

04.09.2024.
Item No. 83.
Court No. 13
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M.A.T. No. 2125 of 2023
With
I.A. No. CAN 1 of 2023

Nipu Das & Ors.
Versus
Union of India & Ors.

Mr. Anirban Kar,
Mr. Munshi Ashiq Elahi.

...For the appellants.

Mr. Alok Kumar Banerjee,
Mr. Arunabha Sarkar.

...For the respondent no.2.

Mrs. Chandreyi Alam,
Mr. Loknath Chatterjee.

...For the UOI.

1. The instant appeal is directed against judgment dated 12th September, 2023 passed by a Single Bench of this Court in WPA 7963 of 2021.

2. By the said judgment, the writ petitioners/appellants were directed to seek remedy against their dismissal from service before the State Industrial Tribunal at Kolkata.

3. The facts relevant to the instant case are that the canteens for non-officer cadre in the Reserve Bank of India (RBI), until the year 2012, were run by Co-operative Societies registered under the relevant State Co-operative statutes, across the country.

4. The canteens, of which the appellants were the employees, was run by a Co-operative Society registered under the statute which was replaced by the West Bengal Co-operative Societies Act, 2016. The

canteen is stated to have existed from the year 1965. The canteen catered to the non-officer employees in the RBI located at Netaji Subhas road, in Central Kolkata.

5. The appellants, in addition to being employees of the canteen and Members of the Cooperative Society, were also President, Secretary and other office bearers of the canteen workers' Union at the RBI at Kolkata.

6. For alleged acts and omissions of some seriousness including physical assault, use of abusive language and gherao against the Chairman of the Co-operative Society, the appellants were suspended by the Co-operative Society, their employer.

7. At the relevant point of time, the employees raised a demand before the Society for parity of pay with the employees of Canteens for the officer employees of the RBI. The matter came to be referred for conciliation to the Assistant Labour Commissioner II (Central) at Kolkata under the Industrial Disputes Act, 1947.

8. The stand of the RBI before the Assistant Labour Commissioner II (Central) was that the appellants are employees of the Co-operative Society and not that of the Bank. Hence they could not maintain any claim against the Bank. Several issues in answer to the contention of the Bank were raised by the Union of the Co-operative Society.

9. There jurisdiction of the ALC-II (Central) to entertain conciliation proceedings of the aforesaid

between the employees of the Co-operative Society and its workmen is questionable. Admittedly the employer, cooperative Society was registered under the West Bengal Co-operative Societies Act.

10. The ALC-II (Central) in its wisdom by communication dated 12th July, 2003 by recording failure of the conciliation proceedings, inter alia requested the Co-operative Society to follow the mandate of Section 33 of the Act of 1947.

11. Such direction is also seriously questionable since it could not bind the the Reserve Bank of India who is not the employer. If it were against the Co-operative Society which was the admittedly employer on record, the proceedings themselves before the ALC-II (Central) were not maintainable. Only the ALC (State) could have entertained such conciliation proceedings.

12. Be that as it may, the Co-operative Society proceeded departmentally against the appellants to conduct a disciplinary proceeding after issuance of charge sheet and dismissed the appellants from service sometime on 18th March, 2005. The said dispute was a deemed industrial dispute under Section 3A of the Act of 1947 against the cooperative society employer.

13. At the relevant point of time, another set of proceedings were taking place before the authorities under the Central Government Industrial Tribunal,

(CGIT) at Mumbai. The said proceedings were initiated at the instance of all the State Co-operative Society Canteens and their employees in India on one hand and the Reserve Bank of India on the other hand. The employees of the Co-operative Society were claiming that they were, in fact, employees of the Reserve Bank of India and were entitle to absorbed as such.

14. The said proceeding had its genesis in an order of the Hon'ble Supreme Court dated 15th July, 1996 in the case of ***Employers in relation to Management of Reserve Bank of India, Appellant Vs. Their Workmen, Respondent*** reported in ***AIR 1996 SC 1241***, where the Hon'ble Supreme Court carved out an exception to the decision rendered in the case of ***M.M.R. Khan Vs. Union of India*** reported in ***AIR 1990 SC 937***. The Hon'ble Supreme Court left an issue open to the employees of the Co-operative Societies running canteens for non-officer employees of RBI to seek independent adjudication of their status against the RBI on other considerations.

15. A reference was taken up on 24th August, 1998 by the CGIT at Mumbai and was pending consideration. The said reference, however, ended in a Settlement under the Act of 1947, between the RBI and all Co-operative Societies running canteens for non-officer employees. By reason of the settlement, employees of the canteens run by Cooperative Societies were absorbed into the Reserve Bank of India

as direct employees of the bank on the terms and conditions mentioned therein.

16. The issue of dismissal of the appellants, was also initially referred to the CGIT at Mumbai. The case of the appellants was separate from that of the other reference pending before the Mumbai CGIT. The appellants expressing hardship to travel to Mumbai to defend their case, got their specific industrial dispute against the order of dismissal by the Co-operative Society transferred to Kolkata albeit still under the CGIT.

17. This Court is of the view that the two disputes could not have been interlinked. The employer of the appellants was the Co-operative Society registered under the appropriate statute of the State of West Bengal. The appellants could have raised an industrial dispute under Section 3A of the Act only before the State Industrial Tribunal in West Bengal.

18. Notwithstanding the aforesaid, the CGIT at Kolkata went on to adjudicate the reference on the propriety of the dismissal from service, of the appellants by the Co-operative Society and the reference was numbered 12 of 2010 before the CGIT, Kolkata.

19. By an award dated 30th September, 2019, the CGIT, Kolkata held that it had no jurisdiction to entertain a dispute between the appellants and their

employer, the Co-operative Society running the canteen at Kolkata.

20. Despite the above, the Tribunal chose to enter into the merits of the disciplinary proceedings conducted by the Co-operative Society against the appellants and upheld the same.

21. Mr. Anirban Kar, learned counsel for the petitioners/appellants has eloquently argued at length before this Court for two days. He has tried to impress upon this Court as he had done before the Single Bench that the CGIT definitely had jurisdiction to entertain the dispute between his clients and the Co-operative Society for the following reasons,

(a) As on the date of suspension and commencement of the departmental proceedings by the Co-operative Society against the appellants, a reference was already pending in Mumbai between the Cooperative Society and the Reserve Bank of India with regard to the status, inter alia, the petitioner.

(b) The appellants being part of 52 employees of the Co-operative Society's canteen at Kolkata must, therefore, be deemed as parties to the reference pending before the CGIT at Mumbai.

(c) The ALC-II (Central), Kolkata in its order dated 12th July, 2007 while recording failure of the conciliation proceedings had requested the Co-operative Society and the bank to follow the

mandate under Section 33 of the Industrial Disputes Act, 1947. The petitioners were therefore protected employees under Section 33 of the Act of 1947.

(d) The issue of the appellants' employment with the Co-operative Society at Kolkata must, therefore, be directly and or indirectly understood to mean part of the reference before the CGIT at Mumbai. Such reference ended in a settlement which resulted in all employees/members of the Co-operative Society across India being absorbed as employees of the Reserve Bank of India.

(e) The Co-operative Society in terms of the affidavit-in-opposition filed by the Reserve Bank of India in the writ petition before the Court below as ceased to function since after the settlement in question.

22. This Court has carefully heard the arguments advanced by the learned counsel for the appellants and the learned counsel for the Reserve Bank of India.

23. The contentions of Mr. Kar are not sustainable in fact or law. As already indicated hereinabove, the illegality in the linkup between the appellants and the Co-operative Society with that of the Cooperative Society and the Reserve Bank of India was committed initially by the Central Government both at Kolkata and Mumbai. The main reference at Mumbai was

between all Canteen Cooperative Societies and the RBI with regard to absorption of the former in the latter.

24. In fact, the illegality commenced when the ALC-II (Central) at Kolkata had entertained an argument that the appellants' dismissal could be mixed with the bargain between the employees of the Co-operative Society and the Reserve Bank of India at Kolkata seeking parity of pay between the officers' canteen and the workmen's canteen. The two issues are separate and distinct and could not have been interlinked.

25. The ALC II (Central) in his report dated 12th July, 2003, therefore, had no jurisdiction to entertain or include within the scope of the conciliation proceeding or assume that the employee-employer dispute between the appellants and the Co-operative Society could have been part and parcel or portion of the dispute between the Co-operative Society and the Reserve Bank of India at Kolkata.

26. It is from here that the propriety and illegality commenced, which finally ended in the first part of the Award of the CGIT Kolkata in its order dated 30th September, 2019 in reference to Case No. 12 of 2010. Having so held that it had no jurisdiction to enter into the dispute between the appellants and the Co-operative Society, the CGIT had absolutely no business whatsoever to enter into the merits, propriety of the departmental proceedings between the appellants and their employer, the Co-operative Society.

27. While it is true that since after the settlement at the CGIT, Mumbai, the canteen of the Co-operative Society may have ceased to function, as to whether the Co-operative Society at Kolkata has been wound up in terms of the provisions of the West Bengal Co-operative Societies Act, 2016 is not known.

28. Be that as it may, a proceeding between the employee and a Co-operative Society relating to dismissal can be entertained even during the pendency of winding up of a Co-operative Society and even thereafter.

29. In those circumstances, this Court is in complete agreement with the findings of the Single Bench that the appellants ought to approach the State Industrial Tribunal at Kolkata to seek remedy and redressal against the order of dismissal from service. In addition thereto the appellants also have a remedy under the WBCS Act, 2016 and the Rules framed thereunder.

30. The observations of the CGIT dated 30th September, 2019 insofar as the propriety of the appellants' dismissal shall stand quashed and set aside. The observations as regards the absence of jurisdiction of the CGIT to entertain a dispute between the appellants and the Co-operative Society are upheld. The order of the Single Bench is upheld.

31. MAT 2125 of 2023 fails and is hereby dismissed.

32. In view of the above, CAN 1 of 20213 shall also stand dismissed.

33. There shall be no order as to costs.

34. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)