

(2016) 01 KAR CK 0184

In the Karnataka High Court

Case No : W.P. Nos. 107995, 108905 and 108619/2014 (S-RES)

Shri Brahmanath Credit Soudharda Sahakari Niyamit Ltd. and Others APPELLANT

Vs

Sunil Jayakumar Makannavar and Others RESPONDENT

Date of Decision : 12-01-2016

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 70

Citation : (2016) 01 KAR CK 0184

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

Bench : Single Bench

Advocate : M.V. Chavan, Advocate, for the Appellant; Mrutyunjay Tata Bangi, Advocate, for the Respondent

Final Decision : Allowed

Judgement

B.S. Patil, J.—1. These writ petitions are directed against the order dated 16.04.2014 passed by the Karnataka Appellate Tribunal in Appeal No. 23/2005. W.P. Nos. 107995/2014 & 108905/2014 are filed by Sri Bramhanath Souharda Sahakari Niyamitha Ltd., Nippani. Whereas, W.P. No. 108619/2014 is filed by the employee - Mr. Sunil Jayakumar Makannavar.

2. Mr. Sunil Jayakumar Makannavar was working as the Secretary of the Sahakari Niyamitha Ltd. On the allegations of misappropriation of funds of the Society, an inquiry was initiated against him. The Inquiry Officer recorded findings holding that the charges were proved. Based on the report of the Inquiry Officer, the Disciplinary Authority dismissed the employee from service vide resolution dated 31.03.1995 passed by the Society. A dispute was raised by the employee under Section 70 of the Karnataka Co-operative Societies Act, 1959. The Assistant Registrar of Co-operative Societies passed an order dated 28.10.2004 dismissing the dispute and holding that the order of dismissal was in accordance with law. Aggrieved by the said order, the employee approached the Karnataka Appellate Tribunal. The Karnataka Appellate Tribunal has come to the

conclusion that the Inquiry Officer did not provide a fair and reasonable opportunity of hearing to the delinquent employee, and therefore, the findings recorded by him were vitiated. Accordingly, the Tribunal has set aside the order passed by the Assistant Registrar of Co-operative Societies and the findings recorded in the inquiry against the employee. The matter has been remitted for holding a fresh inquiry against the employee. After the matter was remitted for fresh inquiry, the Society has reinstated the employee and has placed him under suspension and has been proceeding with the fresh inquiry. In the meanwhile, employee has initiated execution proceedings before the Assistant Registrar of Cooperative Societies contending that he ought to have been paid back wages from the date of dismissal with all other consequential benefits along with interest. At this stage, the Society has approached this Court challenging the order passed by the Karnataka Appellate Tribunal and the proceedings initiated before the Assistant Registrar of Cooperative Societies. The employee on his part is calling in question the order passed by the Karnataka Appellate Tribunal in so far as the de-novo inquiry ordered contending that such fresh inquiry was uncalled for.

3. I have heard the learned Counsel for both parties and perused the entire materials on record.

4. The findings recorded by the Karnataka Appellate Tribunal holding that delinquent was not given fair and reasonable opportunity to have his say by appearing before the Inquiry Officer is borne out from the materials on record, particularly the facts narrated in paragraph 15 of the order passed by the Tribunal. Therefore, the Tribunal has rightly set aside the findings recorded against the employee and the consequent order passed by the Assistant Registrar of Cooperative Societies and has rightly ordered for fresh inquiry by providing fresh opportunity to the employee. However, as can be noticed, while setting aside the order passed by the Assistant Registrar of Co-operative Societies and the Inquiry Officer, the Tribunal has not directed reinstatement of the employee, nor has it ordered for his reinstatement with back wages. It has no doubt stated that the allegations made against the delinquent were serious and they required fresh inquiry.

5. The society has rightly reinstated the employee and placed him under suspension while continuing with fresh inquiry. No exception can be taken to this action of the society.

6. In the absence of any order directing payment of back wages, the employee cannot claim that he is entitled for payment of back wages and other consequential benefits. The consequential benefits will follow the final decision to be taken in the fresh inquiry. If the fresh inquiry goes in favour of the employee, then also necessary orders could be passed with regard to the entitlement for back wages and the extent of entitlement of back wages. Therefore, the employee cannot proceed to recover the back wages from the society by initiating execution proceedings. The execution proceedings initiated are wholly

misconceived. However, so far as the grievance made by the employee regarding the remand of matter for fresh inquiry to the management is concerned, I do not find any illegality.

7. Hence, the writ petition filed by the society deserves to be and is allowed to the extent stated above. In so far as the writ petition filed by the employee is concerned, the same is misconceived and is accordingly dismissed. The fresh inquiry has been rightly directed against the employee because he was deprived of a fair opportunity of hearing before the Inquiry Officer and the order of dismissal was passed on the basis of the evidence recorded in his absence and without any opportunity to cross-examine the witnesses. The management of the society is directed to conclude the inquiry, expeditiously, at any rate, within a period of one month from the date of receipt of a copy of this order.