

**Neutral Citation No. - 2023:AHC-LKO:58838**

**AFR**

**Reserved**

**Writ C No.1006454 of 2011**

U.P. Cooperative Federation Limited through its Managing Director  
and Another ..... ..Petitioners

**Vs.**

Presiding Officer, Industrial Tribunal (2), U. P. Lucknow and two  
others ..... ..Respondents

**Hon'ble Alok Mathur, J.**

1. The award passed by U.P. Industrial Tribunal, Lucknow dated 23.4.2011 has been questioned by the petitioner, wherein the claim of the respondent-employee has been allowed, and his order of termination has been set aside and the petitioners have been directed to reinstate him in service with effect from 1.1.1985 and he has also been held entitled to 50 per cent back wages.
2. The petitioner has also challenged the order dated 9.3.2010 whereby the preliminary objection raised by the petitioner with regard to the jurisdiction of the Industrial Tribunal to decide the dispute pertaining to the cooperative society has been rejected.
3. The facts in brief necessary for adjudication of the present controversy are that respondent No.3-employee, namely, Ajay Kumar Mishra was appointed on *ad hoc* basis for 89 days with effect from 16.2.1982. His employment was extended from time to time till 31.12.1984 after which he was not allowed to continue in service.
4. Aggrieved by the action of the petitioner in terminating his services he moved Conciliation Officer under U.P. Industrial

Tribunals Act, 1947. On failure of the conciliation proceedings the matter was referred for adjudication by the Tribunal on the question with regard to the validity of his termination with effect from 1.1.1985. Notices were issued to the petitioner who appeared before the tribunal and contested the claim of the respondent-employee. It was stated that he was initially appointed on the post of Operator and posted at Copaganj, District Azamgarh on 16.2.1982 and subsequently transferred to Cold Storage, Shahjahanpur (Jaunpur) on his own request with effect from 12.11.1983. Some disciplinary inquiry was also initiated against the employee as there was damage to the potatoes in the said cold storage due to which he was transferred from Shahjahanpur to Head Office, Lucknow where he worked till 31.12.1984. Subsequently, his name was struck off from the attendance register.

5. In the written statement filed by the petitioner it was stated that the employee was engaged only for 89 days but subsequently his services were extended from time to time considering that his services were needed in the working of the federation.
6. The employee himself gave evidence in support of his claim while Sri Lal Bahadur, Additional , Additional District Cooperative Federation Officer appeared for the employer and after hearing both the parties the Tribunal rejected the claim of the employee holding that his services had come to an end on expiry of the period prescribed in his letter of appointment and further he was not entitled to any relief vide order dated 3.4.1991.
7. The employee being aggrieved of the order of Tribunal dated 3.4.1991 filed writ petition before this Court being writ petition No.1350 (S/S) of 1994 (*Ajay Kumar Mishra Vs. Industrial Tribunal (II), Lucknow*). This Court by means of judgment and

order dated 11.4.2008 quashed the award dated 3.4.1991 and remanded the matter back to the Tribunal for adjudication afresh.

8. When the matter was remanded back the petitioner submitted his written statement again and submitted that the controversy in question could not be adjudicated by the Tribunal as per the judgment of Supreme Court in the case of ***Ghaziabad Zila Sahkari Bank Limited Vs. Additional Labour Commissioner and others, 2008 (1) SCC (LNS) 90*** where it has been held that provisions of U.P. Cooperative Societies Act would apply for adjudication of dispute in the matters of employment of the society to the exclusion of other labour laws including U.P. Industrial Disputes Act, 1947.
9. The preliminary objection raised by the petitioner was rejected by means of order dated 09.03.2010 which order has also been impugned in the present writ petition.
10. Subsequent to rejection of the preliminary objection the matter was proceeded with and the statements of the employer along with one Vinod Kumar Pandey, Assistant Accountant and Accountant appeared for the employee were recorded while one Rakesh Kumar Singh, Senior Assistant posted at Lucknow appeared on behalf of the employer.
11. The Tribunal after considering the evidence adduced by both the parties was of the considered view that the employee has worked for more than 240 days in a calendar year preceding his termination and also that his termination was illegal and arbitrary and no procedure was followed and no notice was given to him. It was also considered that even in the inquiry conducted against the petitioner no opportunity was granted to him and accordingly while allowing his claim the order of

termination dated 1.1.1985 was set aside and he was directed to be reinstated in service along with 50 per cent back-wages.

**12.** Learned counsel for the petitioner while assailing the said award has submitted that the same is illegal and arbitrary in as much as the employee was appointed for a fixed period of time on expiry of which his services came to an end and, hence, the order is illegal and arbitrary. It has further been contended that the employee has not completed 240 days in a calendar year and on this ground also the relief as prayed by him could not have been granted.

**13.** Learned counsel for the respondent, on the other hand, has supported the impugned order. He submits that the Tribunal has duly considered all the material and dealt with all the objections preferred by the employer and after categorically recording that the petitioner has completed 240 days in a calendar year and his services were terminated de hors the provisions of law. The oral order of termination dated 1.1.1985 was set aside and there is no infirmity in the same requiring interference of this Court in exercise of powers under Article 226 of the Constitution.

**14.** I have heard learned counsel for the parties and perused the records.

**15.** With regard to validity of the award dated 23.4.2011 it is noticed that the Tribunal has considered the fact that the employee was appointed on 18.1.1985 on the post of Operator after due selection wherein he also faced interview and was placed in the scale of Rs.240-380/- and was posted at Gauriganj Cold Storage, District Azamgarh. He joined on the said post on 16.2.1982 and had worked diligently on the said post till he was transferred to Cold Storage at Shahganj (Jaunpur) on 11.7.1983.

He had worked at Cold Storage at Shahganj till 31.7.1984 subsequent to which he was transferred to Headquarters at Lucknow where he was allowed to work till 31.12.1984.

**16.** With regard to involvement of the petitioner in the destruction of potatoes stored in the cold storage, it was informed that inquiry in this regard has been held and it was found that the air conditioning plant was not working properly due to which temperature could not be lowered . It was further found that ammonia was not filled in the machine due to which temperature did not fall and accordingly four operators were found to be negligent , therefore, their tenure was not extended and new persons had already been appointed in their place. The employee had also filed additional documents including his service record, attendance register etc. according to which from 1<sup>st</sup> January, to June, 2008 he had worked for 196 days and till 13 December, 84 days, total 139 days and totaling to 308 days in 1984 and accordingly the Tribunal has duly concluded that the employee had worked for 308 days in 1984 days i.e. more than 240 days which is statutory requirement under Industrial Disputes Act and consequently held that he is entitled to be granted the benefit of Section 6F of the Act of 1947. He also considered the fact that he had been appointed after following due procedure and he was selected by means of interview. The Tribunal did not believe the version of the employer that appointment letter was issued without jurisdiction as no material or document was filed in support of this contention. It was considered that even after the first appointment letter was issued to him his services was repeatedly extended for 89 days and also considered that he had served in more than one District and held that his appointment was not illegal and accordingly held that the order of termination was illegal and arbitrary and he was entitled to the benefits of Section 6F of the U.P Industrial Disputes Act, 1947 and consequently direction

was issued to the petitioner to reinstate him in service along with 50 percent back-wages.

**17.** This Court does not find any infirmity with the order of the Tribunal on the merits. It was fully established that the respondent employee has worked for more than 240 days in a calendar year and also that he had continuously worked with the petitioner from 16.2.1982 till 31.12.1984 and no procedure was followed prior to passing the order of termination and no salary in lieu of the notice was given and consequently he was entitled to the benefits of Section 6F of U.P. Industrial Disputes Act no material has been placed before him for taking contrary view than what has been taken by the Tribunal and accordingly this Court finds that there is no infirmity in the order of Industrial Tribunal.

**18.** The next question which has been vehemently argued by the petitioner is with regard to the validity of the order dated 9.3.2010 by which the preliminary objection regarding the maintainability of the proceedings was rejected. It has been submitted that in a dispute between employer and employee of a Cooperative Society remedy for the employee lies under Section 70 of U.P. Cooperative Societies Act, and the matter has to be referred for arbitration either by the Registrar himself or to any other person appointed by him. It is submitted that the preliminary objection raised by the petitioner was wrongly rejected and that the award passed by the Industrial Tribunal is fully without jurisdiction. In support of his submissions he has relied upon the judgment in the case of *Ghaziabad Zila Sahkari Bank Limited Vs. Additional Labour Commissioner and others, 2008 (1) SCC (LNS) 90.*

**19.** Learned counsel for the respondent, on the other hand, has submitted that the judgment of the Supreme Court in the case of

*Ghaziabad (supra)* is not a good law in as much as it had not taken into consideration the previous judgment of Supreme Court in the case of *Dharappa Vs. Bijapur Coop. Milk Producers Societies Union Ltd. (2007) 9 SCC 109*, where the Supreme Court has held that unless the statute specifically ousts the jurisdiction of the Labour Court, both courts would have concurrent jurisdiction and the employee of the cooperative can raise the dispute either before the Labour Court or before the Registrar under the Cooperative Societies Act.

20. Similar controversy was decided by Supreme Court dealing with the provisions of *Karnataka Cooperative Societies Act* and it was held that even after amendment of Section 17 of Karnataka Cooperative Societies Act and held that Even though Clause (d) was added in Section 70(2) with effect from 20-1-1976, Section 70(1) it did not exclude or take away the jurisdiction of the Labour Courts and Industrial Tribunals under the ID Act to decide an industrial dispute between the 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 Industrial Disputes Act, continued to have jurisdiction to decide disputes between societies and their employees.

21. It was further submitted that the judgment of Supreme Court in the case of *Dharappa Sangappa Nandyal Vs. Bijapur Co-operative Milk Producers Societies Union Ltd* was affirmed by the Supreme Court in the case of *K.A. Annamma Vs. Secretary, Cochin Cooperative Hospital Society Limited, 2018(2) SCC 729* and held that Karnataka Societies Act did not create any express bar for the Labour Court/Industrial Tribunal from deciding the service disputes arising between a Cooperative Society's Employee and his/her Employer (Co-operative Society).

Secondly, any Co-operative Society's Employee satisfying the definition of the expression "Workman", "Industrial Dispute" and the Co-operative Society to be an "Industry" as defined under the Industrial Disputes Act has the choice to select one forum out of the two forums for filing a case in relation to his service dispute,

22. It was submitted that Uttar Pradesh Cooperative Societies Act does not bar jurisdiction of Industrial Disputes Act. Section 135 of the U.P Cooperative Societies Act specifically provide for exclusion of the provisions of U.P Industrial Disputes Act, but the said section has not been given assent to by the President and consequently is not enforceable in State of U.P. It was vehemently submitted that unless a provision is assented to by the President, it cannot be deemed to be part of the statute, and cannot be taken into account for determining the intention of the legislature. It is for the aforesaid reasons it was submitted that for deciding a dispute between the employee of cooperative society and the cooperative society judgement of Supreme Court in the case of *Dharappa Sangappa Nandyal Vs. Bijapur Co-operative Milk Producers Societies Union Ltd* would fully prevail over the judgment of *Ghaziabad Zila (Supra )* and accordingly there is no infirmity in the order passed by the Tribunal.

23. It was further submitted that in case the U.P Industrial Disputes Act is made inapplicable to the employees of the Cooperative Societies, then such a employees/workman would be unjustifiably be deprived of the benefit of provisions of 6H and other similar beneficial provisions provided for in the industrial disputes act. On the other hand in case there disputes are adjudicated by the Registrar, Cooperative Societies then the general law would apply, and the workmen would be deprived of getting an order for reinstatement in case of illegal termination. It was further submitted that such a interpretation



would be discriminatory and also deprive the Workman of the cooperative societies of the beneficial piece of legislation introduced by the Industrial Disputes Act, 1947

24. We have considered the arguments of the parties and perused the records.

25. To answer the said question raised by the petitioner with regard to applicability of provisions of section 70 of Uttar Pradesh Cooperative Societies Act in matters pertaining to resolution the disputes between the employees of cooperative society and the cooperative society and whether such disputes can be tried by labour court under the provisions of Uttar Pradesh Industrial Disputes Act, 1947, it would be relevant to consider the related provisions of both these acts in this regard.

26. The controversy involved in the present case is essentially legal in nature and it would be necessary to refer to the statutory provisions of Section 70 of U.P. Cooperative Societies Act:-

*“70. Disputes which may be referred to arbitration. - (1) Notwithstanding anything contained in any law for the time being in force, if any dispute relating to the constitution, management of the business of a co-operative society other than a dispute regarding disciplinary action taken against a paid servant of a 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 any person claiming through, a member, past member or deceased member, and the society, its committee or management of any officer, agent or employee of the society, including any past officer, agent or employee;*

*(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, heir or legal representative of any deceased officer, deceased agent, or deceased employee of the society; or*

*(d) between a co-operative society and any other co-operative society or societies:*

*such dispute shall be referred to the Registrar for action in accordance with the provisions of this Act and the rules and no court shall have jurisdiction to entertain any suit or other proceeding in respect of any such dispute:*

*[Provided that a dispute relating to an election under the provisions of this Act or rules made thereunder shall not be referred to the Registrar until after the declaration of the result of such election]*

*(2) For the purpose of sub-section (1), the following shall be deemed to be included in dispute relating to the constitution, management or the business of a co-operative society, namely -*

- (a) claims for amounts due when demand for payment is made is either refused or not complied with whether such claims are admitted or not by the opposite party;*
- (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) a claim by a society for any loss caused to it by a member, officer, agent, or employee including past or deceased member, officer, agent, or employee, whether individually or collectively and whether such loss be admitted or not; and*
- (d) all matters relating to the objects of the society mentioned in the bye-laws as also those relating to the election of office-bearers.*

*(3) If any question arises whether a dispute referred to the Registrar under this section is a dispute relating to the constitution, management or the business of co-operative society, decision thereon of the Registrar shall be final and shall not be called in question in any court.*

27. The provisions of U.P. Cooperative Societies Act, 1965 (*hereinafter referred to as "the Act, 1965"*) were duly considered by the Hon'ble Supreme Court in the case of **Ghaziabad Zila Sahkari Bank Ltd. vs. Addl. Labour Commissioner, 2007 (11) SCC 756** and in para 65 of the said order, the Apex Court held that in a matter pertaining to dispute raised by the workman, the remedy lies under Section 70 of the Act, 1965 and not before the Assistant Labour Commissioner under the provisions of U.P. Industrial Disputes Act, 1947 (*hereinafter referred to as "the Act, 1947"*). For ready reference para 65 of the said judgment is quoted herein below :-

*"65. We are therefore of the view that the Asst. Labour Commissioner (ALC)'s jurisdiction was wrongly invoked and his order dated 15.03.2003 under section 6H, U.P. Industrial Disputes Act, 1947 is without jurisdiction and hence null and void and it can be observed that, in view of the said general legal principle, it is immaterial whether or not the government has enforced section 135 (UPCS Act) because, in any case the said provision (S.135) had been included in the Act only by way of clarification and abundant caution."*

28. The other judgment relied by the workman/respondents being in the case of **K.A. Annamma Vs. The Secretary, Cochin Co-operative Hospital Society Ltd., 2018(2) SCC 729**. In the aforesaid case similar controversy had arisen before the Apex Court with regard to provisions of Kerala Cooperative Societies Act and the Apex Court held that the disputes can be

adjudicated under both the Acts i.e. Kerala Cooperative Societies Act as well as the Act, 1947, as they enjoy concurrent jurisdiction to decide any service dispute arising between the Cooperative Society's employee and his/her employer (Cooperative Society).

**29.**In the present controversy the issue which has been raised by both the parties is as to whether an employee of the Cooperative Society can maintain an application pertaining to his service dispute taking recourse of the Act, 1965 or the Act, 1947. This Court has also considered the judgements of the Hon'ble Supreme Court as well as the statutory provisions and finds itself bound by the judgment of the Apex Court, in the case of **Ghaziabad Zila Sahkari Bank Ltd.**(supra), where the Hon'ble Supreme Court after considering the provisions of the Act, 1965, in great details along with Section 135 of the said Act, have concluded that provisions of the Act, 1947 stands excluded with regard to the employees of the Cooperative Societies.

**30.**The Division Bench of this Court in the case of **Ramji Lal Tewari Vs. U.P. Co-operative Sugar Federation Ltd. Lko.** Special Appeal No. 524 of 2015 (decided on 02.11.2015), has also relied upon the judgment of the Apex Court in the case of **Ghaziabad Zila Sahkari Bank Ltd.** (supra) and held that if there is any dispute between the employee and employer of a Cooperative Society the matter has to be resolved as per provisions of U.P Cooperative Societies Act, 1965.

**31.**In the present case, the workman had approached the Labour Court, Lucknow and preliminary objection regarding maintainability had been raised by the petitioners but was rejected by the Labour Court by means of order dated

09.03.2010 and accordingly, the Labour Court fell in error in rejecting the preliminary objections by means of order dated 09.03.2010. A Division Bench of this Court has also relied upon the judgment in the case of *Ghaziabad Zila Sahkari Bank Ltd.* (supra) and from the above discussions, it is clear that the Labour Court had no jurisdiction to entertain and decide the said matter pertaining to a Society constituted under the Act, 1965.

32. In light of the above, the impugned award dated 23.04.2011 passed by the Presiding Officer, Industrial Tribunal (2) U.P., Lucknow in in Adjudication Case No.113/1988 as well as order dated 09.03.2010 are hereby set aside.

33. The writ petition stands **allowed**.

Dt. 12.09.2023

**(Alok Mathur, J.)**

RKM.