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**Naganath and ors. Vs. Common Cadre Committee and ors.**

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**SooperKanoon Citation : [sooperkanoon.com/385539](http://sooperkanoon.com/385539)**

**Court : Karnataka**

**Decided On : Sep-26-2000**

**Reported in : ILR2001KAR1716; (2001)ILLJ655Kant**

**Judge : G.C. Bharuka and ;K.R. Prasada Rao, JJ.**

**Acts : [Industrial Disputes Act, 1947](#) - Sections 2 and 33(C2); [National Bank for Agriculture and Rural Development Act, 1981](#) - Sections 2; Karnataka Co-operative Societies Act, 1959 - Sections 111A**

**Appeal No. : W.A. No. 5084/1998**

**Appellant : Naganath and ors.**

**Respondent : Common Cadre Committee and ors.**

**Advocate for Def. : Shantesh Gureddy, Adv. for Respondent No. 1**

**Advocate for Pet/Ap. : K. Subba Rao, Adv.**

**Disposition : Appeal disposed of**

**Judgement :**

1. The appellants have been working as Secretaries of the Primary Agricultural Credit Co-operative Societies (in short 'the Primary Societies') of Bidar District. In 1994 they filed an application before the Labour Court Gulbarga under Section 33-C(2) of the [Industrial Disputes Act, 1947](#) (in short 'the I.D. Act') seeking a direction

against the respondent-1. 'The Common Cadre Committee, Bidar District' (in short 'the Committee') for payment of bonus at the rate of 33% from the date of their appointment in terms of Payment of Bonus Act, 1965 (in short 'the Bonus Act'). The said application was numbered as Application No. 3/94. It was ultimately allowed by an award dated March 15, 1993 (Annexure-F) in the following terms:

'The application of 167 applicants is allowed. They are entitled for minimum bonus at the rate of 33% from the date of their appointment on the basis of annual wages from the respondent-Bank.'

2. The validity of the above award was assailed by the District Central Co-operative Bank Limited, Bidar District, as also the Committee by filing three writ petitions before this Court which had been disposed of by the learned single Judge by the impugned order inter alia remanding the matter to the Labour Court to record a finding as to whether the appellants are workmen within the meaning of the I.D. Act. The appellants being aggrieved by the said order have preferred this appeal.

3. Sri Subba Rao, learned counsel appearing for the appellants, submitted that on the facts and circumstances of the present case there was no occasion on the part of the learned single Judge to remand the case to the Labour Court for arriving at a finding as to whether the appellants are workmen within the meaning of the I.D. Act or not since such an objection was never taken by the Committee before the Labour Court.

4. In order to decide the issue raised on behalf of the appellant certain more fundamental aspects touching upon the mutual relationship of the contesting parties requires to be examined. We first proceed to do so.

#### RE : JURISTIC STATUS AND INTER SE RELATIONSHIP OF THE SOCIETIES

5. The Primary Societies for which the appellants had been appointed as Secretaries are registered co-operative societies under the provisions of the Karnataka Co-operative Societies Act, 1959 (in short 'the Societies Act'). These are Primary Rural Credit Societies within the meaning of Clause (n) of Section 2 of

the [National Bank for Agriculture and Rural Development Act, 1981](#) (in short 'the NABARD' Act). Their functions are to provide financial accommodation to their respective members for agriculture, agricultural operations, for the marketing of crops or for rural developments.

6. Bidar District Central Co-operative Bank Ltd. (in short 'the Central Bank') is also a registered co-operative society under the provisions of the Societies Act. It is a 'Central Co-operative Bank' within the meaning of Clause (d) of Section 2 of the NABARD Act. Its primary object is to finance other co-operative societies in the district of Bidar like the Primary Societies.

7. Section 9 of the Societies Act declares that registration of a co-operative society shall render it a body corporate by the name under which it is registered having perpetual succession and a common seal, and with power to hold property, enter into contracts, institute and defend suits and other legal proceedings and do all things necessary for the purposes for which it was constituted. Therefore both the Primary Societies as well as the Central Bank are independent juristic persons owing their existence and functions to the statutory provisions referred to above.

8. It may be noticed here that the short term and medium term agricultural credit to the agriculturists in the Bidar district is being provided by the Primary Societies of the district which in turn are affiliated to the Central Bank which functions as the federal society in respect of such Primary Societies. The Primary Societies draw loans from the Central Bank which in turn obtains refinance facilities from KSCAB based on the credit limit sanctioned by the National Bank for Agriculture and Rural Development established under the NABARD Act.

## RE: STATUS AND FUNCTIONS OF THE SECRETARIES

9. Section 111-A of the Societies Act deals with the Secretary. Sub-section (1) of this Section provides that:

'111-A. Secretary.- (1) The Chief Administrative and executive officer of a co-operative society, by whatever name called, shall be the Secretary of such society subject to the provisions of the regulations made under Section 128-A, the

Secretary shall be appointed and be removable by the co-operative society.'

10. From the above provision it is clear that every co-operative society like the Primary Society and the Central Bank has to have a Secretary who will act as the Chief Administrative and Executive Officer of these bodies.

11. The above Section 111-A has now been omitted by the Karnataka Act 25 of 1998 with effect from August 15, 1998 and by insertion of a new Section 29-G. The post of Chief Administrative Officer has been redesignated as the 'Chief Executive' which has been defined in Clause (a-3) of Section 2. This clause reads as under:

' 'Chief Executive' means any employee of a co-operative society by whatever designation called and includes an official of the State Government, an employee of any other institution or co-operative society who discharges the functions of a Chief Executive under the Act, rules or the bye-laws;'

From the above provision it is clear that the functions of the Secretary of the Co-operative Societies is mainly managerial and administrative in nature.

## RE : RELATIONSHIP OF THE SECRETARIES WITH THE CENTRAL BANK

12. To ascertain the relationship between the Secretaries, the Primary Societies and the Central Bank we first need to refer to Section 128-A of the Co-operative Societies Act. This Section reads as under:

'128-A. Constitution of a common cadre. (1) Notwithstanding anything contained in this Act, the rules or the bye-laws, where the Registrar in the interest of the co-operative movement, considers that the creation of a common cadre of employees for any class of co-operative societies is necessary, he shall authorise one or more federal societies to which such class of co-operative societies is affiliated to exercise the power of appointment, transfer and disciplinary action in respect of such categories of employees of that class of co-operative societies as may be specified by him and make such regulations as may be necessary for carrying out the said purpose. Where such federal society is so authorised by the Registrar, the affiliated co-operative societies shall not have powers to deal with such categories

of employees except to the extent the regulations may permit.

(2) The Registrar shall have power to require the affiliated co-operative societies to make contribution of such sum every year towards expenditure, as the federal society is likely to incur or has incurred for the purpose. If any co-operative society fails to pay the said sum to such authority as may be specified by the Registrar and within the time fixed by him, the Registrar may on the application of the authority, and after such enquiry as he may consider necessary, make an order requiring the co-operative society to pay the amount, and every such order shall be enforceable against the co-operative society as if it were an award under Section 71.'

Keeping in view the objectives of the above provisions of the Societies Act, the Registrar in respect of the Societies operating in Bidar District made an order dated March 19, 1996 (Annexure-C). The preamble of the order sets out the reasons for creation of such a cadre. The relevant extract of the ultimate order passed reads as under:

'In the circumstances explained in the preamble and in exercise of the powers vested in me under the provisions of Section 128-A of the Karnataka Co-operative Societies Act, 1959 as amended by the Karnataka Act No. 5 of 1984, I, P.S. Nagarajan, Registrar of Co-operative Societies in Karnataka, Bangalore.

1) do hereby create a common cadre consisting of the Secretaries of Primary Agricultural Credit Co-operative Societies in Bidar District and authorise the Bidar District Central Co-operative Bank Ltd., Bidar, the federal society in respect of Primary Agricultural Credit Co-operative Societies in Bidar District to exercise the power of appointment, transfer and disciplinary action in respect of Secretaries;

2) do hereby frame regulations as appended to this order which is necessary for the Federal Society for exercising the power of appointment, transfer and disciplinary action in respect of Secretaries of Primary Societies;

3) do hereby require the Primary Societies and the Bidar District Central Co-operative Bank Ltd., Bidar to make contribution at the rate of 90% and 10%

respectively towards the expenditure that Bidar District Central Co-operative Bank Ltd., is likely to incur or has incurred to meet the salary expenditure of the Secretary of Primary Agricultural Credit Co-operative Societies and stipulate that such contributions shall be made once in a quarter every year.'

13. The above order Annexure-C contains an appendix providing for 'Regulations regarding Appointment, Transfer and Disciplinary Action' (in short the 'Regulation') in respect of the Secretaries of Primary Agricultural Credit Co-operative Societies in Bidar District. These Regulations stipulate the constitution of a Common Cadre Committee with the following members:

- '1) The President of the Central Bank-chairman
- 2) The Deputy Registrar of Co-operative Societies, in Bidar District-Bidar
- 3) Managing Director, DCC Bank Ltd.--Bidar Member.'

14. Regulation 2(1) of the above Regulation defines the Secretary to mean the Chief Executive of a Primary Society appointed and posted as Secretary shall be the Secretary of such Primary Society. These Regulations empower the Committee to recall the services of the Secretaries in terms of the Regulations and other guidelines to be prescribed by the Board of Directors of the Central Bank. Regulation 4 provides for creation of 'Cadre Fund', Regulation 5 provides the mode of recruitment of the Secretaries, according to which the vacancies in the cadre has to be filled up by promotion from among the other employees in the Primary Societies as also by way of direct recruitment in the ratio of 3 : 1.

15. There are detailed provisions regarding disciplinary control and nature of penalties. Regulation 29 provides that the Managing Committee of the Primary Society in which the Secretary is working may impose any of the minor penalties but the major penalty can be imposed only by the Committee. Under Clause 37 of the Regulations the Managing Director of the Central Bank has been authorised to transfer the Secretaries anywhere in the district. The Regulations also provided for the age of recruitment, age of retirement, and other service conditions.

16. From the provision contained in Section 128-A of the Societies Act and the order passed by the Registrar thereunder it is clear that the Central Bank or the Committee has been merely authorised to regulate the appointment and service conditions of the members of the common cadre of secretaries, keeping in view the best interest of the Primary Societies as well as the Secretaries thereof. The function of the Committee is more in the nature of trustee or a statutory delegatee. We are clearly of the opinion that investment of such power on the Central Bank or its Managing Director or the Committee does not clothe them with the status of employers of the Secretaries.

#### MAINTAINABILITY OF PETITION UNDER SECTION 33-C(2) OF THE ID. ACT

Section 33-C(2) of the T.D. Act reads as under:

'33-C. Recovery of money due from an employer. -

(1) .....

(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government within a period not exceeding three months: Provided that where the Presiding Officer of a Labour Court considers it necessary or expedient so to do, he may for reasons to be recorded in writing, extend such period by such further period as he may think fit.'

17. Under the above provision a petition can be maintained only by a workman as defined under Section 2(s) therefore, which reads as under:

'2(s) 'workman' means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged

or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person

(i).....

(ii).....

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv).....'

18. From the above provisions it is clear that a person who is employed mainly in a managerial or administrative capacity is not covered by the definition of 'workman' for the purpose of I.D. Act. As we have already noticed above, the secretaries of all the co-operative Societies including the Primary Societies as also the Central Bank, are appointed to discharge managerial executive and administrative functions. Therefore clearly they are not 'workmen' entitling them to maintain any petition before the Labour Court under Section 33-C(2) of the I.D. Act.

19. In the present case the learned single Judge by referring to paragraphs 11 and 13 of the award of the Labour Court has rightly concluded that the respondent had specifically taken a contention before the Labour Court that the appellants-Secretaries are not workmen but the Labour Court declined to enter into the question by holding that 'only pre-existing rights can be decided. But the Labour Court cannot investigate the matter to decide the status of the workmen or otherwise.'

20. In our considered opinion the Labour Court has fallen in a grave error in not deciding the issue as to whether the appellants are workmen within the meaning of I.D. Act or not, since it was a jurisdictional issue and it was incumbent upon the Labour Court to record its finding on the same. Nonetheless since we have already found that the appellants are not workmen within the meaning of I.D. Act which was ascertainable from the very statutory provisions referred to above, in our considered opinion, it was not necessary for the learned single Judge to remand the matter to the Labour Court for the said purpose.

21. For the aforesaid reasons we set aside the order of the learned single Judge and quash the award of the Labour Court at Annexure-F. The appeal is thus finally disposed of but there will be no order as to costs.

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