

(2015) 07 AHC CK 0113
In the Allahabad High Court
Case No : Service Single No. 157 of 2007

Surendra Chandra Bhartiya and Co.

APPELLANT

Vs

Committee of Management, District Co-operative Bank Ltd.
and Others

RESPONDENT

Date of Decision : 09-07-2015

Acts Referred:

Citation : (2015) 6 ADJ 703 : (2015) 6 ALJ 375 : (2015) 4 ESC 2157

Hon'ble Judges : Attau Rahman Masoodi, J

Bench : Single Bench

Advocate : K.S. Bajpai and B.R. Singh, for the Appellant; A.R. Khan and C.S.C.,
Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

Attau Rahman Masoodi, J—Heard learned counsel for the petitioner and learned counsel for the respondents. The petitioner while working as Manager in District Co-operative Bank, Ltd. was proceeded against on the charge of negligence for causing loss of Rs. 2,81,500/-. Simultaneously proceedings were also drawn against one Sri Raj Kumar Yadav in respect of the same occurrence being the cashier who left the cash unlocked during lunch hours that was operated under double lock system. After conclusion of the disciplinary proceedings punishment of dismissal from service was imposed on both the charged employees. The order of dismissal from service in respect of Sri Raj Kumar Yadav was approved by the U.P. Co-operative Institutional Board whereas the dismissal order against the petitioner was not approved for want of clear 15 days notice and in this manner the punishment of dismissal from service could not be inflicted upon the petitioner and he continued to remain in service until the date of his superannuation on 31.7.2007. The dismissal order passed against the two employees, makes a mention of loss of Rs. 2,81,500 recovery of which simultaneous to the punishment of dismissal was also ordered.

2. For recovery of the alleged loss, the Bank proceeded against both the

employees. An order dated 24.8.2006 was passed against the petitioner for recovery of an amount of Rs. 2,81,500. The petitioner filed an appeal against the said order under Regulation 86 of the U.P. Co-operative Societies Employees Service Regulations, 1975 which was rejected by means of order dated 14.10.2006 giving rise to the present writ petition.

3. After retirement of the petitioner in the year 2007 it appears that some proceedings for recovery of the alleged loss were instituted under Rule 229(1)(c) of U.P. Co-operative Societies Rules 1968 against the petitioner as well as the cashier Raj Kumar Yadav wherein the liability of the petitioner remained unapproved as is evident from the relevant part of the award dated 9.2.2010 reproduced below:

4. Learned counsel for the petitioner has contended that the award passed in the arbitration proceedings is in the nature of a proceeding of civil nature which is bound to have a precedence over the exercise of quasi-judicial jurisdiction in the departmental proceedings, therefore, the order of recovery passed by the disciplinary authority on 24.8.2006 cannot be given effect to even if the same has been upheld by the appellate authority in exercise of the statutory appellate power. The question which crops up for consideration is as to whether award rendered under Rule 229(1)(c) read with Section 70 of U.P. Co-operative Societies Act, 1968 would prevail over an action emanating from disciplinary proceedings held against the petitioner as per service regulations or the former proceedings shall have a binding effect on the petitioner. The answer to this question is to be traced within the scope of relevant statute and it is necessary to make a reference to Section 70 of U.P. Cooperative Societies Act, 1965 which is reproduced below:

"Section 70. Disputes which may be referred to arbitration.--(1) Notwithstanding anything contained in any law for the time being in force, if any dispute relating to the constitution, management or the business of a cooperative society other than a dispute regarding disciplinary action taken against a paid servant of a society arises--

> (a) among members, past members and person claiming through members, past members and deceased members; or

(b) between a member, past member or any person claiming through a member, past member or deceased member, and the society, its committee of management or any officer, agent or employee of the society, including any past officer, agent or employee; or

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

(d) between a co-operative society and any other co-operative society all

societies;

such dispute shall be referred to the Registrar for action in accordance with the provisions of this Act and the rules and no Court shall have jurisdiction to entertain any suit or other proceeding in respect of any such dispute:

[Provided that a dispute relating to an election under the provisions of this Act or rules made there under shall not be referred to the Registrar until after the declaration of the result of such election].

(2) For the purpose of sub-section (1), the following shall be deemed to be included in dispute relating to the constitution, management or the business of a co-operative society, namely-

(a) claims for amounts due when a demand for payment is made and is either refused or not complied with whether such claims are admitted or not by the opposite party;

(b) a claim by a surety against the principal debtor where the society has recovered from the surety any amount in respect of any debt or demand due to it from the principal debtor as a result of the default of the principal debtor or whether such debt or demand is admitted or not;

(c) a claim by a society for any loss caused to it by a member, officer, agent, or employee including past or deceased member, officer, agent, or employee, whether individually or collectively and whether such loss be admitted or not; and

(d) all matters relating to the objects of the society mentioned in the bye-laws as also those relating to the election of office-bearers.

(3) If any question arises whether a dispute referred to the Registrar under this section is a dispute relating to the constitution, management or the business of a co-operative society, the decision thereon of the Registrar shall be final and shall not be called in question in any Court."

5. Rule 229(1)(c) is applicable for settling the liabilities with respect to property or money claims being a subject-matter of dispute in terms of Section 70(1) of the Act. From a plain reading of Section 70(1) reproduced above it is clear that the disputes relating to disciplinary action are excluded from the scope of Section 70(1) as the same are regulated under the relevant service regulations applicable to the employees of Co-operative Societies which in the instant case are the U.P. Co-operative Societies Employees Service Regulations, 1975. Once the disciplinary matters are excluded from the scope of Section 70(1) of the U.P. Co-operative Societies Act, the natural consequence, therefore, is that the disciplinary proceedings under the service regulations are independent and an order passed in arbitration proceedings does not have a bearing or precedence over the disciplinary action resorted to against the paid employees. It is well-settled that disciplinary action, can be taken, simultaneous to criminal proceedings, for an act of misconduct against the paid employees.

6. Now coming to the question of recovery in pursuance of the impugned order dated 24.8.2006 which gave rise to the appeal filed by the petitioner, it is seen that the objections raised by the petitioner were duly considered and the appellate authority has justified the recovery of loss from the petitioner by recording detailed reasons. Out of two employees found guilty of the alleged loss, Sri Raj Kumar Yadav died while the arbitration proceedings were pending against him, therefore, the amount of alleged loss i.e. 2,81,500/- has resulted into withholding of petitioner's post retiral dues to an extent which according to the learned counsel for the petitioner is beyond his liability fastened by means of the impugned order dated 24.8.2006.

7. Learned counsel for the petitioner has submitted that disproportionate amount as compared to the alleged loss, has been withheld by the respondent bank which cannot be legally sustained.

8. Having regard to the entirety of the circumstances and assuming that the alleged loss occasioned due to negligence not attributable to petitioner alone, what is noticeable is the extent of liability of the petitioner and the other employee against whom the charges were found to have been established.

9. Natural justice demands that liability on the guilty employees is to be fastened equally. This Court is not impressed by any other aspect of the objections raised by the petitioner except to the extent of his liability which could not be fastened more than half of the alleged loss. The impugned appellate order calls for a limited interference as has been observed hereinabove.

10. In the result the impugned order passed by the appellate authority as well as the order passed by the disciplinary authority on 24.8.2006 deserves to be modified to the extent of setting aside the liability of the petitioner and limiting it to half of the amount i.e. Rs. 1,40,750. It is ordered accordingly.

11. As a result, the entire held up amount of post retiral dues admissible to the petitioner, after deducting Rs. 1,40,750 shall be paid to him alongwith an interest of 15% p.a (simple interest) from the date of retirement up to the date of actual payment whereas, the bank shall be entitled to interest @ 12% p.a (simple interest) on the loss i.e. Rs. 1,40,750/- from the date of actual loss upto the petitioner's retirement. Writ petition is partly allowed and the impugned orders dated 14.10.2006 and 24.8.2006 stand modified in terms set out hereinabove. All the balance payment in terms of above settlement shall be released in favour of the petitioner expeditiously and not later than three month from today.

No order as to cost.