IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.22251 of 2011
Date of Decision: 19.4.2017

The Boothgarh Cooperative Agricultural
Service Society Ltd. ... Petitioner

Versus

The Presiding Officer Industrial Tribunal,
Ludhiana and another ... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. M.S. Bedi, Advocate,
for the petitioner.

Mr. I.P.S. Doabia, Advocate,
for respondent No.2.

RAJIV NARAIN RAINA, J.

1. The 2nd respondent had before him two options. One, to challenge the resolutions dated April 24, 1999 and May 24, 1999 by way of notice for retrenchment on closure of consumer cell of the petitioner society of which he was in charge but rendered surplus, by electing remedy of appeal provided by Rule 15 (1) of the Punjab State Cooperative Agricultural Service Societies Service Rules, 1997 ("1997 Rules"): or, Two; to apply for the remedy provided by Section 2A read with Section 10 (1) (c) of the Industrial Disputes Act, 1947 ("ID Act") apart from any other remedy available in law. Once he chose an appeal Rule 15 (1) read with Sections 55 & 56 of the Punjab Cooperative Societies Act, 1961 ("1961 Act") before the Deputy Registrar, Cooperative Societies, Ludhiana and thereafter the only

remedial path based on election of remedy was to take recourse to revision etc. The 2nd respondent succeeded before the DRCS, Ludhiana. The petitioning-Cooperative Society aggrieved by the order declaring retrenchment illegal and by way of dismissal from service filed a revision before the Joint Registrar, Cooperative Societies who reversed the order of the Deputy Registrar and upheld the order of retrenchment/termination.

2. Dissatisfied with the order in revision, the 2nd respondent filed a revision under Section 69 of the 1961 Act before the Special Secretary, Cooperation Punjab Chandigarh which was dismissed and the resolutions impugned leading to retrenchment were upheld. The Special Secretary held that the consumer cell of the Cooperative Society was meant as an outlet for sale of daily needs to the members of the society, like sale of cloth, soap, tea, kerosene oil and Ghee etc. As an incharge salesman of the consumer cell his lack of effort forced the closure of the consumer cell when it could earn only ₹11,099/- in seven years, whereas the society had borne the burden of paying salary of ₹4,342/- per month to him which came to ₹52,000/- approximately per year and as such against the profits from 1993 till 1999 the salary paid was in the region of ₹3.6 lacs.

3. In these circumstances the management of the society took into consideration the interest of the society and its members and came to the conclusion that it would be best to close the consumer cell and to retrench the 2nd respondent from service. It is not disputed that no further litigation was carried to the High Court and the orders had attained finality.

4. Unsuccessful in the litigation, the 2nd respondent gave up the chase to its logical end in the previous proceedings, and turn around to

serve a demand notice on the Society by raising a dispute under the ID Act. The dispute was referred for adjudication.

5. The Presiding Officer, Labour Court, Ludhiana vide the impugned award dated September 15, 2011 reinstated the respondent to service with continuity and 50% back wages and held that if the compensation has already been paid to the workman, as alleged by the respondent, the same would be adjusted towards arrears.

6. The most central issue, as I understand, was that the society proved as a fact that at the time of retrenchment, a cheque was sent towards retrenchment compensation which was returned by the 2nd respondent apart from the issue of the bona fides of closure of the consumer cell as it had turned out over the years to be uneconomic and a drain on a society.

7. In this scenario, even assuming that retrenchment compensation was not paid or the cheque represented gratuity and not retrenchment compensation, even then the plea the 2nd respondent should not succeed in a second round of litigation. The first proceedings were definitely within jurisdiction and resort was had by the workman himself to the available machinery for dispute settlement. Having failed before the authorities under the 1961 Act he could not turn around and start litigation again. This would be contrary to public policy that litigation must come to an end in a logical manner in Courts of competent jurisdiction. It would have been another matter if in the beginning the workman has sought his remedies under the ID Act, then the balance of the case may have shifted to determine industrial rights.

8. Far too much was made of by the Labour Court on the testimony

of MW-1 Malager Singh, Secretary of the society recorded years after the retrenchment and based judgment on that oral and interested testimony of a co-member. The Labour Court believed that there was no evidence led by the society to prove that it was actually running into losses or the financial position was so poor compelling it to retrench the respondent who was actually working as Cashier-cum-Salesman. It has been observed that in addition to the duties of Cashier-cum-Salesman the respondent was given duties of running the Cooperative Consumer Cell also, which was not his primary or main function. It was on these premises that the Labour Court held that if the consumer cell failed economically and had to be shut that would not justify retrenchment of the workman, since the society continues and was not dissolved. This is how the retrenchment was declared illegal and arbitrary and violative of the provisions of the ID Act.

9. Regarding alleged compensation amounting to ₹21736/- to the respondent paid vide cheque dated January 21, 2003 the labour court held that this could not be valid and legal tender of retrenchment compensation under the ID Act since retrenchment compensation has to be paid simultaneously and on the same day and time when the workman was retrenched or terminated. The termination took effect on April 24, 1999 and the alleged payment of compensation was paid on January 21, 2003. But as I might think, all this rigmarole is inconsequential and insignificant in view of the fact that the respondent elected legal remedy before the Cooperative authorities in the Cooperative Department and failed. The dispute before the authorities and the Labour Court was one and the same thing arising out of declaration of surplus and closure of consumer cell. At best, the respondent

would be entitled to closure compensation which can be paid later but would not invalidate the termination. It were the two impugned resolutions which were under challenge before the authorities under the 1961 Act and those resolutions were upheld as legal and valid.

10. Even before the Deputy Registrar, Cooperative Societies in appeal the respondent had agitated that no charge-sheet or inquiry was conducted and nor was he heard before the resolutions were passed or was given reasonable opportunity to produce his evidence. The society had not issued a show cause notice before termination of services while Rule 14 of the 1997 Rules prescribe that for infliction of major punishment holding of inquiry is *sine qua non*. The respondent had argued before the authorities in revision that the society did not comply with the provisions of Section 25-F of the ID Act and, therefore, the resolution is illegal and unlawful.

11. The Joint Registrar, Cooperative Societies in his order dated December 30, 2002 struck at the heart of the matter when rightly observing that had the respondent wanted to challenge the resolutions dated April 24, 1999 and May 24, 1999 then he should have taken it before the Labour Court in the first instance and not before the DRCS, Ludhiana where there exists a provision of appeal and revision against the resolutions which have been passed by the society. But the Labour Court did not direct its reasoning to this vital issue when it should have. The Special Secretary Cooperation (Appeals), Punjab by his order dated February 17, 2004 agreed with the revisional order that if the present respondent wanted to challenge the resolutions then he should have approached the Labour Court. I am sorry to say that the learned Labour Court has wrongly recorded in the impugned

award in para.9 that: "ultimately, he was directed to avail his remedy before the Labour Court". This was far from the truth. There may be some discussion in the work of the authorities under the Cooperative law in the two revisions but there are no directions as imagined by the Labour Court. The Labour Court may have glanced at the orders but not read them.

12. There is a material difference in foreclosing the case to seek remedies under the ID Act and deciding the case on merits of the resolutions. In any case, every violation of Section 25-F of the ID Act will not lead to reinstatement mechanically or automatically. The petitioner has had the benefit of Section 17-B of the ID Act in these proceedings and payments have been made of a sizeable amount from time to time which is a benefit he can keep as it cannot be ordered to be refunded in the event of failure of the workman's case.

13. Having heard the Mr. Bedi and Mr. Doabia, the learned counsel for the parties at sufficient length and am of the view that in the facts and circumstances of the case, the respondent workman has to be held down to the remedy elected by him before the authorities in the cooperation department which were capable of bringing relief to him. Those proceedings could only have been taken to their logical conclusion by filing writ petition in the High Court against the decision of the Special Secretary etc. I am convinced that the 2nd respondent should not in law and fact be allowed to change track to play a fresh innings on the same subject matter resolutions dated April 24, 1999 and May 24, 1999. If it was allowed, it was upon a reference order which is invalidated and the proceedings thereon being no more than vexatious litigation. Any other view may be contrary to public

interest and lead to encouraging misconceived and endless litigation.

14. In view of the above discussion, I find sufficient merit in this petition to set aside the impugned award and revert the 2nd respondent to the position obtaining by the order of the Special Secretary, Cooperation (Appeals) Punjab dated February 17, 2004 dismissing the revision.

15. The petition is allowed.

(RAJIV NARAIN RAINA)
JUDGE

19.4.2017
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Whether speaking/reasoned *Yes*

Whether reportable *Yes*