

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

LETTERS PATENT APPEAL NO. 594/2010 IN WRIT PETITION NO.2244/2010 (D)

Bhiwapur Taluka Shetki Sahakari Kharedi
Vikri Samiti Limited, Bhiwapur, Tq. Bhiwapur,
Distt. Nagpur.

APPELLANT

.....VERSUS.....

1. Abdul Salam Abdul Hafiz Sheikh,
Aged about 50 years, R/o Gurudeo Ward,
Bhiwapur, Tq. Bhiwapur, Distt. Nagpur.
2. Asstt. Registrar, Co-operative Societies,
Umred, Tq. Umred, Distt. Nagpur.

RESPONDENTS

Shri V.D. Raut, counsel for the appellant.
Shri H.A. Khedikar, Advocate with Shri D.V. Chauhan, counsel for the
respondent no.1.

CORAM : A. S. CHANDURKAR AND G.A. SANAP, JJ.

DATE : 18TH AUGUST, 2021.

ORAL JUDGMENT (PER : A.S. CHANDURKAR, J.)

By this appeal, challenge is raised to the judgment of the learned Single Judge dated 20.09.2010 in Writ Petition No.2244 of 2010. By that judgment the challenge raised by the appellant to the order dated 14.02.2010 passed by the Assistant Registrar, Co-operative Societies, Umrer has been negatived.

2. Facts in brief are that it is the case of the respondent no.1 that he was engaged as a Manager by the appellant-Society. During the course of employment, the Society held an enquiry in view of the conduct of the respondent no.1 and he came to be suspended by resolution dated

09.08.2000. The respondent no.1 filed dispute before the Co-operative Court under Section 91 of the Maharashtra Co-operative Societies Act, 1960 (for short, 'the Act of 1960') challenging that order of suspension. The Co-operative Court refused to grant any interim relief and hence the respondent no.1 preferred a miscellaneous appeal wherein exparte order of stay was granted. The Society therefore approached this Court in Writ Petition No.3112 of 2000 and on 08.09.2000 this Court directed the Appellate Court to decide the appeal expeditiously. In the meanwhile on 27.12.2000 the Enquiry Officer submitted the enquiry report and accepting the same the Society on 11.01.2001 proceeded to dismiss the respondent no.1 from service.

3. The respondent no.1 on the basis of the bye-laws of the Society and especially Clause 9 thereof proceeded to file an appeal before the Assistant Registrar, Co-operative Societies, Umrer challenging the order of dismissal. The Assistant Registrar by his order dated 14.02.2010 recorded a finding that the enquiry held against the respondent no.1 was contrary to the principles of natural justice and that the respondent no.1 did not have adequate opportunity to defend himself. On that count, the appeal filed by the respondent no.1 was allowed and the order of termination dated 11.01.2001 was set aside. Consequently the services of the respondent no.1 were directed to be reinstated. This order was

challenged by the Society in Writ Petition No.2244 of 2010 and by the impugned judgment the learned Single Judge was pleased to dismiss that writ petition.

Hence, the present appeal.

4. Shri V.D. Raut, learned counsel for the appellant submitted that the Assistant Registrar committed an error of jurisdiction in directing reinstatement of the respondent no.1. According to him, under the Act of 1960 there was no jurisdiction either with the Co-operative Court or with any of the Authorities under the said Act to direct reinstatement of the services of an employee who has been terminated from service. The only relief that could be granted would be grant of damages or compensation for wrongful termination of services and it was only the Civil Court which was competent to do so. In that regard he referred to the decision in *Maharashtra State Co-operative Housing Finance Corporation Ltd. Versus Prabhakar Sitaram Bhadange* [2017 (6) Mh.L.J. 365 (SC)]. Without prejudice to the aforesaid it was submitted that since it was the case of the respondent no.1 that he was employed as a Manager he was not in a position to file an appeal under Clause 9 of the bye-laws. That provision was applicable only to the employees of the Society and not to persons holding managerial post. He submitted that these contentions were raised before the learned Single Judge but the same were not

considered for no justifiable reason. He further submitted that despite the fact that the respondent had attained the age of superannuation in April-2012 he was reinstated in service in view of the interim orders passed on 25.02.2013. He discharged duties till April-2016 and in these facts no further relief could be granted to the respondent no.1. The learned counsel also referred to the following judgments in support of his contentions:-

- a. *Executive Committee of Vaish Degree College, Shamli & Others Versus Lakshmi Narain & Others* [AIR 1976 SC 888].
- b. *State Bank of Patiala Versus S.K. Sharma* [(1996) 3 SCC 364].
- c. *Chairman and MD United Commercial Bank & Others Versus P.C. Kakkar* [(2003) 4 SCC 364].
- d. *Damoh Panna Sagar Rural Regional Bank & Others Versus Munna Lal Jain* [2005 I CLR 821].
- e. *State of U.P. Versus Sheo Shanker Lal Srivastava & Others* [(2006) 3 SCC 276].
- f. *Hariram Tukaramji Ambulkar & Others Versus Bhatkuli Taluka Sahakari Shetki Kharedi Vikri Sanstha Ltd., Amravati & Another* [2007(2) Mh.L.J. 693].
- g. *Kishore Narayanrao Bomble Versus Bank of Maharashtra, Pune & Others* [2009 (6) Mh.L.J. 997]

5. On the other hand Shri H.A. Khedikar, learned counsel for the respondent no.1 supported the impugned order. According to him since it was found that the enquiry proceedings were vitiated the Assistant Registrar was justified in directing reinstatement of the services of the respondent. Grave prejudice had been caused to the respondent no.1 by holding an enquiry in an illegal manner. The respondent no.1 had been kept away from service in a manner not in accordance with law and the Assistant Registrar who was duly empowered under Bye-Law 9 to entertain the appeal had directed reinstatement of his service. Once it was found that the enquiry was vitiated as a natural consequence the respondent no.1 was entitled to be reinstated. He further submitted that the respondent no.1 approached the Assistant Registrar in view of the bye-laws of the Society itself and hence it was not open for the Society to now contend that the Assistant Registrar had no jurisdiction in the matter. The order passed by the Assistant Registrar and thereafter the learned Single Judge met the ends of justice and hence no interference in the same is called for. He thus submitted that the appeal was liable to be dismissed.

6. We have heard the learned counsel for the parties at length and we have perused the material placed on record. We have also given due consideration to the rival submissions of the parties. It is undisputed

that the respondent no.1 who was working as Manager with the appellant-Society was dismissed from service on 11.01.2001 after holding an enquiry. The respondent no.1 by relying upon bye-law no.9 of the Society filed a departmental appeal before the Assistant Registrar, Co-operative Societies, Umrer. That appeal was initially allowed on 17.03.2001 and the Society challenged that order by filing Writ Petition No.2122 of 2001. The learned Single Judge by the judgment dated 07.12.2010 partly allowed that writ petition and set aside the order passed by the Assistant Registrar, Co-operative Societies, Umrer on the ground that the entire evidence on record was not considered. The proceedings were again remanded for fresh adjudication. Thereafter on 14.02.2010 the Assistant Registrar reconsidered the appeal and allowed the same by holding that the order of dismissal dated 11.01.2001 was contrary to law and that the enquiry proceedings were not held by following the procedure prescribed. The services of the respondent no.1 were directed to be reinstated. This order was then challenged by the Society in Writ Petition No.2244 of 2010 and the learned Single Judge on 20.09.2010 dismissed that writ petition.

7. The effect of the order by the Assistant Registrar on 14.02.2010 was of quashing the order of dismissal dated 11.01.2001 passed by the Society and pursuant to the enquiry held. It has been

found that the enquiry was conducted in a manner not provided by law. The learned Single Judge has considered this aspect and has recorded a finding in paragraph 6 of the impugned judgment that the enquiry conducted was in breach of the principles of natural justice and the evidence recorded was liable to be discarded. Though the learned counsel for the appellant sought to urge that these findings should be revisited by relying upon the decisions in *S.K. Sharma*, *P.C. Kakkar*, *Munna Lal Jain* and *Sheo Shanker Lal Srivastava & Others* (supra), we are not inclined to re-examine that contention. The reasons assigned in paragraph 6 of the judgment of the learned Single Judge suffice the purpose and we are in agreement with that finding.

8. On the question whether the Assistant Registrar could have directed reinstatement of the services of the respondent no.1 after setting aside the order of dismissal it was submitted by relying upon the decisions in *Executive Committee of Vaish Degree College Shamli* and *Prabhakar Sitaram Bhadange* (supra) that such relief of reinstatement could not have been granted in favour of the respondent no.1. This contention is liable to be accepted for the reason that it is a settled legal position in the light of the aforesaid two decisions that a contract of personal service cannot be specifically enforced especially in proceedings under the Act of 1960. A service dispute between employees of a Co-

operative Society and its Management would not fall within the provisions of Section 91 of the Act of 1960 and hence would not be a dispute that could be entertained by the Co-operative Court. For the same reason the Assistant Registrar who is an Authority under the Act of 1960 has no jurisdiction to direct reinstatement of the services of the respondent no.1. The observations of the learned Single Judge in that regard in *Hariram Tukaramji Ambulkar & Others* (supra) are also on the same lines. In that view of the matter the order passed by the Assistant Registrar on 14.02.2010 to the extent it directs the Society to reinstate the respondent no.1 on the post of Manager is a direction without jurisdiction. To that extent the order passed is unsustainable.

9. In the light of aforesaid discussion we find that the respondent no.1 was dismissed from service in a manner contrary to law. This act of termination has been found to be illegal by the Assistant Registrar in appeal which finding has been affirmed by the learned Single Judge in Writ Petition No.2244 of 2010. That finding stands affirmed. However the consequential relief of reinstatement cannot be granted to the respondent no.1 as there is no jurisdiction to do so under the Act of 1960. To that extent the orders passed by the Assistant Registrar on 14.02.2010 as affirmed by the learned Single Judge are liable to be set aside. It would be open for the respondent no.1 to seek damages on

account of illegal termination of his services which he can claim by approaching the Civil Court, if so advised.

10. Hence for aforesaid reasons the order passed by the Assistant Registrar, Co-operative Societies, Umrer on 14.02.2010 to the extent the order of dismissal dated 11.01.2001 has been set aside stands confirmed. The direction to reinstate the services of the respondent no.1 on the post of Manager is set aside. It is open for the respondent no.1 to seek damages for his illegal termination from services. The same may be claimed in accordance with law by approaching the Civil Court if so advised. The period spent in prosecuting Writ Petition No.2244 of 2010 and the present letters patent appeal is liable to be excluded in case the respondent no.1 approaches the Civil Court for redressal of his grievance.

11. The letters patent appeal is allowed in aforesaid terms. The parties to bear their own costs.

(G.A. SANAP, J.)

(A.S. CHANDURKAR, J.)