
(1998) 03 AHC CK 0095
In the Allahabad High Court
Case No : C.M.W.P. No. 2271 of 1997

Agra District Co-operative Bank Ltd., Agra	APPELLANT
Vs	
Prescribed Authority/Labour Court, U.P., Agra and others	RESPONDENT

Date of Decision : 10-03-1998

Acts Referred:

Citation : (1998) 3 AWC 1898 : (1998) 2 UPLBEC 1031

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Advocate : H.N. Tripathi, for the Appellant; S.C. and Arun Tandon, for the Respondent

Final Decision : Dismissed

Judgement

D.K. Seth, J.—The award dated 16th August, 1996 passed in Adjudication Case No. 143/1982 and 149/1982 has been challenged by means of this writ petition.

2. Mr. H. N. Tripathi, learned counsel for the petitioner assails the order on the ground that in view of Regulation 5 of U. P. Co-operative Societies Employees Service Regulations, 1975, selection could be made only by the Board and the selection made by the selection committee other than the Board, cannot be sustained. Secondly, he contends that even if such selection can be made by the selection committee as provided under Rule 5 as amended by U. P. Co-operative Societies Employees Service (Second Amendment) Regulations, 1979, even then such selection can be made only after a requisition is sent to the Board. In the present case, such requisition having not been sent, the selection made is bad. His next contention was that under 1979 amendment, the selection committee should consist of Chairman, Assistant Registrar and the Secretary, whereas in the present case admittedly the Additional District Cooperative Officer had participated in the selection instead of Assistant Registrar of the district. Therefore, according to him, constitution of the selection committee was bad and as such the committee was incompetent to make the selection. He next contended that the appointment letter was issued to the petitioner by the

"Sachiv" and not by the appointing authority. On the other hand, the appointing authority had cancelled the said selection by resolution dated 21st May, 1980 and, therefore, the respondent cannot claim any right on the basis of unauthorised appointment letter issued by the Secretary.

3. Mr. Arun Tandon, learned counsel representing the respondents on the other hand, contends that by reason of 1979 amendment of Regulation 5, no requisition is necessary to be sent to the Board for selection. Secondly, such selection can be made under such amended provision by the selection committee as provided in the amended regulation clause (6) of Regulation 5. He next contends that by reason of a Government Order issued by the department whenever the Assistant Registrar is unable to participate in the selection committee, in that event it is open to him to nominate an Additional District Cooperative Officer for participating in the selection committee in his place. Since the said Government Order has not been challenged in the present writ petition, therefore, it is not open to the petitioner to contend that participation of Additional District Co-operative Officer has vitiated constitution of the selection committee. He next contends that in the written statement the petitioner had contended that appointment letter was issued by the Committee of Management. It was also so found by the labour court in the award itself, and the learned counsel for the petitioner having not disputed the same particularly when written statement has not been made part of the record, for which, according to the learned counsel, an adverse presumption may be drawn against the petitioner, the finding of fact so arrived at by the labour court cannot be interfered with in the writ jurisdiction and the same being a finding of fact, this Court should be slow interfering with the same unless it is perverse.

4. In the present case, Interim order was granted on 31.1.1997. By means of an application, Mr. Tandon has sought vacation of the interim order. Admittedly, counter and rejoinder-affidavits have been exchanged between the parties. Learned counsel for both the parties had agreed that this writ petition may be disposed of finally instead of deciding the question of grant of interim order. Accordingly, they had addressed the Court on merits of the case.

5. I have heard both Mr. Tripathi and Mr. Tandon for considerable time.

6. So far as the first contention of Mr. Tripathi that it is only the Board which can make selection and appointment is concerned, the same does not stand to reason in view of provision of Regulation 5 as amended by 1979 amendment. The Regulation 5 as it stood provides as follows :

"5. (i) Recruitment for all appointments in a co-operative society shall be made through the Board whether the recruitment is :

(a) direct, or

(b) by promotion from employees already in the service of the society, or

(c) by taking on deputation or otherwise a person who is already in the service of

any other society registered or deemed to have been registered under the Act.

(ii) Notwithstanding anything in clause (i) no reference to the Board shall be necessary in the following cases :

(a) when it is proposed to fill with the concurrence of the Registrar any post by means of deputation of a Government servant, or

(b) when officiating promotion is made by the appointing authority from a lower rank to the next higher rank for a period not exceeding- six months.

(iii) The Board may, pending selection, permit stop-gap arrangements to be made by the appointing authority for such period as the Board may consider necessary. Intimation of such appointment shall be given to the Board within a month of such appointment.

(iv) To facilitate the performance of the duties enjoined upon the Board under clause (i), every co-operative society shall communicate to the Board by 31st December every year the approximate number of vacancies likely to arise during the course of the next calendar year by reasons of creation of new posts, retirement, deputation or otherwise.

(v) Notwithstanding anything, contained in clause (i), recruitment to the post of category IV employees mentioned in Regulation No. 6, shall be made by a selection committee consisting of (a) secretary of the appointing society, (b) a nominee of the Board who shall be the Chairman of the Selection Committee and (c) Assistant Registrar of the district concerned.

(vi) Selection made by the selection committee referred to in clause (v) and appointments made on basis thereof shall be provisional and be subject to the approval of the Board,

(vii) Notwithstanding the provisions of clause (iv), a co-operative society in which appointment is to be made shall send to the Board requisition in the form specified in Appendix "A" at least three months before the vacancy is sought to be filled up.

(viii) in making recruitment to any post, the Board may require, the appointing society or the society to which the appointing society is affiliated to send one of its officers to the Board, and when the recruitment is to be made for a technical post or a post requiring specialised knowledge or skill, the Board may also request any appropriate institution or authority to deputed technical adviser to assist the Board,"

This regulation was amended from time to time. But for our present purpose, we are concerned with the Second Amendment brought into being by 1979 Second Amendment. By the said amendment, clause (vi) of Regulation 5 as quoted above was replaced as follows :

"(vi) Notwithstanding anything contained in clause (i) recruitment to the posts of

typists and clerks in the lowest pay scales in a Co-operative Society shall be made by a Selection Committee constituted as under ;

(i) in the case of District/Central Co-operative Banks. District Cooperative Federations, Wholesale Co-operative Consumers Stores, including Naya Bazars, Uttar Pradesh Postal Employees" Co-operative Bank Ltd., Lucknow and Oudh and Rohelkhand Railway Employees Cooperative Bank Ltd., Lucknow, the Selection Committee shall consist of :

(a) Chairman/Administrator of the appointing society who shall be Chairman of the Selection Committee. If Assistant Registrar of the District is Administrator, Deputy Registrar of the Region shall be the Chairman of the Selection Committee ;

(b) Assistant Registrar of the district, who shall be member of the Selection Committee ; and

(c) Sachiv of the appointing society, who shall be convener of the Committee."

7. Relying on this provision, Mr. Tripathi contended that Clause (vi) though replaced by the 1979 amendment, but clauses (iv) and (vii) were not replaced, and by reason of clause (iv), it is necessary to communicate to the Board the approximate number of vacancies likely to arise during the course of next calendar year. Notwithstanding clause (iv). by reason of clause (vii) before filling up a vacancy, a requisition is necessary to be sent to the Board by the concerned society. Therefore, unless requisition is sent, no selection under clause (vi) could be made.

8. From the scheme of the Regulations, it appears that clause (iv) requires a communication to the Board in respect of future vacancies that is likely to arise. But such communication is not sufficient. In addition, before seeking filling up a vacancy, a requisition is to be made. But clause (iv) relates to clause (i) of Regulation 5. Clause (i) is power of the Board to recruit. The communication under clause (iv) is made in order to enable the Board to perform its duties enjoined under Clause (i). In addition to the communication under clause (iv), clause (vii) requires that a requisition is to be made. When it referred to clause (iv), it had omitted to refer clauses (v) and (vi). Similarly in the 1979 amendment though clause (vi) has been amended, clause (vii) was not amended. Clause (iv) refers to clause (i). Thus clause (vii) also refers to clause (i), Both clauses (iv) and (vii) are necessary to be complied with for the purpose of enabling the Board to perform its duties enjoined under clause (i). Thus, clause (vii) has no manner of application in respect of recruitment under clauses (v) and (vi). Since both these clauses (v) and (vi) begin with non-obstinate clause providing notwithstanding anything contained in clause (i) which pre-supposes that despite the provisions contained in clause (i) and thus relate to provision contained in clauses (iv) and (vii), recruitment can be made by the selection committee under clauses (v) and (vi) respectively. Thus, recruitment under clause (vi) being independent of clause (i), clauses (iv) and (vii) has no

manner of application. Therefore, I am unable to agree with the contention of Mr. -Tripathi and do not find any reason to interfere with the finding of the labour court that a requisition is not required to be sent for the purpose of recruitment under clause (vi)

9. So far as the question of participation of Assistant Registrar of the district is concerned, the provision is explicit. In sub-clause (i) (b), the Assistant Registrar of the district shall be member of the Selection Committee. If we go by the provisions of clause (vi), in that event the contention of Mr. Tripathi appears to be of substance and that nominee of the Assistant Registrar cannot be included in the Selection Committee. Participation of the nominee of the Assistant Registrar would thus vitiate the constitution of the committee. Though the labour court had relied upon a Government Order dated 27.7.1979 whereby in case the Assistant Registrar is unable to participate in such selection, he may nominate an additional District Co-operative Officer to participate in the Committee, has been provided for, yet the said Government Order has neither been disputed nor challenged. Unless the said Government Order is challenged, it is not incumbent upon this Court to decide the validity thereof. So long the said Government Order remains, unless the same is challenged and is held to be illegal and ultra vires, it is not open for this Court to hold otherwise. The finding of the Labour Court, therefore, cannot be assailed on that score. If it is permitted by the Government Order that in cases where the Assistant Registrar is unable to participate, he may nominate an officer which has since been passed by the Registrar of the Co-operative Society, in that event it cannot be said that the constitution of the committee was vitiated, because of non-participation of the Assistant Registrar and participation by his nominee. On these grounds, I am unable to persuade myself to agree with the contention of Mr. Tripathi and take a different view other than that of the labour court.

10. So far as the question of issuing letter of appointment by the secretary is concerned, it appears from paragraph 7 of the award itself where the employer's case was noted, that the managing committee had issued the appointment letter on 29.4.1980. In the additional written statement, it was :\$o pleaded by the employer. A copy of the additional written statement has not been brought on record to show that the said finding is perverse or that no such case was made out therein. Mr. Tripathi had also not contended that this was not pleaded in the additional written statement of the employer or this finding is perverse. As soon it is admitted by the employer in its pleadings that the appointment letter was issued by the Committee of Management, it is no more open to him to contend that it was not issued by the Committee of Management and that it was issued without any authority by the Secretary. If such question is to be gone into in the writ jurisdiction, it would be an endeavour to enter into disputed question of fact which this Court normally does not do. No such material has been brought before me to hold otherwise than that of the finding by the labour court in that respect. Therefore, I am unable to agree with the contention of Mr. Tripathi in respect of this contention as well.

11. The last contention of Mr. Tripathi was that the appointment having been cancelled by resolution dated 21st May, 1980. the appointment letter issued to the petitioner on 28.4.1980 was ineffective. He points out from the award itself that the appointment letter was issued on 28.4.1980 and the same was cancelled by order dated 21.5.1980 pursuant to the resolution dated 9.5.1980. This question has also been found by the labour court to the extent that this resolution is in effect though termed cancellation of the appointment, is termination of service without notice. Admittedly, the appointment was cancelled by resolution dated 9.5.1980, pursuant to which service was terminated with effect from 21.5.1980. Whether the termination was a consequence of cancellation of the appointment or otherwise. Is in effect a termination and. therefore, the resolution to cancel the appointment does not stand on different footing than that of termination of an appointment. Since it has been found that the selection committee constituted was legal and had competence of selecting the respondent and the letter of appointment having been issued by the Committee of Management, it is very difficult to accept the contention that the selection having been vitiated and the appointment letter having not been issued by the Secretary under any authority, the said selection was liable to be cancelled.

12. In view of the above findings, the decision referred to by Mr. Tripathi in the case of Ashwani Kumar and Others Vs. State of Bihar and Others, , has no manner of application since in the said case it was held that a person selected wrongly and appointment letter having been issued by an unauthorised officer, the appointment and selection being void, the same cannot be upheld. In the present case, the facts are wholly distinguishable to the extent that the labour court had found with which I have no reason to differ, that the committee was competent to make selection and the selection was not vitiated and the appointment was duly given by the Committee of Management and that the cancellation was illegal. In such circumstances, the decision in the case of Ashwani Kumar (supra) cannot be attracted in view of distinguishable facts and circumstances of the present case.

13. Similarly, the decision in the case of Vikramaditya Pandey Vs. Industrial Tribunal II and Another, is also distinguishable on facts. This decision was referred by Mr. Tripathi in order to contend that a person governed under Regulations, is not entitled to take resort to the Industrial Dispute Act. But in the said decision, it was held that such provision was incorporated u/s 135 of the U. P. Co-operative Societies Act. 1965 but though all sections of the said Act have been given effect to by notification but Section 135 has not yet been given effect to. Therefore, though there was legislative intention to exclude the operation of Industrial Dispute Act in respect of disputes arising out of Co-operative Societies Act relating to its employees, but Section 135 having not been given effect to, it cannot be said that the application of the Industrial Dispute Act is excluded. When specific provision has been made but has not been given effect to, it cannot be said that the application of the Industrial Dispute Act is excluded so far

as such disputes are concerned. Therefore, the said contention also does not help Mr. Tripathi.

14. Relying on the decision in the case of R.C. Tiwari Vs. M.P. State Co-operative Marketing Federation Ltd. and others, . Mr. Tripathi contended that the present dispute cannot be brought under the purview of Industrial Dispute Act. But the said ratio does not relate to U. P. Cooperative Societies Act and the Rules framed thereunder. It has not been shown to me that the provisions of M. P. Co-operative Societies Act are similar to that of U. P. Co-operative Societies Act relating to service of the employees. The said decision proceeds on the basis of the facts given in the said case with reference to the provisions of M. P. Co-operative Societies Act. In the absence of any such material to show that those provisions are similar to U. P. Co-operative Societies Act and the Rules framed thereunder relating to its employees. It is not possible to place reliance on the said decision.

15. For all these reasons, I am not inclined to interfere with the impugned award. The writ petition, therefore, fails and is accordingly dismissed. The Interim order is discharged.

16. Before parting with the case, I may record appreciation for the arguments advanced by both Mr. Tripathi and Mr. Tandon.

17. There will, however, be no order as to costs.