

(1991) 04 P&H CK 0017

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 10772 of 1990

The Punjab State Federation of
Consumer's Co-operative
Wholesale Stores Ltd.

APPELLANT

Vs

Commissioner (Appeals).
Jalandhar Division and Others

RESPONDENT

Date of Decision: April 12, 1991

Acts Referred:

- Constitution of India, 1950 - Article 226
- Penal Code, 1860 (IPC) - Section 120B, 471

Citation: (1993) 1 ILR (P&H) 42

Hon'ble Judges: Jauiahar Lal Gupta, J

Bench: Single Bench

Advocate: M.S. Kang, for the Appellant; M.K. Tewari, Party-in-Person for Respondent No. 4 and Randhir Singh, AAG., for the Respondent

Final Decision: Dismissed

Judgement

J.L. Gupta, J.

The Punjab State Federation of Consumer's "Cooperative Wholesale Stores. Ltd. (hereinafter referred to as "Constofed") is a Co-operative Society registered under the Punjab Cooperative Societies Act, 1961 (hereinafter referred to as "The Act"). Aggrieved by the award at Annexure P-3 and the orders passed in appeal and revision (Annexures P-5 and P-6) it has approached this Court through the present writ petition. By the award, Respondent No, 4 who was employed as a Business Manager with the Petitioner, has been held entitled to an amount of Rs. 69,432-66 towards the arrears of salary etc. The facts and circumstances relevant for the decision of the case may be noticed.

2. Respondent No. 4 was employed as Business Manager with the Petitioner when he was placed under suspension,-vide order dated 15th June, 1976. He was served with a charge-sheet and ultimately,-vide order dated 20th November, 1981. his four increments were ordered to be stopped with cumulative effect. He was also censured and it was ordered that he will not be entitled to any allowances for the period of suspension other than what had already been paid to him. On 12th July, 1982, the post of Business Manager held by Respondent No. 4 was abolished as a measure of economy and consequently his services were terminated. It is further averred in the petition that for the acts of omission and commission committed by Respondent No. 4 a criminal case was registered against him u/s 471 and 120-B of the Indian Penal Code at Police Station, Lajpat Nagar, New Delhi. The case is stated to be still pending. After the termination of his service and dismissal of his appeal against the order of termination, Respondent No. 4 is alleged to have approached the Registrar of Cooperative Societies (hereinafter referred to as "the Registrar") for a reference of his dispute regarding the recovery of arrears of pay etc. for the period of suspension u/s 55(1)(b) of the Act. This claim was made,-vide Annexure P. 1. The Petitioner resisted the claim and filed a detailed written statement,-vide Annexure P-2. In this written statement an objection with regard to the maintainability of the arbitration proceedings is also alleged to have been raised. After hearing the parties the arbitrator awarded to Respondent No. 4 an amount of Rs. 69,432-66 which was to be paid in four equal instalments. The award was given on 6th October, 1986. The Petitioner claims to have applied for a copy on 30th October, 1986 which is alleged to be ready on 10th February, 1987. A photo copy of the award is alleged to have been received by the Petitioner from Respondent No. 4 on 20th April, 1987. The appeal was filed through his counsel by the Petitioner on 5th July, 1987. This appeal was dismissed by the Registrar on account of unexplained delay,-vide his orders dated 2nd March, 1988. The revision petition was also dismissed as no explanation had been given for filing the revision after an inordinately long delay. The orders passed on appeal and revision petition are at Annexures P-5 and P-6. Aggrieved by the award, as also the orders passed in appeal and revision the Consto-fed has approached this Court through the present petition.

3. In reply, two written statements have been filed on behalf of Respondents Nos. 1 to 3 and Respondent No. 4 respectively. On behalf of Respondents Nos. 1 to 3, it has been maintained that the Registrar was competent to entrust the case to Additional Registrar for giving an award as arbitrator and that the reference was legally maintainable. It has been further averred that the claim had been legally amended during the course of the proceedings. Respondent No. 4 in his separate written statement has pleaded that,-vide notification dated 21st March, 1978 the Government had passed an order delegating the powers of the Registrar to the Additional Registrar.

4. The order at Annexure P-3, it is stated by Respondent No. 4, is not an award by any arbitrator but an order passed by an officer exercising the powers of a

Registrar. It is further maintained that the Registrar had not appointed any arbitrator but the order" at Annexure P-3 was an order by an authority to whom the powers of the Registrar had been delegated. It has been further pointed out that on 8th July, 1986 the objection of the Petitioner regarding the maintainability of the claim of Respondent No. 4 had been rejected. No objection against that order was ever taken. Thereafter, the Petitioner participated, in the proceedings and when the final order was passed on 30th October, 1986 against the Petitioner, they were not entitled to challenge that order on the ground that the same was beyond the jurisdiction of the Additional Registrar. Various other averments made in the petition have also been controverted in the written statement filed on behalf of Respondent No. 4.

5. Mr. Kang appearing on behalf of the Petitioner has contended that the arbitration proceedings were totally without jurisdiction and beyond the provisions of Sections 55 and 56 of the Act. He has further contended that the Registrar alone was competent to decide whether the dispute in the present case was one touching the constitution of the management or the business of the society. It has also been contended that the arbitrator could not permit the Petitioner to enhance his claim and to raise it from an amount of Rs. 23,275 to Rs. 69,432-66. He has also commented upon the conduct of the Additional Registrar in opinion that the revision petition should not be filed. These contentions have been firmly controverted by Sarvshri H.S. Riar and N.K. Tiwari appearing on behalf of the Respondents.

6. A fact which deserves notice at the outset is that- vide his order dated 8th July, 1986. the Additional Registrar had clearly held that the petition filed by Respondent No. 4 was maintainable. Even though a copy of this order has not been produced on the record of this case, the fact has been mentioned in the order at Annexure P-3. Respondent No. 4 has also made a categorical averment in this behalf in his written statement. This averment has not been controverted by the Petitioner by filing any rejoinder. Consequently, I take it that,-vide order dated 8th July, 1986 the Additional Registrar had clearly held the application filed by Respondent No. 4 to be maintainable. The Petitioner did not challenge this order before any forum. If the Petitioner was aggrieved by this order, he could have proceeded to challenge it. either by way of an appeal or revision under the Act or in proceedings under Article 226 of the Constitution. This was not done. On the contrary, the proceedings before the Additional Registrar were allowed to continue. These culminated in the final order passed almost three months later, on 6th October, 1986. In such a situation. I am led to believe that the Petitioner took P. chance He decided to sit on the fence. Now, since the final order has gone against the Petitioner, a challenge has been made regarding the maintainability of the proceedings before the Additional Registrar. In the circumstances of the case, I am of the opinion that a party to a dispute who challenges the maintainability of the proceedings cannot be allowed to sit on the fence and wait for years for the final decision in the dispute. In the

meantime, other remedies which may be open to a party may become either time-barred or get unduly delayed. The conduct of the Petitioner leads me to hold that he is now estopped from challenging the maintainability of the proceedings before the Additional Registrar. While considering this matter. I cannot ignore the fact that more than four years have elapsed since the Additional Registrar had upheld the maintainability of the petition filed by Respondent No. 4. If I were to uphold the claim today as made out by the Petitioner, the Respondent may be totally without any remedy under the law. In this view of the matter, I reject the contention raised on behalf of the Petitioner that the proceedings were wholly incompetent. The ancillary contention that the Registrar alone should have decided the matter also cannot be sustained in view of the fact that, vide notification at Annexure R-1 passed on 21st March, 1978 all the powers of the Registrar had been delegated to the Additional Registrar.

7. As for the next submission regarding the competence of the Additional Registrar to permit Respondent No 4 to file the revised claim, a perusal of the order (Annexure P-3) shows that by an application, the Respondent had made a request for amending the original claim. He had filed an application revising his claim from Rs. 23,275-00 to Rs. 43,411-96. He had also raised a claim for Rs. 39,031-06 by way of interest. A copy of the revised claim was supplied to the Petitioner-federation. No objection whatsoever is stated to have been raised to the revision of the claim. This fact finds mention in the order dated 6th October, 1986. Since the Petitioner did not object to either the revision of the claim itself or to enhanced amount claimed by Respondent No. 4, I do not think it would be fair for the Petitioner to raise this objection in the writ petition for the first time. The writ Court would normally be reluctant to allow a party to raise an objection when it has not been raised before the authority or Tribunal against whose order the petition has been filed.

8. The Petitioner appears to have pursued the last remedy of appeal and revision in a very leisurely manner. The appeal against the order dated 6th October, 1986 appears to have been filed only in July 1987. There was a delay of 235 days as found by the Registrar. The authority after perusal of the evidence has found that there was no evidence to prove that there was sufficient cause for condonation of delay. Accordingly, the appeal was dismissed. Thereafter, the revision petition was filed against the order of 2nd March, 1988 on 7th March. 1990. The Commissioner, Appeals appears to have dismissed the revision in limine. It was found that no reasons have been given for explaining the delay. If the Additional Registrar who had dealt with the matter and passed the order Annexure P-3 earlier, had at a subsequent stage, opined that there was no point in wasting funds, I find no impropriety, whatsoever, in his observations. He did exactly what would have appealed to any-reasonable person. The criticism made by the counsel for the Petitioner and the contention raised in paragraph 14 of the petition is, I think wholly unwarranted.

9. I, therefore, dismiss this petition with costs. The costs shall be payable equally to Respondents No. 1 to 3 and Respondent No. 4. The costs are assessed at Rs. 2,000.