

(1998) 09 AHC CK 0110
In the Allahabad High Court
Case No : Writ Petition No. 1440 (S/S) of 1997

Anwar Ahmad Siddiqui

APPELLANT

Vs

U.P. Co-operative Institutional Service Board and others

RESPONDENT

Date of Decision : 04-09-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 1 AWC 558 : (1999) 2 UPLBEC 50

Hon'ble Judges : R.H. Zaidi, J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

R.H. Zaidi, J.—Heard the learned counsel for the petitioner, learned standing counsel and also perused the record.

2. By means of this petition, petitioner prays for issuance of a writ, order or direction in the nature of certiorari quashing the order dated 6.2.1997 passed by opposite party No. 2 and the order dated 27.1.1997 passed by opposite party No. 1 contained in Annexures-2 and 1 respectively to the writ petition.

3. It appears that the order of Surcharge was passed against the petitioner u/s 68 of the U. P. Co-operative Societies Act. 1965 (for short the Act). The order being appealable and appeal was filed by the petitioner, which is stated to be pending disposal before the Cooperative Tribunal. In the meanwhile by means of the impugned order dated 6.2.1997, the petitioner was also discontinued from service of clerk (category 3) with prior approval of competent authority, granted to the Society vide order dated 27.1.1997. The orders impugned in the present petition are consequential in nature Section 68 of the Act provides as under :

"68. (1) If in the course of an audit, inquiry. Inspection of the winding up of a Co-operative Society it is found that any person, who is or was entrusted with the organisation of management of such Society, or who is or has at any time been an officer or an employee of the society, has made or caused to be made any

payment contrary to this Act, the rules or the bye-laws or has caused any deficiency in the assets of the Society by breach of trust or wilful negligence or has misappropriated or fraudulently retained any money or other property belonging to such Society, the Registrar may of his own motion or on the application of the committee, liquidator or any creditor. Inquire himself or direct any person authorised by him by an order in writing in this behalf to inquire into the conduct of such person :

Provided that no such inquiry shall be commenced after the expiry of twelve years from the date of any act or omission referred to in this sub-section.

(2) Where an Inquiry is made under sub-section (1) the Registrar may, after affording the person concerned a reasonable opportunity of being heard make an order of surcharge requiring him to restore the property or repay the money or any part thereof with interest at such rate, or to pay contribution and costs or compensation to such an extent as the Registrar may consider Just and equitable.

(3) Where an order of surcharge has been passed against a person under subsection (2) for having caused any deficiency in the assets of the Society by breach of trust or willful negligence, or for having misappropriated or fraudulently retained any money or other property belonging to such society, such person shall. subject to the result of appeal, if any. filed against such order, be disqualified from continuing in or being elected or appointed to an office in any Co-operative Society for a period of five years from the date of the order of surcharge."

4. From a reading of the aforesaid section, it is apparent that the order of surcharge may be passed against any person who has caused any deficiency in the assets of the Society by breach of trust or willful negligence, or for having misappropriated or fraudulently retained any money or other property belonging to such Society. The said order of surcharge is appealable. The appeal, as stated above, has already been filed. The petitioner was discontinued from the service in exercise of power under sub-section (3) of Section 68 of the Act. Thus, in case the order of surcharge is set aside by the Tribunal, the Impugned order shall automatically cease to exist. It was. therefore, not necessary for the petitioner to approach this Court and to challenge the validity of the impugned orders. The petitioner in case he succeeds In the appeal will be entitled to be reinstated on the post he was holding before the Impugned orders were passed against him, with all consequential benefits. No case for interference under Article 226 of the Constitution of India is. therefore, made out. It is, however. observed that the appeal filed by the petitioner which is pending before the Co-operative Tribunal shall be decided expeditiously preferably within a period of two weeks from the dale a certified copy of this order is communicated to the Tribunal.

5. With these observations and directions this petition stands finally disposed of.