

(2008) 03 SC CK 0103

In the Supreme Court Of India

Case No : Civil Appeal No. 1728 of 2008 (Arising out of SLP (Civil) No. 5752 of 2007)

Suresh

APPELLANT

Vs

Yeotmal Dist. Central Co-op. Bank Ltd. and Another

RESPONDENT

Date of Decision : 04-03-2008

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 42, 42(1)

Constitution of India, 1950 — Article 226

Maharashtra Co-operative Societies Act, 1960 — Section 74(1)

Citation : AIR 2008 SC 2432 : (2008) AIRSCW 3724 : (2008) 5 ALLMR 1002 : (2009) 4 ALT 10 : (2008) 2 BomCR 768 : (2008) 3 JT 524 : (2008) 4 SCALE 65 : (2008) 12 SCC 558

Hon'ble Judges : V. S. Sirpurkar, J;S. B. Sinha, J

Bench : Division Bench

Advocate : I. Venkatanarayan, Satyajit A. Desai, Amol N. Suryawanshi and Anagha S. Desai, for the Appellant; R.S. Kurekar, Venkateswara Rao, Anumolu, Sudhanshu S. Choudhari and Sunil Kumar Verma, for the Respondent

Final Decision : Disposed Of

Judgement

S.B. Sinha, J.—Leave granted.

2. Application of a purported circular letter dated 6.08.1996 issued by the Registrar of the Cooperative Societies, State of Maharashtra is in question in this appeal.

3. Respondent No. 1 is a cooperative society registered under the Maharashtra Co-operative Societies Act, 1960 (for short "the Act"). The Society framed rules prescribing terms and conditions of service of its employees. Service Rules framed by the respondent No. 1 Cooperative Society were approved by the Registrar.

4. We are concerned with the post of Higher Grade: Manager; the qualification wherefor is laid down as under:

The candidate should be a postgraduate and should be graduate in Economics or Law also he should have experience in the field of Banking and Co-operative Sector. Preference will be given if he has passed G.D.C. & A exam or has obtained Diploma in Banking.

5. The controversy between the parties hereto arose in the following fact situation:

Appellant was appointed in the post of a clerk on 14.12.1974. He was confirmed in his service on or about 21.04.1994. Respondent No. 2, however, was appointed as Agricultural Development Officer on 26.02.1979 as a direct recruit. He was brought on the Select List for the purpose of promotion to the post of Manager in 1994. The name of the appellant did not figure therein. A seniority list was published on 1.04.1995 wherein the name of the appellant figured at Sl. No. 4; whereas the name of the respondent No. 2 figured at Sl. No. 1.

6. Respondent No. 2 was promoted to the post of Senior Manager on or about 3.10.1998.

Questioning the said seniority list as also the promotion of the respondent No. 2, the appellant raised a dispute before the Cooperative Court, Amravati. Issues were framed having regard to the rival contentions of the parties.

The following findings were recorded by the Cooperative Court in respect of Issue Nos. (5), (5A) and (6):

(5) Whether the disputant is entitled to declaration that the name of opponent No. 2 is to be removed from the seniority list of the Select Grade Officers, in compliance with the Service Rules. No (5A) Whether the disputant is entitled to declaration that promotion order issued on dt. 3.10.1998 of opponent No. 2 is liable to be quashed? Yes

(6) Whether the disputant is entitled to promotion on the post of Manager from deemed date? Yes

As regards, Issue No. 6, the learned Cooperative Court opined:

48. As far as concern about the seniority list published by the opponent No. 1 Bank Exh.37 in which the name of the disputant is at serial No. 4, and it is already held that the opponent No. 2 who stood at serial No. 1 is not eligible or qualified for the post of Manager. As far as about the persons who stood at Serial No. 2 and 3 is concern, at serial No. 2 one M.R. Kadam is there who is having the qualification of B.Com, H.D.C. and as per the service Rules for the post of Manager the employee should be post graduate and having the graduation degree in Economics or in Law. Therefore, those persons are also not having the qualification for the post of Manager, and the next person is the disputant who is having the qualification as per the service Rules who is M.A. Economics, B.Com. LL.B. and G.D.C. & A., D.C.B. Therefore, the disputant is entitled for the promotion on the post of Manager from the deemed date. Hence, I answer issue

No. 6 in the affirmative.

The Cooperative Court allowed the said application of the appellant by a judgment and order dated 16.08.2005 opining that the respondent No. 2 did not possess the requisite qualification.

7. Respondent No. 1 preferred an appeal thereagainst before the Cooperative Appellate Court, which by reason of an order dated 21.06.2006 was allowed, stating:

15. Moreover, it is pertinent to note that the right of the opponent No. 2 to be in the select grade candidates has been maintained by the learned Trial Judge by recording negative finding on Issue No. 5 in his judgment. When the Issue No. 5 is recorded in the negative by the Trial Judge indirectly he has accepted the right of the opponent No. 2 to be in the select grade, who has already placed on Sr. No. 1 in the list published in the year 1997 and which remain undisturbed in the proceeding before the Industrial Court filed by the Union long back earlier to the present dispute.

*** ** 18. As per the Government Circular dated 29th February 1988 for the post of Manager, the requisite qualification is laid down Degree of recognized University in Economics/ Commerce/ Chartered Accountant and Diploma in Cooperation and Accountancy/ Diploma, in Cooperative Business Management. If, the above mentioned qualification as laid down in the Government Circular for the post of Manager is considered, I find it is rightly submitted by the Advocate Shri Parakhi that opponent No. 2 is having Master's degree with subject of Economics i.e. M.Sc (Agril) having Economics subject and he was also having Diploma in cooperative Banking. As per the said Circular dated 29th February, 1988, the educational qualification as are laid down with several Degrees, if one of those is possessed, the person can be posted to the post of Manager. Here, the opponent No. 2 is having Degree/ Master's Degree i.e. M.Sc. (Agri.) having Economics subject therein and in addition to it he is also having independent educational qualification as Diploma in Cooperative Banking. His appointment itself is in select grade. So, it cannot be said that he does not possess a qualification to bring him within the select list candidate and also to be appointed to the post of Manager. The another letter dated 6.8.1996 issued by the Commissioner for Cooperation, Pune also is referred by Advocate Parakhi from record (Record Page No. 395). As per the said Circular, a person in the post of officer is required to possess any one of the qualification as laid down in Paragraph - 2 thereto amongst which D.C.B. is one of the educational qualification and it is possessed by the opponent No. 2. So though the disputant is having Law Degree and other several Diploma's in addition to his Commerce Degree and M.A. Degree, it cannot be said that the educational qualification possessed by the opponent No. 2 is not adequate which is required for the post of Manager. Having excess educational Diploma and Degrees to particular person or in our case to the disputant, cannot debar the opponent No. 2 from the category of the select list candidates and cannot debar the opponent No. 2 on

the post of Manager. As such the Notification issued by the Commissioner u/s 74 of the M.C.S. Act, 1960 has to be accepted. In view of the said notification, I hold that the opponent No. 2 is having requisite educational qualification for the post of Manager. So, submission made by the disputant cannot be accepted that he is not having educational qualification for the post of Manager so, I hold that the learned Trial Judge has erroneously held that the opponent No. 2 is not eligible for promotion to the post of Manager as per the service rules of the bank.

8. A writ petition preferred thereagainst by the appellant has been dismissed by reason of the impugned judgment.

9. At the outset, we may notice that on or about 6.08.1996, the Registrar Cooperative Societies issued a circular letter purported to be in exercise of its power conferred upon it u/s 74(1) of the Act, inter alia stating:

1. For technical post & above-mentioned post the prescribed qualification will not be applicable. For the technical post the concerned Societies can make changes in their service rules regarding the qualifications of the appointment & promotion of the Officers.

*** ** 7. As there are changes in the basic Service Rules, the concern Societies shall take action as per provisions under the Bombay Industrial Relation Act to give notice regarding the said change.

Indisputably such a notice was issued only on 24.09.2001.

10. Mr. I. Venkatnarayan, learned senior counsel appearing on behalf of the appellant, submitted that the promotion of the respondent No. 2 to the post of Manager was illegal as the post of Agricultural Development Officer was not the feeder post therefor. In any view of the matter, it was urged, having regard to the provisions contained in Sub-section (1) of Section 42 of the Bombay Industrial Relations Act, 1946, any change in the service conditions was required to be preceded by a proper notice as was advised by the Registrar of Cooperative Societies in his order dated 6.08.1996 and as such a notice was issued only on 24.09.2001, the promotion of the respondent No. 2 must be held to be illegal.

11. The learned Counsel appearing on behalf of the respondents, however, would support the impugned judgment.

12. Respondent No. 1 is a cooperative society. It has its own rules and bye-laws. The service rules framed by the respondent No. 1 stand approved by the Registrar. We have noticed hereinbefore that in the seniority list published in the year 1995, the position of the appellant was at Sl. No. 4. Those candidates whose names appeared at Sl. Nos. 2 and 3 were not impleaded as parties in the said proceeding. In their absence, the dispute could not have been effectively adjudicated upon.

This Court in *Ku. Rashmi Mishra Vs. Madhya Pradesh Public Service Commission and Others*, observed:

16. In Prabodh Verma this Court held: (SCC pp. 273-74, para 28)

The first defect was that of non-joinder of necessary parties. The only respondents to the Sangh's petition were the State of Uttar Pradesh and its officers concerned. Those who were vitally concerned, namely, the reserve pool teachers, were not made parties - not even by joining some of them in a representative capacity, considering that their number was too large for all of them to be joined individually as respondents. The matter, therefore, came to be decided in their absence. A High Court ought not to decide a writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as respondents or at least by some of them being before it as respondents in a representative capacity if their number is too large, and, therefore, the Allahabad High Court ought not to have proceeded to hear and dispose of the Sangh's writ petition without insisting upon the reserve pool teachers being made respondents to that writ petition, or at least some of them being made respondents in a representative capacity, and had the petitioners refused to do so, ought to have dismissed that petition for non-joinder of necessary parties.

(See also All India SC & ST Employees' Assn. v. A. Arthur Jeen and Indu Shekhar Singh v. State of U.P.)

The dispute raised by the appellant before the Cooperative Appellate Court, therefore, was not maintainable. It was so held also by the High Court. On that ground alone, this appeal must fail.

However, as the parties have addressed us at some length on the merit of the matter, we may as well deal with the contentions raised at the bar.

13. There is nothing on record to show that the provisions of the Bombay Industrial Relations Act, 1946 would be attracted in the matter of laying down qualification for the post of Manager of a Bank. If the provisions of the said Act are not applicable, the same ipso facto cannot apply only because the Registrar of the Cooperative Societies thought so.

14. It is one thing to say that the respondent No. 2 did not possess essential qualification for holding the post but it is another thing to say that the Registrar had exercised its jurisdiction u/s 74 of the Act.

Section 74(1) of the Act reads as under:

74. Qualification and appointment of Manager, Secretary and other officers of societies and Chief Officer and Financial Officer for certain societies.

(1) The qualifications for appointment of the Chief Executive Officer, Finance Officer, Manager, Secretary, Accountant or any other officer of a society or a class of societies and his emoluments and perquisites shall be such as may be determined by the Registrar, from time to time.

15. In terms of the said provision, indisputably, the Registrar could exercise its

jurisdiction for laying down the qualification inter alia for the post of manager. When such qualifications are laid down by the Registrar, he exercises a statutory power. While exercising such a statutory power, requirement to comply with the provisions of another statute, viz., issuance of notice of change in terms of the Bombay Industrial Relations Act, 1946 was not necessary. They were meant to be done for the industrial workers and not for those who exercise supervisory jurisdiction in a cooperative society.

16. We have noticed hereinbefore that the Registrar of Cooperative Societies in its order dated 6.08.1996 merely said that for technical posts, the prescribed qualification would not be applicable and the concerned societies can make changes in their service rules regarding qualification of appointment and promotion. Only when changes in the service rules were required to be made, the respective societies were not given a free hand to do so. It is only from that angle notice of change was, if at all, required to be issued.

17. Respondent No. 2 fulfills the prescribed educational qualification. It was found by the appellate court. It is not the case of the appellant that the post of Manager could be filled up only by way of promotion. Such a post could be filled up also by direct recruitment. For the said purpose, we may assume that the post of Agricultural Development Officer is not the feeder post for promotion to the post of Senior Manager, although no rule in that behalf has been placed before us.

18. We, therefore, are of the opinion that no case has been made out for interfering with the impugned judgments of the Cooperative Appellate Court as also the High Court. The appeal is dismissed accordingly. No costs.