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**(2009) 05 OHC CK 0055**  
**In the Orissa High Court**

Sri Bhagaban Sahoo

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

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**Date of Decision :** 12-05-2009

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2009) 108 CLT 481 : (2009) 2 OLR 994 Supp

**Hon'ble Judges :** M.M. Das, J

**Bench :** Single Bench

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**Judgement**

M.M. Das, J.—The Petitioner was working as a Senior Branch Manager in-charge of Mancheswar Central Depot of the Orissa State Handloom Weavers" Co-operative Society Ltd. (hereinafter referred to as "the Society"), which is a Society registered under the Orissa Co-operative Societies Act, 1962 (hereinafter referred to as "the Act").

2. The case of the Petitioner is that the Society introduced a Voluntary Retirement Scheme (for short, "VRS") for its employees/The Petitioner applied for the same in the prescribed format on 21.4.2001 & along with his application, he submitted a representation to the Opp. Party No. 4 - Managing Director requesting him for early reconciliation of the stock assigned to him. By the letter dated 13.6.2001 under Annexure-2, the Petitioner was intimated that his application under the VRS has been accepted with effect from 30.6.2001 & he was requested to reconcile all his accounts at the Head Office within a weeks time. The concerned officials were also directed to settle all the personal claims of the Petitioner within the due date. The said office order was subject to the condition that the Petitioner was to hand over all stocks of the Society with him to his successor. By a further Order Dated 20.7.2001 the Managing Director accorded sanction for a sum of Rs. 2,15,680 to be released in favour of the Retitioner under the VRS under different heads. The Petitioner was also intimated by a communication dated 21.7.2001 to hand over all the fabrics of the Society with him to one Sri Lingaraj Sahu, Production Assistant, immediately. The

Petitioner claims that he submitted all the stocks kept under him & reconciled the accounts as required under the Scheme. Such process of reconciliation continued till October, 2001 for which the Petitioner could not be formally relieved from his duty till such time. It is further claimed by the Petitioner that even though he performed his duties till the month of October, 2001, he was not paid monthly salary till date. The amount sanctioned in his favour was also not paid to him by the Society. The Petitioner submitted several representations but to no effect. Being aggrieved by the inaction on the part of the Opp. Parties, the Petitioner has approached this Court in the present Writ Petition for appropriate remedy.

3. It appears from the averments made in the Writ Petition that the Petitioner has also alleged that on 21.1.2004, he received a letter dated 19.1.2004 issued by the General Manager of the Society directing him to deposit a sum of Rs. 1,72,265.10 in the Cash Section of the Head Office towards purported recoverable dues of the Society from him & to take the sum of Rs. 2,13,999 in shape of Cheque towards purported VRS dues received from the Government. According to the Petitioner, a sum of Rs. 1416 was legally recoverable from him towards shortage of stocks.

4. A counter affidavit has been filed on behalf of the Opp. Parties 1, 2, & 4 denying the claim of the Petitioner. It has been stated in the counter affidavit that the application of the Petitioner for availing the benefit under the VRS was accepted vide Annexure-2 dated 13.6.2001 subject to the condition that he will hand over all the stocks of the Society kept under his charge as Senior Branch Manager of Mancheswar Central Depot & in the event he is unable to hand over the stock under his charge, the costs thereof has to be deducted from the VRS dues. The amount payable to the Petitioner under the said Scheme was calculated to be Rs. 2,15,680 which was subsequently recalculated & finalized at Rs. 2,13,999 & cheques were issued accordingly in favour of the Petitioner by the Government. The Petitioner did not maintain proper accounts for which the process of handing over was delayed & he could not reconcile the stock account properly in time. Under the letter dated 13.6.2001 by which the Petitioner's request for voluntary retirement was accepted, it was stipulated that the Petitioner will be deemed to have been relieved with effect from 30.6.2001. After final reconciliation on 24.12.2002 & taking into consideration the up-to-date amount to which the Petitioner is entitled to under the VRS & other items, an amount of Rs. 1,07,345.50 was finally found to be due to be recoverable from the Petitioner as per the calculations given in the counter affidavit. On 13/14.8.2000 the Petitioner while was in-charge of Central Depot of Mancheswar, filed an F.I.R. that some stock has been stolen from the Central Go-down. But actually, the quantity of stock alleged to have been stolen was not mentioned in the said F.I.R. The detailed stock taking was done on 15.8.2000 & it was found that there was shortage of stock worth Rs. 2,59,140.90. The Police in course of investigation found that 15 bundles of clothes, sarees, bed sheets, cut pieces etc. worth Rs. 75,000 were stolen from the Central depot. It is the further case of the Opp. Parties that the Petitioner was also liable to refund certain advances, excess

amount of bonus & salary drawn, house building advance & interest on house building advance etc. The net amount refundable by the Petitioner has been recalculated to be Rs. 3,00,441.50. In addition to the above, the Petitioner was liable along with four others to pay an audit recovery of Rs. 51, 494.50 as per the statutory audit for the year 2001-2002.

5. A rejoinder affidavit has been filed by the Petitioner denying the allegations made in the counter affidavit. The Petitioner has prayed in the Writ Petition for issuance of writ of Mandamus directing the Opp. Parties, particularly, Opp. Party No. 4 to release the retiral benefits sanctioned in favour of the Petitioner vide Annexure-3 forthwith & to quash the letter as at Annexure-6 being illegal, arbitrary & unjustified. It may be mentioned that under Annexure- 6, the Petitioner was requested to deposit a sum of Rs. 1,74,265.10 in the Cash Section of the Head Office towards receivable dues of the Society from him.

6. Mr. S.K. Pattnaik, Learned Counsel for the Opp. Party No. 4 raised a question with regard to the maintainability of the Writ Petition. He submitted that since disputed question of facts are involved in the writ, petition, the same cannot be adjudicated in an application under Article 226 of the Constitution of India inasmuch as the Petitioner has a remedy by way of raising a dispute u/s 68 of the Act claiming his dues. Mr. Pattnaik referred to the provisions of Section 68 of the Act in support of his contention & submitted that since the dispute at hand is a dispute between the Society & an employee of the Society, the same squarely comes under the provisions of Section 68 (1) of the Act &, therefore, the Petitioner could have raised a dispute under the said Section.

7. Learned Counsel for the Petitioner, however, submitted that the VRS dues of the Petitioner are nothing but retiral dues inasmuch as it includes gratuity & ex-gratia & is granted only upon cessation of employment (though voluntary) of the employee. Learned Counsel referred to the decision in the case of Gorakhpur University and Others Vs. Dr. Shitla Prasad Nagendra and Others, .

8. As would be revealed from the respective cases of the parties, this is a case where a question of accounting with regard to the entitlement of the Petitioner is involved. The amounts being disputed by-the contesting parties, the said question admittedly involves disputed questions of fact, which cannot be gone into in a Writ Petition.

9. Section 68 (1) of the Act provides as follows:

68. Dispute which may be referred to arbitration (1) Notwithstanding anything contained in any other law for the time being in force, any dispute touching the constitution, management or the business of a Society, other than a dispute required to be referred to the Tribunal & a dispute required to be adjudicated under the Industrial Disputes Act, 1947 shall be referred to registered if the parties thereto are among the following, namely:

(a) the Society, its Committee, past Committee, any past present Officer or

office-bearer, any past or present agent, any past or present servant, or the nominee, legal heir or representative of any deceased Officer, office-bearer, deceased agent or deceased servant of the Society; or

(b) a member, past member, or a person claiming through a member, past member or deceased member of the Society, or of a Society which is a member of the Society; or

(c) a surety of a member, past member or a deceased member, whether such surety is or is not a member of the Society; or

(d) any other Society.

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10. A bare reading of the above provision of the Act clearly goes to show that the Petitioner is entitled to raise a dispute under the said provision before the appropriate authority claiming his dues against the Society & during adjudication of such dispute, it is upon for the Arbitrator to go into the question as to whether the dues under the VRS are required to be adjusted or the same shall be construed as retiral dues &, therefore, would be attached with an immunity from being adjusted towards any dues outstanding against the Petitioner. Considering the above aspects & also finding that the Writ Petition involves various disputed questions of fact, this Court is not inclined to interfere in the matter.

11. This Writ Petition is, therefore, disposed of with the above observation giving liberty to the Petitioner to raise a dispute u/s 68 of the Act before the appropriate authority & if such a dispute is raised, the same shall be arbitrated/adjudicated by the competent authority by taking into consideration all the grounds which have been raised by the Petitioner before this Court.