

Jagdish Prasad Harvilas Sharma Vs Jila Sahakari Kendriya Bank Maryadit and Others

Court: Madhya Pradesh High Court (Gwalior Bench)

Date of Decision: Aug. 20, 1998

Citation: (1998) 2 MPLJ 545

Hon'ble Judges: S.P. Shrivastava, J

Bench: Single Bench

Advocate: Anil Mishra, for the Appellant; No appearance, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

S.P. Srivastava, J.

Feeling aggrieved by the order passed by the Board of Revenue, the respondent No. 4, dismissing the appeal filed by the petitioner, which was

directed against the order passed by the Joint Registrar, Co-operative Societies, he has now approached this Court seeking redress praying for the

quashing of the orders passed by the Joint Registrar, Co-operative Societies as well as the order passed by the Board of Revenue, wherein the

said order has been affirmed.

I have heard the learned counsel for the petitioner. However, in spite of service of notices none has appeared on behalf of the respondent-society.

I have, however, carefully perused the record.

The facts in brief, shorn of details, and necessary for the disposal of this case lie in a narrow compass. The petitioner, who held the post of Samiti

Sewak and was in the employment of the respondent, co-operative society, was subjected to disciplinary proceedings which culminated in an

order dated 27-3-1982 dismissing him from service. This order was challenged by the petitioner in the proceedings u/s 55(2) of the M. P. Co-

operative Societies Act, for short "the Act".

The Deputy Registrar vide his order dated 2-7-1988 set aside the order dated 27-3-1982, whereunder the petitioner had been dismissed,

providing, however, that for the period elapsing between 27-3-1982 and his reporting for duty pursuant to the order passed by the Deputy

Registrar no payment of salary etc. will be payable to him on the basis of "no work no pay."

The respondent, co-operative society, challenged the aforesaid order passed by the Deputy Registrar in an appeal u/s 77 of the Act. This appeal

was heard and disposed of by the Joint Registrar, Co-operative Societies, vide its order dated 30-7-1992 whereunder allowing the appeal the

order passed by the Deputy Registrar, Co-operative Societies, dated 2-7-1988 was set aside with the result that the initial order passed by the

co-operative society dismissing the petitioner from service stood restored. The petitioner, thereafter, filed an appeal before the Board of Revenue

u/s 77(2) of the Act challenging the order passed by the Joint Registrar. The Board of Revenue, however vide the impugned order dismissed the

appeal and affirmed the order passed by the First Appellate Authority.

The learned counsel for the petitioner has strenuously urged that the First Appellate Authority while disposing of the appeal filed u/s 77(1) of the

M. P. Co-operative Societies Act stood vested with the jurisdiction which was co-extensive with the jurisdiction vesting in the authority

contemplated u/s 55(2) of the Act to decide the dispute. However, in the present case, the First Appellate Authority had reversed the order

passed by the Deputy Registrar, Co-operative Societies, without meeting the reasonings of the said authority and further had recorded only the

conclusions without giving any reasons therefor, which has rendered the said order vitiated in law.

It has further been urged that the petitioner in support of his case had asserted that he had not been supplied with the copy of the inquiry-report,

which had prejudiced him, but this aspect of the case was not at all even considered by the First Appellate Authority. The learned counsel has

further urged that the powers of the Board of Revenue while disposing of the appeal filed by the petitioner were limited. As provided for u/s 77(2)

of the Act while disposing of the second appeal the Board of Revenue could interfere only on the ground that the order appealed against was

contrary to law or that the First Appellate Authority had failed to determine some material issue in law or that there had been a substantial error or

defect in the procedure as prescribed by the Act which may have produced error or defect in the decision of the case upon merits. However, the

Board of Revenue without deciding the main issues had disposed of the second appeal acting like a First Appellate Authority and had tried to

supplement the reasons for the conclusions reached by the First Appellate Authority, which was not permissible under the law.

A perusal of the order passed by the First Appellate Authority dated 30-7-1992, a true copy of which has been filed as Annexure P-11 to the writ

petition, indicates that it only contains conclusions without recording any reasons. Further, the First Appellate Authority has not at all considered

the reasons recorded by the Deputy Registrar for the conclusions arrived at by the said authority in favour of the petitioner. The order passed by

the First Appellate Authority being an order of reversal, it was incumbent upon it to meet the reasonings recorded in the order appealed against.

But, this does not appear to have been done.

It may be emphasised that a "decision" does not mean the conclusion. It embraces within its fold the reasons which form the basis for arriving at a

conclusion. The order passed by the First Appellate Authority contained only the conclusions and nothing more. Such an order could not be

sustained. The Board of Revenue with the limited jurisdiction, which was vested in it, should not have undertaken the exercise to analyse the

evidence to determine the questions of fact which could be more appropriately done by the First Appellate Authority.

The appellate authority totally ignored the effect of non-supply of the copy of the inquiry report to the delinquent employee which though cannot

justify a mechanical setting aside of the order of punishment, yet in such a circumstance, it has to be ascertained as to whether reasonable

opportunity had been afforded to such an employee of defending himself. The question as to whether any prejudice had been caused had to be

determined. This aspect of the case was not at all considered by the First Appellate Authority.

A respondent in a statutory appeal is entitled to know what was considered by the Appellate Authority and the reasons for recording a finding

against him with an adequate disclosure of materials justifying an inference that there has been a judicial consideration of the dispute by the

authority competent in that behalf in respect of the claims made by the aggrieved party, specially when it is a case of reversal of a decision standing

in favour of such a respondent.

It must be emphasised that the necessity to disclose reasons is to enable the aggrieved party to have an opportunity to demonstrate that the reasons

which persuaded the authority to reject his case were erroneous and that giving of reasons operates as a deterrent against possible arbitrary action

by the authority invested with judicial/or quasi-judicial power. Further the requirement of giving reasons in support of the conclusions is like the

principle of audi alteram partem, a basic principle of natural justice and must be complied with in its proper spirit and mere pretence of compliance

with it cannot satisfy the requirement of law.

I am of the considered opinion that the defect in the order passed by the First Appellate Authority could not be deemed to have been cured by the

effort of the Second Appellate Authority with its limited jurisdiction to delve into the evidence and determine the questions of fact on an appraisal

of evidence which jurisdiction could not be taken to have been vested in it.

Taking into consideration the facts and circumstances brought on record, sufficient ground has been made out for interference by this Court.

In the result, this writ petition succeeds in part. The impugned orders passed by the Board of Revenue, the respondent No. 4, dated 1-2-1995, a

true copy of which has been filed as Annexure P-16 to the writ petition, as well as the order passed by the First Appellate Authority, Joint

Registrar Co-operative Societies, Respondent No. 3, dated 30-7-1992, a true copy of which has been filed as Annexure P-11 to the writ petition,

are quashed with the direction to the respondent No. 3, the First Appellate Authority to restore the appeal of the petitioner to its original number

and dispose it of afresh in accordance with law in the light of the observations made hereinabove.

Since, the matter has become quite old the said authority shall ensure that the said appeal is decided expeditiously preferably within a period not

later than four months from the production of a certified copy of this order before it.

There shall, however, be no order as to cost.