
(2013) 04 KL CK 0097
In the High Court Of Kerala
Case No : O.P. (C) No. 2230 of 2011

T.S. Selvarajan

APPELLANT

Vs

The Board of Directors and Others

RESPONDENT

Date of Decision : 02-04-2013

Acts Referred:

Citation : (2013) 2 KLJ 697

Hon'ble Judges : S.S. Satheesachandran, J

Bench : Single Bench

Advocate : K.R.B. Kaimal and B. Unnikrishna Kaimal, for the Appellant; N. Raghuraj, A.V. Ravi and K. Amminikutty, for the Respondent

Judgement

S.S. Satheesachandran, J.—Petitioner was the Secretary of second respondent a Co-operative Bank registered under the Kerala Co-operative Societies Act. Disciplinary proceedings were initiated against petitioner by the Bank and, Ext. P1 charge was issued to him raising serious allegations of misconduct. Petitioner submitted Ext. P2 explanation. An inquiry was conducted in which except two charges all the rest were found proved against him. A Sub Committee constituted by the Managing Committee of the bank to consider and decide penalty passed Ext. P10 order to dismiss petitioner from service. Appeal preferred by petitioner to the Managing Committee was rejected, and, thereupon, he filed a petition before the Joint Registrar of Co-operative Societies for rescinding the resolutions of the Sub Committee and Managing Committee. His petition was allowed. He was directed to be reinstated in service with back wages. The bank preferred an appeal before the Government, but, that was dismissed. The bank challenged the orders of the Joint Registrar and also the Government before this court filing a Writ Petition. That petition was disposed by Ext. P4 judgment quashing the orders of the Joint Registrar and also the Government since under the amendment to Section 69 of the Act a different forum, Co-operative Arbitration Court, has been constituted for considering the dispute involved. Petitioner was granted time to move that forum against the order of Managing Committee

rejecting his appeal against the decision of Sub Committee dismissing him from service. Petitioner then preferred an appeal before the Co-operative Arbitration Court challenging his dismissal. That appeal was allowed by the Co-operative Arbitration Court passing Ext. P13 award directing the Co-operative Bank to reinstate the petitioner in service with all service benefits. Co-operative Bank challenged Ext. P13 award filing a revision before the Co-operative Tribunal. The Tribunal set aside Ext. P13 award of the Co-operative Arbitration Court and restored the orders dismissing petitioner from service. Ext. P17 is the order of Cooperative Tribunal. Aggrieved by Ext. P17 order petitioner has filed the above Original petition invoking the supervisory jurisdiction of this court under Article 227 of the Constitution. I heard the counsel on both sides. Learned counsel for petitioner contended that Ext. P17 order passed by the Tribunal is unsustainable in law and facts. Ext. P17 order is erroneous in law and the Tribunal has based its conclusion misappreciating the facts and committing grave mistakes causing miscarriage of justice, is the submission of counsel. Sub Committee constituted by the bank to decide the punishment to be imposed against the petitioner on the basis of findings made in the inquiry issued Ext. P5 notice directing him "to furnish explanation within one week. Petitioner thereupon submitted Ext. P6 reply requesting time for one more week to furnish the explanation. Ext. P7 reply was given that his request for time was not granted. He furnished his explanation the very next day. That explanation sent to the Convenor of Sub Committee was later returned "unclaimed". The Sub Committee thereafter passed Ext. P10 order to dismiss him from service u/s 198 of the Kerala Co-operative Rules. When that was the state of affairs over the notice issued and explanation called for, learned counsel submitted the tribunal has proceeded on the premise that the Sub Committee after considering his explanation informed him that it was "not satisfactory" and thereafter dismissed him from service by a separate order. Non providing of an opportunity to petitioner for consideration of his explanation to the proposed action of extreme penalty of dismissal in the circumstances indicated above has vitiated the punishment imposed against him, and, the Tribunal has gone wrong in interfering with the judgment rendered by the Arbitration Court setting aside the punishment, and, directing his reinstatement, is the submission of counsel. Per contra, learned counsel for the Co-operative Bank submitted that the charges levelled against the petitioner are very serious, and the case canvassed by him over denial of opportunity to submit his explanation against the proposed disciplinary action, is meritless. Petitioner, previously, placed under suspension had been reinstated in service and was officiating as Secretary of the Bank at the time when Ext. P10 notice was issued by Sub Committee calling his explanation to the proposed penalty. He then sent the explanation by post in the name of Convenor of the Sub Committee knowing fully well that it would not reach, him within the time fitted. Submission of explanation as above cannot be canvassed as a circumstance to contend that he was denied opportunity, according to counsel. Further more the arbitration court misconstrued and misunderstood Ext. P4 judgment of this court to take a wrong view that the Co-operative Bank has to conduct a fresh enquiry, and, then, alone

disciplinary committee can go into the question of imposing penalty, submits, the counsel. Ext. P13 award passed setting aside the order of dismissal of petitioner, by the Co-operative Arbitration Court, was rightly and correctly interfered with by the Tribunal after considering the proved facts and circumstances, borne out by the materials tendered in the case, and it does not call for any interference in exercise of supervisory jurisdiction of this court, is the submission of counsel.

2. Ext. P17 is the order passed by the Co-operative Tribunal by which Ext. P13 award of the Co-operative Arbitration Court reversing the order of dismissal of petitioner from service was set aside. The Arbitration Court has interfered with the order of dismissal passed against the petitioner by the Sub Committee constituted by the Co-operative Bank holding that there was denial of opportunity to the petitioner to furnish explanation to the proposed penalty in the show cause notice issued to him. Such a finding was entered by the Arbitration Court accepting the case of petitioner that he was denied opportunity to furnish his explanation, on the materials tendered. The Bank was also found fault with for not examining the inquiry officer to prove that the proceedings of the inquiry were conducted complying with the principles of natural justice. On that premise the arbitration court has expressed the view that there was clear violation of natural justice on the part of the bank in imposing punishment against the petitioner. The Arbitration Court based the above reasonings to annul the penalty of dismissal imposed against petitioner without examining the legality or correctness of the findings made in the enquiry, but, adverting to other aspects not relevant and material was the view formed by Tribunal to set aside Ext. P13 award restoring the order of dismissal.

3. Co-operative Arbitration Court, it is noticed, was not correct in finding fault with the Co-operative Bank for not having examined the Inquiry Officer to lead evidence to show that inquiry was conducted following the principles of natural justice when no such challenge was raised by petitioner. However, its finding that there was denial of opportunity to petitioner to furnish explanation to the proposed punishment under the show cause notice issued by Sub Committee was not liable to be interfered with in exercise of the revisional jurisdiction by the Tribunal unless that finding is shown to be palpably wrong and erroneous. The Tribunal has proceeded forming an erroneous view that Sub Committee considered the explanation of the petitioner and finding the same not satisfactory passed the order of dismissal against him. His explanation whatever be his case over the extension of time sought for to submit the explanation, never reached the Sub Committee is an undisputed fact. When that be so, the view taken as aforesaid by the Tribunal was factually incorrect and against the records produced in the case. The Tribunal, it is noticed, while exercising its supervisory revisional jurisdiction in examining the challenges canvassed against Ext. P13 award of the arbitration court has exceeded its jurisdiction as it was exercising its appellate powers over the challenges raised against an award passed by an inferior court. Correctness or legality of the findings made by the arbitration court in Ext. P13 award was not examined with reference to the limitations

applicable to a revisional court The discussion made by the Tribunal as seen in paragraph 11 and 12 of Ext. P17 order would indicate that it has considered whether the enquiry was conducted satisfying the principles of natural justice and also the power, enjoined by the bank to take disciplinary action against its employees. However, the finding of the arbitration court to unsettle and revoke the penalty imposed against the petitioner accepting his case that he was denied opportunity to furnish his explanation by the Sub Committee and thus there was denial of natural justice to him in passing the extreme penalty of dismissal from service, it seen, has not gone into by the Tribunal which in fact as already indicated had proceeded with a wrong view as against the records that his explanation was considered by the Sub Committee and penalty was imposed after it was found to be unsatisfactory. So, evidently, the Tribunal has not examined the legality propriety and correctness of the finding of the arbitration court that there was denial of natural justice to petitioner in non providing opportunity to him to furnish his explanation when it set aside Ext. P13 award under Ext. P17 order exercising its revisional powers u/s 84 of the Act.

4. Section 84 of the Co-operative Societies Act deals with the powers of revision by Tribunal. That Section reads thus:-

The Tribunal may call for and examine the record of any proceedings in which an appeal lies to it for the purpose of satisfying itself as to the legality or propriety of any decision or order passed and if in any case it shall appear to the Tribunal that any such decision or order should be modified, annulled or revised, the Tribunal may pass such order there on as it may deem fit:

Provided that the Tribunal shall not take any action under this section if:-

- (a) the time for appeal against the decision or order has not expired; or
- (b) the decision or order has been made the subject matter of an appeal:

Provided further that no order shall be made under this section unless notice has been given to all interested parties and they have been given a reasonable opportunity of being heard.

As distinct from the powers of revision conferred under several other statutes to a Tribunal or Court it is to be noticed that Co-operative Tribunal under the aforesaid Section can exercise its supervisory jurisdiction by revision in respect of proceedings from which an appeal lies to it under the provisions of the Act. This Court in *Sukumaran Pillai v. Co-operative Tribunal* (1990 (2) KLT 710) : 1990 ICO 1849 dilating on the above aspect has held the revisional jurisdiction is not limited to appealable orders but to all orders passed in a proceeding from which an appeal lies to the Tribunal u/s 82 of the Act. His Lordship Justice K.T. Thomas (as he then was) in the above decision has expressed thus:-

When statutes provide revisional jurisdiction, generally non-appealable orders are made revisable. When an appeal is provided by a statute, generally such statute would bar a revision against appealable orders at the instance of the

party who could have filed the appeal. That general approach appears to have been departed from in S. 84. Under the said provision revisional jurisdiction can be exercised in respect of any decision whether appealable or not. The intention is gatherable from these words in S. 84."....for the purpose of satisfying itself as to the legality or propriety of any decision or order passed". The preceding words"....record of any proceedings in which an appeal lies to it are not to be interpreted as imposing a restriction that revisional jurisdiction can be exercised only in respect of appealable orders. Since an award is appealable, the Tribunal has revisional jurisdiction to call for and examine the record of any such proceedings for the purpose of satisfying itself as to the legality or propriety of any decision or order passed.

What are the matters in respect of which an appeal can be preferred before the Tribunal are dealt with u/s 82 of the Act. Against an award passed by a Cooperative Arbitration Court an appeal lies before the Tribunal u/s 82 of the Act, and, when that be so, it has the power to exercise its revisional jurisdiction not only over the award passed but also any order in such proceedings of the arbitration court as well, but, subject to the riders imposed u/s 84 of the Act.

5. The distinction in the exercise of two jurisdictions, one under the appellate jurisdiction and the other in revisional jurisdiction, necessarily, has to be borne in mind by the Tribunal when it is called upon to exercise any one of the two jurisdictions. So far as an appeal is concerned, it is well settled it is a substantive right of the party if it is so conferred by the statute. Revision on the other hand is different. That power is given to a superior body or tribunal to supervise the function of subordinate or inferior body or court and it is not linked with the right of the party to the proceedings. An appeal is generally considered to be continuation of the original proceedings and the provisions as applicable at the time of institution of the lis would continue to be operative unless it has been taken away by legislation. An appeal is a necessary part of the procedure in an action, but only if so provided, and, where a right of appeal exists. It envisages a reconsideration of all matters brought before the Court or Tribunal the decision of which is annealed. The right of appeal where it exists is a matter of substance and not a procedure. In appeal the entire proceedings are again left open for consideration by the appellate authority which has the power to review the entire evidence subject to statutory limitation if any. However in revision the exercise of power is hedged and limited and it has no power to re-appreciate the evidence unless the Statute expressly confers that power. That limitation is implicit in the concept of revision. Co-operative Tribunal is conferred revisional jurisdiction over proceedings from which an appeal lies to it u/s 82 of the Act. That supervisory jurisdiction is conferred "for the purpose of satisfying itself as to the legality or propriety of any decision or order passed by inferior court/authority and where it appears to the tribunal that any such, order should be modified, annulled or revised, the Tribunal may pass such order thereon as it may deem fit." A re-appreciation of the evidence to test the correctness, legality or propriety of the inferior court/authority cannot be done in exercise of revisional jurisdiction

unless it is shown that the finding made by the inferior court or authority is so perverse or it is against law. Even if two views are permissible so long as the view taken by the inferior court is not shown to be perverse or against law, the revisional authority cannot substitute its views and interfere with the order under revision. Exercise of revisional power, it has to be taken note is not an adjunct to the appellate Jurisdiction but operate on an entirely different realm subject to the restrictions imposed by the statute. Anyone aggrieved by the State decision of a court or authority from which an appeal is provided u/s 82 of the Act, to have a rehearing of the entire matters on the materials placed, has to prefer an appeal and challenge the order in such appeal. After the expiry of time fixed for preferring an appeal if he prefers a revision, and does not choose to move for condonation of delay to prefer an appeal and entertain such appeal, in such revision he cannot canvass challenges which are available to him only in an appeal. That revision has to be examined within the narrow limits of supervisory jurisdiction conferred on the Tribunal, to satisfy itself the legality or propriety of any decision or order of the inferior court/authority. Where revisional powers conferred on the Tribunal is intended as a supervisory jurisdiction to examine the legality or propriety of any decision of an interior court or authority that has to be exercised strictly within the parameters and not as an appellate jurisdiction as if the entire proceedings is open for fresh decision by the Tribunal. The Tribunal in the present case has not examined the legality or propriety of Ext. P13 award rendered by the Co-operative Arbitration Court with reference to challenges raised and also how far and to what extent such challenges could be entertained in exercise of its revisional jurisdiction.

Setting aside Ext. P17 order the Tribunal is directed to examine the challenges made in revision and pass appropriate orders afresh taking note of the observations made above and in accordance with law.

Parties represented by the counsel shall report before the Tribunal on 29.4.2013 Tribunal shall notify alternate date if there is no slotting on the date fixed as above, and it shall also take every endeavour to dispose the revision as expeditiously as possible, at any rate within four months from the date of receipt of a copy of this judgment.

Original Petition is allowed as indicated above.