S.P. Sharma Vs. Cooperative Land Development Bank Ltd. and anr.

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Court : Rajasthan

Decided On : May-19-2008

Reported in : [2008(119)FLR507]; RLW2008(4)Raj3641

Judge : Gopal Krishan Vyas, J.

Appellant : S.P. Sharma

Respondent : Cooperative Land Development Bank Ltd. and anr.

Disposition : Petition allowed

Judgement :

Gopal Krishan Vyas, J.

1. In this writ petition petitioner has prayed for quashing the impugned order dated 9/6/1995 (Annex.3), whereby, petitioner was retired compulsorily and further prayed that respondents may be directed to reinstate the petitioner in service with all consequential benefits.

2. Initially this writ petition was dismissed for want of alternative remedy vide order dated 6/9/2001 by the Coordinate Bench of this Court against which the petitioner preferred special appeal before the Division Bench of this Court and Division Bench vide order dated 18/11/2003 quashed the order passed by learned Single Judge and remitted this case to Single Judge for deciding the matter afresh on

merits.

3. According to the facts of the case, petitioner - S.P. Sharma worked with the respondent bank for more than 20 years and in the year 1995 when he was working as Branch Secretary and was posted at Head Office of the Bank at Chittorgarh. He was informed vide letter dated 10/3/1992 that Cooperative Department has initiated a scheme known as 'Golden Hand Shake' under which employees can offer voluntary retirement and in that event he will be given certain benefits, however, the petitioner did not opt for the said scheme. Again on 15/9/1994 another letter was given to the petitioner about the same scheme but petitioner did not opt for voluntary retirement due to his family circumstances.

4. According to petitioner, on 15/5/1995 he was given threat by the respondents that if he will not opt for voluntary retirement scheme then he will be compulsorily retired. As per petitioner said threat was illegal and uncalled for because the present service is the only source of livelihood for petitioner and his family and in the year 1995 he was only 46 years old, therefore. It was not possible for him to get any alternate job.

5. On 9/6/1995 an order was issued by the respondent Bank, whereby, petitioner was given compulsory retirement from service as per the so called Rules of the Bank framed in the year 1990. As per petitioner, there were two sets of service rules in the bank. The Rules of 1974 were made effective from 1/4/1974 and another set of Rules were framed in 1990. As per petitioner in the Rules of 1974 there is no provision for compulsory retirement, however,, in the Rules of 1990 there is a provision for termination of service under Rule 20(a) and according to Rule 20(a) the discretion is left with the employer bank to give compulsory retirement to an employee after giving him three months notice in writing or payment of three months pay and allowances in lieu of such notice, if any employee has completed 20 years of service or 50 years of age whichever is earlier.

6. As per petitioner, in the Rules of 1990 it is no where provided that these Rules are superseding the earlier Rules of 1974 so also the Rules of 1990 are also not approved by the competent authority nor framed under Rule 41 of the Rajasthan

Cooperative Societies Rules, 1966 therefore, obviously there is no provision in existence for compulsory retirement of an employee in the respondent bank but without any legal provision the order of compulsory retirement from service was passed which is totally baseless and not In consonance with the provisions of any valid Rules. Further it is submitted that the order of compulsory retirement has been passed only to harass or victimize the petitioner because first of all petitioner was offered to seek voluntary retirement under 'Golden Handshake' Scheme but petitioner refused to accept the said scheme then with malafide reasons the order of compulsory retirement was issued in violation of Rules and existing provisions of service Rules of the Bank. It is further submitted that Rules of 1990 are not approved so also these Rules have not been framed under Rule 41 of the Rajasthan Cooperative Societies Rules, 1966, therefore, the order of compulsory retirement of petitioner is without jurisdiction, therefore, deserves to be quashed.

7. Learned Counsel for the petitioner S.P. Sharma further argued that order of compulsory retirement amounts to punishment if it is passed without any provision of law, therefore, without any opportunity of hearing or holding any proper inquiry, said order cannot be sustained. The petitioner was permanent employee of the respondent bank and his services cannot be dispensed with contrary to the provisions of Rules, therefore, petitioner is entitled to reinstatement in service and the order of compulsory retirement dated 9/6/1995 (Annex.3) deserves to be set aside.

8. Per contra learned Counsel for the respondent bank submitted that there is a provision under the Rules of 1990, and those Rules are based upon model rules circulated by the Registrar, Cooperative Societies in exercise of powers conferred by Rule 41 of the Rules of 1966. It is also submitted by learned Counsel for the respondent that every employer has a right to pass an order of compulsory retirement under the Rules if employee becomes deadwood for service and such power can be exercised by the respondent bank as per Rule 20(a) of the Rules of 1990, therefore, contention of petitioner that order of compulsory retirement is not in consonance with the provisions of Rules is untenable. It is further submitted that the Rules of 1990 were framed as per model Rules framed under Rule 41 by the Registrar, Cooperative Department within its power under Rajasthan Cooperative

Societies Rules, 1966 and order of compulsory retirement passed by the respondent bank is based upon the recommendation of the committee constituted after screening the entire service record of the petitioner. It is also submitted that the Golden Handshake scheme was circulated to all the employees and there is no malice against any employee nor any threat was given to petitioner S.P. Sharma for seeking voluntary retirement, therefore, all allegations against the respondent are unfounded.

9. It is further submitted that the respondent bank is entitled to give voluntary retirement to an employee, who has outlived his utility and such order cannot be termed as punishment because after assessing the service record of employee, the decision was taken by the committee duly constituted by the Administrator. It is further submitted in reply that upon screening the service record of petitioner it is found that petitioner has outlived his utility and petitioner became deadwood. So also his work was deteriorating, therefore, on the basis of recommendation of committee it was felt necessary by the respondent bank to give compulsory retirement to Shri S.P. Sharma,, thus no illegality is committed by the respondent Bank.

10. In para No. 9 and 10 of the reply it is specifically stated by the respondent bank that contention of petitioner is totally wrong that there is no provision in the Rules of 1974 and Rules of 1990 for compulsory retirement of the employee. In fact Rules of 1990 are based upon model rules framed by the Registrar and under Rule 41 of-Rajasthan Cooperative Societies Rules, 1966 Registrar has power to frame rules for the employees of the cooperative societies and Rules of 1974 are approved by the Assistant Registrar, Cooperative Society, Chittorgarh and so far as Rules of 1990 are concerned same are framed under the model rules framed by the Registrar and under Rule 20 there is a provision for compulsory retirement upon completion of 20 years of service, therefore, petitioner has not been able to make out any case for interference by this Court.

11. Learned Counsel for the respondent vehemently argued that before passing order of compulsory retirement a committee was constituted to assess the service record of petitioner and upon recommendation made by the said committee the

order of compulsory retirement was passed by the respondent bank on the ground that the petitioner has lost his utility to continue in service and became deadwood for bank services. Therefore, there is no merit in the writ petition and same may be dismissed.

12. Learned Counsel for the respondents argued that the Hon'ble Apex Court has held in so many cases that order of compulsory retirement is not a punishment and employer has every right to pass order of compulsory retirement in public interest if the employee has lost its utility to continue in service.

13. In rejoinder, it is pointed out by the Counsel for the petitioner that the service record of Shri S.P. Sharma was not properly considered by the committee so also the petitioner was promoted as Branch Secretary in the year 1987-88, therefore, earlier adverse entries are deemed to be wiped out and those entries cannot be taken into consideration for the purpose of taking decision of compulsory retirement. The main contention of petitioner is that only those service Rules are enforceable which is framed and approved by the Registrar under Rule 41 of the Rajasthan Cooperative Societies Rules. It is also stated in rejoinder that reply filed by the respondents is totally untenable so also Rules of 1990 are not approved by the Registrar, Cooperative Society, therefore, said Rules cannot be made applicable for the purpose of compulsory retirement of an employee of the respondent bank.

14. I have heard learned Counsel for both the parties and considered the material on record. The main ground raised by the petitioner is that whether the order impugned dated 5/6/1995 is in consonance with provisions of law or not. In my opinion, upon perusal of reply to para No. 10 it is admitted by the respondents that so far as Rules of 1974 are concerned these rules are approved by the Assistant Registrar, Rajasthan Cooperative Society, Chittorgarh vide letter dated 2.3.1974 but with regard to Rules of 1990 it is stated that the same are based on the model rules framed by the Registrar in exercise of power under Rule 41 of the Rules of 1966, therefore, not require to be approved by the Registrar, Cooperative Societies and Rules of 1990 contain provision of voluntary retirement after completion of 20 years of service, therefore, the committee was constituted and

after perusing and screening the entire service record of the petitioner, his case was recommended by the committee for compulsory retirement in the interest of bank. The said report has been placed on record as Annex.R/1 which is signed by the Assistant Registrar, Cooperative Society, Chittorgarh, Secretary, Cooperative Land Development Bank, Chittorgarh and General Manager, Chittorgarh Kray Vikray Sahkari Samiti Limited. As per respondents this committee was constituted as per Rules of 1990 but as per Rules of 1990 no such committee can be constituted for the purpose of assessing the service record of an employee for taking final decision of compulsory retirement, therefore, when there is no provision under the Rules of 1990 for constituting any committee for the purpose of taking decision of compulsory retirement then in my opinion the recommendation of the committee upon which order of compulsory retirement has been passed is totally against the Rules of 1990. Relevant Rule 20(a) enumerated in the Rules of 1990 is as follows:

20. Termination of Employment:

An employee of an Institution may after giving at least three months' previous notice in writing to the Chief Executive of the Institution retire from service on which he has completed 20 years of service or the date on which he attains the age of 50 years whichever is earlier, or any other date hereinafter to be specified in the notice.

(a) The Chief Executive Officer may after giving 3 months previous notice in writing or by payment of three months pay and allowances in lieu of such notice require an employee to retire from service on the date on which he completes 20vears of service on date on which he attains the age of 50 years which ever is earlier or any other date thereafter.

15. Upon perusal of Rule 20(a) as aforesaid, it is revealed that only Chief Executive Officer of the Bank is competent to pass an order of compulsory retirement but here in this case the Secretary of the respondent Bank has passed the order of compulsory retirement, who has no jurisdiction under the Rules to pass such order So also upon perusal of Annex.3 it is clear that there is no mention with regard to recommendation of any committee, who has assessed the

service record of petitioner Upon perusal of Annex.R/1 it is no where stated that on what date the committee gave its recommendation or assessed the service record of petitioner. Likewise, as per respondents' contention in para No. 10 of reply, Rules of 1990 are not approved by the Registrar, Cooperative Societies. The Rule with regard to compulsory retirement was inserted on the basis of modal rules Annex.R/3 dated 17/7/1989 issued by the Registrar, Cooperative Societies while exercising power under Rule 41(1) of the Rules of 1966. The order dated 17/7/1989 (Annex.R/3) reads as follows:

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16. Upon perusal of Annex.R/3 it is abundantly clear that an employee of the Cooperative Society can be given compulsory retirement on the basis of decision taken by the Board of Director and such decision is required to be approved by the Registrar and the approval from the Registrar is a mandatory for the purpose of taking decision of compulsory retirement.

17. But in Rule 20 of the Rules of 1990 no such provision for taking approval is provided in Annex.R/3 dated 17/7/1989 is inserted and assertion has been made in reply that Rule 20 is based upon model Rules framed by the Registrar, Cooperative Societies, therefore, it appears that respondent Bank has tried to mislead this Court because as per reply of the Bank provision for compulsory retirement was incorporated as per modal rules framed by the Registrar under Rule 41 of the Rules but in the Rules of 1990, the provision is not inserted as per Annex.R/3 dated 17/7/1989.

18. Admittedly, a decision has been taken by the respondents to compulsorily retire the petitioner under Rule 20 of the Rules of 1990 which is said to be inserted as per modal rules framed under rule 41 of the Rules of 1966 by the Registrar vide order Annex.R/3 dated 17/7/1989 but under rule 20 it is no where provided that

approval shall be taken before passing order for compulsory retirement.

19. The reply filed by the respondents is contrary to their own document. The order dated 17/7/1989 (Annex.R/3) passed by the Registrar, Cooperative Societies under Rule 41(1) of the Rules of 1966 is altogether different than Rule 20 of Rules of 1990 which is said to be framed by the respondent bank and admittedly not even approved by the Registrar, Cooperative Societies, therefore, the order of compulsory retirement of petitioner is patently illegal and have no foundation to stand before eye of law. Therefore, in my opinion order dated 9/6/1995 (Annex.3) is not in consonance with the provisions of law and deserves to be quashed.

20. So far as judgments cited by learned Counsel for the respondents are concerned there is no quarrel with the proposition of law laid down by Hon'ble Apex Court that employer has right to pass an order of compulsory retirement if an employee has lost its utility and become deadwood, but here in this case the order of compulsory retirement has been challenged on the ground that the order is not in consonance with the provisions of law, therefore, the judgment cited by learned Counsel for the respondents are not applicable in this case.

21. For the reasons and discussion made above, this writ petition is allowed. The order dated 9/6/1995 (Annex.3) is hereby quashed and respondents are directed to take petitioner back in service all consequential benefits.