

(2012) 07 UK CK 0021

In the Uttarakhand High Court

Case No : Writ Petition No. 240 of 2003 (S/S)

Anil Kumar Pant

APPELLANT

Vs

Registrar Cooperative Societies Uttarakhand and Others

RESPONDENT

Date of Decision : 09-07-2012

Acts Referred:

Citation : (2013) 2 UC 1025

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Judgement

Tarun Agarwala, J.—Heard Sri Manoj Tiwari, the learned Senior Counsel assisted by Mr. Alok Mahra, the learned counsel for the petitioner, Sri N.S. Pundir, the learned Brief Holder for respondent No. 1, Mr. K.K. Sah, the learned counsel for respondent No. 2 and Mr. M.C. Kandpal, the learned Senior Counsel assisted by Mr. S.S. Chaudhary, the learned counsel for respondent No. 3. The petitioner claims that he is a graduate and holds a certificate in Stenography. The petitioner was appointed in 1987 as a Clerk-cum-Typist in the respondent bank on the recommendation of the U.P. Cooperative Institutional Service Board, Lucknow. Respondent No. 3 was appointed as a Peon on a Class-IV post in the Nainital District Cooperative Bank Limited in the year 1987. In the year 1993, the U.P. Cooperative Institutional Service Board granted sanction for promotion on three post from Class IV to Class III on the basis of which respondent No. 3 was appointed on a Class III post. Since then, it transpires that respondent No. 3 was working as a Clerk-cum-typist in the office of Secretary of the Nainital District Cooperative Bank, Haldwani, respondent No. 2. In paragraph 7 of the writ petition, it has been alleged that one resolution dated 24th May, 1999 was passed by the Administrative Committee of the Bank recommending the promotion of respondent No. 3 on the post of Stenographer. Based on this recommendation of the Administrative Committee, the Secretary of the Bank, respondent No. 2 issued a letter dated 19th June, 1999 stating therein that 13 posts of Class II under promotion quota are lying vacant and, consequently, made a request for approval of the promotion of respondent No. 3 on the post of

Stenographer. In paragraph 13 of the writ petition, it has been alleged that respondent No. 2, i.e., Secretary issued two separate letters dated 17th August, 2001 to the petitioner as well as to the respondent No. 3 informing them that the Cooperative Institutional Service Board has opined that the post of Stenographer is a technical post and, consequently, the said post cannot be filled by way of promotion and that it could only be filled up by way of direct recruitment.

2. It transpires that the respondent No. 3 filed a writ Petition No. 4179 (S/S) of 2001 alleging that he has been working on the post of Stenographer for a considerable period of time and that the respondents be directed to regularize his services on the post of Stenographer. In paragraph 16 of the present writ petition, it has been stated that the Secretary, respondent No. 2 had filed a counter affidavit in the writ petition of respondent No. 3 contesting the claim of respondent No. 3, contending that he was never appointed as a Stenographer and, in any case, the proposal regarding his promotion on the post of Stenographer was turned down by the Cooperative Institutional Service Board, Lucknow. In the counter affidavit, it was also averred that there are many persons senior to the respondent No. 3 who could have a better claim than that of respondent No. 3. It transpires that that the writ petition was subsequently dismissed as withdrawn.

3. Upon the creation of the State of Uttarakhand, the power to make appointments/promotion by the Cooperative Institutional Service Board was withdrawn by means of a notification dated 23rd July, 2001 and the said power was given to the Registrar of the Cooperative Society appointed u/s 122 of the Cooperative Society Act, 1965. The Registrar by the impugned order dated 29th March, 2003 while referring to the recommendation of the Administrative Committee dated 24th May, 1999 and, the recommendation of the Secretary, respondent No. 2 dated 6th August, 1999 and, considering the qualification of the petitioner and, considering the interim order of the High Court dated 20th August, 2001, regularized the services of the respondent No. 3 on the post of Stenographer. The petitioner, being aggrieved by the said order of regularization of the services of the respondent No. 3, has filed the present writ petition.

4. Paragraph 7, 13 and 16 of the writ petition has not been denied by respondent No. 1, 2 or 3. No Rules has been placed by the Registrar to indicate that the services of the respondent No. 3 could be regularized as per the Regularization Rules. Nothing has been indicated by the Registrar that the claim of the respondent No. 3 was contested by the respondent bank before the High Court indicating that respondent No. 3 had never worked as a Stenographer coupled with the fact that the writ petition was subsequently dismissed as withdrawn. The Registrar has also not considered the fact that the Cooperative Institutional Service Board at Lucknow had declined the recommendation of the Administrative Committee to promote respondent No. 3 on the post of Stenographer as in their considered opinion the post was required to be filled up by direct recruitment. Without considering all these aspects, the Registrar has

regularized the services of the respondent No. 3 on a post on which he was not working and which was being contested by the respondent Bank.

5. Assuming that the post was required to be filled up by way of promotion, the relevant rules are not before the Court and it is not known whether promotion is subject to seniority subject to the rejection of the unfit or promotion by way of merit. In the absence of any promotion Rules being brought before the Court and, in the absence of any rules of regularization which the impugned order does not indicate, the Court gets an uncanny feeling that the order of regularization was made by the Registrar to benefit the respondent No. 3 who admittedly was junior to the petitioner and to several others. In the light of the aforesaid, the Court is of the opinion that regularization of respondent No. 3 on the post of Stenographer was dehors the rules and cannot be sustained. Consequently, the writ petition is allowed. The order dated 29th March, 2003 passed by the Registrar, respondent No. 1 and the consequential order dated 17th April, 2003 passed by the Secretary of the Cooperative Bank are quashed. It is open to the respondents to proceed and fill up the post of Stenographer in accordance with law.