(2010) 11 AHC CK 0413

In the Allahabad High Court

Case No : Special Appeal No. 345 of 2010

Allahabad District Cooperative Bank and Another	APPELLANT
Vs	
Ram Kishore Tewari and Others	RESPONDENT

Date of Decision : 12-11-2010

Acts Referred:

Uttar Pradesh Co-operative Societies Act, 1965 — Section 128, 98

Citation : (2011) 2 ADJ 207

Hon'ble Judges : F.I. Rebello, C.J;A.R Sahi, J

Bench : Division Bench

Advocate : P.S. Baghel and Gautam Baghel, for the Appellant; Devendra Kumar Mishra, P.K. Ganguly and Yogesh Agrawal, C.S.C., for the Respondent

Final Decision : Allowed

Judgement

1. The appellant-Bank aggrieved by the judgment dated 31.7.2007 and the order dated 5.5.2009 has preferred this appeal contending that the learned Judge has fallen in error in allowing the writ petition filed by the respondent-writ petitioners extending them consequential benefits of absorption in the appellant-Bank w.e.f. 9.3.1992. Sri P.S. Baghel, learned Senior Counsel appearing on behalf of the appellant-Bank contends that the respondent-writ petitioners were not entitled to any such benefits, but on instructions at the time of the hearing of this appeal, he submits that in the event this Court arrives at a conclusion that the respondent-writ petitioners were entitled to any notional benefit then the same could be granted only to the extent of the payment of gratuity.

2. Sri Yogesh Agrawal has been heard on behalf of the respondent-writ petitioners who contends that the learned Single Judge has taken into account the entire gamut of facts which indicate that the appellant-Bank compelled the respondent-writ petitioners to contest a litigation and the delay caused by the Bank in ultimately absorbing the respondent-writ petitioners was taken Into account for granting relief to them. In such a situation, it is urged that the learned Single Judge has not committed any error and the appeal deserves to be

dismissed,

3. The factual backdrop of the case is that the respondent-writ petitioners were initially appointed and were working as Class-III employees/Secretaries in Primary Agricultural Credit Cooperative Societies. They were confirmed employees. Certain Class-III posts were available in the appellant-Bank and a circular came to be issued by the Registrar of the Cooperative Societies that some of these posts in accordance with the said directives be filled up by way of deputation of employees of the Cooperative Societies. Accordingly, the respondent-writ petitioners were taken on deputation in the appellant-Bank.

4. The Registrar, Cooperative Societies issued an order on 9.3.1992 in accordance with which the respondent-writ petitioners claimed that they were entitled for absorption. A writ petition was filed being Writ Petition No. 3324 of 1992 in which an order was passed on 15.9.1992 calling upon the Bank to consider such claims and pass appropriate orders.

5. Consequent to the said directions, the appellant-Bank passed a resolution on 24.9.1992 that upon the expiry of the period of deputation, the respondent-writ petitioners would stand relieved. In essence, the respondent-writ petitioners were refused absorption. The said resolution of the appellant-Bank was also assailed in the same writ petition but it was dismissed on the ground of existence of alternative remedy u/s 128 of the U.P. Cooperative Societies Act.

6. The respondent-writ petitioners thereafter approached the Registrar u/s 128 of the 1965 Act for annulling the resolution dated 24.9.1992. The Deputy Registrar after hearing passed an order on 28.6.1993 annulling the resolution dated 24.9.1992. By subsequent order dated 30.6.1993, the Deputy Registrar stayed the operation of his own order, which was again challenged in a writ petition, which was allowed vide judgment and order dated 20.8.1993.

7. The appellant-Bank aggrieved by the order of the Deputy Registrar filed an appeal u/s 98 of the U.P. Cooperative Societies Act, 1965 before the State Government. The appeal filed by the appellant-Bank was allowed and the order of the Deputy Registrar was set aside. The respondent-writ petitioners aggrieved by the order of the State Government filed writ petition No. 40124 of 1993.

8. This Court after hearing the parties finally allowed the writ petition on 2.11.1995 holding that the order of the Deputy Registrar dated 28.6.1993 was valid and accordingly set aside the order of the State Government dated 2.11.1993. While allowing the writ petition, the following direction was issued:

In the aforesaid circumstances, I find that the impugned order cannot be sustained in the facts of the case. Accordingly the writ petition succeeds and is allowed. The order dated 2.11.1993 at annexure No. 12 to the writ petition is hereby quashed. The respondent No. 4, the Allahabad District Cooperative Bank Limited, Allahabad is directed to take appropriate steps for absorption of the petitioners in the District Cooperative Bank Ltd. Allahabad in strict compliance of the policy framed for the purposes.

9. The aforesaid direction appears to have not been implemented by the appellant-Bank. That compelled the respondent-writ petitioners to file Contempt Petition No. 333 of 1998. An order came to be passed by the Bank on 26.3.1999 complying with the aforesaid judgment and ultimately absorbing the respondent-writ petitioners. The respondent-writ petitioners were accordingly permitted to join on 1.4.1999 as Class-III employees posted as Clerk-cum-Cashier in the Bank whereafter they continued to work in the Bank.

10. The order of absorption of the year 1999 has been brought on record and the same specifies five conditions under Clause-3 for absorption. The same are quoted below:

11. The respondent-writ petitioners thereafter filed a writ petition giving rise to the present appeal being Writ Petition No. 547 of 2004 claiming a mandamus directing the respondents to fix the salary of the petitioners w.e.f. 9.3.1992, to deduct contributory provident fund and also pay salary to the petitioners between the period they were not permitted to work in the appellant-Bank, and to give consequential benefits alongwith 18% interest thereon. The appellant-Bank filed a counter-affidavit contesting the aforesaid position and also filed a supplementary counter-affidavit contending that in view of the terms and conditions of absorption dated 26.3.1999 as quoted hereinabove, the respondent-writ petitioners were not entitled for any such benefits as they had accepted the aforesaid terms and conditions and even otherwise during the period prior to their absorption in 1999, they had already been repatriated to their parent department where they had worked and had received salary. The Bank also took the stand that the petitioners had no vested right of absorption and the same was to be done in accordance with the guidelines that had been issued on 9.3.1992.

12. It appears that even though the counter-affidavit was on record and the same was considered by the learned Single Judge, no one appeared on behalf of the Bank before the learned Single Judge and the matter was proceeded ex-parte culminating in the judgment dated 31.7.2007. The Bank thereafter moved a recall application, which was rejected by the learned Single Judge on 5.5.2009 that has also been assailed in the present appeal. The learned Single Judge also noted that the supplementary counter-affidavit was filed on 24.2.2009, much after the decision rendered by the Court and, therefore, the same could not be taken into account.

13. Sri Baghel, learned Senior Counsel for the appellant-Bank advanced his submissions and laid emphasis on the terms and conditions of absorption as contained in the policy decision dated 9.3.1992 that prescribes the procedure for absorption in accordance with the U.P. Cooperative Societies Employees'' Service Regulations, 1975 and the consideration of individual candidature on the basis of merit. He submits that Clause-3 of the policy recites that the petitioners shall not

be entitled to any benefits of past services. He contends that the terms and conditions clearly spell out that the absorption will amount to a fresh service and will be treated to be a direct recruitment. In such circumstances, the learned Judge could not have assumed the right of absorption of the respondent-writ petitioners w.e.f. 9.3.1992.

14. Sri Yogesh Agrawal appearing on behalf of the respondent-writ petitioners contends that in view of the judgment of the learned Judge dated 2.11.1995, once the resolution of the Bank dated 24.9.1992 has been set aside, the only consequence to follow was the benefit of absorption, which the Bank delayed in litigation and hence the learned Judge has rightly allowed the benefits to the petitioners w.e.f. 9.3.1992.

15. Having heard learned counsel for the parties and having perused the records, we find that no useful purpose would be served by remitting the matter back to the learned Single Judge, even if the order dated 5.5.2009 is set aside and, therefore, with the consent of the parties, we are proceeding to dispose of the matter on merits.

The terms and conditions of the policy dated 9.3.1992 are extracted hereinbelow:

16. A perusal thereof leaves no room for doubt that the assessment of a candidate has to be made on merits before absorption is granted. The absorption, therefore, is not automatic by virtue of the policy dated 9.3.1992. It has to be made after following due procedure of the 1975 Regulations. The same, therefore, envisages an assessment for the purpose of absorption and the same is not automatic. The respondent-writ petitioners were entitled for being considered no doubt in terms of the said policy decision, which had been done in the year 1999 after the legal battle was fought and settled as indicated hereinabove.

17. The contention of Sri Agrawal for the respondent-writ petitioners that the impact of the judgment dated 2.11.1995 automatically entitles the petitioners for absorption, in our opinion, is not correct. This Court while deciding the said writ petition directed the appellant-Bank to take appropriate steps for absorption in compliance of the policy framed for the said purpose. This Court did not, therefore, grant the benefits of absorption to the petitioners w.e.f. 9.3.1992. The consideration was to be made in terms of the policy as referred to hereinabove. The said decision only set aside the resolution of the Bank and the order passed by the State Government in appeal calling upon the Bank to grant the benefit of absorption after considering their claims. This, in our opinion, does not amount to an automatic absorption w.e.f. 9.3.1992.

18. Apart from this, learned counsel for the Bank has rightly submitted that the respondent-writ petitioners have accepted the terms and conditions of absorption as contained in the order dated 26.3.1999. The petitioners never challenged the terms and conditions set out therein, which clearly prescribes that the absorption will be treated to be a new appointment against direct recruitment posts and that

they would be entitled for the basic pay-scale of Class-III employees henceforth. The respondent-writ petitioners accepted the terms and conditions therein and therefore, in our opinion, it is not open to the petitioners to contend that they were entitled for an automatic absorption from before.

19. The question, therefore, now remains to be considered is with regard to past services.

20. The respondent-writ petitioners admittedly had been relieved by the appellant-Bank in 1992 itself. While assailing the orders before this Court, the interim order that was passed on 16.3.1994 and has been appended alongwith the counter-affidavit by the respondent-writ petitioners themselves, indicates that the petitioners were to join their parent department without prejudice to their right in the pending writ petition. Thus, the respondent-writ petitioners continued in their parent posts and received salary till 1999, even after the writ petition was allowed on 2.11.1995. There was no direction for either making payment of salary or giving any such benefits as claimed by the respondent-writ petitioners. Thus, in our opinion, the respondent-writ petitioners are not entitled to any salary or payments for the period as claimed by them in the writ petition prior to their reinstatement in the year 1999.

21. The only issue which now remains to be considered is with regard to the delay on the part of the appellant-Bank in absorbing the respondent-writ petitioners. From a perusal of the facts as brought out on record, the respondent-writ petitioners had battled out their claim for which they had to undertake the litigation and their petition was allowed on 2.11.1995. The Bank thereafter took four years to implement the said decision that too even after a Contempt Petition was filed. In such circumstances, in our opinion, this delay on the part of the Bank deserves to be compensated to the extent that the respondent-writ petitioners would be entitled to count the aforesaid period for the purpose of payment of gratuity. Accordingly, as suggested by Sri Baghel, learned Senior Counsel for the Bank, the relief to the respondent-writ petitioners can be extended to the aforesaid extent only.

22. In view of the conclusion drawn by us hereinabove that the respondent-writ petitioners were not entitled to the relief of automatic absorption w.e.f. 9.3.1992, the judgment dated 31.7.2007 impugned herein is unsustainable. We, accordingly, set aside the judgment dated 31.7.2007 and direct that the appellant-Bank shall count the period w.e.f. 9.3.1992 onwards for the purpose of payment of gratuity to the respondent-writ petitioners and accordingly make payments to them. The payment shall be made to those who have retired and so far as such of the petitioners who are still in employment, would be entitled to the benefits accordingly as and when it falls due. The appeal stands allowed.

