

Before M.M. Kumar & Ritu Bahri-JJ,

**THE MANAK-DHERI CO. OP. AGRICULTURAL
SERVICE SOCIETY LIMITED,—Appellant**

versus

**THE PRESIDING OFFICER, LABOUR COURT
JALANDHAR AND ANOTHER,—Respondents**

LPA No. 473 of 2010 in

CWP No. 9086 of 1997

23rd August, 2010

Constitution of India, 1950—Art. 226—Punjab Cooperative Societies Act, 1961—S. 55—Punjab State Primary Cooperative Service Society Rules, 1986—Rls. 14 & 15—Industrial Disputes Act, 1947—S. 10—Termination of an employee of Cooperative Society—Appeal under Rl. 15 of 1986 Rules rejected—Reference—Labour Court ordering reinstatement of workman with 60% back wages—Whether having elected remedy of filing an appeal petitioner could seek reference—Held, yes—Merely because after inquiry remedy of appeal or revision provided by 1986 Rules would not result into application of principles of res judicata by barring jurisdiction of Court/Tribunal to raise such a dispute—Appeal dismissed, order of Single Judge holding workman entitled to full back wages upheld.

Held, that merely because after inquiry the remedy of appeal or revision have been provided by the 1986 Rules, would not result into application of principles of *res judicata* by barring the jurisdiction of the Court/Tribunal to raise such a dispute because there has been no adjudication at any judicial forum. There is nothing in Section 55 of the 1961 Act or 1986 Rules to conclude that the orders passed by the Appellate Authority or the Revisional Authority are to be considered final. Even otherwise, an interpretation which tends towards sustaining jurisdiction of the Civil Court or the Tribunal is preferable to the one which tends to exclude their jurisdiction.

(Para 8 & 9)

M.K. Tewari, Advocate, for the appellant.

M.M. KUMAR, J.

(1) The instant appeal filed under Clause X of the Letters Patent, is directed against judgment dated 17th July, 2009, rendered by the learned Single Judge allowing the writ petition of the workman-respondent by holding that he is entitled to full wages, which were payable to the persons of his cadre. The workman has also been held entitled to costs which were assessed at Rs. 5000. Accordingly, the award of the Labour Court was modified. The workman was reinstated and his termination order was declared against the law. The Labour Court has granted him 60% back wages.

(2) Feeling aggrieved the appellant-Society challenged the award of the Labour Court before this Court and the learned Single Judge has dismissed the petition filed by the appellant-Society and has partially allowed the writ petition filed by the workman-respondent by enhancing the back wages from 60% to 100%.

(3) It is pertinent to notice that the jurisdiction of the Labour Court to entertain the reference was also challenged. The learned Single Judge has dealt with this argument and placed reliance on a Full Bench judgment of this Court in the case of **Ambala Central Cooperative Bank Ltd. Ambala versus State of Haryana, (1)** and judgment of Hon'ble the Supreme Court rendered in the case of **Morinda Cooperative Sugar Mills Ltd. versus Morinda Cooperative Suger Mills Workers Union, (2)** to conclude that the Labour Court under the Industrial Disputes Act, 1947 (for brevity, 'the ID Act') cannot be divested of its jurisdiction. The view of the learned Single Judge is discernible from paras 8,9 and 10 of the judgment, which reads thus :

“8. The point for consideration would, therefore, be only one whether the Labour Court did not have any jurisdiction to pass the order, the way it did. Learned counsel appearing for the society refers me to the decision of the Hon'ble Supreme Court in **R.C. Tiwari versus M.P. State Co-op. Marketing Federation Ltd. 1997 AIR (SC) 2652** where the Hon'ble

(1) (1993) 2 S.C.T. 310

(2) (2006) 6 S.C.C. 80

Supreme Court was dealing with a case of a dispute which has been decided under Section 55(2) of the M.P. Cooperative Societies Act, 1960. The relevant Section referred to an adjudication relating to a dispute regarding management or business of the society. Finding that the term was comprehensive in providing for a special mechanism through an arbitrator to resolve the dispute, the Court found that Section 10 of the Industrial Disputes Act stood excluded. The industrial dispute that the workman raised by complaining of the termination of service cannot be taken to be in the nature of a dispute relating to management or business. It operates completely on a different field. The reference to this judgment shall have absolutely no bearing to a matter relating to termination of service which is undertaken under the Service Rules. The relevant Service Rule, 1997 itself describes a different procedure than what Section 55 of the Punjab Cooperative Societies Act, 1961. The provisions of the said Act refers to a resolution of dispute by an arbitrator. There is also a provision for an appeal under Section 68 with a right of revision under Section 69. These provisions address different sets of problems namely the dispute relating to management, constitution or business of a Cooperative Society, *a. la* the facts that the Hon'ble Supreme Court was adverting to. The Service Rules, 1997 operates in a mutually exclusive field from what Sections 55, 67 and 60 deal with.

9. The jurisdiction of a Labour Court to adjudicate on a labour dispute relating to termination, in the face of express provisions through service rules of the society cannot be doubted. The question whether the jurisdiction of a Labour Court stands excluded by the Service Rules of Cooperative Society is no longer *res integra*. The point has been squarely answered by a decision of Full Bench of this Court in **Ambala Cooperative Bank Ltd., Ambala versus State of Haryana (1993) 2 SCT 310**. The point in reference before the Full Bench also subsequently decided by a Division Bench again in **The Bhuna Cooperative Sugar Mill Ltd., versus Mohinder Singh and another 2000 (3) LSJS 692**.

10. Learned counsel appearing for the workman relies on a decision of the Hon'ble Supreme Court in **Morinda Cooperative Sugar Mills Ltd., versus Morinda Cooperative Sugar Mills Workers Union (2006) 6 S.C.C. 80** that dealt with the right of a workman to resort to a civil action for declaration in the face of express provisions under the Punjab Cooperative Societies Act. The Hon'ble Supreme Court had held that suit had not been barred by any of the provisions. The point was again referred to in **Rajpura Cooperative Marketing Union Ltd., and another versus Puran Singh 2005 (2) All India Land Laws Reporter 96** where a learned Judge of this Court held that the jurisdiction of a Civil Court had not been barred in a matter which was referred to arbitration. These two decisions have no clear bearing to our case. We are not dealing with an issue whether a civil suit challenging an order of termination was possible or not. An industrial adjudication before a Labour Court operates independently. If the two decisions cited by learned counsel for the respondent have any bearing, it is that even when a Civil Court is competent to entertain a suit, when there are express provisions under the Cooperative Societies Act and the Service Rules. The jurisdiction of the Labour Court cannot be excluded on a matter relating to adjudication of industrial dispute that arises by wrongful termination by the management."

(4) Mr. M.K. Tiwari, learned counsel for the appellant--management has argued that after exhausting the remedy under the Punjab State Primary Cooperative Agricultural Service Society Rules, 1986 (for brevity 'the 1986 Rules'), there was occasion for the workman to seek reference under Section 10 of the ID Act. In that regard, he has drawn our attention to Rules 14 and 15 of the 1986 Rules, which reads as under :—

"14. PENALTIES :

The following penalties may for good and sufficient reasons be imposed on an employee by the committee for the misconduct established on his part.

- (i) Censure
- (ii) Reduction in emoluments
- (iii) Removal or dismissed from service.

In addition to any one of the aforementioned penalties, the committee may order recovery from his pay of the whole or part of any pecuniary loss caused by him to the society by negligence or by any wilful act of omission or commission.

2. No order imposing any of the penalties specified in sub-rule (o) shall be passed except after :—
 - (i) informing the employee in writing of the charge/charges levelled against him and
 - (ii) Giving the employee an opportunity to represent his case within 15 days from the receipt of notice.

15. APPEAL :

- (i) An employee shall have a right to file an appeal against the order imposing any of the penalties specified in Rule 14 of the Deputy Registrar.

- (ii) **REVISION :**

A Revision petition can be filed against the order of Deputy Registrar within 60 days of the order before the Joint Registrar Cooperative Societies of the Division whose decision shall be final, binding and conclusive.”

(5) Learned counsel for the appellant-management has sought support for his argument from the judgment of Hon'ble the Supreme Court rendered in the case of **R.C. Tiwari versus M.P. State Cooperative Marketing Federation Ltd.**, (3) and argued that once the workman-respondent has opted one of the two courses then there was no possibility for him to come back and choose the other course. According to the learned counsel after the order of termination, he availed the remedy of appeal under Rule 15 before the Deputy Registrar, which upheld the order of his termination and thereafter he could not have sought reference. Accordingly, it is urged that the finding of the lower appellate Court is wholly without jurisdiction.

- (6) No other argument has been raised.

(7) The question which falls for consideration in the instant appeal is whether the Courts or Tribunal have jurisdiction to entertain a dispute by an employee of the Society concerning his service conditions. The aforesaid question in the context of the Punjab Cooperative Societies Act, 1961 (for brevity, 'the 1961 Act') is no longer *res integra*. The question has been considered by a Full Bench of this Court in the case of **Ambala Central Cooperative Bank Ltd., Ambala** (*supra*). Referring to the provisions of the ID Act as well as Haryana Cooperative Societies Act, 1984, Hon'ble Full Bench reiterated the view earlier taken by a Full Bench of this Court in **Sonepat Cooperative Sugar Mills versus Presiding Officer, Labour Court, Rohtak**, (4) and proceeded to hold as under :—

- “7. In view of the consistent decisions referred to above specifying the scope of the authorities under the Cooperative Societies Act, the Civil Court and the Labour Court and the remedies available there-under, the decision of the Division Bench of this Court in the **Kapurthala Central Cooperative Bank Limited versus State of Punjab** (*supra*) does not lay down the law correctly. In this case it was held that the employee of a Cooperative Society having elected his remedy of filing an appeal under the provisions of the Act and failed there could not get the matter referred through the State to the Labour Court under Section 10 of the Industrial Disputes Act. It was also held in this case that the decision of the authorities under the Cooperative Societies Act Registrar of the Cooperative Societies would operate as *res judicata*. Since the dispute between the workman and the Bank in the present case related to establishment of the Society, it could be referred to the Arbitrator under Section 102 and adjudicated under Section 103 of the Act reproduced above. Jurisdiction of the Civil Court would obviously be barred to challenge those decisions. However, Industrial Disputes Act dealing with the special subject relating to rights of the workman and the management and the relief provided therein could only be granted by the Court established under the Industrial Disputes Act. Section 128 of the Haryana Cooperative Societies Act was rightly held to be

ultra vires i.e. the remedies available under the Industrial Disputes Act could not be denied to the workman of the management, a Cooperative Society. In that sense the order of the Registrar passed under the provisions of the Cooperative Societies Act cannot be treated as a decision final to operate as *res judicata* in the Labour Court in a reference under Section 10 of the Industrial Disputes Act. Obviously when the order itself is under challenge the same cannot operate as *res judicata*. To sum up, it is held that after the Registrar decides the matter between an employee and employer, a Cooperative Society, with regard to the termination of his service under Section 102 and 103 of the Haryana Cooperative Societies Act, 1984 the matter could be referred under Section 10 of the Industrial Disputes Act as an industrial dispute to the Labour Court for adjudication. It is further held that such a decision made by the Registrar under the Haryana Cooperative Societies Act would not operate as *res judicata* in proceedings initiated on reference under Section 10 of the Industrial Disputes Act in the Labour Court.”

(8) The question whether a dispute concerning services of an employee could be referred to arbitration under Section 55 of the 1961 Act came up for consideration before one of us (M.M. Kumar, J.) in the case of **Morinda Co-operative Sugar Mills Limited, Morinda versus The Morinda Co-operative Sugar Mills Workers Union Registered**, (5). In that case the question concerning interpretation of Section 55 of the 1961 Act fell for consideration. After referring to various judgments, in para 11 of the judgment it was held that the dispute raised by the employee by filing a civil suit was not covered by the expression '*touching the business of the Society*' as used in Section 55 of the 1961 Act. The matter traveled to Hon'ble the Supreme Court and the view taken by this Court was upheld and the judgment is reported as **Morinda Co-operative Sugar Mills Limited, versus Morinda Co-operative Sugar Mills Workers Union**, (6). It is, thus, patent that under Section 55 of the 1961 Act no dispute concerning service conditions of an employee could be referred to arbitration and that the provision which excluded the jurisdiction of the Labour Court

(5) 2004 (1) R.S.J. 10

(6) J.T. 2006 (6) S.C. 374

(M.M. Kumar, J.)

under the ID Act were held to be *ultra vires* by the Full Benches of this Court in **Sonepat Co-operative Sugar Mills' case (supra)** and **Ambala Central Co-operative Bank Limited Ambala's case (supra)**. Therefore merely because after inquiry the remedy of appeal or revision have been provided by the 1986 Rules, would not result into application of principles of *res judicata* by barring the jurisdiction of the Court/Tribunal to raise such a dispute because there has been no adjudication at any judicial forum.

(9) The argument based on the judgment rendered by Hon'ble the Supreme Court in **R.C. Tiwari's case (supra)** is wholly fallacious because in that case there was dispute which had been decided under Section 55(2) of the M.P. Co-operative Societies Act, 1960. Section 55 of that Act confer power on the Registrar to deal with the disciplinary matters concerning the employees of the Society or a class of Societies including the terms and conditions of their employment. The provision further provided that the Registrar or any officer appointed by him was to decide the dispute concerning disciplinary matters of employees working in the Society or class of Societies including their terms and conditions of employment. The decision reached by the Registrar or its nominee was given finality. It was on the language of the aforesaid provision that Hon'ble the Supreme Court interpreted it to mean that it excludes the remedies of ID Act. However, there is nothing in Section 55 of the 1961 Act or 1986 Rules for us to conclude that the order passed by the Appellate Authority or the Revisional authority are to be considered final. Even otherwise, an interpretation which tends towards sustaining jurisdiction of the Civil Court or the Tribunal is preferable to the one which tends to exclude their jurisdiction. On the scheme and language of Section 55 of the 1961 Act read with 1986 Rules, particularly when the matter under the 1961 Act has been decided by Hon'ble the Supreme Court, it is not possible to accept the contention raised by Mr. M.K. Tewari. Accordingly, we find no substance in the aforesaid submission and the same is rejected.

(10) For the reasons aforementioned, this appeal fails and the same is dismissed.