

(2007) 05 AHC CK 0241
In the Allahabad High Court

U.P. Co-operative Spinning Mills Federation Ltd.	APPELLANT
Vs	
Ram Magan and The Presiding Officer, Labour Court (IV)	RESPONDENT

Date of Decision : 24-05-2007

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C
Industrial Disputes Act, 1947 — Section 33C
Industrial Disputes Act, 1947 — Section 33C

Citation : (2007) 7 AWC 7154

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Final Decision : Partly Allowed

Judgement

Tarun Agarwala, J.—Respondent's No. 1 father died-in-harness and, accordingly, the respondent No. 1 was appointed on compassionate ground as a driver on a permanent vacant post. Instead of paying the regular wages of a driver, the workman was being paid a fixed salary. The workman raised a demand for the payment of regular salary which was not considered by the employers. Consequently, he filed an application u/s 33C(2) of the Industrial Disputes Act and, the Labour Court, after considering the matter, awarded a sum of Rs. 55,102.88 towards the difference of wages. A review application was filed by the employer which was also rejected and eventually when a recovery certificate was issued, the employers, after paying the said amount to the workman also terminated his services on 2.7.1997. This led to an Industrial Dispute which was referred to the Labour Court u/s 4K of the Act for adjudication. The terms of the reference order was whether the employers were justified in not giving the workman the wages and other benefits on the post of driver w.e.f. 12.6.1997 and whether the employers were justified in terminating the services of the workman w.e.f. 2.7.1997.

2. The petitioner is a Co-operative Society and submitted before the Labour Court that it had no jurisdiction to decide the dispute since the provisions of U.P.

Industrial Disputes Act was not applicable to a Cooperative Society. The employees of a Cooperative Society were governed by the provisions of U.P. Cooperative Societies Act, 1965, which is a complete code in itself and that, the provisions of U.P. Industrial Disputes Act was not applicable to the Cooperative Society. The Labour Court in its award specifically overruled objection of the petitioner relying upon a decision of this Court in *Agra District Cooperative Bank Limited, Agra v. Presiding Officer, Labour Court, Agra* 1998 (80) FLR 40, in which it was held that in view of Section 135 of the U.P. Cooperative Societies Act, the provisions of the U.P. Industrial Disputes Act was applicable in respect of a dispute arising out of Cooperative Societies Act relating to its employees. In the present case, the Labour Court, on merits, found that the workman was working as a driver in a permanent capacity on a permanent post, but was only being paid the wages of a daily rated worker and that the employers had adopted an unfair labour practice in not providing the workman the regular wages which the workman was entitled to. The Labour Court further found that since the claim of the workman u/s 33C(2) was allowed, the employers illegally terminated the services of the workman without complying with the provisions of Section 6N of the U.P. Industrial Disputes Act inspite of the workman having worked for more than 240 days in a calender year.

3. The petitioner, being aggrieved by the aforesaid award, has filed the instant writ petition. Heard Sri Dhananjay Awasthi, the learned Counsel for the petitioner and Sri Avanish Misra, the learned Counsel for the respondent-workman.

4. The learned Counsel for the petitioner has only urged that the petitioner is a Cooperative Society and is governed by the provisions of the Cooperative Societies Act, 1965. The service conditions of the employees of the petitioner are governed by the U.P. Cooperative Societies Employees Service Regulations 1975 which has been framed u/s 122 of the U.P. Cooperative Societies Act, 1965, which has a full fledged mechanism to consider and redress the grievance of an employee of a Cooperative Society. The learned Counsel for the petitioner submitted that the provisions of U.P. Industrial Disputes Act are not applicable to the employees of the petitioner's Society and therefore, the State Government had committed an error in referring the dispute for adjudication before the Labour Court. Consequently, the award of the Labour Court was void and was liable to be quashed. In support of his submission, the learned Counsel for the petitioner has placed reliance upon a decision of this Court in *Ghazipur Zila Sahkari Sangh Ltd. v. Industrial Tribunal (1), U.P. at Allahabad and Anr.* 2003 (3) ESC 1518 and a decision of the Supreme Court in the case of *Ghaziabad Zila Sahkari Bank Ltd. v. Additional Labour Commissioner* 2007 (2) ADJ 25.

5. On the other hand, the learned Counsel for the respondents submitted that the decision of the Supreme Court in the case of *Ghaziabad Zila Sahkari Bank Ltd.* (supra) is per incurium and that the Supreme Court in its decision had not considered its earlier judgments. Consequently, the said judgment is not binding upon the High Court. The learned Counsel for the respondents further submitted

that the Supreme Court in the aforesaid judgment had not considered the impact of Regulation 103 of the U.P. Cooperative Societies Employees Regulation 1975. The learned Counsel further submitted that the Supreme Court in the aforesaid decision had not taken into consideration its earlier decision in the case of Gujarat State Co-operative Land Development Bank Ltd. Vs. P.R. Mankad and Others, , and in the matter of Life Insurance Corporation of India Vs. D.J. Bahadur and Others, and in the case of Jai Bhagwan Vs. Management of The Ambala Central Co-operative Bank Ltd. and Another,

6. In order to appreciate the question as to whether a dispute of an employee working in a Cooperative Society could be referred for adjudication before a Labour Court or a Tribunal under the U.P. Industrial Disputes Act, it would be necessary to consider a few provisions of the Cooperative Societies Act (hereinafter referred to as the Act of 1965). The Act of 1965 provides for the registration of the Cooperative Societies. Section 122 of the Act provides that the State Government may constitute an authority or authorities in such manner as may be prescribed for the recruitment, training and disciplinary control of the employees of the Cooperative Societies and may require such authority or authorities to frame regulations regarding recruitment, emoluments, terms and conditions of service including disciplinary control of such employees. In exercise of the powers contained u/s 122 of the Act, the State Government framed U.P. Cooperative Societies Employees Service Regulations 1975 (hereinafter referred to as the Regulations) for the recruitment, appointment, probation, confirmation, termination and retrenchment of the employees of the Cooperative Societies.

7. Regulation 5 of the Regulation of 1975 provides for recruitment of an employee in the service of the Society. Regulation 17 relates to the probation of an employee. Regulation 19 contemplates termination of an employee which reads as under:

19. Termination. - Services of an employee shall be terminable:

(a) in case of a temporary employee, on one month's notice in writing on either side, or in lieu thereof by payment of one month's salary by the party which gives notice:

Provided that in case of direct appointments made for a specific period, it shall not be necessary to given any notice or any pay in lie thereof.

Explanation. - "Specific period" means stated period of less than six months.

(b) by three month's notice in writing on either side in case of a confirmed employee.

Explanation. - (1) A notice given by an employee under Regulation No.19 shall be deemed to be proper only if he remains on duty during the period of the notice:

Provided that the employee may be allowed on request to avail such portion of earned leave as may be due to him which shall however not exceed the notice

period.

(2) The expression "month" used in this regulation shall be a period of thirty days commencing on the date immediately following the date on which the notice is received by the employee or the appointing authority, as the case may be.

8. Regulation 24 relates to retirement. Regulation 26 relates seniority. Regulation 28 relates to reversion and Regulation 29 relates to retrenchment, which is quoted hereunder:

29. Retrenchment - (i) A co-operative society may, subject to the approval of the Registrar, retrench its employee if the business of the society has either shrunk or the concerned post or posts are to be reduced to effect economy:

Provided that compensation where required under the Industrial Disputes Act 1947, is paid to the employees.

(ii) In making retrenchment the policy shall be to retrench the junior most employee of the grade.

9. Chapter VII of the Regulations of 1975 provides for penalties, disciplinary proceedings and appeals. Regulation 84 provides various kind of penalties that could be imposed upon an employee of the Society. The procedure for initiating disciplinary proceedings is contemplated in Regulation 85 and an appeal against an order imposing a penalty is provided under Regulation 86. The aforesaid provisions clearly indicates that a complete and comprehensive machinery for the imposition of any penalty, etc. and provision for the redressal of any injury upon an employee of a Co-operative Society is available. The Regulation is a complete code in itself as regards employment in Cooperative Society and provides redressal of a wrong action.

10. In Himanshu Kumar Vidyarthi and Others Vs. State of Bihar and Others, the Supreme Court held that where the appointments are regulated by statutory rules, the concept of industry to that extent stands excluded. Consequently, an employee of a Cooperative Society whose services has been terminated can approach the competent authority under the Regulations of 1975.

11. In the light of the aforesaid, the Supreme Court in Ghaziabad Zila Sahkari Bank (supra) held that the Cooperative Societies Act is a special enactment in the matter of employment of Cooperative Societies which alone would apply to the exclusion of all other Labour Laws. The Supreme Court held-

48. The general legal principle in interpretation of statutes is that "the general Act should lead to the special Act". Upon this general principle of law, the intention of the U.P. legislature is clear, that the special enactment U.P. Co-operative Societies Act, 1965 alone should apply in the matter of employment of Co-operative Societies Act, 1965 to the exclusion of all other Labour Laws. It is a complete code in itself as regards employment in cooperative societies and its machinery and provisions. The general Act the UPID Act, 1947 as a whole has

and can have no applicability and stands excluded after the enforcement of the UPCS Act.

12. The Supreme Court while coming to the aforesaid conclusion relied upon its earlier decision in R.C. Tiwari Vs. M.P. State Co-operative Marketing Federation Ltd. and others, The Belsund Sugar Co. Ltd. Vs. The State of Bihar and Others Etc., Allahabad Bank Vs. Canara Bank and Another, State of Punjab Vs. Labour Court Jullunder and Others, and U.P. State Electricity Board Vs. Shri Shiv Mohan Singh and Another,

13. The Supreme Court in the case of Ghaziabad Zila Sahkari Bank Ltd. (supra), further held that the provisions of the U.P. Industrial Disputes Act was wrongly invoked and that Section 135 of the U.P. Cooperative Societies Act 1965 was only included by way of clarification and abundant caution and that such a provision could not enable an employee to seek redressal by invoking the provisions of the U.P. Industrial Disputes Act. The Supreme Court held:

We are therefore of the view that the Assistant Labour Commissioner (ALC)'s jurisdiction was wrongly invoked and his order dated 15.3.2003 u/s 6-H of the U.P. Industrial Disputes Act, 1947 is without jurisdiction and hence null and void and it can be observed that, in view of the said general legal principle, it is immaterial whether or not the government has enforced Section 135 (UPCS Act) because, in any case the said provision (Section 135) had been included in the Act only by way of clarification and abundant caution.

14. The learned Counsel for the respondents submitted that the said decision of the Supreme Court is per incurium as the Supreme Court itself had not considered its earlier decision and therefore, the said decision of the Supreme Court cannot be made binding upon the High Court. In my view, the submission of the learned Counsel for the respondent is bereft of merit. The decisions relied upon by the learned Counsel has no application to the facts and the circumstances of the case.

15. In Gujarat Cooperative Land Development Bank v. P.R. Mankand (supra), the Supreme Court held that the Bombay Industrial Relations Act was a special law dealing with the rights and obligations specially created by it and the Cooperative Societies Act must yield to the special provisions in the Bombay Industrial Relations Act. The Supreme Court gave the aforesaid finding after coming to the conclusion that the Co-operative Societies Act did not contain any provision with regard to the conditions of service of an employee of a Cooperative Society.

16. In Life Insurance Corporation of India v. D.J. Bahadur (supra), the Supreme Court held that the Industrial Disputes Act was a special statute devoted wholly to the investigation and settlement of the industrial disputes, which was in reference to an industrial dispute between the employers and its workmen. The Industrial Disputes Act was a special statute. The Supreme Court further found that the LIC Act, on the other hand, did not speak with any specific reference to the workman and that it related to the general aspects of nationalisation, of

management, etc. and in that regard, held that the LIC Act was a general Act and the I.D. Act was a special statute.

17. The decision of the Supreme Court in *Jai Bhagwan v. Management of Ambala Central Co-operative Bank Ltd.* (supra), has no application with regard to the question as to whether the Industrial Disputes Acts was a special statute in relation to the Cooperative Societies Act.

18. In my view, the aforesaid decisions of the Supreme Court are not in conflict with the decision of the Supreme Court in *Ghaziabad Zila Sahkari Bank Ltd.* (supra). Consequently, the submission of the learned Counsel for the respondent that the said judgment of the Supreme Court is per incurium and is totally erroneous.

19. The learned Counsel submitted that Section 135 of the Cooperative Societies Act has not been enforced and, therefore, the Labour Laws cannot be excluded and it was open to an employee of a Cooperative Society to invoke the provisions of the U.P. Industrial Disputes Act. In support of his submission, the learned Counsel for the petitioner placed reliance upon a large number of judgments of this Hon'ble Conn. In my view, it is no longer open to the learned Counsel for the petitioner to raise this submission in view of the latest judgment of the Supreme Court in *Ghaziabad Zila Sahkari Bank Ltd.* (supra) in which the Supreme Court has clearly held that it was immaterial as to whether Section 135 of the U.P. Cooperative Societies Act had been enforced or not since the said provision had only been included by way of clarification and abundant caution. The Supreme Court has categorically held that since the U.P. Cooperative Societies Act was a special statute, it would prevail over the provisions of the U.P. Industrial Disputes Act. Consequently. Section 135 of the Cooperative Societies Act cannot be invoked.

20. The learned Counsel for the respondents further submitted that the Supreme Court had not considered Regulation 103 of the Regulations of 1975 in the aforesaid judgment and submitted that in view of Regulation 103, if any provision of the Regulation of 1975 was inconsistent with any of the Labour Laws, the said provision would be deemed to be inoperative to the extent of such inconsistency. The learned Counsel submitted that in view of the aforesaid provision, it was clear, that the provisions of the U.P. Industrial Disputes Act would be applicable. In my opinion, the submission of the learned Counsel for the respondents is patently erroneous. Regulation 103 of the Regulation of 1975 reads as under:

103. The provisions of these regulations to the extent of their inconsistency, with any of the provisions of the Industrial Disputes Act, 1947, U.P. Dookan Aur Vanijya Adhishthan Adhiniyam, 1962, Workmen's Compensation Act, 1923 and any other labour laws for the time being in force, if applicable to any co-operative society or class of co-operative societies, shall be deemed to be inoperative.

21. The words "if applicable" clearly indicates that the provisions of the Industrial Disputes Act, if applicable (emphasis is mine) to any Cooperative Society, in that event, the provisions of the regulations of 1975 to the extent of its inconsistency with any of the provisions of Industrial Disputes Act would be deemed to be inoperative. The Supreme Court in Ghaziabad Zila Sahkari Bank Ltd. (supra) has clearly held that the provisions of the Industrial Disputes Act would not be applicable on an employee of a Cooperative Society. Consequently, Regulations 103 will not help the respondents. In view of the aforesaid, the judgment of this Court in Agra District Cooperative Bank Limited, Agra v. Presiding Officer, Labour Court, Agra and Ors. 1998 (80) FLR 40, Zila Sahakari Federation Ltd. Bulandshahr v. Labour Court Ghaziabad and Anr. 2004 (2) SAC 321 , U.P. Rajya Sahkari Krishi Evam Gramya Vikas Bank Ltd. and Another Vs. Labour Court (I) and Another, Sahkari Ganna Vikas Samiti Ltd. v. State of U.P. and Ors. 199 (1) A.W.C. 822 , Sadhan Sahakari Samiti Basantpur Ltd. Vs. Presiding Officer, Labour Court and Another, holding that the provisions of Industrial Disputes Act and U.P. Industrial Dispute Act would be applicable upon an employee of a Co-operative Society, are no longer a good law, in view of the decision of the Supreme Court in Ghaziabad Zila Sahkari Bank Ltd. (supra) and stands impliedly overruled.

22. In view of the aforesaid, this Court holds that the invocation of the provisions of the U.P. Industrial Disputes Act by the workman was wholly incorrect. The State Government had committed a manifest error in referring the dispute u/s 4-K of the U.P. Industrial Disputes Act. The Labour Court committed an error in holding that that the provisions of the U.P. Industrial Disputes Act was applicable upon an employee of a Cooperative Society, including the workman in question. Consequently, the impugned award cannot be sustained and is quashed. The writ petition is allowed.

23. This Court while entertaining the writ petition had passed an interim order on 29.3.2001 staying the payment of the back wages pursuani to the award but directed the reinstatement of the workman. Pursuant to the interim order, the petitioner has reinstated the workman who is still working.

24. I have perused the pleadings of the parties and, I find, that the workman was appointed on compassionate ground in substantive capacity on a substantive vacancy. The employers terminated the services of the workman because he had raised a claim u/s 33C(2) which was decided in his favour. In my opinion, the order of termination was punitive in nature and could not be sustained. Consequently, even though the award is set aside, nonetheless, since the workman had been reinstated pursuant to an interim order of the Court, he would continue in the service of the petitioner but would not be paid any back wages under the award.

25. In the circumstances of the case, the writ petition is partly allowed and there shall be no order as to cost.