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HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 1721 of 2020**

Nilesh Kumar Yadav S/o Shri Narottam Prasad, Aged About 24 Years (Ex - Peon District Cooperative Central Bank Limited, Bilaspur), R/o Chorbhatthi Kala, Patrlaya, Ganiyari, Tahsil - Takhatpur, District - Bilaspur Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh, Through The Secretary, Cooperative Department, Mahanadi Bhawan, Mantralaya, Atal Nagar, Nawa Raipur Chhattisgarh.
2. The Joint Registrar, Cooperative Societies, Raipur Division, Raipur Chhattisgarh.
3. The District - Cooperative Central Bank Limited, Bilaspur Chhattisgarh, Through Its Authorized Authority, District Cooperative Central Bank, Bilaspur Chhattisgarh.
4. The Chief Executive Officer, District - Cooperative Central Bank Limited, Bilaspur Chhattisgarh.

---- Respondents

For Petitioner : Shri Rajesh Kumar Kesharwani, Advocate.
 For State : Shri Amrito Das, Addl. A.G.
 For respondents No.3 & 4 : Shri Jitendra Shrivastava, Advocate.

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****16/03/2020**

Heard.

1. Instant petition is against the order dated 20/02/2020 passed by the Chhattisgarh State Co-operative Tribunal, Bilaspur whereby the Tribunal has affirmed the order dated 26/04/2019 passed by the Joint Registrar, Co-operative Societies.
2. The facts of this case are that the petitioner's services were terminated by

order dated 1/09/2018. The petitioner assailed such order directly before the Tribunal under Section 78 of the Co-operative Societies Act, 1960 (hereinafter referred to as 'the Act of 1960'). The Co-operative Tribunal by its order dated 26/11/2018 remitted back the case to the Joint Registrar Co-operative Societies for adjudication of the dispute. While the dispute was preferred before Joint Registrar by the petitioner it got delayed, thereby as per Section 55 (2) of the Act of 1960, 30 days time had expired therefore on that ground petition was dismissed by holding it as barred by time by Joint Registrar, Co-operative Societies.

3. Learned counsel for the petitioner would submit that there were two sets of litigants, one is the petitioner and other one is Omprakash Dubey. Both of them were terminated and had approached before the Joint Registrar, Co-operative Societies. The tribunal had dismissed the petition by order dated 20/06/2019 since initially the dispute was directly raised before the tribunal. Against such order of dismissal, one of the other litigant, Omprakash Dubey had filed a W.P.S. No.5215/2019 before this court by Annexure P-5. This court by an order dated 17/07/2019 had remitted back the case to the Joint Registrar, Co-operative Societies who was vested with the jurisdiction to decide the original lis as it should have been raised under Section 55 (2) of the Act of 1960. It is contended the petitioner instead of filing writ petition before this court as was done by Omprakash Dubey this petitioner had approached to the Joint Registrar against termination raising a dispute. In adjudication to such dispute raised the Joint Registrar dismissed the petition on the ground that it is barred by 15 days of delay. Said rejection by Joint Registrar was further was challenged before the Co-operative Tribunal, that too was dismissed on 20/02/2020 by impugned order Annexure P-1. The counsel would submit that since the issue is about the termination as such by closure of the right of the petitioner on the ground of limitation would be too technical and no enormous or gross delay had occurred on the part of the petitioner and actually he had approached the wrong forum and was not sitting idle.

It is stated considering the same the tribunal should have taken notice of the fact the order passed by this court in another similar lis of the like nature and should have remitted back the case for adjudication before the Joint Registrar, Co-operative Societies. He would further submit that the impugned order has caused gross illegality on the face of it which needs to be set aside.

4. Per contra, learned counsel for respondents No.3 & 4 vehemently opposes the argument and would submit that in any case the tribunal was not entitled to condone the delay, therefore the order is well merited and even otherwise the petitioner having chosen the wrong forum he cannot be allowed to take the advantage of his own ground.

5. Heard learned counsel for the parties.

6. Chapter VII of the Chhattisgarh Co-operative Societies Act, 1960 is captioned with a heading "Disputes and Arbitration". Dispute has been defined under Section 64 of the Act which reads as under:-

"64.Disputes-(1) Notwithstanding anything contained in any other law for the time being in force, [any dispute touching the constitution, management or business, terms and conditions of employment of a society or the liquidation of a society shall be referred to the Registrar] by any of the parties to the dispute if the parties thereto are among the following:

(a) a society, its (Board), any past [Board], any past or present officer, any past or present agent, any past or present servant or a nominee, heirs or legal representatives of any deceased agent or deceased servant of the society, or the liquidator of the society;

(b) a member, past member or a person claiming through a member, past member or deceased member of a society or of a society which is a member of the society;

(c) a person other than a member of the society who has been granted a loan by the society or with whom the society has or had business transactions and any person claiming through such a person;

(d) a surety of a member, past member or deceased member or a person other than a member who has been granted a loan by the society, whether such a surety is or is not a member of the society;

(e) any other society or the liquidator of such a society; and

(f) a creditor of a society.

(2) For the purposes of sub-section (1), a dispute shall include-

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

(ii) a claim by a surety 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 be admitted or not;

(iii) a claim by a society for any loss caused to it by a member, past member or deceased member, any officer, past officer or deceased officer, any agent, past agent or deceased agent, or any servant, past servant or deceased servant, or its [Board], past or present, whether such loss be admitted or not;

(iv) a question regarding rights, etc., including tenancy rights between a housing society and its tenants or members; and

(v) any dispute arising in connection with the election of any officer of the society or representative of the society or of composite society:

Provided that the Registrar shall not entertain any dispute under this clause during the period commencing from the announcement of the election programme till the declaration of the results]

(3) If any question arising whether a dispute referred to the Registrar is a dispute, the decision thereon of the Registrar shall be final and shall not be called in question in any Court."

7. The mechanism to resolve such dispute has been provided under the chapter. The relevant Section 65 speaks about limitation, which being relevant to

the issue reads as under:-

“65. Limitation-(1)Notwithstanding anything contained in the Indian Limitation Act, 1908 (IX of 1908), and subject to the specific provisions made in this Act, the period of limitation for referring the disputes mentioned below to the Registrar under Section 64 shall-

(a) when the dispute relates to the recovery of any sum including interest thereon due to a society by a member thereof, be six years from, the date on which such member dies or ceases to be a member of the society.

(b) when the dispute is between a society or its [Board] and any past [Board] any past or present officer, or past or present agent, or past or present servant or the nominee, heir or the legal representative of a deceased officer, deceased agent or deceased servant of the society or a member or past member or the nominee, heir or the legal representative of a deceased member and when the dispute relates to any act, or omission on the part of either party to the dispute, be six years from the date on which the act or omission with reference to which the dispute arose, took place;

(c) When the dispute is in respect of any matter touching the constitution, management or business of a society which has been ordered to be wound up under Section 69 or in respect of which a nominated [Board] or a person or persons has or have been appointed under Section 53, be six years from the date of the order issued under Section 69 and Section 53, as the case may be;

(d) when the dispute is in connection with the election of any officer of a society, be forty-five days from the date of declaration of the result of such election.]

(2) The period of limitation in the case of any other dispute except those mentioned in sub-section (1) which are required to be referred to the Registrar under Section 64 shall be regulated by the provisions of the Indian Limitation Act, 1908 (IX of 1908), as if the dispute were a suit and the Registrar a Civil Court.

(3) Notwithstanding anything contained in sub-sections (1) and (2) the Registrar may admit a dispute after the expiry of the limitation period if the applicant satisfies the Registrar that he had sufficient cause for not referring

the dispute within such period.

8. Likewise Section 66 is under the head of Settlement of dispute which reads as under:-

“66. Settlement of dispute-(1) The Registrar may, on receipt of the reference of dispute under Section 64 decide the dispute himself, or transfer it for disposal to a nominee or board of nominees to be appointed by the Registrar.

(2) When a dispute is transferred under sub-section (1) for disposal by a nominee or a board of nominees, the Registrar may at any time, for reasons to be recorded in writing, withdraw such dispute from such nominee or board of nominees and may decide the dispute himself or transfer it again to any other nominee or board of nominees appointed by him for decision.

(3) The decision of a nominee or a board of nominees to whom any dispute is transferred for decision under this section shall, for the purposes of this Act, be deemed to be the decision of the Registrar.

9. Likewise word “dispute” regarding “terms of employment working condition etc.” is covered under Section 55 (2) of the Act of 1960. For the sake of brevity Section 55(2) alongwith proviso clause of the Act is reproduced hereunder:-

“55(2) Where a dispute, including a dispute regarding terms of employment, working conditions and disciplinary action taken by a society, arises between a society and its employees, the Registrar or any officer appointed by him not below the rank of Assistant Registrar shall decide the dispute and his decision shall be binding on the society and its employees:

Provided that the Registrar or the officer referred to above shall not entertain the dispute unless presented to him within thirty days from the date of order sought to be impugned.

Provided further that in computing the period of limitation under the foregoing proviso, the time requisite for obtaining copy of the order shall be excluded.

10. Section 65 (2) takes within its sweep the applicability of the Indian Limitation

Act, 1908 and the sub-section (3) of Section 65 starts with non-obstante clause giving a power to the Registrar that he may admit a dispute even after expiry of the period of limitation if satisfactory reasons are shown to the Registrar that why the dispute could not be referred within period prescribed. Therefore Section 65 (3) gives the power to the Registrar to condone the delay on showing sufficient cause. Likewise Section 55 of the Act of 1960 which provides for Registrar's power to "determine conditions of employment" and Section 55(2) touches upon the "dispute" too which includes the dispute regarding "terms of employment", working conditions and disciplinary action taken by a society, arising between a society and its employees. Reading of this Section 55(2) would show it puts on a rider of 30 days limitation and reads that the Registrar shall be denuded of the power to entertain the dispute of like nature if it is preferred or presented after 30 days from the date of order under challenge. Therefore reading of Section 55(2) which prescribes the limitation of 30 days and Section 64 both touches upon the subject matter of decision of dispute regarding terms and condition of employment. Section 55(2) provides special provision for reference which erupts from the disciplinary action and terms of employment whereas Chapter VII the dispute also includes the terms and conditions of employment of a society. The chapter provide different period of limitation as Section 65(3) engrafts the applicability of benevolent principles contained under the Limitation Act whereby the Registrar is vested with power to condone the delay.

11. Therefore in order to condone the delay Sections 55(2) cannot be read in isolation to the power vested with the Registrar under Section 65(3) and harmonious and equitable interpretation to Section 55(2) and Section 64 read with Section 65 of the Act of 1960 has to be given. It goes without saying once the statute of Limitation Act, 1908 set into motion the statute which contains the clause to condone the delay on equitable principles cannot be side lined. When the provisions of Section 55 and Section 64 are placed against each other qua the

litigant, it projects that a person who resort to the remedy under Section 64 is better placed to place his facts to condone the delay of limitation, therefore such discriminatory interpretation of Section 55(2) qua Section 64 and 65 cannot be given effect to. More so when this court exercises the equitable jurisdiction under Article 226 of the Constitution of India the Court cannot ignore the equitable principles contained in Indian Limitation Act which has given necessary implication by virtue of Section 65(3) when the right of a person can be protected. To put it straight the projection of a proceeding which surfaces pertaining to terms and conditions of employment and brought under Section 55(2) cannot be held to be prejudicial to the person vis a vis person who refers the dispute under Section 64.

12. In the case in hand the termination of the petitioner was on 1/09/2018. Reading of the order would show that against such order of termination instead raising a dispute under Section 55 (2) of the Act of 1960 which mandate the dispute to be raised within 30 days from the date of order sought to be impugned, the petitioner directly approached to the tribunal which is constituted under section 78 and challenged the order of termination. The tribunal remitted the case back to the court of Joint Registrar, Co-operative Societies for decision. Another like nature of the order is filed in this petition as Annexure P-5 i.e. of W.P.S. No.5215/2019 passed on 17/07/2019. This order would show that on the similar back ground, Omprakash Dubey had challenged the order of tribunal before this court and this court directly remitted the case to the Joint Registrar, Co-operative Societies on the ground that hyper-technical approach cannot be allowed to sustain as it was a matter of termination, thereby benefit of Section 14 of the Limitation Act was given.

13. The petitioner's case is also with respect to termination, which has a nature of capital punishment. The petitioner also initially appears to have been approached the wrong forum against termination and challenged it before the tribunal. The tribunal thereafter by order dated 20/06/2019 remitted back the case to the Joint Registrar, Co-operative Societies, respondent No.2. The petitioner in

this case also approached the wrong forum. Initially the petitioner instead of approaching the Joint Registrar, Co-operative Societies had approached to Co-operative Tribunal Bilaspur. The Co-operative Tribunal remitted the case back to the Joint Registrar and thereafter Joint Registrar by order dated 26/04/2019 has dismissed the application on the ground the reference of dispute is delayed by 15 days. The said order when was challenged was affirmed by the tribunal. When initial order of the rejection of the Joint Registrar are examined it appears that only delay of 15 days had occurred when the dispute was raised under section 55 (2). Therefore the rejection of application by Joint Registrar in the opinion of this court do not appear to be reasonable in as much as dispute touches upon termination of the petitioner. The facts of events suggest the petitioner though has raised dispute initially was not sleeping over his right and reasonability of the time also shows that the petitioner was agile enough to agitate his claim against the termination.

14. In a result, Annexure P-1 dated 20/02/2020 is set aside. The matter is remitted back to the Registrar Co-operative Societies to decide the case on its own merits as the delay stands condoned. The petitioner shall appear before the Sub Registrar on 21st July, 2020.

15. Accordingly, the petition stands disposed of.

Sd/-
(Goutam Bhaduri)
Judge