(1998) 07 CAL CK 0024

In the Calcutta High Court

Case No : Civil Appellate Jurisdiction M.A.T. No''s. 1414-1417 of 1998

The Kishan Co-operative Milk Producers'' Union Ltd. and Another — APPELLANT

Vs

Sri Paramananda Patra — RESPONDENT

Date of Decision : 27-07-1998

Acts Referred:
Companies Act, 1956 — Section 234, 235, 237, 397, 398
Constitution of India, 1950 — Article 12, 226

Citation : (1999) 1 CALLT 102

Hon'ble Judges : Satyabrata Sinha, J;Ronojit Kumar Mitra, J

Bench : Division Bench

Advocate : Mr. N.K. Manna and Mr. R. Roy, for the Appellant; Mr. A.P. Sircar, Mr. S. Sanyal and Mr. A. Bhattacharya, for the Respondent

Judgement

S. B. Sinha, J.—The four appeals involving similar questions were taken up for hearing and are being disposed of together. The fact of the matter however shall be noticed from M.A.T. No. 1414 of 1998.

2. The petitioner-First Respondent in each case were employees of the appellant which is a Co-operative Society registered under Cooperative Societies Act. Their services were terminated by an order dated 20.4.98. Allegedly the said order was passed on the ground of various misconduct committed by the writ petitioners including refusal to join at the transferred posts. The said order of termination dated 21.11.97 reads thus :--

"Whereas Shri Paramananda Patra, Sales Asstt. of the Kishan Cooperative Milk Producers'' Union Ltd., Nadia was transferred by the Managing Director of the Union vide his office Memo No. 537(8) dated 24.04.1997.

Whereas The Managing Director of the above named Union has issued reminders to proceed to new post after handling over his charge.

Whereas Shri Paramananda Patra did not comply with the orders.

Whereas on receipt of the report from the Managing Director the undersigned, Shri R. K. Vats, District Magistrate, Nadia and Special Officer of the Kishan Co-operative Milk Producers Union Ltd. has issued show cause notice vide his No. 2238(5)-DM dated 5.11.97 with two weeks time to represent his case as an opportunity to him and whereas the undersigned is not satisfied and is not convinced with the reply submitted by Sri Paramananda Patra of the Kishan Co-operative Milk Producers'' Union Ltd., Nadia. Now. the undersigned, Shri R.K. Vats, District Magistrate, Nadia and Special Officer, the Kishan Co-operative Milk Producers'' Union Ltd., as disciplinary authority, is satisfied that Shri Paramananda Patra of the Kishan Co-operative Milk Producers'' Union Ltd. has committed (1) wilful insubordination (2) disobedience of lawful and reasonable order of his superior authority and the undersigned is also satisfied that the reasonable opportunity of making representation on the removal notice was given to Shri Paramananda Patra of the Kishan Co-operative Milk Producers'' Union Ltd.

Therefore, the undersigned, Shir R.K. Vats, District Magistrate, Nadia and Special Officer, The Kishan Co-operative Milk Producers'' Union Ltd., under Rule 48(f) of the West Bengal Co-operative Societies Act, 1987 remove Shri Paramananda Patra of the Kishan Co-operative Milk Producers'' Union Ltd., Nadia from the service of the Kishan Co-operative Milk Producers'' Union Ltd. with effect from 24th November, 1997 (forenon)."

3. The learned trial Judge on the prayer of the petitioners granted mandatory injunction directing the appellants to reinstate them only on the ground that the said orders of termination have been passed without complying with the provisions of Rule 48(f) of the West Bengal Co-operative Societies Rule, 1987 (hereinafter called and referred to as the said Rule).

4. However, it was directed that the said interim order would not prevent the respondents to proceed afresh in accordance with law, If they so desire from the stage of issuance of the charge-sheet. It appears from the impugned order dated 20.4.98 that prior to passing of the said order a direction was issued upon the respondents to produce the records and upon perusal thereof the learned trial Judge found that there was nothing to show that any domestic enquiry had been held or the writ petitioners had been given an opportunity of hearing.

5. Mr. Manna, the learned counsel appearing on behalf of the appellants, inter alia submitted that as from the impugned order, it would appear that the petitioners had been given show cause notices and the said orders having been passed upon considering the show-cause submitted by the writ petitioners; Rule 48(f) of the rules must be held to have been substantially complied. The learned counsel sought to urge that the rule making power as contained in section 147 of the West Bengal Co-operative Societies Act, 1983 does not contain any provision for framing a rule in the nature of Rule 48(f) of the rules, in any event, the learned counsel submits that as no writ petition is maintainable as against a Co-operative Society the impugned orders must be held is bad in law. Alternatively,

it was submitted that as the petitioners have a right to prefer an appeal against the orders of termination passed against them the writ petition ought not to have been entertained and in support of the said contentions reliance has been placed on Sri Ramdas Motor Transport Ltd. & Ors. v. Tadi Adhinarayana Reddy & Ors. reported in 1997 (5) SCC 466. Our attention has further been drawn to the fact that the writ petitioners-respondents being guilty of serious misconduct, no equitable relief ought to have been granted in their favour.

6. Mr. Sarkar, appearing on behalf of the writ petitioners respondents, on the other hand, relied upon a decision of a Division Bench of this court in Mousumi Co-operative Housing Society Ltd. v. Smt. Gayatri De & Ors. reported in 1998 (1) CHN 159 for the proposition that a writ petition is maintainable against the Co-operative Society if a mandatory statutory provision has been violated by it.

7. According to the learned counsel as the provision of Rule 48(f) have been violated, the orders impugned in the writ petition cannot be sustained and in this connection reliance has been placed due to U.P. Co-operative Federation Ltd. v. Ram Singh Yadav & Ors. reported in AIR 1998 SC 413.

8. In this case, it almost stands admitted that prior to issuance of the orders of terminations the provisions contained in Rule 48(f) of the rules had not been compiled with. Rules 48(f) of the rules reads thus :--

"48. Powers of the board.--The board of a co-operative society shall have full control over the administration and the business of the society and shall exercise all or any of the following powers as may be provided in the by-laws :--

(f) to appoint, discharge or to dismiss or to remove employees of the society :

Provided that a no employee of a Co-operative Society shall be dismissed or removed from service except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges, and where it is proposed after such inquiry, to dismiss or remove him, until he has been given a reasonable opportunity of making representation on the penalty proposed."

9. The proviso appended to said rule, thus, in no uncertain terms lay down the condition for terminating the services of an employee of a cooperative society. The requirements of law as contained in the said rule are : (a) An enquiry is to be initiated against the delinquent employee in which he has to be informed of the charges against him; (b) he should be given a reasonable opportunity of being heard in respect of those charges; (c) if after such enquiry it is proposed to dismiss or to remove him; he is to be given a reasonable opportunity of making representation on the penalty proposed.

10. In the instant case, the District Magistrate. Nadia has been appointed as a Special Officer. The impugned orders of termination have also been passed by the said authority. In this view of the matter, there cannot be any doubt that a writ petition would be maintainable. In Nand Kishore Rai & Ors. v. The State of

Bihar and Ors. reported in 1988 PLJR 1065, N.P. Singh, J. (as His Lordship then was) speaking for himself and O.K. Sen, CJ. held :--

"It was then submitted on behalf of the respondents that in view of the decision of this court in the case of Harender Narain Banker v. The State of Bihar & Ors. (1985 PLJR 1078), no writ can be issued on the Managing Committee of a Co-operative Society which shall not be deemed to be a State within the meaning of Article 12 of the Constitution. It appears that this aspect of the matter was also not considered by the Bench in the case of Sheoshankar Prasad Sinha & Ors. (supra). But, as the impugned order dated 28.5.1985 has been passed by a Special Officer appointed by the Registrar, Co-operative Societies, after supersession of the Co-operative Society, in my view, there is no necessity of considering that aspect of the matter, in detail. According to me the principle laid down by a Bench of this court in the case of Harender Narain Banker (supra) shall not be applicable when the Managing Committee of a Cooperative Society has been superseded and a Special Officer has been appointed by the Registrar to manage the affairs of such societies. The Special Officer has to be held to be an Authority within the meaning of Article 12 of the Constitution who shall be amenable to the writ jurisdiction of this court,"

11. It is furthermore beyond any show of doubt that where a mandatory statutory provision is violated by the society, a writ petition would be maintainable against it. [see Mousumi Co-operative (supra)].

12. It has not been and cannot be disputed that the services of the employees of a co-operative society are protected by a statutory provisions. A rule when validly framed becomes part of the Act. The State can make a legislation in respect of the Co-operative Society in terms of item 32 of List-II of the VIIth Schedule of Constitution. Under the Act the State as also the Registrar of the Co-operative Societies have been empowered to issue directions from time to time. The law so enacted by the State of West Bengal also empowers it to make over the management of the Co-operative or management of its property in public interest. In this case as noticed hereinbefore Special Officer has been appointed. Thus, prima facie a writ petition would be maintainable against the appellant No. 1.

13. Furthermore, the vires of Rule 48(f) has not been questioned and thus it is not necessary at this stage to consider the submission of Mr. Manna to the effect as to whether the said rules could be framed by the State in exercise of its power conferred upon it u/s 147 of the Act.

14. The learned trial Judge prior to passing of the impugned orders has considered the materials on record so as to enable him to pass the order of reinstatement of the writ petitioners subject to the leave granted by him. Although normally the court is slow to grant an injunction in mandatory form, such an order passed cannot be said to be wholly without jurisdiction, particularly, when the records clearly show a flagrant violation of provisions of

the mandatory rules. Ex facie the services of the employees of the cooperative society are protected by the statute.

15. Similar provisions exists in other statutes as for example, Management of recognised Non-Government institutions (Aided & Unaided) Rules, 1969. The fact that the State in exercise of its power conferred upon it under the Co-operative Societies Act can frame a rules or regulations is neither in doubt nor in dispute. In UP. Co-operative Federation Ltd. v. Ram Singh Yadav reported in 1998 SC 413 the apex court held :--

"It could not be denied that the respondent is an employee within the meaning of Cl. (xi) of Regulation 2 of the Regulations. He is in the whole-time service of the appellant. He is not a casual worker employed on daily wages or a person in part-time service of the appellant. It is not material for us to examine therefore if the respondent is temporary or has been substantive appointed to the post he is holding. The impugned order is in fact an order of removal of the respondent from service. It is not a termination in the strict sense within the meaning of Regulation 19 as the requirements of that Regulation have not been met and that is also not the case of the appellant that the action was under Regulation 19. That being so the impugned order of termination is in fact removal of the respondent from the service and procedure as prescribed in Regulations 84 and 85 had, therefore, to be met. That has admittedly not been done. There is no charge-sheet, no enquiry officer and no enquiry proceeding. Provision of Regulations 84 and 85 have certainly been violated to the prejudice of the respondent. We, therefore, uphold the order of the High Court setting aside the termination of service of the respondent by Order dated 2.5.78 to the extent that the respondent has to be reinstated in the service though it does not preclude the appellant from holding an enquiry or passing proper order in accordance with law."

16. The aforementioned decision applies in all fours to the fact of the instant cases.

17. The question which now remains for consideration is as to whether the writ petitioners have an adequate alternative and efficacious remedy. The court normally before issuing a writ of Mandamus or Certiorari may refuse to exercise its discretion if they exists an alternative remedy which is equally efficacious, speedy and cheap. However, in this case even the appellate authority has ratified the order.

18. In Sri Ramdas Motor Transport Ltd. and Others Vs. Tadi Adhinarayana Reddy and Others, the apex court was considering a case where a writ petition was filed alleging oppression and mismanagement of affairs of the company. Having regard to the provision of sections 397, 398, 234, 235 and 237 of the Companies Act, the apex court held as there exists an alternative remedy under the said provisions before the company law board, the writ petition should not be entertained.

19. Such is not the position here. In the instant case, there has been a flagrant violation of principle of natural justice. The orders passed by the appellants are ex facie wholly without jurisdiction. In such an event a writ court may or not follow the rule of self-restraint in directing a party to avail the alternative remedy.

20. See Hriday Narayan v. Income Tax Officers reported in 1971 SC 33, The said decision has been followed by this court in Shri Swapan Ray v. Indian Airlines Ltd. & Ors. reported in 1996 (1) CHN 147.

21. In the latter decision this court was considering a case of dismissal of an employee. In Swapan Roy''s case (supra), this court apart from Hriday Narayan (supra) was relied upon. Miss Maneck Gustedji Burjarji Vs. Sarafazali Nawabali Mirza, and Balkrishan v. State of U.P. 1995 Lab.I.C. 1396.

22. For the reasons aforementioned, we do not find any merit in this appeal. However, before parting with these cases, we may observe that the appellants as employer have an inherent power to suspend their employees by not taking any work from them. In such an event, however, they have to be paid the entire salary. We may further observe that the order of reinstatement of the writ petitioners shall be subject to same terms and conditions by which the writ petitioners were being governed and thus it would be open to the appellant to pass an order of transfer in accordance with law. We may further observe that there cannot be any doubt whatsoever that in the event the writ petition is dismissed, the writ petitioners will have to refund the salary received by them.

23. For the reasons aforementioned these appeals are dismissed with the aforementioned directions and observations. But in the facts and circumstances of these cases there will be no order as to costs. Keeping in view the nature of the controversy, we would request the appropriate bench to hear out the main writ applications as expeditiously as possible.

R. K. Mitra, J.

24. I agree.

25. Appeals dismissed