(2009) 12 AHC CK 0274

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 43228 of 2003

Arun Kumar Agarwal — APPELLANT

Vs

U.P. Gangakisan Sansthan, Lucknow and Others — RESPONDENT

Date of Decision : 14-12-2009

Acts Referred:
Constitution of India, 1950 — Article 12

Citation : (2009) 12 AHC CK 0274

Hon'ble Judges : V.K.Shukla, J

Final Decision : Dismissed

Judgement

V.K. Shukla, J.—Present writ petition has been filed by the petitioner questioning the validity of the decision dated 24.07.2003 and 29.07.2003, Annexures 10 and 11 to the writ petition passed by Deputy Director and Director U.P. Ganna Kisan Sansthan Lucknow in respect of putting petitioner on his earlier post and pay scale.

2. Brief background of the case is that Uttar Pradesh Ganna Kishan Sansthan is a society registered under the Societies Registration Act. Functioning of said Sansthan is to impart knowledge and training to the canegrowers and connected persons so as to effectuate increase sugar production in the State, functions which was being earlier performed by Cane Development Department. Said Sansthan has been established by Government Order dated 04.08.1975 and has training centres at Shahjahanpur, Muzaffarnagar and Gorakhpur. Petitioner was appointed as Senior AssistantCum Accountant in U.P. Ganna Kishan Sansthan on 16.05.1977. Pursuant thereto he joined on 27.05.1977. Petitioner claims that he applied to the Director to promote him as Sahayak Lekhadhikari (Assistant Accountant) and he was promoted as Sampriksha Sahayak on 29.11.1994 and he joined on 05.12.1994. Petitioner has stated that he has been promoted as Accountant vide order dated 09.07.1999 passed by Director in the pay scale of Rs. 1400 to 2600 and he joined as Accountant. The Director, Ganna Kishan Sansthan on 28.07.1999 suspended the order and again order was passed on

31.08.1999 cancelling the order dated 28.07.1999 with a direction to comply with the order dated 09.07.1999. Petitioner has further stated that he was promoted and annual increment was also accorded and on 06.01.2001 Director again suspended the order dated 31.08.1999 passed by his predecessor and thereafter order dated 24.07.2003 has been passed by which order dated 09.07.1999 was cancelled wherein petitioner has been reverted from the post of Accountant to Sampriksha Sahayak and thereafter consequential order has been passed by Deputy Director. At this juncture present writ petition in question has been filed.

3. Counter affidavit has been filed on behalf of U.P. Ganna Kishan Sansthan contending that it is an autonomous self governing body and order dated 09.07.1999 was not a promotional order rather by the above order designation was given to employees in term of Government Order dated 11.08.1983 and as per the semi Government letter dated 29.07.1992 issued by the Finance Pay Commission. By the said order 80% of total strength of Account cadre was given to Accountant and 20% to the Assistant Accountant, however since the said order was issued without the concurrence of the Governing Council, the same was kept in abeyance vide subsequent order dated 28.07.1999. Again order was passed on 31.08.1999 and then order dated 31.08.1999 was again suspended till the decision by the Governing Council. Governing Council considered the matter in its meeting held on 01.05.2003, a committee was constituted and decision was taken on 14.07.2003 by Governing Council not to extend said benefit. In this background decision has been taken and none of the right of the petitioner has been infringed.

4. Rejoinder affidavit has been filed disputing the averments mentioned therein and reiterating the averments mentioned in the writ petition.

5. After pleadings mentioned above have been exchanged present writ petition has been taken up for final hearing and disposal with the consent of the parties.

6. Sri Rahul Jain, Advocate contended with vehemence that in the present case entire action smacks of arbitrariness and unreasonableness, as without providing any opportunity of hearing orders have been passed as such orders impugned are liable to be quashed and writ petition deserves to be allowed.

7. Countering said submission Sri Ravindera Singh, Advocate appearing for U.P. Ganna Kishan Sansthan contended that fact of the present case clearly demonstrated and established that rightful action has been taken and none of the legal right of the petitioner has been infringed seeing the nature of appointment of the petitioner, as such writ petition as it has been framed and drawn is liable to be dismissed.

8. After respective arguments have been advanced, the first fact which has been looked into is that Hon''ble Apex Court in the case of State of Uttar Pradesh and another Vs. Radhey Shyam Rai reported in 2009 (5) SCC 577 has already taken decision, holding that U.P. Ganna Kishan Sansthan falls within the scope and

ambit of Article 12 of the Constitution of India and U.P. Ganna Kishan Sansthan is "State" within the meaning of Article 12 of the constitution of India.

9. As U.P. Ganna Kishan Sansthan is "State" within the meaning of Article 12 of the constitution of India, in this background action of respondents, U.P. Ganna Kishan Sansthan is being tested on the touch stone of arbitrariness and fairness.

10. In the present case undisputed position is that petitioner was promoted as Sampriksha Sahayak on 29.11.1994 and he joined on 05.12.1994, Annexure4 to the writ petition and even said promotion which has been accorded to petitioner same was purely temporary promotion and is fully reflected from the contents of the promotional order dated 29.07.1994. Thereafter pursuant to resolution dated 03.08.1998 of Governing Council decision was taken to distribute the post of Accountant in 80:20 ratio. Petitioner claims that pursuant thereto fixation was made accordingly. After said order had been communicated, it is reflected from the record that in the present case qua the meeting which held on 03.08.1998 same complaints were made by one Smt. Asha Mishra contending that at no point of time any resolution was passed in respect of distribution of Accountant cadre under 80:20 ratio. Director on being apprised of the situation, said order dated 09.07.1999 in favour of petitioner and other was suspended and thereafter again order was passed by Director on 31.08.1999 and there it was mentioned that proceedings on 03.08,.1998 was verified as such communication dated 28.07.1999 is being cancelled and order dated 09.07.1999 should be implemented and given effect to. After said proceedings had been undertaken again various complaints were made on 06.01.2001 the order dated 31.08.1999 was stayed and thereafter matter was taken up by Governing Council on 01.05.2003 and Committee was constituted which also submitted its report on 17.05.2003 and by means of which order dated 09.07.1999 was resolved to be cancelled.

11. In the present case admitted position is that fitment which has been done, though it has been treated to be promotion by petitioner but the same was done on purely temporary basis as is reflected from the letter dated 09.07.1999 and once said fitment has been done on purely temporary basis and thereafter competent authority resolved to cancel the same then in such a situation none of legal right of the petitioner has been infringed by any means. This is not at all case of reversion rather in the present case on basis of 80:20 ratio fitment was made on temporary basis and right from beginning said fitment has been subject matter of dispute and ultimately Governing Council resolved not to accord any fitment. In this background, as fitment was purely temporary, no notice or opportunity was required. Action taken is strictly in accordance with law.

12. Consequently, writ petition lacks substances and is accordingly dismissed.

