
(2004) 03 PAT CK 0009

In the Patna High Court

Case No : CWJC No's. 3110, 3111 and 3114 of 2004

Vidya Bhushan Singh Abhai

APPELLANT

Vs

The Bihar State Co-operative Milk Producer's Federation Ltd.
and Others
 Suresh Kumar Vs The State of Bihar and
Others
 Rabindra Prasad Sharma Vs The Bihar State
Co-operative Marketing Union Ltd. and Others

RESPONDENT

Date of Decision : 29-03-2004

Acts Referred:

Bihar Co-operative Societies Act, 1935 — Section 48, 48(1)

Citation : (2005) 3 PLJR 386

Hon'ble Judges : R.S. Garg, J

Bench : Single Bench

Advocate : Bipin Bihari Pd. in 3110, Mr. Alok Kumar in 3111 and Mr. Abu Haider in 3114, for the Appellant; A.N. Singh, Rajesh Prasad Choudhary, for the Respondent

Judgement

R.S. Garg, J.—Heard learned counsel for the parties. This order shall govern C.W.J.C. No. 3110 of 2004, 3111 of 2004 and 3114 of 2004.

2. Learned counsel for the respondents-Board/COMFED raised a preliminary objection that as the order has been passed by the Board of Directors of the Co-operative Society, the petitioners who are the employees of the Co-operative Societies must go to the Registrar u/s 48(1) of the Bihar Co-operative Societies Act, 1935. Learned counsel has placed his strong reliance upon a judgment of Full Bench Rajendra Prasad Sah and Anil Kumar Ojha Vs. State of Bihar and Others, .

3. On the other hand, learned counsel for the petitioners jointly submit that the matter relating to a service dispute or condition of service is not required to be referred to the Registrar, Co-operative Societies u/s 48(1) of the Act because such disputes are beyond the judicial competence of the Registrar.

4. The petitioners have relied upon two Division Bench judgments of this Court in

the matter of Bihar State Co-operative Marketing Union Ltd. vs. Registrar, Cooperative Societies, Bihar (1974 BLJR 183) and The Bihar State Co-operative Bank Ltd. Vs. The Registrar, Co-operative Societies and Another, and have also sought some support in their favour from a Full Bench judgment of this Court Tisco Oriya Co-operative Credit Society Ltd. Vs. The Assistant Registrar, Co-operative Society and Another, .

5. Section 48(1) starts saying that if. any dispute touching the business of a registered society (other than a dispute regarding disciplinary action taken by the society or its managing committee against a paid servant of the society) arises.

(a).....

(b).....

(c) between the society or its managing committee and any past or present officer, agent or servant of the society; or

(d).....

(e).....

such dispute shall be referred to the Registrar.

6. The two Division Benches and the Full Bench observed that the service dispute would not be a dispute touching the business of the registered society. Therefore, service dispute cannot be referred to the Registrar for his decision u/s 48 of the Bihar Co-operative Societies Act, 1935.

7. Learned counsel for the respondents have referred to a Single Bench judgment of this Court in the matter of Bihar Co-operative Bank Employees Union vs. Ranchi-Khunti Central Co-operative Bank Ltd. [2000(4) PLJR 179]. According to them, all the three judgments on which reliance has been placed by the petitioners have been considered in this case and the Court has observed that the words "touching the business of the society" mean to include within its sweep "touching affairs of the society".

8. According to the respondents, as the three judgments of this Court have already been considered and the Single Bench has observed that such aggrieved employee except against whom disciplinary action has been taken must go to the Registrar, this Court must hold that the petitions are not maintainable.

9. In the matter of Tisco Oriya Cooperative Credit Society Ltd. vs. The Assistant Registrar, Co-operative Society, Jamshedpur Circle and another (supra) the Full Bench has observed as under:--

Learned counsel for the respondent No. 2 urged that the scope of the words in parenthesis in sub-section (1) of Section 48 cannot and should not be enlarged. What has been excluded by the said words is "a dispute regarding disciplinary action taken by the society" and not a dispute regarding termination of service brought about by the society. In my opinion, to say that a dispute regarding

disciplinary action which may result in imposition of punishment of any kind, including the punishment of dismissal, is excluded from the general language of sub-section (1) and a similar action of much lesser gravity, imposing no punishment, casting no stigma, should be allowed to be covered by Section 48 will be manifestly absurd, palpably unjust, absurdly inconvenient and will lead to anomalous results. Quoting a passage from Craies on Statute Law, Fifth Edition, at page 82 to the effect--"Manifest absurdity or futility, palpable injustice, or absurd inconvenience or anomaly to be avoided" Subba Rao, J. (as he then was), has said in *M. Pentiah and Others Vs. Muddala Veeramallappa and Others*, at page 1111, column 1:

"Lord Davey in *Canada Sugar Refining Co. V. R.*, 1898 AC 735 provides another useful guide of correct perspective to such a problem in the following words:

"Every clause of a statute should be construed with reference to the context and the other clauses of the Act, so as, so far as possible, to make a consistent enactment of the whole statute or series of statutes relating to the subject-matter."

Applying the test aforesaid I have unhesitatingly come to the conclusion that dispensing with the services of an employee of the society in the course of disciplinary action, if not covered by section 48 of the Act, surely comparatively much dwarf in stature and lighter dispute cannot be held to be covered within the four corners of Section 48; rather, such a dispute, in my opinion, as a matter of necessary construction of the words within the parenthesis must be held to have been excluded from the general dispute referred in the main part of Subsection (1) of Section 48. By necessary implication, such an interpretation does follow."

10. The Full Bench categorically observed that dispensing with the services of an employee of the society in the course of disciplinary action, if not covered by Section 48 of the Act, surely comparatively much dwarf in stature and lighter dispute cannot be held to be covered within the four corners of Section 48; rather, such a dispute, in the opinion of the Court, as a matter of necessary construction of the words within the parenthesis must be held to be excluded from the general dispute referred in the main part of sub-section (1) of Section 48.

11. The observation of the Full Bench though have been interpreted by the learned Single Judge in the matter of *Bihar Cooperative Bank Employees Union vs. Ranchi Khunti Central Co-operative Bank Ltd.* (supra) but I am of the considered opinion that the same has not been properly appreciated and the learned single Judge contrary to the three larger Bench judgments has recorded a wrong finding. Though, I could have ignored the judgment of the learned Single Judge but the propriety demands that the matter should be referred to the larger Bench for authoritative expression in the matter. Let all these three cases be placed before My Lord the Chief Justice for constitution of a larger Bench. The

petitioners shall be free to bring to the notice of the My Lord the Chief Justice that as they have prayed for certain interim reliefs the matter may be heard at an early date or in the alternative interim reliefs claimed by them may be taken up for consideration by the Court.