



2024:DHC:7204



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of Order: 19.09.2024**

+ **W.P.(C) 11057/2024 & CM Appl.45715/2024**

SUNIL KUMAR TEWATIAPetitioner

Through: Mr. Anil Kumar and Mr. Narender
Kumar, Advs.

versus

JAIN COOPERATIVE BANK LTD.Respondent

Through: Mr. Abhinav Sharma and Mr. Ravi
Singh Chhikara, Advs.

CORAM:

HON'BLE MS. JUSTICE TARA VITASTA GANJU

TARA VITASTA GANJU, J.: (ORAL)

1. The present Petition has been filed on behalf of the Appellant impugning the award dated 07.11.2023 [hereinafter referred to as “the Impugned Award”] passed by the learned Additional District and Sessions Judge, POLC-8, Rouse Avenue District Courts, Delhi. By the Impugned Award, the complaint filed by the Petitioner/Workman was dismissed by the learned Labour Court on the applicability of the provisions of the Industrial Disputes Act, 1947, in view of the specific bar as placed by the provisions of Section 70(1)(b) of the Delhi Cooperative Societies Act, 2003 [hereinafter referred to as “DCS Act”].

2. Notice in the present Petition was issued on 09.08.2024. Pursuant thereto, the Respondent sought time to examine the matter and take instructions, and if necessary, file a Counter-Affidavit. No Counter-Affidavit has been filed by the Respondent till today.

2.1 Learned Counsel for the Respondent submits that no Counter-



Affidavit is necessary to be filed and he will make oral submissions.

3. With the consent of the parties, the matter is taken up for hearing and disposal today.

4. The brief facts are that the Petitioner was working as a Clerk-cum-Cashier with the Respondent since the year 2001. The Petitioner was removed from the services of the Respondent, after which The Petitioner raised an industrial dispute *inter alia* alleging that his services have been terminated illegally or unjustifiably and also filed a Petition before the Industrial Tribunal.

4.1 By the Impugned Award, the learned Labour Court found that the action of the Respondent/Bank of terminating the services of the Petitioner comes within purview of Section 70(1)(b) of the DCS Act and that only the Registrar of Cooperative Societies Act is competent to decide such a dispute, dismissing the claim petition filed by the Petitioner.

5. Learned Counsel for the Petitioner further submits that the Petitioner was removed from the services pursuant to a disciplinary action, initiated by the Respondent.

5.1 Learned Counsel for the Petitioner further seeks to rely upon the judgment passed by the Supreme Court in the matter titled as *K.A. Annamma v. Secretary, Cochin Co-operative Hospital Society Ltd.*¹, to submit that the learned Labour Court has concurrent jurisdiction with the Cooperative Societies Act and that the Tribunal can adjudicate upon such a dispute provided it is satisfied that the employee concerned is a 'Workman' and that the dispute raised by him is an 'Industrial Dispute'. Learned

¹ (2018) 2 SCC 729



Counsel for the Petitioner submits that both these pre-requisites stand satisfied in the present case and that the Respondent has not raised any objection with regard either to the status of the Petitioner as being a workman or that this is not an industrial dispute.

6. Learned Counsel for the Respondent on the other hand submits that the issue with respect to jurisdiction of the learned Labour Court is a legal issue, which has been correctly decided by the learned Labour Court.

6.1 Learned Counsel for the Respondent submits that the action taken against the Petitioner was not a disciplinary action since he had “voluntarily abandoned/resigned his services”, and thus, the exception in Rule 70(1) of the DCS Rules is not applicable in the present case. In this regard, he seeks to rely upon the Reply dated 02.02.2023 filed by the Respondent before the learned Labour Court. The relevant extract is below:

“10. That the contents of para no. 10 are wrong, false and vehemently denied. It is submitted that even after repeated letters to claimant he did not report back for duty. It is further submitted that the claimant/employee has remained willfully absent from duty without the prior permission of the competent authority and also without valid reasons for a period exceeding fifteen days. It is pertinent to mention herein that the above circumstances the competent authority decided to declare that claimant has voluntarily abandoned/Resigned his services/employment and thereby treated as having ceased to be in the employment of the bank from the date of his unauthorized absence from his duties in terms of chapter II, Section 5 of Employee Service Rules. It is further submitted that the respondent/bank have also delivered order dated 9.12.2020 through speed post which has been received back undelivered and it was subsequently sent through email dated 21.12. 2020. Copy of the said e- mail is annexed as Annexure-M-7.

11. That the contents of para no. 11 are wrong, false and vehemently denied. It is submitted that the termination of the claimant was held as per chapter II, Section 5 of the Employee Service Rules, 2017 of the management bank.”



[Emphasis supplied]

6.2 Relying on the judgment of the Supreme Court in *Cooperative Central Bank Ltd. and Ors. v. Additional Industrial Tribunal, Andhra Pradesh and Ors.*², it is submitted that the disputes of this nature are required to be adjudicated upon by the Registrar of Cooperative Societies himself. It is further contended that the Kerala Co-operative Societies Act, 1969 [hereinafter referred to as “Kerala Act”], which is referred to in the *K.A. Annamma* case does not contain the words “disciplinary action” thus, the case is not applicable to the present case. Lastly, it is contended that whether or not it is a “disciplinary action”, is something to be decided by the learned Labour Court.

7. In the Rejoinder, learned Counsel for the Petitioner submits that so far as it concerns the judgment in the *Cooperative Central Bank* case, the same is not applicable as it was in essence in the context of a reference made with respect to service conditions and with respect to conditions in relation to transfer of employees of two banks. It is submitted that it was on the basis of these issues that the entire judgment is premised.

7.1 In addition, it is contended that the words “disciplinary actions”, form part of Section 70(1) of the DCS Act, which by itself makes it clear that an exception has been carved out for the same. He reiterates that *K.A. Annamma* case also sets out that the Registrar and the learned Labour Court have concurrent jurisdiction and it is the discretion of the workman to choose his forum for adjudication.

² (1969) 2 SCC 43



7.2 Lastly, it is contended that the action taken against the Respondent was a disciplinary action in terms of the Rules and thus, the bar as contained in Section 70(1) of the DCS Act, is not applicable in the present case as well.

8. This Court is unable to agree with the submissions of the Respondent. The reasons are being explained hereafter. The record shows that the Petitioner was removed from the services of the Respondent for misconduct. The Chief Executive Officer ('CEO') of the Respondent passed an order dated 09.12.2020 directing that the Petitioner was absenting himself from duties without proper permission or sanction of leave and that he was not reporting for duty. It sets out that by a letter dated 20.10.2020, the Petitioner was previously informed that unless he reports for duty, disciplinary action would be initiated against him. Since, he did not report for duty, such action was initiated and the Petitioner was removed from the services. The relevant extract of the said order is reproduced below:

"1. It is matter of record that with his application for medical leave, he only submitted/attached copy of OPD Card where doctor has advised him rest. Doctor has also written "patient is in better condition and may take rest on SOS". No proper medical certificate bearing his signature duly attested by doctor has been submitted by him. He has requested for earned leaves on vague grounds by that mentioning slip disc problem. Under the circumstances his leave application was not considered/sanction by the Competent Authority. He was informed in this regard vide letter no. ESTB/199/2020-21 dated 20.10.2020 that "You are further directed to report for duty immediately; else the Competent Authority will be constrained to initiate disciplinary action against you as per prevailing Employees Service Rules" and vide letter no JCB/HO/355/2020-21 dated 18.11.2020 that "The Doctor's prescription attached in mail by you clearly mention that patient is in better condition and may take rest on SOS basis" but on the contrary, you remained absent continuously w.e.f. 31.08.2020. In



the light of above mentioned circumstances, you are once again directed to join duties within two days from the receipt of this letter along with all relevant medical histories/treatment taken from an appropriate government hospital.

xxxxxx

2. We are constrained to point out that you have not so far reported back for duty. As such, you have remained absent from duty without prior permission of the Competent Authority of the Bank continuously for a period exceeding fifteen days.

3. In the above circumstances, the Competent Authority of the Bank has decided to declare you to have voluntarily abandoned/resigned from you employment of you own violation and you are hereby treated as having ceased to be in employment of the Bank from the date of your unauthorized absence from place of duty in terms of Chapter II- Section 5 of Employee Service Rules.

4. Please note that the above decision of the Competent Authority of the Bank is without prejudice to the Bank's right to proceed against you, even after voluntary abandonment of your services stated above, for any of your acts of misconduct, omission and commission and you will be liable for such further disciplinary measures as the disciplinary authority may deem fit in the interest of the justice based on facts of the matter any time in future.... "

5. You are directed to contact Establishment Cell for settlement of your dues."

[Emphasis supplied]

8.1 The aforesaid order sets out that the competent authority has initiated disciplinary action against the Petitioner for remaining absent from duty without prior permission of the competent authority. Although, the communication uses the term "voluntarily abandoned/resigned from employment", it further sets out that the Petitioner would be liable for further disciplinary action. This is also evident from the Reply filed by the Respondent before the learned Labour Court, where it is set out that



disciplinary action was taken against the Petitioner.

9. Sub-Section (1) of Section 70 of the DCS Act provides for a bar on a Civil Court from entertaining certain disputes. It *inter alia* states that where a dispute touching the business of a Cooperative Society amongst its members, past members or between two Cooperative Societies exists, the dispute shall be referred to the Registrar for such a decision. The Section contains within itself an exception, which is with respect to a dispute regarding a disciplinary action against action taken by the Cooperative Society against a paid employee. Section 70(1) is set out below:

“70. Disputes which may be referred for arbitration.

(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 other than a dispute regarding disciplinary action taken by the cooperative society or its committee against a paid employee of the co-operative society arises -

(a) among members, past members and persons claiming through members, past members and deceased members; or

(b) between a member, past member or person claiming through a member, past member or deceased member and the co-operative society, its committee or any officer, agent or employee of the co-operative society or liquidator, past or present; or

(c) between the co-operative 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 co-operative society; or

(d) between the co-operative society and any other co-operative society, between a co-operative society and liquidator of another co-operative society or between the liquidator of one co-operative society and the liquidator of another co-operative society;



such disputes shall be referred to the Registrar for decision and no court shall have jurisdiction to entertain any suit or other proceedings in respect of such disputes.

[Emphasis supplied]

9.1 A plain reading of the aforesaid Section shows that where there is a dispute which relates to disciplinary action taken by the Cooperative Society against a paid employee, such a dispute will not be barred by the provisions of Section 70(1) of the DCS Act.

9.2 Learned Counsel for the Respondent has contended that the ***K.A. Annamma*** case is not applicable to the facts of the present case as the *pari materia* Section (Section 69) of the Kerala Act (as amended in 2003) is different from Section 70 of the DCS Act. Section 69 of the Kerala Act is set out below:

“69. Disputes to be decided by Cooperative Arbitration Court and Registrar.—

(1) Notwithstanding anything contained in any law for the time being in force, if a dispute arises—

(a) among members, past members and persons claiming through members, past members and deceased members; or

(b) between a member, past member or person claiming through a member, a past member or deceased member and the society, its committee or any officer, agent or employee of the society; or

(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) between the society and any other society; or

(e) between a society and the members of a society affiliated to it; or



(f) *between the society and a person, other than a member of the society, who has been granted a loan by the society or with whom the society has or had business transactions or any person claiming through such a person; or*

(g) *between the society and a surety of a member, past member, deceased member or employee or a person, other than a member, who has been granted a loan by the society, whether such a surety is or is not a member of the society; or*

(h) *between the society and a creditor of the society, such dispute shall be referred to the Cooperative Arbitration Court constituted under Section 70-A in the case of non-monetary disputes and to the Registrar, in the case of monetary disputes; and the Arbitration Court, or the Registrar, as the case may be, shall decide such dispute and no other court or other authority shall have jurisdiction to entertain any suit or other proceedings in respect of such dispute.*

(2) *For the purposes of sub-section (1), the following shall also be deemed to be disputes, 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 by 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 principal 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 the Board of Management or any officer of the society;*

Explanation.—A dispute arising at any stage of an election commencing from the convening of the general body meeting for the election, shall be deemed to be a dispute arising in connection with the election;

(d) *any dispute arising in connection with employment of officers and servants of the different classes of societies specified in sub-section (1) of Section 80, including their promotion and inter se seniority.*

(3) *No dispute arising in connection with the election of the Board of*



Management or an officer of the society shall be entertained by the Cooperative Arbitration Court unless it is referred to it within one month from the date of the election.”

9.3 A careful review of this Section shows that the bar of jurisdiction under the Kerala Act refers to disputes arising amongst various categories which are set out in Para (a) to (h) of Sub-Section (1) of Section 69 of the Kerala Act. Amongst these disputes are disputes amongst members *inter se*, both past and present, disputes between the society and its Committee, between two different societies, between a society and its members where such member has taken a loan and between the societies a creditor of society of such society etc. There is no reference in this sub-Section to exclusion of disputes between a society and a paid employee in relation to a disciplinary action. Thus, even under the Kerala Act, Section 69 would not oust the jurisdiction of the Civil Court.

10. The Supreme Court in the ***K.A. Annamma*** case has held that both the Kerala Act and the Industrial Disputes Act, 1947 possess concurrent jurisdiction to decide a service dispute between a Cooperative society employee and his employer. The Court has also held that the employee has the right to approach either the Labour Court/Industrial Tribunal or Registrar, both of whom have concurrent jurisdiction. The Labour Court/Tribunal can adjudicate upon a dispute provided, it is specified that the employee concerned is a workman and the dispute raised by him is an ‘industrial dispute’. The relevant extract is below:

“67. In the light of the foregoing discussion, we are of the considered opinion that the view of majority Judges cannot be upheld whereas the view of the minority Judges in Santhosh case deserves to be upheld and is accordingly upheld. We accordingly hold that the KCS Act and the ID Act both possess and enjoy the



concurrent jurisdiction to decide any service dispute arising between the cooperative society's employee and his/her employer (cooperative society).

68. We also hold that it is the choice of the employee concerned to choose any one forum out of the two forums available to him/her under the two Acts (the KCS Act and the ID Act) to get his/her service dispute decided. It is, however, subject to satisfying the test laid down under the ID Act that the employee concerned is a "workman", the dispute raised by him/her is an "industrial dispute" and the cooperative society (employer) is an "industry" as defined under the ID Act."

[Emphasis supplied]

10.1 So far as concerns the reliance placed by Respondent on the **Cooperative Central Bank** case, the subject matter of the dispute was service conditions, such as salary, skills, dearness allowance, other special allowances, etc. and in relation to *inter-se* transfers between the Banks. The case was filed in the context of the Andhra Pradesh Cooperative Societies Act, 1964 [hereinafter referred to as "Andhra Pradesh Act"] and the question formulated under the judgement was with respect to the provisions of Section 61 of the Andhra Pradesh Act. The Court held that, in the context of service conditions and transfer of employees, the Industrial Tribunal under the Industrial Disputes Act, 1947 would have jurisdiction. Thus, the judgement in the **Cooperative Central Bank** case is inapplicable to the circumstances of the present case.

11. Undisputedly, in the present case, the Petitioner was working as a Clerk-cum-Cashier with the Respondent since the year 2001. Although, the Respondent has contended that the Petitioner voluntarily abandoned his services, the order/communication dated 09.12.2020 says otherwise. In addition, the Staff Service Rules of the Respondent/Bank, more specifically Rule 32, provide that where there is absence of an officer from duty without



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leave, the same would constitute misconduct punishable under disciplinary proceedings.

11.1 In view of the foregoing discussions, the action initiated by the Respondent is pursuant to a disciplinary action taken against a paid employee of a corporative society and thus, does not fall within the definition of Section 70(1) of the DCS Act.

12. For the reasons as set out above, the Petition is allowed. The matter is remanded to the learned Labour Court for a *de novo* hearing.

13. It is clarified that the dispute has not been examined on merits by the Court and all rights and contentions of both parties are left open in this regard.

14. Parties will act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

SEPTEMBER 19, 2024/r

Click here to check corrigendum, if any