

Umakanta Pal and ors. Vs. Banchhanidhi Swain and anr.

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Court : Orissa

Decided On : Feb-26-1985

Reported in : 1985(I)OLR598

Judge : G.B. Pattnaik, J.

Acts : Orissa Co-operative Societies Act, 1962 - Sections 32, 68, 121, 121(1), 121(3), 128(2) and 128(3)

Appeal No. : Second Appeal No. 11 of 1979

Appellant : Umakanta Pal and ors.

Respondent : Banchhanidhi Swain and anr.

Advocate for Def. : P.K. Misra, Adv.

Advocate for Pet/Ap. : G. Rath and N.C. Panigrahi

Disposition : Appeal dismissed

Judgement :

G.B. Pattnaik, J.

1. Defendants are the appellants against a reversing judgment passed by the Subordinate Judge, Nayagarh, holding that the order of dismissal passed by defendant No. 1 against the plaintiff is null and void.

2. Plaintiff filed the suit for a declaration that the order of dismissal dismissing him from service passed by defendant No. 1 was null and void, since defendant No. 1 had ceased to be the administrator of the Regional Cooperative Marketing Society Limited, Nayagarh, with effect from 11.7.1973, on the following averments. The plaintiff was appointed as Secretary of the Regional Cooperative Marketing Society (for short, 'R. C. M. S.'). In a proceeding under Section 32 of the Orissa Co-operative Societies Act (hereinafter referred to as the 'Act') against the committee of Management of the R. C. M. S. The Deputy Registrar, Co-operative Society, passed an order on 10.7.1972 superseding the committee of Management and appointed the Assistant Registrar of Co-operative Societies, Khurda Circle, as the Administrator for a period of one year from the date he assumed charge of the institution. The said Assistant Registrar assumed charge as Administrator of the R. C. M. S. on 17.7.1972. The order of supersession was unsuccessfully challenged before the Registrar by the management of the Society and then a further revision was carried to the State Government. The revisional authority passed an order on 13.10.1972 staying

operation of the order of supersession 24.7.1972, the plaintiff applied for leave and was sanctioned four months, leave by the President of the Society. The plaintiff was suspended from service on 19.11.1972 by defendant No. 1 the Deputy Registrar, as the Administrator of the Society. A proceeding had been taken by the Administrator against the plaintiff behind his back and ultimately after finding him guilty, an order of dismissal was passed against him on 5.9.1973. According to the plaint averment, the Administrator who had assumed charge of the management of the society on 17.7.1972 became functus officio on 17.7.1973 after expiry of one year and, therefore, had no jurisdiction to pass the order of dismissal on 5.9.1973.

3. Three sets of written statements were filed one each by each of the defendants. Defendant No. 1 contended that the plaintiff remained absent from duty without authority after 22.7.1972 for which a regular disciplinary proceeding had been taken against him and defendant No. 2 was appointed as the enquiring officer. The plaintiff did not participate in the proceeding. The plaintiff having been found guilty was terminated from service by order of defendant No. 1 who was the Administrator on 3.9.1973 which was duly communicated to the Plaintiff on 5.9.1973. It was further pleaded that the term of appointment of Administrator for one year was extended on 17.10.1973 for a further period of two years giving it retrospective effect from 17.7.1973 and in that view of the matter, there was no illegality in the order of dismissal passed by the Administrator.

Defendant No. 2 in his written statement only asserted that he was appointed as the enquiring officer and he found the plaintiff guilty of the charges.

Defendant No. 3 pleaded to the effect that the suit was not maintainable in the absence of a notice under the provisions of the Act and further defendant No. 1 was fully justified in passing the order of dismissal after the plaintiff was found guilty of charges levelled against him in the disciplinary proceeding.

4. On these pleadings, the learned Munsif formed six issues and found that the suit was clearly barred under Section 121(3) of the Act in view of the said finding, he though it unnecessary to decide any other issues.

5. On appeal, the learned Subordinate judge reversed the finding of the learned Munsif and held that Section 121(3) of the Act had no application and the suit would not be barred. He also held that Section 127 of the Act did not apply and no notice was necessary. Having so held, on merits he came to the conclusion that after expiry of the period of one year with effect from 17.7.1973, the Administrator had no jurisdiction to pass the order of dismissal on 3.9.1973 and the subsequent order of the Government extending the period by further two years with effect from 17.7.1973 would not validate an invalid order which was void ab initio and, therefore, he allowed the appeal.

6. The learned counsel for the appellants raised three submissions in support of this appeal. According to the learned counsel, under Section 121 of the Act, the Civil Court has no jurisdiction in respect of any dispute required under Section 68 to be referred to the Registrar and further under Sub-section (3) of Section 121, an order or decision under the Act shall be questioned in any Court on any ground whatsoever. According to the learned counsel, an order of dismissal passed against an employee of the society touches the management or business of the society and is, therefore, a dispute within the meaning of Section 68 of the Act.

7. The aforesaid submission of the learned counsel for appellants has been made completely overlooking the phrase other than a dispute regarding disciplinary action taken by a society or its committee against a paid servant of the society occurring in Section 68 of the Act. In my view the order of dismissal in the present case is a disciplinary action taken by the society and therefore, cannot be a dispute within the meaning of Sac. 68 of the Act. Once it is held that it is not a dispute within the ambit of Section 68, Section 121(1)(c) of the Act has no application. Further, the order is not an order under the Act and, therefore, Sub-section (3) of Section 121 has also no application. Consequently, the bar of jurisdiction of Courts contemplated under Section 121 of the Act does not apply. In the case of *Kunnimellihalw Dodda Pramananda Prathami Pattin Vyavasaya Sahakari Sangha Ltd. v. Shivappa Guddappa Surad*, A.I.R. 1973 Mysore, 68, a Bench of the Mysore High Court has held that dispute between a society and its past employee about his dismissal is not a dispute touching the constitution, management or business of the society' within the meaning of Section 70 of the Mysore Co-operative Societies Act. The provision of Section 68 of the Orissa Act is in pari materials with Section 70 of the Mysore Act. In the case of *Bihar State Co-operative Marketing Union Ltd. v. The Registrar, Cooperative Societies Bihar and another*, A.I.R. 1974 Patna, 77, the Patna High Court was examining the meaning of the word 'dispute' in Section 48 (1) of the Bihar and Orissa Co-operative Societies Act. It was held that the word 'dispute' in Section 48 did not include within its ambit service conditions of the employees of a society. My conclusion aforesaid gains full support from the aforesaid two decisions. I would, therefore, reject the submission of the learned counsel for the appellants on that score.

8. The learned counsel for the appellants further submitted that it was true that the Administrator had been appointed for a period of one year with effect from 17.7.1972 and, therefore, ceased to continue as Administrator on and from 17.7.1973, but the subsequent order dated 17.10.1973 extending the period of appointment for two years giving it retrospective effect from 11. 7.1973 clothed the Administrator with full jurisdiction and, therefore, the order dated 3.9.1973 dismissing the Plaintiff from service was perfectly valid one. In my opinion, this submission is also devoid of any substance. Admittedly, the Administrator appointed by order of the Deputy Registrar dated 10.7.1972 for a period of one year with effect from the date the Administrator assumed charge became functus officio after expiry of the period of one year which is on 17.7.1973, he having assumed charge on 11.7.1972. Therefore, on 3.9.1973 he had no Jurisdiction to pass the impugned order. The order is void and becomes non-est. Subsequent order continuing the Administrator for two years with effect from 11.7.1973 cannot validate a void order. In my opinion, the conclusion of the lower appellate Court on this score becomes unassailable and cannot be interfered with by this Court. I, therefore, reject the second submission of the learned counsel for the appellants.

9. The learned counsel for the appellants then submitted that the Administrator who was exercising the powers of the society acted in good faith and, therefore, the order passed by him would not be invalid under Sub-section (2) of Section 128 of the Act. This point has not been urged in any of the Courts below. That apart, on merits also, this point has no substance, inasmuch as the appointment of Administrator in this case has not been cancelled by any order 'passed under the Act. The Administrator was appointed for a period of one year and after expiry of the said period, he cannot be said to have continued in good faith. In my view, the provisions of Sub-Section (2) of Section 128 of the Act have no application to the facts and circumstances of the present case.

10. In the ultimate result, therefore, all the submissions of the learned counsel for the appellants fail and this second appeal is dismissed, but in the facts and circumstances of the case, there would be no order for costs.

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