Dharappa Sangappa Nandyal vs Bijapur Co-Operative Milk Producers ... on 26 April, 2007

Equivalent citations: AIR 2007 SUPREME COURT 1848, 2007 (9) SCC 109, 2007 AIR SCW 2882, 2007 LAB. I. C. 2471, 2007 (4) AIR KAR R 214, 2007 (6) SCALE 307, (2007) 4 KANT LJ 161, (2007) 3 SCT 491, (2007) 6 SCALE 307, (2007) 113 FACLR 1159, (2007) 3 LAB LN 139, (2007) 4 SUPREME 120, (2007) 2 CURLR 942

Bench: G P Mathur, R V Raveendran

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           CASE NO.:
Appeal (civil)  2175 of 2007

PETITIONER:
Dharappa Sangappa Nandyal

RESPONDENT:
Bijapur Co-operative Milk Producers Societies Union Ltd

DATE OF JUDGMENT: 26/04/2007

BENCH:
G P Mathur & R V Raveendran

JUDGMENT:
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J U D G M E N T CIVIL APPEAL NO 2175 OF 2007 (Arising out of SLP [C] No.3796/2006) RAVEENDRAN, J.

Leave granted.

This appeal is filed against the judgment dated 15.6.2005 passed by the High Court of Karnataka in Writ Appeal No.2131/2005.

2. The appellant claims that he was employed as a daily-wage labourer in the Rural Dairy Centre, Bijapur, on 13.5.1977. He further alleges that he worked continuously and uninterruptedly till his services were illegally terminated with effect from 1.3.1980. The appellant did not challenge his termination.

3. Section 10 of the Industrial Disputes Act, 1947 ('ID Act' for short) was amended in Karnataka by the Industrial Disputes (Karnataka Amendment) Act, 1987 [Karnataka Act No.5 of 1988] inserting the following as sub-section (4A) with effect from 7.4.1988 :

> "(4A) Notwithstanding anything contained in section 9-C and in this section, in the case of a dispute falling within the scope of section 2-A, the individual workman concerned may, within six months from the date of communication to him of the order of discharge, dismissal, retrenchment or termination or the date of commencement of the Industrial Disputes (Karnataka Amendment) Act, 1987, whichever is later, apply, in the prescribed manner, to the Labour Court for adjudication of the dispute and the Labour Court shall dispose of such application in the same manner as a dispute referred under sub-section (1)."

Taking advantage of the new provision, on 4.10.1988, the appellant made an application to the Labour Court, Hubli (KID No.1055/88 subsequently transferred and renumbered as KID No. 497/1995 on the file of the Labour Court, Bijapur) seeking a declaration that his termination from service on 1.3.1980 was null and void and a direction for reinstatement with full back- wages, continuity of service and other consequential reliefs. The appellant contended that his termination amounted to illegal retrenchment, as the respondent failed to comply with the mandatory requirements of Section 25- F of ID Act even though he had worked continuously for more than 240 days in a year.

4. The respondent (Karnataka Milk Federation, Unit : Bijapur) filed an objection statement contending that it came into existence and took over the Rural Dairy Centre, Bijapur, long after the alleged termination of appellant by Rural Dairy Centre, Bijapur. The respondent denied the claim of the appellant that he was a daily wage worker between 13.5.1977 and 1.3.1980 and that his services were termination in violation of section 25F of the ID Act.

5. The appellant gave evidence and produced a certificate dated 19.2.1978 allegedly issued by the Dairy Supervisor, Rural Dairy Centre, Bijapur, certifying that he had worked as a casual labourer from 13.5.1977 to 19.2.1978. None was examined on behalf of the respondent to deny the said certificate. On consideration of the material, the Labour Court accepted the said service certificate, but did not accept his further self-serving statement that he worked up to 1.3.1980 as such claim was not supported by any document. The Labour Court made an award dated 15.10.1996 directing reinstatement, holding that Appellant had worked for more than 240 days in the year preceding termination (13.5.1977 to 19.2.1978), and the termination of his service, without complying with section 25F of ID Act, amounted to illegal retrenchment. However, as there was an inordinate delay of 10 years in filing the claim statement, the Labour Court awarded only 50% back- wages in addition to continuity of service and consequential benefits. The respondent challenged the said award in W.P. No.7227/1997.

6. During the pendency of the said writ petition, a Division Bench of Karnataka High Court held in Veerashiva Co-operative Bank Ltd. vs. Presiding Officer, Labour Court [2001 (3) Kar.L.J. 519] that the procedure for adjudication and the remedy provided under the Karnataka Co-operative Societies Act, 1959 ('KCS Act' for short) being comprehensive, the jurisdiction of Labour Courts under ID Act to deal with such disputes was barred. The decision in Veerashiva Co-operative Bank was approved and reiterated by a Full Bench of the Karnataka High Court in Karnataka Sugar Workers Federation v. State of Karnataka [2003 (4) Kar.L.J. 353].

7. Following the decision of the Full Bench, a Single Judge of the High Court, allowed the Respondent-employer's writ petition, by order dated 1.2.2005, holding that ID Act was inapplicable to a dispute raised by an employee of a co-operative society. He therefore set aside the award of the Labour Court, reserving liberty to the appellant to work out his remedy in accordance with law. The said order of the learned Single Judge was challenged by the appellant in a writ appeal. A Division Bench of the High Court, by its judgment dated 15.6.2005, dismissed the writ appeal, holding that an employee of a co-operative society having a claim against the employer has to raise a dispute under Section 70 of the KCS Act. The Division Bench purported to follow the decision of the Full Bench in Karnataka Sugar Workers Federation. The said decision of the Division Bench is challenged in this appeal by special leave.

8. The Appellant contends that amended Section 70 of the KCS Act took away the jurisdiction of Labour Courts and Industrial Tribunals functioning under the ID Act, only when the amendments to the said section as per Act 2 of 2000 came into effect on 20.6.2000, and it did not nullify an award made by the Labour Court prior to that date, that is on 15.10.1996. It was also contended that the respondent not having raised any objection about want of jurisdiction before the Labour Court, could not subsequently be permitted to raise the plea of want of jurisdiction before the High Court. The Respondent on the other hand, supported the decision of the High Court and contended that the Labour Court had no jurisdiction having regard to section 70 of the KCS Act. The respondent also contended that the award of the Labour Court was otherwise also unsustainable as the claim itself was hopelessly barred by limitation, delay and laches. Therefore, the following two questions arise for our consideration :

> (i) Whether the jurisdiction of Labour Court under the ID Act, was barred by section 70 of the KCS Act with reference to co-

operative societies and if so, from when.

(ii) Even if Labour Court had jurisdiction, whether the appellant was entitled to file an application under Section 10(4A) of ID Act in respect of a cause of action which occurred in 1978.

Re : Question (i) :

9. It is necessary to refer to the metamorphosis of section 70 of the KCS Act, before considering this question. The said section originally stood as follows :

> "70. Disputes which may be referred to Registrar for decision. (1) Notwithstanding anything contained in any law for the time being in force, if any dispute touching the constitution, management, or the business of a co-operative society arises.
>
> (a) and (b) x x x x x (omitted as not relevant) [c] between the society or its committee and any past committee, any officer, agent or employee, or any past officer, past agent or past employee or the nominee, heirs, or legal representatives of any deceased officer, deceased agent, or deceased employee of the society, or

(d) x x x (omitted as not relevant) such dispute shall be referred to the Registrar for decision and no Court shall have jurisdiction to entertain any suit or other proceeding in respect of such dispute.

(2) For the purposes of sub-section (1), the following shall be deemed to be disputes touching the constitution, management or the business of a co-operative society, namely.

(a) a claim by the society for any debt or demand due to it from a member or the nominee, heirs or legal representatives of a deceased member, whether such debt or demand be admitted or not;

(b) a claim a surety against the principal debtor where the society has recovered from the surety any amount in respect of any debt or demand due to it from the principle debtor, as a result of the default of the principal debtor whether such debt or demand is admitted or not;

(c) any dispute arising in connection with the election of a President, Vice-President, Chairman, Vice-Chairman, Secretary, Treasurer or Member of Committee of the society.

(3) x x x (omitted as not relevant).

Section 70 was amended by Karnataka Co-operative Societies (Amendment) Act, 1976 (Karnataka Act 19 of 1976). The Amendment Act received the assent of the Governor on 7.3.1976. It was brought into effect from 20.1.1976. The Amendment Act added the following as clauses (d) and (e) in sub-section (2) of section 70 :

(d) any dispute between a co-operative society and its employees or past employees or heirs or legal representatives of a deceased employee, including a dispute regarding the terms of employment, working conditions and disciplinary action taken by a co-operative society;

(e) a claim by a co-operative society for any deficiency caused in the assets of the co-operative society by a member, past member, deceased member or deceased officer, past agent or deceased agent or by any servant, past servant or deceased servant or by its committee, past or present whether such loss be admitted or not."

Section 70 was again amended by Karnataka Co-operative Societies (Second Amendment) Act, 1997 (Karnataka Act No.2/2000) in the following manner:

(i) In sub-section (1), for the words "no court", the words "no civil or Labour or Revenue court or Industrial Tribunal" were substituted.

(ii) At the end of clause (d) of sub-section (2), the words "notwithstanding anything contrary contained in the Industrial Disputes Act, 1947 (Central Act 14 of 1947)" were inserted.

The said Amendment Act (Act 2 of 2000) received the assent of the President on 18.3.2000 and was brought into force on 20.6.2000. After the said amendments in 1996 and 2000, Section 70 of KCS Act (relevant portion) reads thus:

"Notwithstanding anything contained in any law for the time being in force, if any dispute touching the constitution, management, or the business of a Co-operative Society arises - between the Society or its committee and any officer, agent or employee, or any past officer, past agent or past employee of the Society, _.. such dispute shall be referred to the Registrar for decision and no Civil or Labour or Revenue Court or Industrial Tribunal shall have jurisdiction to entertain any suit or other proceeding in respect of such dispute.

For the purposes of sub-section (1), the following shall be deemed to be disputes touching the constitution, management or the business of a Co- operative Society, namely . (d) any dispute between a Co-operative Society and its employees or past employees or heirs or legal representatives of a deceased employee, including a dispute regarding the terms of employment, working conditions, and disciplinary action taken by a Co-operative Society notwithstanding anything contrary contained in the Industrial Disputes Act, 1947(Central Act 14 of 1947)."

10. "Co-operative societies" fall under Entry 32 of the State List.

"Industrial and labour disputes" fall under Entry 22 of the Concurrent List. Industrial Disputes Act, 1947 is an "existing law" with respect to a matter enumerated in the Concurrent List, namely, industrial and labour disputes. A dispute between a co-operative society and its employees in regard to terms of employment, working conditions and disciplinary action, is an industrial and labour dispute squarely covered by an existing law (ID Act), if the employees are 'workmen' as defined in the ID Act. Clause (1) of Article 254 provides that if any provision of a law made by a State Legislature is repugnant to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the existing law shall prevail, and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void. Clause (2) of Article 254, however, provides that where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List, contains any provision repugnant to an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State. The question of repugnancy can arise only with reference to a legislation made by Parliament falling under the Concurrent List or an existing law with reference to one of the matters

enumerated in the Concurrent List. If a law made by the State Legislature covered by an Entry in the State List incidentally touches any of the entries in the Concurrent List, Article 254 is not attracted. But where a law covered by an entry in the State List (or an amendment to a law covered by an entry in the State List) made by the State Legislature contains a provision, which directly and substantially relates to a matter enumerated in the Concurrent List and is repugnant to any provision of an existing law with respect to that matter in the Concurrent List then such repugnant provision of the State law will be void. Such a provision of law made by the State Legislature touching upon a matter covered by the Concurrent List, will not be void if it can co-exist and operate without repugnancy with the provisions of the existing law. What is stated above with reference to an existing law, is also the position with reference to a law made by the Parliament. Repugnancy is said to arise when : (i) there is clear and direct inconsistency between the Central and the State Act; (ii) such inconsistency is irreconciliable, or brings the State Act in direct collision with the Central Act or brings about a situation where obeying one would lead to disobeying the other. If the State Legislature, while making or amending a law relating to co-operative societies, makes a provision relating to labour disputes falling under the Concurrent List, then Article 254 will be attracted if there is any repugnancy between such provision of the State Act (MCS Act) with the existing law (ID Act). We will have to examine the issue in this case keeping the above legal position in mind.

11. The effect of the amendments to Section 70 of KCS Act, by Act 2 of 2000 is that if any dispute (including any dispute relating to the terms of employment, working conditions and disciplinary action), arose between a co-operative society and its employees or past employees or heirs/legal representatives of a deceased employee, on and from 20.6.2000, such dispute had to be referred to the Registrar for decision and no Civil Court or Labour Court or Industrial Tribunal would have jurisdiction to entertain any suit or proceeding in respect of such dispute.

12. Even prior to 20.6.2000, having regard to the amendment to Section 70 of KCS Act by Act 19 of 1976 with effect from 20.1.1976, any dispute between a co-operative society and its employees or past employees or heirs/legal representatives of a deceased employee including a dispute regarding the terms of employment, working conditions and disciplinary action taken by a co-operative society, was deemed to be a dispute touching the constitution, management, or business of a co-operative society which had to be referred to the Registrar for adjudication. But prior to 20.6.2000, there was no express exclusion of the jurisdiction of the Labour Court and Industrial Tribunal. As a result, if an employee of a Co-operative Society answered the definition of 'workman' and the dispute between the co- operative society and its employee fell within the definition of an 'industrial dispute', then the employee had the choice of two alternative forums either to raise a dispute before the Registrar under Section 70 of the KCS Act or seek a reference to the Labour Court/Industrial Tribunal under Section 10(1)(c) of the ID Act (or approach the Labour Court by an application under Section 10(4A) of ID Act).

13. In Co-operative Central Bank Ltd. v. Additional Industrial Tribunal, A.P. (AIR 1970 SC 245), this Court considered Section 61 of the Andhra Pradesh Co-operative Societies Act, 1964, which dealt

with disputes which could be referred to the Registrar. The said section was in pari materia with Section 70 of KCS Act, as it originally stood, before the amendments under Act 19 of 1976 and Act 2 of 2000. This Court held that where a State Co- operative Societies Act had received the assent of the President, if any provision of such State Act was repugnant to any provision of the ID Act, the provisions of the State Act will prevail over the provisions of the ID Act. This Court accepted the general proposition that the jurisdiction of the Industrial Tribunal/Labour Court under the Industrial Disputes Act will be barred if the disputes can be competently decided by the Registrar under section 61 of the Andhra Pradesh Act, in view of the fact that the Andhra Pradesh Act had received the assent of the President. This Court then proceeded to examine whether disputes relating to service conditions of workmen could be referred to the Registrar for decision under Section 61 of the State Act and held that the disputes could only be decided by an Industrial Tribunal dealing with an industrial dispute. This Court held that the Registrar under the Co-operative Societies Act, could not grant the relief in respect of such disputes because of the limitations placed on his powers under the Act itself, and having regard to the expression "touching the business of the society" in Section 61 which did not include a dispute in regard to conditions of service of workmen.

14. Though the Karnataka Co-operative Societies Act, 1959 was reserved for the assent of the President and received his assent on 11.8.1959, the Amendment Act 19 of 1976 which added clause (d) to sub-section (2) of Section 70, (whereby a dispute between a Co-operative Society and its present or past employee/s in regard to any disciplinary action or working conditions was deemed to be a dispute touching the constitution, management, or the business of a co-operative society), was neither reserved for, nor received the assent of the President. In the absence of the assent of the President, clause (d) of Section 70(2) could not be called in aid to contend that section 70(1)(c) of the KCS Act would prevail over the provisions of the Industrial Disputes Act. Consequently, even after the 1976 amendment to the KCS Act, the Labour Courts and Industrial Tribunals functioning under the ID Act continued to have jurisdiction in regard to disputes between a Society and its workmen if the co-operative society answered the definition of an 'industry' and the dispute was an 'industrial dispute'. But when sub-section (1) of section 70 of KCS Act was further amended by Act 2 of 2000 by specifically excluding the jurisdiction of Labour Courts and Industrial Tribunals with the simultaneous addition of the words "notwithstanding anything contrary contained in the Industrial Disputes Act, 1947" in clause (d) of Section 70(2) of KCS Act, the said Amendment Act (Act 2 of 2000) was reserved for the assent of the President and received such assent on 18.3.2000. The amended provisions were given effect from 20.6.2000. Therefore, only with effect from 20.6.2000, the jurisdiction of Labour Courts and Industrial Tribunals were excluded in regard to disputes between a co-operative Society and its employees (or past employees) relating to terms of employment, service conditions or disciplinary action. It follows therefore that in the year 1996, the Labour Court had the jurisdiction to make an award in regard to such a dispute. The High Court could not have interfered with it on the ground that Section 70 of the KCS Act was a bar to the jurisdiction of the Labour Court to decide the dispute.

15. The 1976 Amendment to the KCS Act did not bring about any inconsistency with the provisions of the ID Act nor did it purport to prevail over the provisions of the ID Act. Its effect was merely to provide an additional or alternative forum for adjudication of the disputes between co- operative societies and its employees, relating to employment, working conditions and disciplinary action. The

1976 Amendment Act, therefore, was valid, even in the absence of the assent of the President. On the other hand, the 2000 Amendment specifically excluded the jurisdiction of Industrial Tribunals and Labour Courts under the ID Act, and intended to prevail over the provisions of the ID Act in regard to adjudication of disputes. The said Amendment required the assent of the President and was, in fact, reserved for the assent of the President and obtained his assent. If the 1976 Amendment was to be read as excluding the jurisdiction of the Industrial Tribunals and Labour Courts, then it was necessary to read the provisions of Section 70, as amended by the 1976 Act, as prevailing over the provisions of the ID Act. In which event, it would have required the President's assent, and in the absence of such assent, the Amendment to the extent it purported to prevail over the Central enactment, would have been void. Therefore, the only way to read the 1976 Amendment is to read it in a literal and normal manner, that is, as not excluding the jurisdiction of the Industrial Tribunals and Labour Courts but as merely conferring a concurrent jurisdiction on the Registrar under Section 70 of the KCS Act.

16. This aspect has been completely overlooked by the Division Bench of the Karnataka High Court in Veerashaiva Co-operative Bank. It misled itself to an erroneous assumption that two decisions of this Court in R.C. Tiwari v. Madhya Pradesh State Co-operative Marketing Federation Ltd. (1997 (5) SCC 125) and Sagarmal v. District Sahkari Kendriya Bank Ltd., Mandsaur and another [1997 (9) SCC 354] laid down the proposition that once a specific procedure and effective remedy is provided under a Co-operative Societies Act, it ipso facto excluded the settlement of disputes under section 10 of the Industrial Disputes Act. On that assumption, the High Court held that Section 70 of the KCS Act, excluded the jurisdiction of Labour Courts/ Industrial Tribunals in regard to references under Section 10 of the ID Act stood excluded. The High Court held so in view of clause (d) of sub-section (2) of Section 70 which provided that any dispute between a co-operative society and its employees (past or present) in regard to terms of employment, working conditions and disciplinary action will be deemed to be a dispute to be decided by the Registrar under sub-section (1) of Section 70, overlooking the fact that Amendment Act 19 of 1976 by which clause

(d) was inserted in Section 70(2), had not received the assent of the President and therefore the jurisdiction of the Registrar under Section 70(1) of the KCS Act as expanded by section 70(2)(d), could not prevail over the provisions of the ID Act. If the amendment to section 70(2) by Act 19 of 1976 should be read or construed as having the effect of enabling section 70(1) of KCS Act to prevail over the provisions of ID Act, then the said amendment Act (Act 19 of 1976) would have required the assent of the President under Article 254(2). But there was no such assent.

17. As the Division Bench had relied on two decisions of this Court in R.C. Tiwari (supra) and Sagarmal (supra), it is necessary to refer to them. But before doing so, we have to note that many a time, a principle laid down by this Court with reference to the provisions of a particular State Act is mechanically followed to interpret cognate enactments of other States, without first ascertaining whether the provisions of the two enactments are identical or similar. This frequently happens with reference to the laws relating to rent and accommodation control, co-operative societies and land revenue. Before applying the principles enunciated with reference to another enactment, care should be taken to find out whether the provisions of the Act to which such principles are sought to be applied, are similar to the provisions of the Act with reference to which the principles were

evolved. Failure to do so has led to a wrong interpretation of section 70 of the KCS Act, in Veerashiva Co-operative Bank and Karnataka Sugar Workers Federation.

18. R.C. Tiwari (supra) related to Madhya Pradesh, where ID Act itself was inapplicable (except to the extent indicated in M.P. Industrial Relations Act, 1960). In that case, an employee of a co-operative society who had been dismissed from service for mis-conduct, raised a dispute under the Madhya Pradesh Co-operative Societies Act, 1960. The concerned Deputy Registrar held that the dismissal was proper and rejected the reference. Thereafter the employee sought a reference under section 10(1) of the ID Act. The Labour Court held that the domestic inquiry was vitiated and set aside the order of dismissal. The said order was challenged by the employer- Society before the Madhya Pradesh High Court. The High Court held that in view of the provisions of Section 55 of the Madhya Pradesh Co-operative Societies Act, 1960, the Labour Court had no jurisdiction and therefore the reference to the Labour Court was bad. It also held that the findings recorded by the Deputy Registrar, Co-operative Societies against the employee in the award made under Section 55 of the Madhya Pradesh Co-operative Societies Act, would operate as res judicata. This Court upheld the said decision of the High Court and dismissed the special leave petition. The decision was rendered with reference the special provisions of the M.P. Co-operative Societies Act, 1960 and the M.P. Industrial Relations Act, 1960. Having regard to Section 110 of the M.P. Industrial Relations Act, the provisions of the Central Act - Industrial Disputes Act, 1947 (except Chapters V-A, V-B and V-C relating to lay off and retrenchment, special provisions relating to lay off, retrenchment and closure in certain establishments and unfair labour practices), did not apply to any industry to which the said M.P. Industrial Relations Act applied. ID Act did not apply in the State of Madhya Pradesh for adjudication of disputes between the employer and employees, not because of any bar in the MP Co-operative Societies Act, but because of the State having made a law relating to industrial disputes, namely the M.P. Industrial Relations Act, 1960 which had received the assent of the President. The M.P. Co-operative Societies Act, 1960, vide section 55, specifically provided that where a dispute including a dispute relating to terms of employment, working conditions and disciplinary action by a Society arises between a Society and its employees, the Registrar or any officer appointed by him shall decide the dispute and his decision shall be binding on the Society and its employees; and Section 93 of the M.P. Co- operative Societies Act provided that nothing contained in the M.P. Industrial Relations Act, 1960 shall apply to a Society registered under that Act (M.P. Co-operative Societies Act). It is in those circumstances that in R.C. Tiwari, this Court held that the I.D. Act did not apply to a dispute between a Society and its employees in regard to any disciplinary action. In that case, the question of any repugnancy between a State Act (Madhya Pradesh State Co-operative Societies Act) and the Central Act (the Industrial Disputes Act, 1947) did not arise. The State of Karnataka does not have a State Act governing industrial disputes as in Madhya Pradesh and therefore, the question of Karnataka Co-operative Societies Act excluding the applicability of a State law relating to industrial disputes did not arise. The decision in R.C.Tiwari was not, therefore, relevant or applicable. The Division Bench of Karnataka High Court committed an error in following the decision in R.C. Tiwari to hold that the jurisdiction of Labour Court under the ID Act was barred, in view of section 70 as amended by the Amendment Act 19 of 1976, even prior to the amendment of Section 70(1) and (2) by Act 2 of 2000.

19. The decision of this Court in Sagarmal (supra) also related to Madhya Pradesh. In that case, the appellant was an employee of a Co-operative Bank and he was removed from service after a disciplinary inquiry. The employee challenged his removal by seeking a reference to the Labour Court under section 10 of the Industrial Disputes Act, 1947. A reference was made and the Labour Court granted him relief of reinstatement with back-wages. The employer Bank challenged the award in a writ petition and the High Court quashed the award on the ground that it was a nullity, having been made in an incompetent reference. While affirming the decision of the High Court, this Court held that the provisions of the ID Act, did not apply to the respondent co-operative bank, and the only question was about the availability of remedy either under the Madhya Pradesh Co-operative Societies Act, 1960 or under the Madhya Pradesh Industrial Relations Act, 1960. This Court observed that if such a question had arisen, section 93 of the Madhya Pradesh Co-operative Societies Act would have come into effect, but no occasion arose for consideration of such question inasmuch as the employee did not resort to the remedy either under the Madhya Pradesh Co-operative Societies Act, 1960 or under the Madhya Pradesh Industrial Relations Act, 1960, but chose the remedy of a reference under Section 10 of the ID Act, which was inapplicable in the State of Madhya Pradesh. This Court reiterated that as the only question before the High Court was the competence of a reference under Section 10 of the Industrial Disputes Act, 1947, and not the availability of the remedy under the Madhya Pradesh Co- operative Societies Act, 1960 or the Madhya Pradesh Industrial Relations Act, 1960, the view taken by the High Court that the reference under Section 10 of the ID Act was incompetent, and the award made therein a nullity, did not suffer from any infirmity. In short, Section 10 of the ID Act was held inapplicable not because the Madhya Pradesh Co-operative Societies Act, 1960 prevailed over the provisions of the Industrial Disputes Act, 1947 but because in Madhya Pradesh, the provisions of the ID Act, 1947 (except certain specified provisions relating to lay off etc.) did not apply in view of the provisions of the Madhya Pradesh Industrial Relations Act, 1960. Therefore, the decision in Sagarmal was also of no assistance. Therefore the decision in Veerashiva Co-operative Bank was erroneous.

20. The Full Bench of the Karnataka High Court in Karnataka Sugar Workers Federation, decided two issues. Firstly, it upheld the constitutional validity of amendment of Section 70 of the KCS Act, by Act 2 of 2000. That question does not arise for our consideration and the decision thereon does not require to be disturbed. Secondly, it upholds and reiterates the decision in Veerashaiva Co-operative Bank (supra). To that extent, it is not good law.

21. In Management of Hukkeri v. S.R. Vastrad [ILR 2005 Karnataka 3882], a learned Single Judge of the Karnataka High Court held that even before the amendment of Section 70 by Act 2 of 2000, the legal position was that Labour Courts and Industrial Tribunals under ID Act did not have jurisdiction in regard to disputes between society and its employees because of insertion of clause (d) in Section 70(2) of KCS Act introduced with effect from 20.1.1976, relying on Veerashiva Co-operative Bank and Karnataka Sugar Workers Federation. The said decision also, therefore, stands overruled.

22. The resultant position can be summarized thus :

a) Even though clause (d) was added in Section 70(2) with effect from 20.1.1976, section 70(1) did not exclude or take away the jurisdiction of the Labour Courts and Industrial Tribunals under the I.D. Act to decide an industrial dispute between a Society and its employees. Consequently, even after insertion of clause (d) in Section 70(2) with effect from 20.1.1976, the Labour Courts and Industrial Tribunals under the I.D. Act, continued to have jurisdiction to decide disputes between societies and their employees.

(b) The jurisdiction of Labour Courts and Industrial Tribunals to decide the disputes between co-operative societies and their employees was taken away only when sub-section (1) and sub-section (2)(d) of section 70 were amended by Act 2 of 2000 and the amendment received the assent of the President on 18.3.2000 and was brought into effect on 20.6.2000.

(c) The jurisdiction to decide any dispute of the nature mentioned in section 70(2)(d) of the KCS Act, if it answered the definition of industrial dispute, vested thus :

(i) exclusively with Labour Courts and Industrial Tribunals till 20.1.1976;

(ii) concurrently with Labour Courts/Industrial Tribunals under ID Act and with Registrar under section 70 of the KCS Act between 20.1.1976 and 20.6.2000; and

(iii) exclusively with the Registrar under section 70 of the KCS Act with effect from 20.6.2000.

23. We therefore hold that the award of the Labour Court was not without jurisdiction. We, however, make it clear that this decision shall not be applied to re-open matters decided relying on Veerashiva Co-operative Bank and Karnataka Sugar Workers Federation, which have attained finality.

Re : Question (ii)

24. As we have held that the Labour Court had jurisdiction, the next question that arises for consideration is the validity of the award. As noticed above, according to the appellant, the termination was with effect from 1.3.1980. The Labour Court found that the termination was in fact from 19.2.1978. The employee made an application under section 10(4A) of the I.D. Act on 4.10.1988. But for the insertion of sub-section (4A) in section 10 of the ID Act on 7.4.1988, the appellant's challenge would not have been entertained at all as the claim had become stale on account of the same not being agitated for more than 10 years. The Labour Court, however, proceeded on the assumption that any claim application filed within six months from the date when sub-section (4A) was introduced, is to be considered as in time, irrespective the date of termination or cause of action. Such assumption is erroneous and would lead to absurd results.

25. Section 10(4A), no doubt, applied to termination orders passed prior to 7-4-1988. But the question is whether recourse to section 10(4A) can be had in regard to any order of termination

irrespective of when it was passed, and without reference to any time limit. Section 10(4A) enables an individual workman to challenge a termination order before the Labour Court, within "six months from the date of communication" of such order of termination. Having thus fixed the time within which such application has to be filed, the legislature added the words "or the date of commencement of the Industrial Disputes (Karnataka Amendment) Act, 1987, whichever is later". What is the Legislative intent behind the said addition? Is it intended to provide a one time revival to all claims, including stale, dead, non- existing claims relating to orders of termination passed years or decades ago? Or does it extend the time only to those who were entitled to seek the benefit of Section 10(4A) as on 7-4-1988 on account of communication of termination orders within six months before that date by giving them a uniform time limit of six months from 7-4-1988, to approach the Labour Court?

26. The Legislative intent should be ascertained by keeping in view the position before the amendment, the nature of remedy provided, and the need therefor. It is also necessary to keep in view the general principles relating to limitation. Statutes relating to limitation are said to be retrospective in nature in the sense that that apply to all proceedings brought after they come into force, even for enforcing causes of action which had accrued prior to the date when such statute came into force. But they are also prospective in the sense that they do not have the effect of reviving a right of action which was already barred on the date of its coming into operation. Therefore, where the right to file an action had come to an end on expiry of period of limitation prescribed under a law relating to limitation and thus becomes barred by limitation, the right is not revived by a later limitation Act, even if it provides a longer period of limitation. Let us illustrate with reference to an action for which the period of limitation was one year under the Limitation Act, 1908 and three years under the new Limitation Act, 1963 which come into force on 1.1.1964. The Limitation Act, 1963 will apply to all suits filed after 1.1.1964, though the cause of action might have accrued before that date. But if cause action had accrued on 1.1.1962, and therefore, the right to file a suit came to an end on 1.1.1963 under the old Act, a suit cannot obviously filed on 1.4.1964, on the ground that the suit is within time as per the new law of limitation. In other words, any law relating to limitation, though will apply to cause of actions accruing earlier, will apply only if the cause of action was 'live' as on the date when the new Act came into force and not to claims which were 'dead' or unenforceable when the new law came into force. This general Rule is however subject to any express statutory provisions to the contrary.

27. This Court while dealing with Section 10(1)(c) and (d) of the ID Act, has repeatedly held that though the Act does not provide a period of limitation for raising a dispute under Section 10(1)(c) or (d), if on account of delay, a dispute has become stale or ceases to exist, the reference should be rejected. It has also held that lapse of time results in losing the remedy and the right as well. The delay would be fatal if it has resulted in material evidence relevant to adjudication being lost or rendered unavailable [vide - Nedungadi Bank Ltd vs. K. P. Madhavan kutty [2000(2) SCC 455]; Balbir Singh vs. Punjab Roadways [2001 (1) SCC 133]; Asst. Executive Engineer vs Shivalinga [2002 (1) LLJ 457]; and S.M. Nilajkar vs. Telecom DT. Manager [2003 (4) SCC 27]]. When belated claims are considered as stale and non-existing for the purpose of refusing or rejecting a reference under Section 10(1)(c) or (d), in spite of no period of limitation being prescribed, it will be illogical to hold that the amendment to the Act inserting section 10(4A) prescribing a time limit of six months,

should be interpreted as reviving all stale and dead claims.

28. The object of Section 10(4A) is to enable workmen to apply directly to the Labour Court for adjudication of disputes relating to termination, without going through the laborious process of seeking a reference under section 10(1) of ID Act. The Legislative intent was not to revive stale or non-existing claims. Section 10(4A) clearly requires that a workman who wants to directly approach the Labour Court, should do so within six months from the date of communication of the order. Then come the words "or the date of commencement of the Industrial Disputes (Karnataka Amendment) Act, 1987, whichever is later". The reason for these words is obvious. In cases where the cause of action arose prior to 7.4.1988, some additional time had to be provided to make the provisions effective. Let us take the example of a workman who had received the termination order on 10-10-1987. If section 10(4A), which come into effect on 7.4.1988, had merely stated that the application had to be filed within six months from the date of communication, he had to file the application before 10-4-1988, that is hardly three days from the date when the amendment came into effect. The Legislature thought that workmen should be given some reasonable time to know about the new provision and take steps to approach the Labour Court. Therefore, all workmen who were communicated orders of termination within six months prior to 7-4-1988 were given the benefit of uniform six months time from 7-4-1988, irrespective of the date of expiry of six months. When a new remedy or relief is provided by a statute, such a transitional provision is made to ensure that persons who are given a special right, do not lose it for want of adequate time to enforce it, though they have a cause of action or right as on the date when the new remedy or relief comes into effect.

29. Section 10(4A) does not therefore revive non-existing or stale or dead claims but only ensures that claims which were live, by applying the six month rule in Section 10(4A) as on the date when the Section came into effect, have a minimum of six months time to approach the Labour Court. That is ensured by adding the words "or the date of commencement of the Industrial Disputes (Karnataka Amendment) Act, 1987, which is later" to the words "within six months from, the date of communication to him of the order of discharge, dismissal, retrenchment or termination." In other words all those who were communicated orders of termination during a period of six months prior to 7-4-1988 were deemed to have been communicated such orders of termination as on 7-4-1988 for the purpose of seeking remedy. Therefore, the words "within six months from the date of commencement of the Industrial Disputes (Karnataka Amendment) Act, 1987, whichever is later" only enables those who had been communicated order of termination within six months prior to 7-4-1988, to apply under Section 10(4A).

30. Section 10(4A) provides an alternative procedure to seek redressal in regard to an order of termination, by making an application directly to the Labour Court, within six months from the date of communication of the order of termination, without the intervention or assistance of an employees union and without having to approach the appropriate Government for making a reference. Such a provision cannot be interpreted as reviving stale and dead claims nor as enabling a workman to seek remedy beyond six months from the date of communication, except to the extent expressly provided for. The true and proper interpretation of Section 10(4A) is that an individual workman can apply to the Labour Court for adjudication of the dispute relating to an order of

discharge/dismissal/retrenchment/termination within six months from the date of communication to him, of such order of termination. Where such remedy becomes available to a workman as on 7-4-1988 on account of his having received the communication of termination order within six months prior to 7-4-1988, then the six months period stands extended upto 7-10-1988. To summarize :

(i) In regard to termination orders communication on or after 7-4-

1988, the outer limit for making an application under Section 10(4A) is six months from the date of communication of the order.

(ii) In regard to termination orders communicated during a period of six months prior to 7-4-1988, the period of limitation would be up to 7-10-1988 even though the six months period from the date of communication may actually expire between 7-4-1988 to 7-10- 1988.

(iii) In regard to termination orders communicated prior to 7-10-1987, no claim application under Section 10(4A), could be filed, as there is no provision for such applications. The remedy under section 10(1) (c) and (d) will continue to be available, subject, however, to the rule that stale and dead claims will not be referred.

The intent of Section 10(4A) is to give a right to the aggrieved workman to challenge the termination order within six months from the date of accrual of cause of action and not to furnish an one time revival in regard to stale and non-existing claims. Therefore, a claim application of the petitioner filed on 4.10.1988 in regard to alleged termination on 1.3.1980 (or 19.2.1978 as found by the Labour Court) was not maintainable under Section 10(4A) of ID Act and could not have been entertained by the Labour Court.

31. We, therefore, find no reason to interfere with the final order in the judgment of the High Court setting aside the award, though for different reasons. The appellant is not entitled to any relief. The appeal is, therefore, dismissed. Parties bear respective costs.