That obtaining a prior approval is mandatory. Failure to do so would render the action of the respondents as unsustainable. In support of his case, he relies on the Division Bench judgment of this Court in the case of Zila Sahakari Krishi Aur Gramin Vikas Bank Maryadit Vs. Phool Singh Tandeshwar, reported in 2004 1 MPHT 266 with reference to para 16. We have considered the said judgment. Para 16 reads as follows:

"16. In view of the aforesaid enunciation of the law we are impelled to hold that the officer appointed in subordinate to the Registrar and can not assume the role of Registrar in entirety. He has the statutory obligation to act subject to control of the Registrar. He can not be allowed to act like an unruly person. True it is, he is the delegatee but the statute does not permit total delegation. The power of the Registrar has not been taken away. The role of the Registrar does not stand ostracised. In fact, the person so appointed has power to exercise all or any of the power and to discharge all or any of the functions of the committee and to

take any action in the interest of the society subject to control of the Registrar and subject to such instructions he may give from time to time. If the language of the aforesaid provision is understood in proper perspective we are disposed to think that the role of the Registrar by any stretch of imagination can not be marginalised and, therefore, concurrence of approval of an order of termination of the employee of the society by the Registrar is not only necessary but also essential. It is pre-requisite and condition precedent. Thus, we have no hesitation in holding that the learned Single Judge has correctly held that the prior approval of the Registrar was imperative before officer-in-charge could give effect to the order passed by him."

On considering the same, we are of the view that the findings recorded by the learned Division Bench cannot be disputed at all. The Division Bench therein held that the role of the Assistant Registrar cannot be marginalised and therefore, concurrence or approval of an order of termination of an employee is not only necessary, but also essential. This we find is the language of the statute. The findings recorded therein is binding on us and therefore, we have no quarrel with the same. However, what is being contended is the next sentence as stated by the Division Bench which reads as follows:

"It is pre-requisite and condition precedent".

It is herein that the learned counsel contends that this has to be read as a "prior approval". On considering the contention, we do not find that such a question arose for consideration before the Division Bench. One of the question that arose for determination is the power of the Registrar with regard to grant of approval or otherwise. As to whether the power of the Registrar could be diluted and the non-approval could be acceptable or not, it was that question that the learned Division Bench was concerned with.

On interpreting the provisions of Section 53(3) of the Act of 1960, the learned Division Bench held, as is narrated in para 16 herein above. In the course of so saying, they have stated that it is pre-requisite and condition precedent. It cannot be read to mean as a "prior approval". Firstly, that was not the question for determination before the learned Division Bench. Secondly, the statute does not provide for a pre-approval. Section 53(3) of the Act of 1960 only indicates that the power of the Administrator shall be under the control of the Registrar and such instructions as from time to time which may be issued for the discharge of the functions of the Board of Directors etc. It does not indicate any prior approval. Therefore, if the contention of the petitioner were to be accepted, the same would amount to re-writing sub Section (3) of Section 53. Therefore, the words used in para 16 of the aforesaid judgment have to be read so as to mean that it is a necessary condition and which cannot be ignored. That the approval of the Registrar is a must. However, it cannot be read that it is only a pre-approval that any action could be taken by the Administrator.

So far as the material is concerned, the Tribunal held in para 16 of its order that

the Manager of the Bank in his evidence recorded on 9. 04.1990 has stated that when the matter was referred to the Assistant Registrar, he has accorded approval to the order of termination. That the order of termination has been approved by the Assistant registrar in an ex post facto manner. The Tribunal also noted that such a statement made by the witness was not countered by the Workman. The statement made by the witness has been accepted. He did not find any reason to dispute or to question the statement made by the witness with reference to the ex post facto permission being granted by the Assistant Registrar. Therefore, when such is a position when the evidence was being recorded, we do not think it appropriate to re-examine the evidence to this extent. That the statement of the witness has not been countered when the evidence was being recorded, is sufficient for us to conclude the contents of the evidence.

The contents of the evidence cannot be questioned when such a question was not even asked by the employee to the concerned witness. Therefore, the statement of the witness with regard to grant of ex post facto permission requires to be accepted.

Under these circumstances, when once it is held that the approval of the Registrar has been obtained, we find that there is no infraction of the law that calls for any interference. The Tribunal was therefore justified in passing the impugned order based on facts as well as on law.

Hence, the petition stands dismissed.