

(2017) 01 RAJ CK 0095
In the Rajasthan High Court
Case No : 12586 of 2016

Sri Karanpur Kray Vikray Sahkari Samiti Through Its
Authorized

APPELLANT

Vs

The Appellate Authority Under Payment of Gratuity Act, 1792

RESPONDENT

Date of Decision : 31-01-2017

Acts Referred:

Payment of Gratuity Act, 1972, Section 7(7), Section 4(6), Section 7(4)(b), Section 4(6)(b), Section 4(6)(b) -
Rajasthan Co-operat

Citation : (2017) 01 RAJ CK 0095

Hon'ble Judges : Arun Bhansali

Bench : SINGLE BENCH

Advocate : Mr.B.S.Sandhu, S.K.M.Vyas

Judgement

1. This writ petition has been filed by the petitioner Society aggrieved against the order dated 23/9/2016 passed by the appellate authority under the Payment of Gratuity Act, 1972 ("The Gratuity Act") , whereby, the appeal filed by the appellant against the order dated 29/10/2015 passed by the Controlling Authority, Sriganganagar has been rejected.

2. The respondent no.3 was appointed as Manager of the petitioner Society and retired from the post of Factory Manager on 30/9/2009. During the period the respondent no.3 was in service, an inquiry was conducted under Section 55 of the Rajasthan Co-operative Societies Act, 2001 ("the Societies Act") and a report was given on 26/11/2009, wherein, the Deputy Registrar held the respondent no.3 responsible for causing loss to the Society. Proceedings were initiated under Section 57 of the Societies Act for taking disciplinary proceedings against the respondent no.3, however, the Joint Registrar, Cooperative Societies ordered to drop the proceedings by his order dated 31/8/2001.

3. Aggrieved against the order dated 31/8/2001, the petitioner Society preferred

a revision petition before the Addl. Registrar (Appeal), Jodhpur, which revision petition was also dismissed on 28/1/2011. Against the order dated 28/1/2011, the appeal preferred by the petitioner before the Cooperative Tribunal, Jaipur is pending consideration. In the meanwhile, the petitioner Society passed a resolution dated 1/4/2010 that until final order was passed regarding the recovery of amount against the respondent no.3, the payment of retiral benefits to respondent no.3 be withheld. The respondent no.3 filed an application before the Controlling Authority under the Gratuity Act for release of his gratuity with interest @ 18%, notices were issued to the petitioner Society, the petitioner Society appeared before the authority and claimed that the proceedings were not maintainable and that the recovery against the respondent no.3 was still pending. However, the Controlling Authority by its order dated 29/10/2015 allowed the application of respondent no.3 and ordered for deposit of a sum of Rs.4,97,000/- and interest within a period of 30 days and against the order dated 29/10/2015 when the petitioner Society approached the appellate authority, the appellate authority with reference to Section 4(6)(b) of the Gratuity Act came to the conclusion that the action of the petitioner Society was not covered under any provision, whereby, the gratuity payment to an employee could be wholly or partially forfeited and consequently dismissed the appeal.

4. It is submitted by learned counsel for the petitioner that the proceedings/claim under the Gratuity Act was not maintainable inasmuch as the respondent no.3 is covered by the provisions of Societies Act, which is a special law and in terms of Section 58 of the Societies Act, the dispute between the parties has to be referred to the Registrar for decision and no other authority has power to decide the said issue. It was submitted that the provisions of the Service Conditions merely deal with the payment of gratuity and not with the redressal of grievance and, therefore, the fact that under the Service Conditions, employees have been held entitled to payment of gratuity in accordance with the Gratuity Act does not make the redressal provision applicable and, therefore, for lack of jurisdiction the order impugned deserves to be quashed and set aside.

5. Reliance was placed on Ghaziabad Zila Sahkari Bank Ltd. vs. Addl.Labour Commissioner & Ors. : (2007) 11 SCC 756 and M/s Pradhan Prabandhak, Kisan Sahkari Chini Mill through General Manager vs. State of U.P. & Ors. : Writ Petition No.44864/2005 decided on 28/3/2012 by Allahabad High Court.

6. Learned counsel appearing for the respondents submitted that proviso to Section 58 clearly takes care of the plea sought to be raised by the counsel for the petitioner, which indicates that a remedy, if available, under the provisions of service laws applicable on the employees cannot be entertained by the Registrar and, therefore, there is no substance in the writ petition. It was submitted that the Service Conditions provide for entitlement of the employees to gratuity under the Gratuity Act and Rules made thereunder and, therefore, the redressal mechanism as indicated in the Gratuity Act would also apply and, therefore, the writ petition filed by the petitioner Society deserves to be dismissed.

7. I have considered the submissions made by the learned counsel for the parties and have perused the material available on record.

8. The question raised in the present writ petition pertains to the exercise of jurisdiction by the authority under the Gratuity Act with regard to the employees covered by the Societies Act.

9. The Sahkari Upbhokta Whole-sale Bhandars and Kraya Vikrya Sahkari Samiti's Employees Service Conditions inter alia provides under Chapter VII as under:-
"Gratuity

Employees of such institutions wherein gratuity act is applicable shall be entitled to payment of gratuity in accordance with the payment of gratuity Act, 1972 and the rule made thereunder."

Section 58 of the Societies Act insofar as relevant reads as under:-

"58. Disputes which may be referred to arbitration- (1) Notwithstanding anything contained in any law for the time being in force, if the dispute touching the constitution, management or the business of a co-operative society arises-

(a) ...

(b) ...

(c) between the society or its committee and any past committee, any officer, agent or past employee or the nominee, heirs or legal representatives of any deceased officer, deceased agent or deceased employee of the society, or

(d) ...

(e) ...

such dispute shall be referred to the Registrar for decision and no court shall have jurisdiction to entertain any suit or other proceeding in respect of such dispute:

Provided that such disputes between the society and its employees, for which a remedy is available under the provisions of the service laws applicable on the employees, shall not be entertained under this section."

10. Further, the provision of Section 7(4)(b) of the Gratuity Act provides for resolution of dispute with regard to any matter by way of an application to the Controlling Authority and Section 7(7) provides for appeal against the order of Controlling Authority.

11. A bare look at the above provisions indicates that Section 58 starts with a non-obstante clause and provides that notwithstanding anything contained in any law for the time being in force, any dispute between the Society and any officer shall be referred to the Registrar for decision. The proviso, which deals with the dispute between the Society and its employees, provides that the dispute, for

which a remedy is available under the provisions of service laws applicable to the employees, shall not be entertained under provisions of Section 58.

12. It was submitted by counsel for the petitioner that the proviso is not applicable in the present case as the term "service laws" would have to be read as the Service Conditions only and as in the Service Conditions applicable to the employees of the Cooperative Societies no remedy therein has been provided, the dispute amongst them has to be resolved by the Registrar under the provisions of Section 58 only.

13. The expression "service laws" cannot be given a restricted meaning in absence of definition of the said term inasmuch as, the Service Conditions of the employees provide for payment of P.F. under the Provisions of Employees Provident Fund Act, bonus under the provisions of Payment of Bonus Act and gratuity under the Payment of Gratuity Act. Further, a bare look at the applicable provision under the Service Conditions, as reproduced hereinbefore, indicates that the employees are entitled to payment of gratuity in accordance with the Payment of Gratuity Act and the Rules made thereunder and, therefore, the said provision cannot be read as meant only for quantifying the benefit of gratuity and not for enforcement of the benefit under the said provision.

14. The use of word "service laws" in the proviso and the stipulation about remedy available under the provisions under the service laws, cannot be restricted to the Service Conditions as sought to be argued by counsel for the petitioner and service laws would have to be given its natural meaning i.e. the laws relating to service conditions i.e. payment of P.F., bonus, gratuity etc. as indicated in the Service Conditions.

15. In view thereof, the submissions made by counsel for the petitioner regarding bar of jurisdiction under the Gratuity Act cannot be sustained.

16. So far as the reliance placed on the judgment of Hon'ble Supreme Court in the case of Ghaziabad Zila Sahkari Bank Ltd. (supra) and of the Allahabad High Court in the case of Kishan Sahkari Chini Mill (supra) are concerned, the issues raised therein pertain to the applicability of the U.P. Industrial Disputes Act, 1947 and U.P. Cooperative Societies Act and based on the provisions contained therein, it was laid down that as the Cooperative Societies Act therein was a special Act, the general law as contained in the U.P. Industrial Disputes Act was not applicable. The said judgment cannot be made applicable to the facts of present case inasmuch as there was no provision similar to the proviso as contained in the Rajasthan Cooperative Societies Act, 2001 restricting the applicability of provision of reference to the Registrar.

17. This Court in Ajmer Central Cooperative Bank Ltd. vs. Labour Court & Industrial Tribunal, Ajmer & Ors. : 2016(3) CDR 1148 (Raj.) while dealing with the similar issue, laid down as under:- "11. A perusal of the section 58 as to what type of disputes can be referred for arbitration. Proviso to subsection (1) of section 58 does not bar for the remedy under the provisions of service laws

applicable to the employees. In view of proviso, the dispute between the employer and employee regarding order of compulsory retirement can very well be adjudicated under the service law and in the present case, the Act of 1947. For the aforesaid reason, no objection of jurisdiction seems to have taken before the Labour Court.

12. It would be necessary to refer that earlier to the order of compulsory retirement, the respondent employee was terminated from service. He approached the authority under the Rajasthan Shop and Commercial Establishment Act. The adjudication was made on merit without an objection of remedy under the Act of 2001 or the previous repeal act. The termination order was set aside by the authority and challenge to order in a writ petition and appeal before the Division Bench remain unsuccessful. The Hon'ble Supreme Court did not interfere in the order of the Division Bench. In view of above, earlier also the respondent had taken the remedy other than what is provided under the Act of 2001 or the repeal act without any objection by the petitioner. The reference to the judgment of the Hon'ble Supreme Court in the case of The Gujarat State Co-operative Land Development Bank Ltd. v. P.R. Mankad and another would be relevant. The order of removal from service was brought before the Labour Court and the objection regarding remedy under the Bombay Cooperative Society Act was not accepted by the Hon'ble Supreme Court. The ground of victimization was raised by the employee therein and after a detail discussion on the issue, it was held that a reference under the Act of 1947 is maintainable.

13. The Division Bench of this Court in the case of Raj. Rajya Sahakari Samiyan Vyavasthapak Union v. Judge, Ind. Tribunal, Raj. and another 1984 RLR 754, took a similar view.

14. The learned Counsel for the petitioner has referred to the judgment of the Hon'ble Supreme Court in the case of R.C. Tizvari (supra). If the facts of that case are considered, plea of res judicata was raised because after dismissal of the service, the Registrar upheld the finding regarding misconduct of the petitioner. Therein it was held that for challenge to the order of cooperative society, machinery for adjudication is provided under Co-operative Society Act, hence, section 10 of the Act of 1947 would not apply. There it was categorically held that section 64 of M.P. Co-operative Society Act exclude the jurisdiction of other acts. If the facts of this case in reference to section 58 is considered, no such bar exists, rather proviso to subsection (1) of section 58 provides application of service rules in regard to dispute between the society and the employees. The Act of 2001 rather excludes the jurisdiction provided therein so as to make room for service laws applicable to the employee.

15. In the case of Ghaziabad Zila Sahkari Bank Ltd. v. Addl. Labour Commissioner and others (supra) dispute between parties was quite different. It was regarding ex gratia payment to the employees and referring to the provisions of U.P. Cooperative Society Act, 1965, the issue was decided.

16. In the instant case, section 58 and 60 of the Act of 2001 has been referred. Those provisions do not cast bar for exercise of jurisdiction by any authority rather excludes the jurisdiction under the Act 2001 if service rules are applicable.

17. In the light of the provisions aforesaid, it cannot be said that the provisions of the Act of 1947 would be excluded. It is necessary to add there that Rajasthan State Co-operative Society Act, 2001 is State legislation whereas the Industrial Disputes Act, 1947 is Central legislation. In the case of repugnancy between two legislation, what will prevail is the Central legislation. The exclusion of Central legislation cannot be taken impliedly."

18. So far as the order passed by the appellate authority in rejecting the application filed by the petitioner is concerned, the provisions of Section 4(6) of the Gratuity Act envisage only two conditions where the gratuity payable to an employee can be forfeited i.e. (i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on which part, or (ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

19. In the present case, admittedly, the respondent no.3 retired in the year 2009 and there is no case of termination of his employment for any of the conditions envisaged under the provisions of Section 4(6)(b) of the Gratuity Act and, therefore, the Controlling Authority and appellate authority were justified in allowing the claim of respondent no.3/dismissing the appeal filed by the petitioner.

20. In view of the above, no interference is called for in the present writ petition and the same is accordingly dismissed.