

Birbhum District Central Co Operative Bank Ltd. & Ors Vs Paresh Kumar Mukherjee & Ors

Court: Calcutta High Court (Appellate Side)

Date of Decision: Jan. 29, 2025

Acts Referred: West Bengal Cooperative Societies Act, 2006 " Section 6(2), 134A, 134B, 134C, 134C(2)(d), 154

Hon'ble Judges: Debangsu Basak, J; Md. Shabbar Rashidi, J

Bench: Division Bench

Advocate: Saikat Banerjee, Arnab Ray, Shirsho Banerjee, Pradip Kumar Roy, Joydeep Roy, Kishore Mukherjee

Final Decision: Disposed Of

Judgement

Debangsu Basak, J.:-

1. Appeal is at the behest of a Cooperative Society and directed against the judgment and order dated May 15, 2024, passed in WPA 13722 of 2021.

2. By the impugned judgment and order, learned Single Judge held that, superannuated employees of the appellants is entitled to leave encashment of

300 days in view of the prescriptions made with regard thereto, under the West Bengal Cooperative Societies Rules, 2011.

3. Learned Senior Advocate appearing for the appellants submits that, seven persons approached the Writ Court for grant of leave encashment as

part and parcel of their recruitment benefits. He submits that, all seven writ petitioners superannuated subsequent to February 1, 2013.

4. Learned Senior Advocate appearing for the appellants draws the attention of the Court to the provisions of Section 134A, 134B and 134C of

Chapter XIII A of the West Bengal Cooperative Societies Act, 2006. He submits that, the appellant No.1 before us is a Cooperative Credit Structure

Entity within the meaning of Section 134B of the Act of 2006. He submits that, consequently, as a cooperative credit structure entity, in terms of

Section 134C(2)(d), his clients are entitled to formulate policy regarding the personnel including compensation to be paid to the staff of the appellant

No.1.

5. Learned Senior Advocate appearing for the appellants submits that, in view of Section 134A of the Act of 2006, the provisions relating to Chapter

XIII A of the Act of 2006 will prevail. Consequently, it cannot be disputed that the appellants as cooperative credit structure entity will be entitled to

formulate policy regarding personnel and compensation receivable by such employees.

6. Learned Senior Advocate appearing for the appellants submits that, the appellants formulated the compensation with regard to leave encashment by

a resolution dated June 11, 2001. He draws the attention of the Court to such resolution. He submits that, such resolution prescribes leave encashment

not exceeding 180 days on superannuation.

7. Learned Senior Advocate appearing for the appellants submits that, the resolution dated June 11, 2001 was taken when the West Bengal

Cooperative Societies Act, 1983 and the Rules framed thereunder being West Bengal Co-operative Societies Rules, 1987 were under operation. He

draws the attention of the Court to Rule 19 of the Rules of 1987 and submits that, such Rule does not provide for any compensation with regard to

leave encashment. Nonetheless, the appellants took a resolution dated June 11, 2001 allowing leave encashment for 180 days. All employees of the

appellants are governed by the resolution dated June 11, 2001 relating to leave encashment.

8. Learned Senior Advocate appearing for the appellants draws the attention of the Court to the West Bengal Cooperative Societies Rules, 2011 and

submits that, Rule 106 thereof provides for the method of recruitment and condition of service of the officers and employees of Cooperative Societies

other than cooperative credit structure entities. Therefore, according to him, since appellants are placed outside the purview of Rule 106 of the Rules

of 2011, the prescriptions of such Rule do not apply for a co-operative credit structure entity of the appellant No.1.

9. He submits that, amendment to Rule 106 was introduced with effect from February 1, 2013. Such amendment excluded cooperative credit structure

entity from the operation of Rule 106 of the Rules of 2011. Appellant No.1 being a cooperative credit structure entity, it stood excluded from the

purview of Rule 106 of the Rules of 2011 by virtue of amendment thereto on February 1, 2013.

10. Learned Senior Advocate appearing the appellants submits that, each of the writ petitioners superannuated subsequent to February 1, 2013.

Therefore, in view of the fact that, the appellant No.1 as a cooperative credit structure entity, being entitled to prescribe a compensation for leave

encashment did so by resolution dated June 11, 2001, which resolution is presently binding none of the private respondents are entitled to leave

encashment beyond 180 days.

11. Learned Senior Advocate appearing for the appellants submits that, the resolution dated June 11, 2001 is protected by Section 6(2) of the Act of

2006 read with Section 154 thereof.

12. Learned Senior Advocate appearing for the appellants relies upon 1966(1) SCR 543 (Martin Burn Ltd. vs. Corporation of Calcutta) and 2024 SCC

Online SC 513 (Pathapati Subba Reddy (died) vs. Special Deputy Collector (LA) for the proposition that a statutory provision is never an evil and that,

Court cannot ignore the statutory provision even if, it considers a distress to the result from its operation.

13. Learned Senior Advocate appearing for the appellants relies upon (2005) 2 Supreme Court Cases 638 (Maruti Udyog Ltd. versus Ram Lal and

Others) in support of his contention as to the operation of the non obstante clause in the provision of the Act of 2006. He also relies upon such

authority for proposition that, sympathy cannot form the basis for a statutory provision.

14. Learned advocate appearing for the private respondents submits that, resolution dated June 11, 2001 was adopted when the earlier Rules

governing Co-operative Societies were prevailing namely, the West Bengal Co-operative Societies Rules, 1987. He refers to Rule 12 thereof and

submits leave accumulation for 180 days prescribed therein.

15. Learned advocate appearing for the private respondents submits that, subsequently, the West Bengal Co-operative Societies Act, 2006 came into

operation. He refers to Section 154 thereof and draws the attention of the Court to the overriding effect of the Act of 2006. He submits that, the Rules

of 2011 were framed in terms of Act of 2006. He refers to Rule 106(19) of the Rules of 2011. He submits that, such Rule prescribes grant of leave

encashment for a period of 300 days. Therefore, the resolution dated June 11, 2001 was no longer valid due to the overriding effect of the Act of

2006. According to him, private respondents are entitled to leave encashment for 300 days as allowed by the learned Single Judge.

16. Seven persons approached the Writ Court with a prayer for grant of relief on their superannuation. All the seven persons superannuated after

February 1, 2013.

17. Issue before us is whether, the appellants and the private respondents are governed by the resolution dated June 11, 2001 of the appellant No.1 or

not in calculating the quantum of leave encashment that the private respondents are entitled to on their superannuation.

18. It is an admitted position that, as superannuated employees, the private respondents are entitled to leave encashment. The quantum of leave

encashment, that is, the number of days of leave that the private respondents are entitled to encash on their superannuation is in dispute.

19. There is a resolution dated June 11, 2001 of the appellant No.1 which specifies that, a superannuated employee of the appellant No.1 is eligible for

leave encashment for a maximum period of 180 days. Such resolution was adopted when, the West Bengal Co-operative Societies Act, 1983 and the

West Bengal Co-operative Societies Rules 1987 framed under the Act of 1983 were in operation.

20. Rule 19 of the Rules of 1987 although, specified compensation which an employee of a Co-operative Society is entitled to did not specify leave

encashment as one of the compensation in such Rule.

21. Rules of 1987 being silent with regard to amount of compensation receivable by a superannuated employee of a Co-operative Society, the

appellants in its wisdom adopted the resolution dated June 11, 2001 prescribing a maximum period of 180 days to an eligible superannuated employee.

22. West Bengal Co-operative Societies Act, 2006 came into effect from January 18, 2011. The Act of 2006 repealed the Act of 2003.

23. Act of 2006 was amended with effect from January 18, 2011 to insert Chapter XIII A. Chapter XIII A of the Act of 2006 craves cooperative

credit structure entities as niche amongst co-operative societies and accords special privileges to them.

24. Section 134A of the Act of 2006 opens with a non obstante clause and makes the provisions of Chapter XIII A applicable notwithstanding anything

contrary to or inconsistent contained in the Act of 2006 or the rules framed thereunder or bye laws of any registered society or orders issued

thereunder.

25. Section 134B of the Act of 2006 defines a cooperative credit structure entity. Section 134C specifies special provisions which are applicable to a

cooperative credit structure entity. Under sub-section (2) of Section 134C and particularly in clause (d) thereof, a cooperative credit structure entity is

given autonomy in all financial and internal administrative matters including making of policy relating its personnel and compensation payable to its

staff.

26. Rule 106 of the Rules of 2011 is as follows:-

106. Method of recruitment and conditions of service of the officers and employees of Co-operative societies.- The method of recruitment and conditions of

service of the officers and employees of Co-operative societies [other than Co-operative Credit Structure Entities] shall, subject to the terms of specific contract

enforceable by law and the provisions of any law for the time being in force, be as enunciated in the Appendix to this Chapter:

Provided that if any particular matter is not covered in the specific contract, the matter shall be guided by the method of recruitment and conditions of service as

indicated in the Appendix to this Chapter.

27. The West Bengal Cooperative Societies Rules, 2011 came into effect from January 18, 2011. Rule 106 of the Rule of 2011 prescribe the method

of recruitment and conditions of service of officers and employees. It specifies that, the method of recruitment and conditions of service of officers

and employees of the cooperative society other than cooperative credit structure entities shall, subject to the terms of specific contract enforceable by

law and provisions for the time being in force be as is enunciated in appendix to that chapter. The proviso thereto specifies that if any particular matter

is not covered in the specified contract, such matter be guided by the method of recruitment and conditions of service as indicated in the appendix to

the chapter.

28. Rule 106 keeps the cooperative credit structure entities out of its purview when it says “other than cooperative credit structure entities”. This

exclusion was introduced with effect from February 1, 2013. By virtue of such exclusion, the cooperative structure entities stood excluded, from the

purview of Rule 106 and by necessary corollary from Clause 19 under Appendix 5. Such being a plausible interpretation, and since, the claim of the

private respondents are founded upon Clause 19 of Appendix 5 of Rule 106, was claimed must be held to be without any foundational basis as the

appellant No.1 is outside its purview.

29. In the facts of the present case, we find that, the learned Single Judge based its decision to grant relief of leave encashment of 300 days on the

anvil of Appendix 5 Clause 19 of Rule 106 of the Rules of 2011.

30. Appendix 5 Clause 19 of the Rule 106 of the Rules of 2011 is as follows:

“19. Retirement and Retirement benefits

(1) Every employee of a Co-operative society shall retire on superannuation attaining the age of 60 years.

(2) Employees of a co-operative society shall be eligible to payment of gratuity as per the provisions of the payment of Gratuity Act, 1972 (39 of 1972).

(3) An employee of a Co-operative society who retires on superannuation or otherwise shall be eligible to receive cash equivalent of pay in respect of earned

leave standing to his credit provided that the quantum of leave encashable under this sub-section shall not exceed three hundred days.

(4) If the employee dies before superannuation, the benefits under sub-rule (2) and (3) and all other dues shall be payable to his heirs or nominees, as the case

may be.”

31. It is contended on behalf of the private respondents that, proviso to Rule 106 brings the appellant No.1 and the private respondents within the

purview of Rule 106 of the Rules of 2011.

32. With respect we are not in a position to accept such contention since the opening paragraph of Rule 106 excludes cooperative credit structure

entities from its purview. The proviso thereto does not reintroduce a cooperative credit structure entities into the scope and ambit of Rule 106 or

Appendix 5 or Clause 19 thereof.

33. Clause 19 of Appendix 5 is to be read in conjunction with Rule 106 of the Rules of 2011 of which it is a part. Since Rule 106 of the Rules of 2011

excludes a co-operative credit structure society from its purview Clause 19 of Appendix 5 cannot assist a superannuated employee of a co-operative

credit structure society to successfully claim 300 days leave encashment.

34. Martin Burn Ltd. (Supra) held that result flowing from statutory provision is never an evil. It also observes that the Court should not ignore a

provision to relieve what it considers distress resulting from its operation. A statute must be given effect to whether the Court likes it or not. Same

view was expressed in Pathapati Subba Reddy (Died) (Supra).

35. Maruti Udyog Ltd (Supra) considers the provisions of Section 25J of the Industrial Disputes Act, 1947 and the effect of the non obstante clause

therein. It also observes that beneficial statutes, may receive liberal construction but the same cannot be extended beyond the statutory scheme. It

goes on to say while construing a statute there is no role for sympathy.

36. The private respondents are therefore entitled the leave encashment as per the resolution dated June 11, 2001 of the appellant No.1. The private

respondents pleaded in their writ petition that they received payment in terms of resolution dated June 11, 2001 with regard to 180 leave encashment.

37. In such circumstances, we set aside the impugned judgment and order of the learned Single Judge dated May 15, 2024 passed in WPA 13722 of

2021.

38. MAT 1701 of 2024 is disposed of without any order as to costs.