

Supreme Court of India

I.D.L. Chemicals Ltd. vs T. Gattaiah And Ors. on 22 February, 1995

Equivalent citations: (1996) III LLJ 346 SC, 1995 Supp (3) SCC 573

Author: K Singh

Bench: K Singh, N Venkatachala

ORDER Kuldip Singh, J.

Civil Appeal No. 3351 of 1981

1. Mr. A. Subba Rao, learned Counsel appearing for the appellant, states that the appellant has implemented the impugned order of the High Court. He further states that after a lapse of about 15 years it is not necessary to decide the precise question of law involved in this case. The appeal is disposed of.

2. We make it clear that we are not deciding the question of law involved in this case.

3. The appellant was working as a Manager in the Primary Land Mortgage Bank, Samana (the Bank) in the year 1982. The Bank is a cooperative society under the Punjab Co-operative Societies Act, 1961. The appellant was served with a charge-sheet and was asked to give his explanation. The explanation of the appellant was considered by the Management and thereafter, another show-cause notice regarding the proposed penalty was issued to him. After considering his reply to the show-cause notice, the penalty of stoppage of two increments with cumulative effect was imposed. The appellant represented before the Management that since no enquiry was held against him, major penalty of stoppage of two increments with cumulative effect could not be imposed. The matter was again considered by the Management and a minor penalty of stoppage of two increments simpliciter was imposed. The appellant challenged the order of punishment by way of a civil suit. The Trial Court dismissed the suit primarily on the ground that the Bank being a Co-operative society no suit was competent. The lower appellate court reversed the findings of the Trial Court and remanded the case back for trial on merits. Second appeal filed by the Bank was allowed by the High Court and it was held that no suit was competent against the Bank. This appeal by way of special leave is against the judgment of the High Court.

4. It is not necessary for us to decide the primal question as to whether the suit is competent against the Bank. During the last more than a decade, this Court has laid down sufficient law in this field and situation may be different than it was at the time when the matter was decided by the High Court. But as stated, we are not inclined to go into this question. The penalty of stoppage of two increments simpliciter was imposed upon the appellant. He was given a charge-sheet and his explanation was called and taken into consideration. Nothing more need to be done so far as the procedure for imposing minor penalty is concerned. No fault can be found with the penalty of stoppage of two increments imposed by the Bank upon the appellant.

5. In this view of the matter, we see no ground to interfere and the appeal is dismissed. No costs.

Civil Appeal No. 6197 of 1983

6. The appellants were working at the relevant time as Junior Accountants. The appellants challenged the legality of the Punjab State Co-operative Land Mortgage Bank Service (Common Cadre) Rules, 1978 (the Rules) on the short ground that the same were not framed in accordance with the provisions of Section 84-A of the Punjab Co-operative Societies Act, 1961 (the Act). It was also contended in the writ petition that promotion of Assistant Inspecting Officer (AIO) in preference to the Junior Accountants was not permissible under the Rules. The High Court did not go into the merits of the controversy and dismissed the writ petition on the short ground that no writ petition against a co-operative society was maintainable. This appeal by way of special leave is against the judgment of the High Court. Section 84-A(1) of the Act reads as under:

84-A. Constitution of common cadre of employees of certain societies.

(1) An apex society may sua motu and when required to do so by the Registrar, shall constitute a common cadre of all or specified class of employees in the service of that society or in the service of the Central Societies which are members of the apex society or in the service of the primary societies which are members of the apex society or the aforesaid Central societies.

The precise arguments advanced by the learned Counsel for the appellants is that under Section 23 of the Act, the final authority in a cooperative society vests in the general body of the members and as such it was only the general body of the society which could have framed the common cadre rules under Section 84-A(1) of the Act. The stand of the Bank on the other hand is that the Bye-Laws of the Bank framed by the general body of the Bank lay down the procedure for framing the common cadre rules and the rules have been framed in accordance with the procedure provided under the Bye-Law. Bye-law 42 of the bye-laws reads as under:

42.(a) As and when common cadre is introduced for the employees of the State Bank and Primary Co-operative Land Mortgage Bank, and rules for the purpose are prepared by the Board with the prior approval of the Registrar, Co-operative Societies an Administrative Committee shall be constituted in the following manner:

1. President of the Board
2. RCS or his nominee
3. Managing Director; and
4. Two Directors to be appointed by the Board out of its remaining elected Directors;

(b) The term of office of the elected members of the Administrative Committee shall be coterminous with the terms of the Board. An interim vacancy caused by resignation or otherwise occurring among the elected members of the Administrative Committee shall be filled by election by the Board. Persons so elected shall hold office for unexpired period of the Administrative Committee;

(c) The Administrative Committee shall exercise such powers and duties as may be prescribed in the common cadre rules.

It is not disputed before us that the procedure laid down under Bye-law 42 was followed in framing the common cadre rules. We are of the view that Bye-law 42 reproduced above, which has been framed by the general body and approved by the Registrar. Co-operative Societies, lays down detailed procedure for framing the common cadre rules. Section 84-A provides that "an apex society may...constitute a common cadre of all or specified class of employees in the service of that society..". It is the Society which has to frame the bye-laws and Section 23 further provides that the Society is controlled by the general body. When the general body itself has laid down by way of Bye-law 42, the procedure for framing the common cadre rules, no fault can be found with the same. We, therefore, find no force in the contention of the learned Counsel.

7. So far as the second contention of the learned Counsel is concerned, it is mentioned to be rejected. The contention of the learned Counsel is that there was a common cadre of Personal Assistants, Junior Accountants and Assistant Inspecting Officers. According to him, there being a common seniority among these three categories and the appellants being senior to the AIOs, the promotion of the AIOs in supersession of the appellants was arbitrary and was liable to be set aside. There is no basis for the contention. The Bank in its counter-affidavit has categorically denied that there was a common cadre of the three categories. According to the Bank, the cadre of the Assistant Inspecting Officers was separate and there was a separate seniority list for the cadre of AIOs. That being the position, there is no basis whatsoever for the arguments.

8. Having dealt with the merits of the controversy and rejected the same, it is not necessary for us to go into the question as to whether the respondent-Bank is a State or an Authority under Article 12 of the Constitution of India. We leave the question open to be decided in an appropriate proceeding. The appeal is dismissed. No costs.