(2003) 05 MP CK 0017

In the Madhya Pradesh High Court

Case No : Writ Petition No. 519 of 2003

Sita Ram Chowhan and others APPELLANT

Vs

State of M.P. and others RESPONDENT

Date of Decision : 12-05-2003

Acts Referred:

Madhya Pradesh Co-operative Societies Act, 1960 — Section 55(1)
Zila Sahakari Kendriya Bank Karmachari Seva (Niyojan, Nibandhan Tatha Karya Sthithi) Niyam, 1982 — Rule 72(1)

Citation : (2004) 1 MPLJ 20

Hon'ble Judges : K.K. Lahoti, J

Bench : Single Bench

Advocate : V.S. Shroti with Pramod Mishra, for the Appellant; A.S. Raizada, Government Advocate for Respondents No. 1 and 2 and S.A. Dharmadhikari, for the Respondent

Final Decision : Dismissed

Judgement

K.K. Lahoti, J.

The petitioners, who are employees of Zila Sahakari Kendriya Bank Maryadit, Hoshangabad, aggrieved by order of respondent No. 2, the Registrar, Co-operative Societies, dated 5-10-2002 (Annex.P/3) have filed this petition. Vide order dated 5-10-2002, respondent No. 2 invoking powers u/s 55(1) of the M.P Co-operative Societies Act, 1961 has amended Rule 72(1) of the Zila Sahakari Kendriya Bank Karmachari Seva (Niyojan, Nibandhan Tatha Karya Sthithi) Niyam 1982 (hereinafter referred to as the Rules). The effect of the aforesaid amendment is that the age of superannuation will be reduced from 60 to 58 years of the employees.

The contention of the petitioners is that in the M.P. Co-operative Societies Act, 1960 (hereinafter referred to as Act), there are three provisions for framing rules:

i) u/s 48C of the Act by the Society;

ii) u/s 55(1) by the Registrar;

iii) u/s 95 by the State Government.

Section 95(3) of the Act provides that the Rules made under this Act shall be laid down on the table of Legislative Assembly, but in the present case, the amendment of Rule 72(1) (Annexure P/3) was not placed before the table of Assembly. In the circumstances, it could not be given effect to by respondent No. 3. The petitioners have assailed aforesaid rules on various grounds and have sought writ for quashing Annexure P/3. They have also sought relief of quashment of consequential orders Annexures P/5 and P/6 issued by respondent No. 3. The learned counsel for petitioners further contends that in view of law laid down by the Division Bench of this Court in case of Hemant Kumar Ganga Prasad Gupta vs. President District Co-operative Central Bank Ltd., Ambikapur reported in 1983 MPLJ 461 and in case of Hukamchand Mills Karmachari Paraspar Sahakari Sanstha and others vs. State of M.P. and others reported in 1988 MPLJ 201, this petition deserves to be allowed.

On 29-1-2003, this Court issued show cause notice to respondents and ad interim writ was issued for staying the operation of the impugned orders till next date of hearing. On 20-2-2003, this petition was admitted for final hearing and ad interim writ issued earlier was continued till next date of hearing. The respondents after appearance raised a preliminary objection that the question raised in this case has already been decided by the Division Bench of this Court in W.P. No. 6323/02, Seoni, District Co-operative Bank Officers and Employees Association and others vs. State of M.P. and another on 26-11-2002 and also by another Division Bench of this Court in Writ Petition No. 6506 of 2000, Balaghat Zila Sahkari Karmchari Sangh, Balaghat and another vs. State of M.P. and another, and other connected matters on 4-2-2003 (since reported in 2004(1) MPLJ 162). As the controversy involved in this petition has been decided by Division Benches of this Court and also by Single Bench of High Court of M.P., Indore Bench in W.P. No. 1949/2002 Mohan Singh vs. The Registrar and others decided on 22nd January 2003, this petition deserves to be dismissed. On aforesaid objections, raised by the learned counsel for respondents, the counsel for petitioners contends that the Division Bench of this Court has not considered the ratio of Hukamchand Mills'' case (supra) whereas Division Bench of this Court held that all the Rules framed under the Act shall be placed on the table of the Legislative Assembly, which is a mandatory requirement of the law as subsequent Benches have also not considered aforesaid ratio of Hukumchand Mills. Consequently, this matter may be referred to a larger Bench. In this regard, he has placed reliance on two judgments of the Apex Court: Shri Bhagwan and Another Vs. Ram Chand and Another, and Tribhuvandas Purshottamdas Thakur Vs. Ratilal Motilal Patel, (para 11 of the judgment) and contended that it will be appropriate for this Court to refer this matter for a decision by a larger Bench and matter be placed before the Hon''ble Chief Justice for constituting a Larger Bench in this case. He further contends that the judgment of Seoni District Co-operative Bank Officers and Employees Association and others and Murari Lal Shrivastava (supra) cannot be treated as precedent because the aforesaid judgment of Hukumchand Mills was not considered in the cases. He further contends that in the present case, the Bank, respondent No. 3, vide Annexure P/2 has enhanced the age of superannuation from 58 to 60 years. The aforesaid rule was framed u/s 48C of the Act and the aforesaid powers are different to the power of the Registrar u/s 55(1). In the circumstances, if order P/3 is found to be valid, even then the employees cannot be retired at the age of 58 years. Contending aforesaid, the learned counsel for petitioners contends that petition may be allowed and orders P/5 and P/6 may be quashed.

The learned counsel appearing for respondents contends that this question has been considered by Division Bench in para 12 of the order. The ratio of Hukumchand Mills (supra) was argued before Division Bench and the Division Bench considering the aforesaid has not accepted the aforesaid argument. As in the subsequent judgment, the previous judgment has been considered, in the circumstances, matter does not deserve to be referred to the Larger Bench. Apart from this, the learned counsel for respondents contends that principle of constructive res judicata will apply in the present case. When the constitutional validity of amendment in Rule 72(1) was challenged before Division Bench of this Court, and this issue might and ought to have been made ground of attack in that case, but it was not done then the order in former petition shall operate as res judicata and the petitioner cannot agitate again and again the same issue on different grounds. The aforesaid ground was available in previous contested writ petition and if the aforesaid ground was specifically not raised, then the petitioner cannot agitate the aforesaid question in this petition. Apart from this, the constitutional validity of the aforesaid rules has been examined by the Division Bench of this Court, in the circumstances, the aforesaid question cannot be reagitated by the petitioner. The petitioner in para 5.9 of the writ petition has specifically stated as under :

5.9.........

The respondent-Bank has not framed Rules u/s 48C and, therefore, the Rules framed by the Registrar u/s 55(1) of the Act previous (sic) and governs the terms and conditions of their employment.

Referring the aforesaid, the learned counsel for respondents contends that the petitioners themselves have admitted in the writ petition that u/s 48C, the Rules has not been framed by the Bank. In the circumstances, petitioners cannot change this stand during the course of the argument. Apart from this, from the perusal of Annexure P/2, it is apparent that the Bank has followed the amendment made by the Registrar u/s 72(1) on 28-7-1998, enhancing the age of superannuation. In these circumstances, the contention of the petitioners cannot be accepted that the aforesaid rule was framed by the Bank u/s 48C of the Act. In view of this also, petition deserves to be dismissed.

Considering the arguments raised by the parties, firstly it has to be seen under which provision, the aforesaid amendment Annexure P/2 was made in the rules, u/s 48C or u/s 55(1). From the perusal of Annexure P/2, it is apparent that the Bank has followed the amendment in Rule 72(1) of the Rules as amended by the Registrar on 28-7-1998 Annexure P/l. From the perusal of Annexure P/2, the Bank nowhere has referred section 48C of the Act. Apart from this, in para 5.9 of the writ petition, the petitioners have categorically stated that the respondent-Bank has not framed Rules u/s 48C and, therefore, the Rules framed by the Registrar u/s 55(1) of the Act governs the terms and conditions of the employees. In view of the specific averment, contention of the learned counsel for petitioners that respondent No. 1 has framed rules u/s 48C of the Act cannot be accepted and accordingly, this ground is repelled.

Another question arises whether this matter may be referred to a larger Bench because the argument advanced that in Seoni District Co-operative Bank Officers and Employees Association and Murari Lal Shrivastava (supra) the Court has not considered earlier Division Bench judgment in Hukumchand Mills'' case.

To appreciate the contention of the learned counsel for petitioners, it is necessary to refer Hukumchand Mills'' case (supra) whereas Division Bench held in para 11 :

Since in the instant case, even though in exercise of the power conferred on it by clause (11) of sub-section (2) of section 95 of the Act, the impugned amendment rules have been framed by the State Government, it has failed to comply with the condition imposed by sub-section (3) of section 95 of the Act, inasmuch as the amended rules have not been laid by it on the table of the Legislative Assembly. As a consequence thereof, the rules cannot be taken to have come into force so far and this being so, the respondents cannot enforce the amended rules against the petitioners of these writ petitions.

The Division Bench found that the aforesaid requirement is a mandatory requirement and without complying with the aforesaid provision, the Rules cannot be given effect. Now the judgment of Seoni District Co-operative Bank Officers and Employees Association may be seen. In the aforesaid case, the amendment in Rules dated 5-10-2002 (Annexure P/3) was under challenge. The petitioners in the case assailed the legality, validity and propriety of the aforesaid amendment. The Division Bench while considering the aforesaid validity of the Rules held:

The issue with regard to the validity of section 55(1) of the Act, is no longer res-integra. The provision was challenged in the case of Hemant Kumar Ganga Prasad Gupta vs. President, District Co-operative Central Bank, 1983 MPLJ 461 and it was observed that rule making power conferred on the Registrar by section 55(1) of the M.P. Co-operative Societies Act, 1960, does not suffer from excessive delegation and does not confer arbitrary power on the Registrar. It was further observed that the Registrar is the highest in the hierarchy of officers appointed u/s 3 for administering the Act and he is expected to be well acquainted with the data necessary for formulating the terms and conditions of employment of employees of the societies. It was further observed that section 95(3) will cover the rules made by the Registrar u/s 55 of the Act, and the provision for laying the rules made under an act on the table of the Legislative Assembly was a method of control exercised by the Legislature over the rule making authority.

This Court held that the power to issue orders to the Societies was not uncanalised or arbitrary and cannot be held to be invalid. In view of the above enunciation on the subject, the challenge to the vires of section 55(1) of the Act is unsustainable.

Learned counsel for petitioners has also challenged the order dated 5-10-2002 as arbitrary. The grievance of the learned counsel is that the order does not reflect that it is based on any relevant criteria or that the Registrar had any material before him to come to the conclusion that the economic condition of the District Co-operative Central Bank needed measures to be taken for financial discipline. It is mentioned in the order that to bring uniformity in the age of retirement, it was proposed to reduce the age from 60 years to 58 years. Relevant considerations have also been referred to in the order passed by the Registrar. As held by this Court in Hemant Kumar Ganga''s case (supra), the power to make rules and issue orders u/s 55 conferred on the Registrar is in the nature of legislative power. The Full Bench in Sevaram Totaram Pargir vs. Board of Revenue, 1983 MPLJ 645 has also ruled that the power exercised u/s 55(1) by the Registrar is statutory.

Since the Registrar has exercised the power having regard to the circumstances enumerated in the order, no ground calling for interference in the rule framed by the Registrar is made out. We therefore do not find any merit in this petition.

The Division Bench considering the previous judgment of Division Bench, in the case of Hemant Kumar Ganga Prasad Gupta held in para 8 :

Bestowing our anxious consideration on the reasonings ascribed by the Full Bench and taking note of the pronouncement of the Apex Court in the case of Nergech Meerza (supra), we are of the considered view that the ratio and analysis made by the Full Bench in the case of Hemant Kumar (supra) has to hold the field and the said judgment in our considered opinion does not require reconsideration. Hence, we impel the above submission of Mr. Gupta.

In para 12 of the judgment, the question for referring the matter to a Larger Bench was also considered by the Division Bench. The ground which was raised before the Division Bench that the amended Rule was not laid down on the table of Legislative Assembly in accordance with law. The Division Bench considering this argument held in para 12 :

An assiduous submission has been made by Mr. Dixit and Mr. Tamrakar to refer the matter to a larger Bench. On anxious perusal of the grounds and the contentions raised, we do not think that the law laid down in the case of Seoni District Co-operative Bank Officers and Employees Association (supra) does not correctly lay down the law. On the contrary, we are inclined to follow the same law as it is a binding precedent. It is also submitted that the circular dated 5-10-2002 is not based on relevant criteria. The provision has not been laid down on the table of the Legislative Assembly in accordance with law. We have carefully perused the circulars. They run in same fashion. The first circular, as it appears, was passed by the same authority by following a particular mode. The second or subsequent has come into existence by adopting the similar method. The approach has been the same while issuing the circulars. Hence, we are not impressed by the submission of the learned counsel for the petitioners. We do not think it appropriate to refer the matter to a larger Bench.

The Division Bench has refused to refer the matter to a larger Bench. The Court has considered that the amendment has come into existence by adopting the similar method by which the previous amendment was made. Considering the aforesaid, the Division Bench has refused to refer the matter to a larger Bench.

As the Division Bench has already considered the matter for referring the matter to a larger Bench on the same issue, which is binding as res judicata and the matter cannot be referred to a larger Bench. The Apex Court in case of Kesho Ram and Co. and Others etc. Vs. Union of India (UOI) and Others, has considered the question of res judicata whereas the Apex Court held in para 10.

10. .... In our opinion the petitions by such tenants are not maintainable as the same are barred by principles of res judicata. Once the petitioners challenged the validity of the impugned notification dated Sept. 24, 1974 in earlier proceedings they ought to have raised all the grounds which could have been raised in impugning the validity of section 3 and the notification, if they failed to raise a ground in earlier petition they cannot raise that ground now in the present proceedings. Finality in litigation and public policy both require that a litigant should not be permitted to challenge validity of the provisions of the Act or notification at different times on different grounds. Once petitioners'' challenge to section 3 and the impugned notification was considered by the Court....

The aforesaid ratio is fully applicable in the present case. The aforesaid ground was available in the previous round of litigation when in the previously decided writ petition, the validity of Rule 72(1) amended on 5-10-2002 has been considered. The petitioners of that case were having opportunity to raise this issue as a ground of attack in the previous writ petition. The aforesaid ground was raised and decision by the Division Bench. In the circumstances, the aforesaid question cannot be permitted to be raised in this petition as the Division Bench has already considered this question and refused to refer it to a larger Bench. In the circumstances, I do not find any justification to refer this matter to larger Bench. The ratio of Hemant Kumar''s case (supra) will not apply in the present case as the ground was already raised in Balaghat Zila Sahkari Karmchari Sangh,Balaghat and another''s case (supra) and the Division Bench has also considered the question that the amendment Rules were not laid down on the table of Legislative Assembly.

In view of the aforesaid discussion, the question has already been concluded by the Division Bench. In the circumstances, I do not find any justification to refer this matter for a decision by a larger Bench.

As aforesaid both the Division Benches have considered and affirmed the validity of Rule 72(1) as amended by respondent No. 2 on 5-10-2002, in the circumstances, I do not find any merit in the writ petition. Consequently, this petition is dismissed. Ad interim writ issued earlier stands vacated. The petitioners who have served the Department because of ad interim writ issued by this Court will be entitled for their salary till date, if they have discharged their duties in the Bank. No order as to costs.