

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**Regular Second Appeal No.1784 of 1989 (O&M)
Date of decision: 13.07.2015**

The Punjab State Co-operative Supply & Marketing Federation Ltd.

.....Appellant

Versus

Kartar Chand and another

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Ranjit Singh Kalra, Advocate,
for the appellant.

Ms. Jagdeep Bains, Advocate,
for respondent No.1.

Ritu Bahri, J.

The Punjab State Co-operative Supply & Marketing Federation Ltd-defendant has come up in regular second appeal against the judgment of reversal dated 26.09.1987 passed by the Addl. District Judge, Ludhiana, setting aside the judgment and decree dated 11.11.1985 passed by the Sub Judge, Ludhiana and decreeing the suit filed by the plaintiff-respondent No.1 to the effect that the award dated 04.12.1981 passed by defendant No.1 was null & void and not binding upon the plaintiff-respondent No.1.

Kartar Chand-plaintiff (respondent No.1 herein) was an employee of defendant No.2-appellant and was posted as clerk at Ludhiana in the year 1977. There was a charge of misappropriation of funds to the tune of Rs.23,576.33 against the plaintiff. For this embezzlement, he was prosecuted, but was acquitted by the appellate Court on 20.07.1982. His

services were also terminated along with three other persons namely, S.P.

Bhatti, Accountant, S.K. Sehgal, Ex-cashier and Hari Dass, Ex.-chowkidar. They all challenged the termination order before the Labour Court, whereupon they were ordered to be reinstated. Thereafter, defendant No.2-appellant made an application before the Assistant Registrar, Co-operative Societies, Ludhiana-defendant No.1 for taking action against the plaintiff under Section 55 of the Punjab Co-operative Societies Act. Consequently, defendant No.1 in his capacity as an Arbitrator, passed an award dated 04.12.1981 for recovery of Rs.23,576.33 along with costs and interest at the rate of 13½ % per annum. The said award was challenged by the plaintiff by filing a suit.

Trial Court, after going through the evidence led by the parties, dismissed the suit. However, on appeal, the lower appellate Court decreed the suit on the ground that during arbitration proceedings, no proper service was effected upon the plaintiff and hence, the award dated 04.12.1981 was invalid. The lower appellate Court while referring to the judgments passed in **Ram Singh Vs. The Gandher Agricultural Co-operative Service Society**, 1976 PLJ 162, **Gurdit Singh & others Vs. State of Punjab**, 1974 PLR 374, **Lok Sewak Co-operative Marketing-cum-Processing Society Vs. Janga Singh**, 1974 PLJ 5, held that once the award passed by the Arbitrator was held to be invalid and without jurisdiction, under Section 82 of the Punjab Co-operative Societies Act, there was no bar to challenge the said award in the civil court. Further reference was made to decision given in **Om Parkash Vs. Dodewala Co-operative Agriculture Service Society**, 1983 (1) LLR 128.

Learned counsel for the appellant has argued that in a case of recovery, once the Arbitrator is appointed by following due procedure under

Act'), the jurisdiction of civil Court is barred under Section 82 of the Act. In support of his contentions, he has referred to the judgments passed by this Court in **Ram Parkash Vs. Assistant Registrar, Cooperative Societies, Hansi and others,** RSA No.1225 of 1986 (decided on 27.09.2011) and **Jagsir Singh Vs. Assistant Registrar, Co-operative Societies, Faridkot and others,** 2011 (3) PLR 280.

On the other hand, Ms. Jagdeep Bains, learned counsel for respondent No.1, has argued that under Section 55 of the Act, the dispute which can be referred to the Arbitrator, would be with regard to the business of the society and the same will not include the dispute regarding service condition(s) of employee of the society. In the present case, the services of the plaintiff-respondent No.1 were terminated, but pursuant to the award passed by the Labour Court, he was reinstated. Now the plaintiff has been retired and no punishment order was passed by the Co-operative Society against him. In the absence of any punishment order, recovery of the above said amount would amount to a dispute regarding service conditions of the plaintiff-respondent No.1. There was no occasion to refer the dispute to an Arbitrator under Section 55 of the Act. She has referred to the judgment passed by this Court in **Naurata Vs. State of Punjab,** 2000 (2) RCR (Civil) 635, to contend that the award in the present case was without jurisdiction and there was no bar under Section 82 of the Act to challenge the said award in a civil suit. She has further referred to the decision given by the Hon'ble Supreme Court in **Morinda Cooperative Sugar Mills Ltd. Vs. Morinda Cooperative Sugar Mills Workers Union,** 2006 (6) SCC 80 on the proposition that disputes touching the business of the society do not include the disputes relating to the service conditions of employees of the society

Sections 55 and 79 of the Act.

Learned counsel for the appellant has not disputed that before the Labour Court, a decision was taken to reinstate the plaintiff.

Facts not in dispute are that the plaintiff-respondent No.1 was an employee of the defendant-society. Upon his implication in a case of embezzlement, criminal proceedings were launched against him. However, vide judgment dated 20.07.1982 passed by the criminal Court, he was acquitted in that case. Thereafter, an enquiry was conducted against the plaintiff along with three other persons namely S.P. Bhatti, Accountant, S.K. Sehgal, Ex-cashier and Hari Dass, Ex-chowkidar and their services were terminated. However, pursuant to the order passed by the Labour Court, they were reinstated with 25% back wages. For all intents and purposes, the plaintiff was an employee of the Cooperative Society. Recovery of Rs.23,576.33 Ps. was initiated by referring the dispute to an Arbitrator.

Section

55. Disputes which may be referred to arbitration – (1)

Notwithstanding anything contained in any law for the time being in force, if any dispute touching the constitution, management or the business of a co-operative society arises-

- (a) among members, past members and persons claiming through members, past members and deceased members; or
- (b) between a member, past member or person claiming through a member, past member or deceased member and the society, its committee or any officer, agent or employee of the society or liquidator, past or present; or
- (c) between the society or its committee and past committee, any officer, agent or employee, or any past officer, agent or past employee or the nominee, heirs or legal representatives of any deceased officer, deceased agent, or deceased employee of the society; or
- (d) between the society and any other co-operative society, between a society and liquidator of another society or between the liquidator of one society and the liquidator of another society.

Such disputes shall be referred to the Registrar for the decision and no court shall have jurisdiction to entertain any suit or other proceeding in respect of such dispute.

(2) For the purpose of sub-section (1) , the following be deemed to be disputes touching the constitution, management or the business of cooperative society, namely-

(a) a claim by the society for any debt or demand due to it from a member or the nominee, heirs or legal representatives of a deceased member, whether such debt or demand be admitted or not;

(b) a claim by a society against the principal debtor where the society has recovered from the surety any amount in respect of any debt or demand due to it from the principal debtor as a result of the default of the principal debtor, whether such debt or demand is admitted or not;

(c) any dispute arising in connection with the election of any Officer of the society.

(3) if any question arises whether a dispute referred to the registrar under this section is or not a dispute touching the constitution, management or the business of a co-operative society, the decision thereon of the Registrar shall be final and shall not be called in question in any Court.

As per the judgment delivered by the Hon'ble Supreme Court in **Morinda Cooperative Sugar Mills Ltd.'s** case (supra), the dispute touching the business of the society can be referred to an Arbitrator under Section 55 of the Act. Those disputes will not include the disputes relating to the service conditions of employees of the society. Section 55 cannot be equated to a dispute relating to disciplinary action taken by the Management against a workman. In the aforesaid judgment, the Hon'ble Supreme Court has observed as under:-

“9. In *Co-operative Central Bank Ltd. and others etc. v. Additional Industrial Tribunal, Andhra Pradesh, Hyderabad and others etc.*[1969 (2) SCC 43] it was held that alteration of the conditions of the service of the workman would not be covered by the expression “touching the business of the society”. It was held *inter alia* as follows:

“Applying these tests, we have no doubt at all that the dispute covered by the first issue referred to the Industrial Tribunal in the present cases could not possibly be referred to decision to the

Registrar under Section 61 of the Act. The dispute related to alterations of a number of conditions of service of the workmen which relief could only be granted by an Industrial Tribunal dealing with an industrial dispute. The Registrar, it is clear from the provisions of the Act, could not possibly have granted the reliefs claimed under this issue because of the limitations placed on his powers in the Act itself. It is true that Section 61 by itself does not contain any clear indication that the Registrar cannot entertain a dispute relating to alteration of conditions of service of the employees of a registered society : but the meaning given to the expression “touching the business of the society”, in our opinion, makes it very doubtful whether a dispute in respect of alteration of conditions of service can be held to be covered this expression. Since the word “business” is equated with the actual trading or commercial or other similar business activity of the society, and since it has been held that it would be difficult to subscribe to the proposition that whatever the society does or is necessarily required to do for the purpose of carrying out its objects, such as laying down the conditions of service of its employees, can be said to be a part of its business, it would appear that a dispute relating to conditions of service of the workmen employed by the society cannot be held to be a dispute touching the business of the society.”

Recently, a Coordinate Bench of this Court in **Punjab State Federation of Consumer Cooperative Wholesale Stores Vs. Home Secretary, Union Territory, Civil Secretariat**, 2009 (4) SCT 770, had examined the provisions of Sections 55 and 82 of the Punjab Cooperative Societies Act, 1961 and held that the dispute of a workman employed in Cooperative Society was maintainable in the Labour Court and by virtue of Sections 55 and 82, the jurisdiction of Civil Court was not barred as these sections do not contemplate industrial disputes. It was held that the Labour Court had the jurisdiction to decide the dispute of workmen. A Division bench of this Court in **Naurata's** case (supra), has held that an award passed by an Arbitrator under Section 55 of the Act was appealable under Section 68 (h) of the Act. However, if the dispute was not within the scope of

Section 55 and the award was passed wholly without jurisdiction, the statutory bar to civil court's jurisdiction was not applicable. In that case, the parties before the Arbitrator were members of the society and the dispute was that one of the member was in possession of the land and had been forcibly dispossessed by another member. Though the dispute was between the members of the society, but the same was purely of civil nature. The dispute could not be said to be touching the constitution, management or business of the society and therefore, it was outside the purview of Section 55 of the Act and could not be referred by the Registrar to the Arbitrator for decision. The award was held to be without jurisdiction. In para 5 of the aforesaid judgment, it was observed as under:-

“5. No doubt, the petitioner and respondent No.3 are members of the society but every dispute between the members is not covered by Section 55 of the Act. Only those disputes between the members which touch the constitution, management or the business of the society can be referred to the Registrar for decision. The dispute raised in the instant case by respondent No.3 is that he was in possession of the land in dispute and that the petitioner forcibly dispossessed him. The petitioner, on the other hand, in his written statement before the Arbitrator took the stand that he was in possession of the land in dispute on the basis of a warrant of possession issued by the civil court in pursuance of a court decree. The allotment of the land in dispute was not in question and the only issue was whether respondent No.3 had been forcibly dispossessed or not. This dispute had arisen between the petitioner and respondent No.3 not as members of the society and the same was purely of a civil nature and, therefore, it was the civil court alone which could take cognizance of the same in view of the provisions of Section 9 of the Code of Civil Procedure. The dispute regarding forcible dispossession, if any, as alleged by respondent No.3 cannot be said to touch the constitution, management or the business of the society and, therefore, it was clearly outside the provisions of Section 55 of the Act and could not be referred by the Registrar to the Arbitrator for decision. In this view of the matter, we have no hesitation in holding that the impugned award is without jurisdiction and cannot be sustained.”

As per the judgments delivered by the Hon'ble Supreme Court and

the Coordinate Benches of this Court in the aforesaid judgments, the consistent view is that under Section 55 of the Act, only the disputes touching the constitution, management or business of the society can be referred to the Arbitrator. The civil disputes, service matters and disciplinary actions against the employees of the society would not fall in the domain of Section 55 for reference to the Arbitrator. In the present case, the plaintiff-respondent No.1 was an employee of the defendant-society. His services had been terminated. However, pursuant to an award/order passed by the Labour Court, he had been reinstated with 25% back wages. In criminal proceedings, he stood acquitted. The recovery proceedings would certainly fall in the category of service matters/disciplinary proceedings,. Hence, as per the law discussed above, the same would fall outside the purview of Section 55 of the Act. Even though, reference has been made under Section 55 (3) of the Act, it will not create the jurisdiction of the Arbitrator to go into the service matters, disciplinary proceedings of recovery against an employee. Thus, the award passed by the Arbitrator is not sustainable in the eyes of law.

After going through the impugned judgment passed by the lower appellate Court, no illegality, much less perversity has been found therein warranting interference by this Court.

No substantial question of law arises for consideration.

Dismissed.

13.07.2015
ajp

(RITU BAHRI)
JUDGE