

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No.4484 of 2010**

P.R. Jain (dead) through LR's

(1) Smt.Ganeshiya Bai, Wife of Late P.R. Jain, aged about 64 years, R/o. Village – Bhodiya, Tahsil & Thana-Bhanupratappur, District-Kanker (CG)

(2) Indal Ram Jain, S/o Late P.R. Jain, aged about 37 years, R/o. Village – Bhodiya, Tahsil & Thana-Bhanupratappur, District-Kanker (CG)

----- LR's of the Petitioner

Versus

Jila Sahakari Kendriya Bank Maryadit, Jagdalpur, District Bastar (CG) Through the Chief Executive Officer, Jila Sahakari Kendriya Officer, Jila Sahakari Kendriya Bank Maryadit, Jagdalpur, District Bastar (CG)

----- Respondent

For LR's Petitioner	: Mr.Somkant Verma, Advocate
For Respondent	: Mr.Prafull Bharat, Senior Advocate with Mr.Keshav Dewangan, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

9.8.2021

- 1.Proceedings of this matter has been taken-up through video conferencing.
- 2.The petitioner herein (died during the pendency of this writ petition and his legal representatives have been brought on record) calls in question legality, validity and correctness of the impugned order dated 5.5.2009 (Annexure P-1) by which the Additional Registrar, Cooperative Societies, Chhattisgarh has

set-aside the order passed by the Joint Registrar, Cooperative Societies dated 28.11.2008 affirming the order of the Deputy Registrar, Cooperative Societies dated 26.2.1991.

3. The original petitioner was Samiti Sevak in Jila Sahakari Kendriya Bank Maryadit, Jagdalpur, he was placed under suspension on 18.9.69 for causing loss to the bank and making embezzlement by fabricating documents, for which he was also prosecuted by criminal Court for offences under Sections 409 and 467 of the IPC, but he was acquitted by the jurisdictional criminal Court on 12.9.74. Thereafter, on 31.3.76 the petitioner raised co-operative dispute under Section 64 of the Madhya Pradesh Co-operative Societies Act, 1960 (hereinafter called as 'Act of 1960') to the then Registrar, Cooperative Societies, Bhopal. The Registrar by order dated 16.10.76 converted the said co-operative dispute in a proceedings under Section 55(2) of the Act of 1960 and referred the matter to the Deputy Registrar, Cooperative Societies, Kanker for revocation of suspension and arrears of salary etc. The Deputy Registrar, Cooperative Societies, Kanker by order dated 26.2.91 (Annexure P-2) revoked the suspension of the petitioner and directed for reinstated with all consequential service benefits,

which the respondent-Bank challenged by way of first appeal under Section 77/78 of the Act of 1960 and also took a specific plea that application under Section 55(2) of the Act of 1960 was barred by limitation. The Joint Registrar, Cooperative Societies/First Appellate Authority by its order dated 28.11.2008 (Annexure P-3) dismissed the appeal preferred by the respondent-Bank. Thereafter, second appeal was preferred against that order by the respondent-Bank before the Registrar, Cooperative Societies. The Additional Registrar, Cooperative Societies by the impugned order dated 5.5.2009 (Annexure P-1) set-aside the orders passed by the Joint Registrar, Cooperative Societies on 28.11.2008 and the Deputy Registrar, Cooperative Societies on 26.2.1991 and dismissed the original application dated 31.3.1976 filed by the original petitioner holding that application under Section 55(2) of the Act of 1960 was barred by limitation as it could have been preferred within thirty days from the date of suspension dated 18.9.69, however, directed for payment of subsistence allowance, if any.

4. The petitioner has called in question legality, validity and correctness of the order dated 5.5.2009 passed by the Additional Registrar, Cooperative Societies, Chhattisgarh granting the appeal preferred

by the respondent-Bank stating inter-alia that the Additional Registrar has committed grave legal error in allowing the appeal and rejecting his application as the petitioner's application under Section 64 of the Act of 1960 as barred by limitation, which was not barred by proviso to Section 55(2) of the Act of 1960, as such, the writ petition be allowed and the order of the Additional Registrar, Cooperative Societies, Chhattisgarh be set-aside and that of the Deputy Registrar as confirmed by the Joint Registrar be restored.

5. Return has been filed by the respondent-Bank justifying the order passed by the Additional Registrar, Cooperative Societies pleading that the writ petition has no merits and deserves to be dismissed.

6. Mr. Somkant Verma, learned counsel for the petitioner, would submit that the Additional Registrar, Cooperative Societies has committed grave legal error in entertaining the appeal and setting aside the orders passed by the Joint Registrar, Cooperative Societies confirming the order of the Deputy Registrar, Cooperative Societies, as such, no order of termination has been passed against the petitioner and the petitioner has been illegally deprived of by

all service benefits which he was otherwise entitled and plea of limitation has not expressly taken by the respondent-Bank before the first appellate authority. Even otherwise, the application was within a period of limitation so prescribed, therefore, the impugned order deserves to be set-aside.

7. On the other hand, Mr. Prafull Bharat, learned Senior Counsel with Mr. Keshav Dewangan, learned counsel for the respondent, would submit that though the petitioner raised co-operative dispute under Section 64 of the Act of 1960, but it was converted by the then Registrar, Cooperative Societies, Bhopal by order dated 16.10.76 as dispute under Section 55(2) of the Act of 1960 and referred to the Deputy Registrar, Cooperative Societies, Kanker and order dated 16.10.76 converting the dispute under Section 64 of the Act of 1960 to proceedings under Section 55(2) of the Act of 1960 was never challenged by the petitioner and as such, that order dated 16.10.76 has become final. An application under Section 55(2) of the Act of 1960, limitation of thirty days has been prescribed by first proviso to Section 55(2) of the Act of 1960. Admittedly, the petitioner was placed under suspension on 18.6.69 and dispute was raised on 31.1.76, as such, it was hopelessly barred by limitation, which has

rightly been considered by the Additional Registrar, Cooperative Societies and his claim has rightly been rejected as barred by limitation. To bolster his submission, he would rely upon the judgment of the Supreme Court in the matter of **Noharlal Verma v. District Cooperative Central Bank Limited, Jagdalpur**¹.

8. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and also went through the records with utmost circumspection.

9. The petitioner was in service as Samiti Sevak in Jila Sahakari Kendriya Bank Maryadit, Jagdalpur, but he was placed under suspension on 18.9.69 on account of registration of criminal case and consequent pending criminal trial for offences under Sections 409 and 467 of the IPC, which was ultimately decided and the petitioner was acquitted by order dated 12.9.1974 (Annexure P-4) and thereafter he raised a co-operative dispute on 31.3.76 under Section 64 of the Act of 1960 before the Registrar, Cooperative Societies, Bhopal, which the Registrar, Cooperative Societies did not consider it proper to take-up under Section 64 of the Act of 1960 and converted it in a proceeding under Section 55(2) of the Act of 1960 and remitted to the

1 (2008) 14 SCC 445

Deputy Registrar, Cooperative Societies, Kanker for hearing and disposal in accordance with law. The Deputy Registrar, Cooperative Societies, Kanker by its order dated 26.2.91 allowed the application and directed for treating the petitioner as reinstated and also directed for payment of all consequential service benefits from the date of suspension. Feeling aggrieved against the order of the Deputy Registrar, the respondent-Bank preferred an appeal under Section 77/78 of the Act of 1960 before the Joint Registrar, in which the respondent-Bank has taken a specific plea and also raised an argument duly recorded in the impugned order that application under Section 55(2) of the Act of 1960 was barred by limitation and therefore, dispute could not have been entertained by the Deputy Registrar, but anyhow the question of limitation was not considered by the Joint Registrar/First Appellate Authority and dismissed the appeal. Being aggrieved against the order of the Joint Registrar, second appeal has been preferred by the respondent-Bank before the Registrar, Cooperative Societies. The Additional Registrar, Cooperative Societies has taken cognizance of the plea with regard to period of limitation and held that the application under Section 55(2) of the Act of 1960 preferred by

the original petitioner was barred by limitation and consequently, set-aside the order passed by the Joint Registrar affirming the order of the Deputy Registrar.

10. The question would be whether the Additional Registrar, Cooperative Societies/Second Appellate Authority is justified in granting the appeal holding the application under Section 55(2) of the Act of 1960 as barred by limitation.

11. Section 55 of the Act of 1960 empowers the Registrar to determine conditions of employment in societies which states as under:-

"55. Registrar's power to determine conditions of employment in societies.- (1) The Registrar may, from time to time, frame rules governing the terms and conditions of employment in a society or class of societies and the society or class of societies to which such terms and conditions of employment are applicable shall comply with the order that may be issued by the Registrar in this behalf.

(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."

12. The aforesaid provision clearly provides that when a dispute is raised with regard to 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. First proviso to Section 55(2) of the Act of 1960 further mandates 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.

13. The Supreme Court in the matter of Noharlal Verma (supra) has considered the proviso to Section 55(2) of the Act of 1960 and held that application has to be filed within thirty days from the date of such order or action. It was observed as under:-

"21. The first proviso to sub-section (2) of the said section prohibits the Registrar from entertaining the dispute unless such dispute is presented to him within thirty days from the date of the order impugned. The second proviso declares that in computing the period of limitation, the time requisite for obtaining copy of the order would be excluded. It is thus clear that if an employee, aggrieved by any decision taken by the society intends to

approach the Registrar, he must invoke provisions of Section 55 of the Act by filing an application within thirty days from the date of such order or action."

Their Lordships further considered in Noharlal Verma (supra) that limitation goes to the root of the matter. If a suit, appeal or application is barred by limitation, a court or an adjudicating authority has no jurisdiction, power or authority to entertain such suit, appeal or application and to decide it on merits and relied upon Section 3 of the Limitation Act, 1963 and held that the Registrar has to be approached under Section 55(2) of the Act by an aggrieved party within a period of thirty days and there is no provision analogous to Section 5 of the Limitation Act, 1963 for condonation of delay. It was observed by their Lordships as under:-

"33. Sub-section (1) of Section 3 of the Limitation Act, 1963 reads as under:

(3) Bar of limitation.--(1) Subject to the provisions contained in Sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence. (emphasis supplied)

Bare reading of the aforesaid provision leaves no room for doubt that if a suit is instituted, appeal is preferred or application is made after the prescribed period, it has to be dismissed even though no such plea has been raised or defence has been set up. In other words, even in absence of such plea by the

defendant, respondent or opponent, the court or authority must dismiss such suit, appeal or application, if it is satisfied that the suit, appeal or application is barred by limitation.

34. As stated earlier, Section 55 allows an aggrieved party to approach the Registrar within a period of thirty days. There is no provision analogous to Section 5 of the Limitation act, 1963 allowing the Registrar to condone delay if "sufficient cause" is shown. In view of this fact, in our opinion, the contention of the learned counsel for the Bank is well founded that the application submitted by the appellant was barred by time. "

- 14.** Reverting to the facts of the present case in light of principle of law laid down by the Supreme Court in Noharlal Verma (supra), it is quite vivid that first proviso to Section 55(2) of the Act of 1960 is mandatory and application under Section 55(2) of the Act of 1960 has to be preferred within thirty days from the date of order sought to be impugned and only the time requisite for obtaining copy of the order has to be excluded. In the instant case, admittedly, the petitioner was placed under suspension on 18.9.69, against which, he raised a co-operative dispute on 31.3.76 i.e., more than six years, which the Registrar, Cooperative Societies treated it under Section 55(2) of the Act of 1960 by order dated 16.10.76, which has become final in absence of challenge to that order and therefore, dispute raised was hopelessly barred by limitation as thirty days

period is provided by first proviso to Section 55(2) of the Act of 1960. Since there is no provision for condonation of delay analogous to Section 5 of the Limitation Act, 1963 by showing sufficient cause, the second appellate authority is justified in holding that dispute raised by the petitioner was barred by first proviso to Section 55(2) of the Act of 1960, which is strictly in accordance with law and it is neither perverse nor contrary to record. I do not find any merit in this writ petition.

15. Accordingly, the writ petition being without substance is liable to be and is hereby dismissed. However, as directed by the Additional Registrar, Cooperative Societies, subsistence allowance if already not paid, it be paid to legal representatives of the petitioner within 30 days from today. No order as to cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-