Before : I. S. Tiwana & A. S. Nehra, JJ.

SURESH CHANDER SHARMA (DR.) AND OTHERS,—*Petitioners.*

versus

THE HARYANA DAIRY DEVELOPMENT CO-OPERATIVE FEDERATION LTD. AND ANOTHER,—*Respondents.*

Civil Writ Petition No. 3885 *of* 1988

1st August, 1990.

Haryana Co-operative Societies Act 1984—*S.* 37—*Constitution of India,* 1950—*Arts.* 38, 41 & 43—*Abolition of posts—Surplus staff—Termination of services—Board of Directors of the Federation taking such decision in view of accumulated losses—'Last come first go' principle followed*—Bona fide *decision—Termination justified.—Prior approval of the Registrar not required under S.* 37.

Held, the petitioners may have reasons to disagree or not to accept the conclusions reached by the Board of Directors of the Federation, but the action of the Federation in finding certain number of posts as surplus and therefore terminating the services of the employees in the light of the well-established principle of 'last come first go' cannot possibly be struck down on the ground of *mala fide.*

(Para 6)

Held, S. 37 does not talk of any approval of the Registrar which the society is required to take while abolishing the post or reducing the strength of its employees in a particular cadre. Post and cadre are apparently two different cannotations and S. 37 does not obliterate that difference. Cadre means the strength of a service or a part of a service sanctioned as a separate unit. The Registrar may well be entitled to lay down the strength of the employees of a particular society in consultation with the society while framing the rules to regulate the recruitment and other conditions of service of such employees, but once he has done so, the section does not give him any further power to deal with the matter except to change the structure of a particular cadre by adding or deleting any class of employee from the common cadre and that too has to be done by him in consultation with the cadre society. So if there is no rule in the common cadre rules framed by the Registrar which requires the society to seek any prior approval of the Registrar before it abolishes any number of posts, the society's power to abolish a post or number of posts is not restricted or curtailed in any manner.

(Para 8)

Ravinder Kumar and others *v.* The State of Haryana, 1990(1) SLR 805. (OVERRULED)

Civil Writ Petition Under Article 226/227 *of the Constitution of India praying that the writ petition may kindly be allowed and :*

(a) *a writ in the nature of* mandamus *may kindly be issued in favour of the petitioners and against respondent No.* 1,

directing the respondents not to terminate the services of the petitioners;

(b) *a writ in the nature of* Mandamus *be issued in favour of the petitioners and against the respondent directing respondent No. 1 not to declare the employees surplus as proposed and resolved,*—vide *agenda,*—vide *annexure P-5;*

(c) *a writ in the nature of certiorari may kindly be issued, quashing the termination order, if any passed against the petitioners on the basis of resolution dated 4th May,* 1988;

(d) *a writ in the nature of* mandamus *may kindly be issued, directing respondent No. 1 to absorb on the vacant posts, the employees who have been declared surplus, in the agenda item annexure P-5;*

(e) *any other appropriate writ or direction or order may be passed which may be deemed fit in favour of the petitioners and against respondent No. 1;*

(f) *filing of certified copies of the annexures may kindly be dispensed with;*

(g) *issuance of advance notices to the respondent may kindly be dispensed with;*

(h) *record of the case may be called for an be perused;*

(i) *cost of the petition may be awarded to the petitioners.*

It is, further, respectfully prayed that pending the decision of this writ petition, termination of services of the petitioners may kindly be stayed.

J. L. Gupta, Sr. Advocate with Surya Kant, Advocate, *for the Petitioner.*

J. S. Shahpuri, Advocate, *for the Respondent.*

JUDGMENT

I. S. Tiwana, J.

(1) Learned counsel for the parties are agreed that in view **of the identity of facts and the contentions** raised therein, **these** four

Suresh Chander Sharma (Dr.) and others *v.* The Haryana Dairy Development Co-operative Federation Ltd. and another
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Civil Writ Petitions Nos. 3885, 3922, 3923 and 4028 of 1988 can conveniently be disposed of together. They are further agreed that for this purpose the facts stated in C.W.P. No. 3885 may be taken as fairly representative of the case of the other petitioners.

(2) The three petitioners in this petition were initially employed as Management Trainees by the respondent Federation. Later, two of them, i.e., Nos. 2 and 3, became full-fledged Managers, while No. 1 still continued to work as Trainee Incharge (Procurement and Inputs), Milk Union, Rohtak. They have two/three years service to their credit. Now they have gone out of service on account of abolition of their posts. To impugn the termination of their services, their learned counsel, Mr. J. L. Gupta, Senior Advocate, has raised these three principal contentions :—

(i) The resolution of the Federation, dated May 4, 1988, abolishing certain number of posts and more particularly those of the petitioners, lacks *bona fides*.

(ii) The Federation had no legal authority to abolish the posts and declare the services of the petitioners as surplus. This is more so in the light of the Directive Principles enshrined in Articles 38, 41 and 43 of the Constitution of India.

(iii) The abolition of the posts of the petitioners is violative of section 37 of the Haryana Cooperative Societies Act, 1984 as on prior permission of the Registrar, Cooperative Societies, Haryana was obtained to delete the class of employees like the petitioners from the common cadre.

(3) As against this, the stand of the respondents, i.e., Haryana Dairy Development Cooperative Federation Limited and the Registrar, Cooperative Societies, Haryana, who filed a joint written statement, is, in their own words, as follows :—

"The answering Federation incurred the accumulated losses of roughly about 27 crores of rupees as on June 30, 1987. (Copy of the balance-sheet is Annexure R.3 to the reply). The Federation, therefore, thought of taking measures to restrict their working to minimise the loss and to retrench the unnecessary staff which has been actually retrenched

keeping its own working load. This retrenchment of the staff was necessary so that further losses are not incurred. The Federation, therefore, abolished certain jobs including the jobs of the 3 petitioners. ... ...

Their services were terminated and they were given one month's salary in lieu of notice as provided in the terms of agreement. ... ... They were junior most officers in the Federation. ... ... Not only the services of these three petitioners have been terminated, besides services of 33 more employees have also been terminated. The process of terminating the services of others besides the above 36 employees continues.

The Board actually came to the conclusion that over six hundred workers/supervisors can be retrenched being surplus. The steps to complete the process will definitely take further time. ... ... As a part of better management, steps are underway to reduce the surplus staff."

In order to establish its *bona fides*, the Federation has further pleaded :—

"Keeping in view the accumulated losses as evident from the balance sheet, economy measures were taken in order to relieve the Federation from the debt trap. An agenda was placed before the Board of Directors in the meeting held on 4th May, 1988 where it was made clear that total requirement of the staff at present was 1494 and already there was a strength of 1725 employees. Surplus/deficit staff to the extent of 636 and 405 respectively after making adjustment, surplus staff remained around 250 only. ... ... The services of the employees were terminated strictly in accordance with law laid down by the Hon'ble Supreme Court 'last come first go' and the posts of Management Trainees as already stated above were abolished as an economy measure in the *bona fide* belief".

In order to meet the challenge on the basis of section 37 of the Co-operative Societies Act, it is stated that as abolition of posts has not led to deletion of any class of classes of employees, there is no violation of the section involved. There are many posts of Managers

(Sales) against which senior incumbents to the writ petitioners are holding charge and have been retained.

(4) This stand of the respondents appears to be wholly truthful and finds enough of support from the facts pleaded in the petition itself. Some of these are "the respondent Federation also went on suffering losses, an approximate details of which from the year 1985-86 is as follows :—

Year	Amount (Rs in crore)	Accumulated Loss
1985-86	2·00	18·50
1986-87	2·13	20·63

Ultimately the learned Managing Director drafted an agenda for putting it up in the meeting of Board of Directors with a fatal suggestion for removal of about 700 employees out of the total strength of about 1,700 employees. This agenda item was prepared for putting it up in the meeting of Board of Directors. held on 4th May, 1988,—*vide* Agenda Item No. 1062/67/88.

The meeting of the Board of Directors of the respondent Federation has taken place on 4th May, 1988 and by accepting the agenda Item Annexure P. 5. it has been resolved to terminate the services of all those employees suggested in Agenda Annexure P. 5 by abolishing their posts."

(5) In the light of these facts, which are available from the pleadings of the parties themselves, it is difficult to appreciate as to how the action of the respondent Federation in abolishing certain number of posts can be held to be *mala fide* or lacking in *bona fides*. The action of abolition of posts is not directed towards the petitioners alone but has rather been taken after a detailed study of the whole functioning of the Federation and with a view to improve its economy. The authorities concerned found it inevitable to reduce the strength

of the staff by abolishing the posts. All that has been highlighted by Mr. Gupta in this regard is that in the year 1987-88, the Federation secured a profit of rupees two crores and, therefore, with its improved working it could dilute the losses which it had already suffered.

(6) Having given our thoughtful consideration to this aspect of the matter, we find that the Federation was not actuated with any ulterior motives in reaching the conclusion it has. If any value has to be attached to this submission of Mr. Gupta, then the Federation has to wait for another ten years or more to dilute its losses. The petitioners or their learned counsel may have reasons to disagree or not to accept the conclusions reached by the Board of Directors of the Federation, but the action of the latter in finding certain number of posts as surplus and therefore terminating the services of the employees in the light of the well-established principle of 'last come first go' cannot possibly be struck down on the ground of *mala fide*.

(7) For his second submission as noticed above, Mr. Gupta primarily relies on certain observations of their Lordships of the Superme Court in *The Dharwad District, P.W.D. Kiterate Daily Wages Employees Association and others* v. *State of Karnataka and others* (1). It has been opined therein that the State has to discharge certain important obligations, such as to ensure the right to work, the right to free choice of employment, the right to protection against unemployment, equal pay for equal work, etc. In addition to this, Mr. Gupta also makes a reference to Articles 38, 41 and 43 of the Constitution to support this submission of his. However, he completely ignores that all that has been said by the Court in a case where the prayer of the petitioners before their Lordships was for directions to confirm the daily rated and monthly rated employees as regular Government servants, and for payment of normal salary at the rates prescribed for the appropriate categories of Government servants and other service benefits. It was not at all a case of abolition of posts. In this very judgment, their Lordships recorded a note of caution in the following words:—

> "It is true that all these rights cannot be extended simultaneously. But they do indicate the socialist goal. The

(1) AIR 1990 S.C. 883.

degree of achievement in this direction depends upon the economic *resources*, willingness of the people to produce and more than all the existence of industrial peace throughout the country." (Emphasis supplied).

The question whether the Government (employer) has a right to abolish a post in the service, came to be considered by a Constitutional Bench of the Supreme Court in a bunch of petitions and the judgment reported is *M. Ramanatha Pillai* v. *The State of Kerala and another*, (2). The Bench concluded that:

"The power to create or abolish a post is not related to the doctrine of pleasure. It is a matter of Governmental policy. Every sovereign Government has this power in the interest of necessity of internal administration. The creation or abolition of post is dictated by policy decision, exigencies of circumstances and administrative necessity. The creation, the continuance and the abolition of post are all decided by the Government in the interest of administration and general public. *** ***

The power to abolish any civil post is inherent in every sovereign Government. This power is a policy decision exercised by the executive. This power is necessary for the proper functioning and internal administration of the State ** ** **

The abolition of post may have the consequence of termination of service of a Government servant. Such termination is not dismissal or removal within the meaning of Article 311 of the Constitution.
** ** ** **

Whether after abolition of the post the Government servant who was holding the post would or could be offered any employment under the State would therefore be a matter of policy decision of the Government because the abolition of post does not confer on the

(2) 1974(1) S.L.R. 225.

person holding the abolished post any right to hold the post."

In the face of this authoritative pronouncement which is not only binding on all the subordinate Courts but even on the smaller benches of the Supreme Court itself (See 1989 S.C. 2027), the submission of Mr. Gupta as (ii) is totally meritless. Though it is hardly necessary to burden this judgment any further by referring to some latter decisions of the Supreme Court and various High Courts, yet these two latter decisions of the Supreme Court can also be referred to with advantage, i.e., *State of Haryana* v. *Shri Des Raj Sangar and another* (3), and *K. Rajindran and others* v. *State of Tamil Nadu and others*, (4). The submission of Mr. Gupta made in the context of Articles 38 and 43 of the Constitution stands answered in the latter mentioned judgment in the following words:—

> It is no doubt true that Article 38 and Article 43 of the Constitution insist that the State should endeavour to find sufficient work for the people so that they may put their capacity to work into economic use and earn a fairly good living. But these articles do not mean that everybody should be provided with a job in the civil service of the State and if a person is provided with one he should not be asked to leave it even for a just cause. If it were not so, there would be no justification for a small percentage of the population being in Government service and in receipt of regular income and a large majority of them remaining outside with no guaranteed means of living. It would certainly be an ideal state of affairs if work could be found for all the able bodied men and women and everybody is guaranteed the right to participate in the production of national wealth and to enjoy the fruits thereof. But we are today far away from that goal. The question whether a person who ceases to be a Government servant according to law should be rehabilitated by giving an alternative employment is, as the law stands today, a matter of policy on which the Court has no voice."

Still larger question arises: can this right to work survive if it is also not seen by the citizen as the duty to work? The answer appears

(3) 1976 (1) S.L.R. 191 (Paragraph 7).

(4) 1982 (2) S.L.R. 196.

clearly to be in the negative if we cling on to our habits of thought and action.

(8) The Third submission of Mr. Gupta is equally devoid of merit. It is primarily based on the following observations made in a Single Bench judgment of this Court in *Ravinder Kumar and others* v. *The State of Haryana,* (5):—

> "Apart from this, the impugned orders have been challenged and, in my opinion, successfully, on the ground that the impugned orders of abolition of posts held by the petitioners could not be issued without the approval of the Registrar, Cooperative Societies. This provision is a salutary one as it provides a check to control the arbitrary actions of the Cooperative Societies and in process to safeguard the interests of the employees. There is no specific approval of the Registrar, Cooperative Societies, to the abolition of the posts. This has rendered the impugned orders without jurisdiction."

This was a case where the learned Judge was dealing with the validity of "abolition of Construction Cell and the posts created therein by the Haryana State Cooperative Bank Ltd. Chandigarh."

Whether it was a case of addition or deletion of any class of employees from the cadre is not at all clear from the report. We however, find it difficult to concur with the above noted expression of opinion. This is how section 37 of the Haryana Co-operative Societies Act, 1984, reads:—

> "37. *Constitution of Common cadre.*
>
> (1) The Registrar may require an apex society to constitute a common cadre of all or a specific class of employees in the service of that society or in the service of the Central Societies which are members of the apex society, or of the service of the primary societies which are members of the apex society or the aforesaid central socities.

(5) 1990 (1) S.L.R. 805.

(2) When a common cadre is constituted under sub-section (1), the Registrar shall make rules to regulate recruitment and the conditions of service of such employees, and their strength in consultation with the cadre society:

Provided that the Registrar may add or delete any class of employees from the common cadre in consultation with the cadre society".

A bare analysis of this section reveals that the Registrar can require an apex society, central societies or primary societies who are members of the apex society to constitute a common cadre of all or a specific class of employees in the service of the societies and when such a common cadre is constituted he is entitled to make rules to regulate recruitment and other conditions of service of such employees and even to fix the strength of such employees in consultation with the cadre society. Proviso to sub-section (2) enables the Registrar to add or delete any class of employees from the common cadre in consultation with the cadre society. He therefore is well entitled to constitute or reconstitute a cadre in consultation with the cadre societies. The section does not talk of any approval of the Registrar which the society is required to take while abolishing the post or reducing the strength of its employees in a particular cadre. Post and cadre are apparently two different connotations and this section does not at all oblitrate that difference. Cadre as we know, means the strength of a service or part of a service sanctioned as a separate unit. The Registrar may well be entitled to lay down the strength of the employees of a particular society in consultation with the society while framing the rules to regulate the recruitment and other conditions of service of such employees, but once he has done so, the section does not give him any further power to deal with the matter except to change the structure of a particular cadre by adding or deleting any class of employees from the common cadre and that too has to be done by him in consultation with the cadre society. So if there is no rule in the common cadre rules framed by the Registrar which requires the society to seek any prior approval of the Registrar before it abolishes any number of posts, the society's power to abolish a post or number of posts is not restricted or curtailed in any manner.

As is well indicated by the observations made in *M. Ramanatha Pillai's case* (supra), the power to create or abolish a post is essentially left to the policy and planning which the employer lays down for

itself. This has essentially to be in the discretion of the society. i.e., the employer to create or abolish any particular number of posts in order to run its affairs efficiently. In the instant case, it is the conceded position that neither the Registrar has required the respondent-Society to constitute any common cadre of all or any specific class of its employees nor has he framed any rules to regulate the recruitment and other conditions of service of the employees of the society. Therefore, no situation ever arose for the Registrar to exercise his powers in terms of the proviso to sub-section (2) of Section 37 of the Act.

(9) For the reasons recorded above, these writ petitions fail and are dismissed but with no orders as to costs.

R.N.R.

Before : I. S. Tiwana, J.

TIRLOK CHAND JAIN & OTHERS,—*Petitioners.*

versus

SWASTIKA STRIPS (P) LTD. AND OTHERS,—*Respondents.*

Company Petition No. 39 *of* 1990.

18th August, 1990.

Companies Act, 1956—*Ss.* 433, 434 & 439—*Arbitration Act* (*X of* 1940)—*S.* 34—*Winding up petition—Partnership agreement containing arbitration clause—During pendency of winding up petition, dispute cannot be referred to arbitration.*

Held, that proceedings under sections 433/434 read with section 439 of the Companies Act, are in a completely different jurisdiction than the one under which remedy or relief can be sought by way of arbitration. The proceedings for winding up under the Companies Act are the proceedings for the recovery of any amount. Sections 433, 434 and 439 record or codify the circumstances/grounds on which a company can be ordered to be wound up by the Court. Therefore, none of the disputes referred to in the arbitration clause of the partnership agreement can be co-related to the relief sought in the Company Petition. Hence, it has to be held that the dispute cannot be referred to arbitration.

(Para 4)