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**(2002) 09 AHC CK 0071**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No. 37753 of 2002

Arun Kumar Awasthi

APPELLANT

Vs

Sadhan Sahkari Samiti Ltd. and Another

RESPONDENT

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**Date of Decision :** 06-09-2002

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 400, 467, 471

**Citation :** (2002) 5 AWC 3891 : (2003) 1 UPLBEC 193

**Hon'ble Judges :** S.P. Mehrotra, J

**Bench :** Single Bench

**Advocate :** R.C. Singh, for the Appellant; H.R. Mishra, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

S.P. Mehrotra, J.—This writ petition has been filed by the petitioner under Article 226 of the Constitution of India, inter alia, challenging the resolution dated 8th March, 2002 (Annexure-4 to the petition) passed by the Board of Directors of the Society and the order dated 8th March, 2002 (Annexure-5 to the petition) issued by the Secretary of the Society.

2. It is inter alia, alleged in the writ petition that the petitioner was appointed on the post of Accountant in the respondent Society, namely, Sadhan Sahkari Samiti Ltd.; and that First Information Report dated 6th July, 2000 in Case Crime No. 123/2000 under Sections 400, 467, 468 and 471, I.P.C. was lodged against the petitioner; and that by the order dated 2nd August, 2000 (Annexure-2 to the petition), the petitioner was placed under suspension; and that the petitioner was granted bail by this Court by order dated 20th March, 2002 passed on Bail Application No. 11695 of 2001; and that the petitioner was not subjected to departmental enquiry and no Inquiry Officer was appointed to enquire into the matter; and that the Board of Directors of the respondent- Society resolved on 8th March, 2002 to terminate the services of the petitioner; and that the said resolution/decision of the Board of Directors was communicated to the petitioner vide letter/order dated 8th March, 2002 issued by the Secretary of the

respondent- Society.

3. Thereafter the petitioner has filed the present writ petition.

4. I have heard Shri R.C. Singh, learned Counsel for the petitioner and Shri H.R. Mishra, learned Counsel for the respondents.

5. Shri R.C. Singh, learned Counsel of the petitioner, submits that the impugned resolution and the impugned order of termination of the services of the petitioner have been passed without giving any opportunity to the petitioner.

6. Shri H.R. Mishra, learned Counsel for the respondents, submits that the petitioner has got an alternative remedy u/s 128 of the U.P. Co-operative Societies Act, 1965 and as such the present writ petition filed by the petitioner is not maintainable.

7. Having considered the submissions made by the learned Counsel for the parties, I am of the opinion that the submission made by Shri H.R. Mishra, learned Counsel for the respondents, is correct. Section 128 of the Uttar Pradesh Co-operative Societies Act, 1965 (In short "the Act") provides as follows :

"128. Registrar's power to annul resolution of a co-operative society or cancel order passed by an Officer of a co-operative society in certain cases.-The Registrar may-

(i) annul any resolution passed by the Committee of Management, or the general body of any co-operative society; or

(ii) cancel any order passed by an officer of a co-operative society :

If he is of the opinion that the resolution or the order, as the case may be, is not covered by the objects of the society, or is in contravention of the provisions of this Act, the rules or the byelaws of the society, whereupon every such resolution or order shall become void and inoperative and be deleted from the records of the society."

8. In view of clause (i) of Section 128 of the Act, "Registrar" within the meaning of Section 2(r) read with Section 3 of the Act has power to annul any resolution passed by the Committee of Management, or the general body of any Co-operative Society. Further, in view of clause (ii) of Section 128 of the Act, the Registrar has power to cancel any order passed by an Officer of the co-operative society. In view of the aforesaid provisions, it is evident that the petitioner has an alternative remedy to approach the Register u/s 128 of the Act challenging the resolution dated 8th March, 2002 (Annexure-4 to the petition) passed by the Board of Directors of the respondent-society and the order dated 8th March, 2002 (Annexure-5 to the petition) issued by the Secretary of the respondent-Society.

9. In view of the aforesaid discussion it is clear that the petitioner has an alternative remedy u/s 128 of the Act. The writ petition filed by the petitioner is,

therefore, dismissed on the ground of availability of alternative remedy.

10. It is, however, observed that in case the petitioner approaches the appropriate authority u/s 128 of the U.P. Co-operative Societies Act by making requisite application/representation within three weeks from today, the appropriate authority will entertain such application/representation u/s 128 of the Act without raising any objection on the question of limitation, if any. It is however, made clear that no directions are being given on the merits of the case, as it is for the appropriate authority to take appropriate decision in this regard in accordance with law.