

(2006) 05 AHC CK 0084

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 54684 of 2005

Ayodhya Rai and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 29-05-2006

Acts Referred:

Constitution of India, 1950 — Article 226
Maintenance of Essential Service Act, 1966 — Section 3(1)
Uttar Pradesh Primary Agricultural Cooperative Credit Societies Centralized Service Rules, 1976 — Rule 13, 13(3), 14, 59, 7
Uttar Pradesh Primary Agricultural Credit Societies Centralised Services Regulations, 1978 — Regulation 59, 59(1)

Citation : (2006) 6 AWC 6439

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : M.P. Gupta, for the Appellant; D.P. Singh and N. Misra and C.S.C., for the Respondent

Judgement

Sudhir Agarwal, J.—The petitioners eight in numbers have approached this Court by means of the present writ petition under Article 226 of the Constitution of India, assailing the orders dated 13.1.2005 and 23.2.2005 placing the petitioners under suspension in a contemplated enquiry.

2. All the petitioners are working as Secretaries in various Primary Agriculture Credit Cooperative Societies. Their service conditions are governed by the U.P. Primary Agriculture Credit Cooperative Societies, Centralized Service Rules, 1976 (hereinafter referred to as 1976 Rules) and U.P. Primary Agriculture Credit Cooperative Societies Centralized Service Regulations, 1978 (hereinafter referred to as 1978 Regulations). The petitioners claim that they were not paid salary since November 2002 causing serious financial crisis and difficulty to them for managing their affairs and family liabilities. They approached the higher authorities time and again, but the same was not attended at all. Thereafter, the Union of Secretaries of Primary Agriculture Credit Cooperative Societies resolved

to proceed on strike w.e.f. 7th January 2005 to press their demand including payment of salary and ultimately they went on strike. All the petitioners claimed to be the office bearers of their Union and it is averred that the higher authorities got annoyed from the petitioners strike which they had resorted to press their demand with respect to payment of salary, and in furtherance of annoyance, the respondent No. 4 issued a circular dated 11.1.2005 notifying that since the elections of Cooperative Societies are to be held on 16th and 17th of January 2005, therefore, all the Secretaries, In-charge, Directors, and other employees of various Cooperative Societies are to ensure their presence for smooth conduct of election and ensure working of the office on 15th, 16th and 17th January 2005.

3. The Government declared strike illegal u/s 3(1) of Maintenance of Essential Service Act, 1966. The Assistant District Registrar Cooperative Societies, Ghazipur, also issued notice dated 11.1.2005 to the petitioners stating that they have withdrawn salary directly from Cash book in the month of October and November 2004, although the salary could have been received from the Management's Expense Account after sanction of salary bill by the Chairman, but in an illegal manner it was withdrawn from the funds of the Cooperative Societies. Consequently, the petitioners were directed to refund and deposit the entire amount in bank within a period of three days from the date of the receipt of letter dated 11.1.2005 and to ensure receipt of salary only from the management's Expense Account. It also said that in case of non-deposit of the amount, illegally withdrawn by the petitioners, action in accordance with Rules shall be taken against the petitioners

4. It is, further stated by the petitioners that they had drawn salary after preparing pay bills and after having resolutions passed by the concerned Committee of Management. There was no irregularity on the part of the petitioners in withdrawal of the aforesaid amount towards their salary and hence there was no occasion for the petitioners to refund the aforesaid amount. The petitioners submitted their reply vide representation dated 25.1.2005 explaining the aforesaid facts to the District Assistant Registrar, Cooperative Societies, Ghazipur.

5. However, by means of the impugned orders dated 13.1.2005 and 23.2.2005 all the petitioners have been placed under suspension therefore, the present writ petition has been filed.

6. A counter affidavit has been filed on behalf of respondent Nos. 2 and 3 wherein it has been stated that prior to the 11th Amendment of 1976 Rules, published on 4th June 2003, the Secretary of the Primary Agriculture Credit Cooperative Society was entitled to draw salary from the bank but under the aforesaid amendment, it was provided that the salary shall be paid by the Society where such Secretary is posted. By 12th Amendment of 1976 Rules, published on 30th June 2004, it has also been provided that the post of Secretary of Primary Agriculture Cooperative Credit Societies is not transferable. In order to make provision for payment of salary to the Secretary each Primary

Society has to maintain a separate account under the head of "Prabandh Evam Vikas Nidhi" in each District Cooperative Bank and a prescribed amount would be deposited by the concerned Society in the aforesaid account towards margin money for managerial expenditure. The Secretary of the said Society is liable to be paid his salary from the aforesaid account only and that too by depositing his salary cheque in the concerned branch of the District Cooperative Bank. Under no circumstance a Secretary is entitled or permitted to withdraw salary directly from the funds of the society and to adjust the same towards his wages, In the present case, all the petitioners resorted to this illegal and unauthorized procedure by withdrawing their salary in cash directly from the funds of the Society itself, which was not permissible, and therefore, they were required to deposit the aforesaid amount. Since the petitioners defied and disobeyed the orders of the superiours authority and also were guilty of wrongful withdrawal and retention of Society funds, hence, in contemplation of disciplinary enquiry, the petitioners have been placed under suspension by the District Administrative Committee i.e. District Magistrate, Ghazipur, who was holding the office of the Administrator of the Society and therefore, was entitled to discharge functions of the committee of the Management of the Society.

7. It is also stated that since the State Government declared strike illegal, the petitioners were bound to report for duty and since they did not submit their joining, the District Administrative Committee resolved on 1,9.2.2005 (Annexure No. CA-2), to place the petitioners under suspension and pursuant thereto, the suspension order has been communicated to the petitioners by the Secretary of the Committee. The order of suspension was issued after approval of the District

8. Magistrate who is the Administrator of the Society and therefore, there is no error in the order impugned in the writ petition.

9. The respondents have also stated that under Regulations 59 (g) of 1978 Regulations, the petitioners have a statutory" remedy of appeal, which has not been availed by them; therefore, this writ petition is liable to be dismissed. It is, also stated that in respect to the petitioners Nos. 3 and 7, charge sheet has already been issued and in respect to other petitioners, it is in process.

10. No rejoinder affidavit has been filed by the petitioners nor any request was made for time to file rejoinder affidavit. The learned Counsel for the petitioners urged that since the matter is pending since long and the petitioners are under suspension, the Hon"ble Court may hear the matter finally at the time of admission itself. The learned Counsel for the respondents has no objection to the aforesaid request, and therefore, with the consent of the parties, the writ petition is finally heard and is being decided under the Rules of the Court at the admission stage.

11. The learned Counsel for the petitioners advanced the following submissions:

(i) Under Rule 14 (V), the Member Secretary of the District Administrative Committee has power to place a Member of Centralized Service under suspension

with the prior concurrence of Assistant Registrar. It is, submitted that the impugned order of suspension having been issued by the Member Secretary of the District Committee but there is no prior concurrence of Assistant Registrar before issuance of the impugned order of suspension, and therefore, the same is illegal and without jurisdiction.

(ii) The orders of suspension nowhere mentions that the same has been issued either in a contemplated disciplinary enquiry or in a pending enquiry, and therefore, the order of suspension is vitiated in law. Unless there is a disciplinary enquiry contemplated or pending, the petitioners could not have been suspended. Reliance has been placed on the judgments of this Court in *Mewa Ram Bharti v. district Administrative Committee and Ors.* 1991 (2) UPLBEC 1306, and *Abdul Rauf v. District Administrative Committee and Ors.* 1991 (2) UPLBEC 1166;

(iii) The orders of suspension have been passed on 13.1.2005 and 23.1.2005 but except the petitioner Nos. 3 and 7, in respect to other petitioners, no charge sheet has been issued and this shows that the impugned orders of suspension are arbitrary and penal in nature;

(iv) The disciplinary enquiry is required to be completed within a period of six months under law but since even charge sheet has not been issued, there is no occasion to complete the disciplinary enquiry within six months itself by respect to the petitioner Nos. 3 and 7 also, the disciplinary proceedings have not been completed so far, therefore, the continuance of suspension for such a long time is illegal and arbitrary.

The learned Counsel for the respondents however refuted all these contentions and submitted that suspension of the petitioners needs no interference.

12. Heard learned Counsel for the parties and perused the record. Rule 13 of 1976 Rules confers power upon the District Committee to exercise control and supervision over the members of the district and to perform such other duties and functions, as may be entrusted by the Authority or Regional Committee.

13. In the present case, the power of suspension has been exercised by the District Magistrate in his capacity as Administrator of the Society and therefore, he was entitled to discharge all functions which the Society or Committee of Management could have performed, and the Secretary has only communicated the said decision to the petitioners. The contention of the petitioners that the Secretary has suspended them is therefore incorrect and contrary to the record. This is evident from the suspension order itself, The relevant extract showing that the Member Secretary has only communicated the order of the District Magistrate of placing the petitioners under suspension is reproduced from one of the suspension order as under:

;r% ftyk lgk;d fucU/kd lg?l?m?iz? xkthiqj dh izFke n`"V;k fjiksVZ fnukad 12&1&2005 ds vk/kkj ij Jh v;ks;/k jk; lfpo] lk? lgdkjh lfefr gqlsuiqj fo?[k? Inj }kjk

fnukad 6&1&2005 dh lfefr ds fuokZpu gsrq ernkrk lwph u fn;s tkus ds dkj.k ukekadu dk;Z IEiUu u gksus dk rF; izdk"k esa vk;k gS ftls m?iz? lgdkjh lfefr fu;ekoyh 1998 ds fu;e la? 398?6? ds vUrxZr ernkrk lwph rS;kj djus esa foQy jgus dks vijk/k ekurs gq;s ftykf/kdkjh@egksn; ds xkthiqj ds i=kad 1455@6& lg?@vf/k? @04&05 fnukad 12&1&2005 }kjk Jh v;ks;/k jk; mDr dks Isok ls fuyfEcr djus dk funsZ"k izkIr gSA

14. Regulations, 1978 have been framed by the State Cadre Authority under Rule 7 of 1976, Rules with the prior approval of the Registrar.

15. Regulations 59(f) confers power upon the District Committee or any other Officer authorized for the purpose to place a member of Centralized Service other than one who is on deputation, to place him under suspension, in certain circumstances, prescribed thereunder. Regulations 59 1(a) and (f) is produced as under:

59. Disciplinary proceedings:-

(1) (a). " The disciplinary proceedings against a member shall be conducted by the Inquiring Officer referred to in Clause (b) below with due observance of the principles of natural justice for which it shall be necessary that;

....

(f). A member other than one referred to in Clause (e) above may be placed under suspension by the District Committee or any other officer authorised for the purpose in the following circumstances;

(i). " then the said authority is satisfied that a prima facie case exists, which is likely to result in the removal, dismissal or reduction in rank of the member.

(ii). when an Inquiry into his conduct is immediately contemplated or is pending and his further continuance on his post is considered detrimental to the interest of the society or the authority ;

(iii). when a complaint against him of any criminal offence is under police investigation for which he has been arrested or he is undergoing trial in a court of law for an offence under the Indian Penal Code, U.P. Co-operative Societies Act, 1965 or any other Act or charges have been proved against him by a Criminal Court:

Provided that during suspension the member shall be entitled to a subsistence allowance equal to one third of his pay :

Provided further that a member who is under suspension on the date of coming into force of these regulations shall continue to draw such proportion of his pay and such allowance as he was allowed to draw for the period of suspension:

Provided also that no payment of the subsistence allowance shall be made unless the member has furnished a certificate and the authority passing the order of suspension is satisfied that the member was not engaged in any other

employment, business, profession or vocation and had not earned remuneration therefore during the period of his suspension;

(iv). If the period of suspension extends beyond six months for no fault of the member concerned, the subsistence allowance shall be increased to half of his pay.

(v). when a member is reinstated the authority competent to order the reinstatement shall make specific order regarding pay and allowances to be paid for the period of suspension and whether or not the said period shall be treated as a period spent on duty :

Provided that where the authority passing the order of reinstatement is of the opinion that the member has been fully exonerated or the suspension was wholly unjustified, the member shall be given the full pay and allowance to which he would have been entitled, had he not been suspended.

16. A cumulative reading of Rule 13 of 1976 Rules and Regulations 59 (1) (f) of 1978, Regulations, makes it clear that the power of suspension is to be exercised by District Committee itself or any officer authorised for the purpose. There is no requirement of seeking prior approval from the Assistant Registrar.

17. The learned Counsel for the petitioners has placed reliance in support of his submission that the District Administrative Committee could not have exercised the power of suspension without prior concurrence of the Assistant Registrar upon a Division Bench judgment of this Court in the case of *Giriwar Prasad Tripathi v. District Assistant Registrar Cooperative Societies and Ors.* 1982 UPLBEC 611 Rule 13(3) of 1997 Rules empowers a Chairman to suspend a member of centralized service with prior concurrence of Assistant Registrar. Rule 14 empowers the Member Secretary of the District Administrative Committee to suspend a member of centralized service. However, Regulation 59 of 1978 Regulations empowers the District Administrative Committee or any other officer authorized for the purpose to suspend a member in certain circumstance. Ex facie all the provisions travel on different fields. In *Giriwar Prasad Tripathi (supra)*, this Court noticed the aforesaid position as apparent from the following observations in para 3 of the judgment:

Such different intention will be clearly inferred from the specific provisions contained in Rules 13 and 14 where the power of suspension in one case has been given to the Chairman to be exercised with the prior concurrence of the Assistant Registrar and in the other case, the Member-Secretary will also exercise the power subject to the same condition of concurrence of the Assistant Registrar. All these provisions indicate a different intention and therefore, it cannot be said that the appointing authority could still exercise the powers of suspension even in the face of specific provisions in different terms in the same rules, namely, Rules 13 and 14.

(emphasis added)

Again this Court noticed difference in power of District Administrative Committee under Regulation 59 (f) in para 4 of the judgment:

Moreover, the power under regulation 59 (f) is to be exercised by the District Committee only in certain circumstances, one of them being where the authority is satisfied that a prima facie case exists which is likely to result in the removal, dismissal or reduction in rank of member, and secondly, whether an enquiry into the conduct is immediately contemplated or is pending.

18. Case of Giriwar Prasad Tripathi (supra) was decided on the basis of the language of suspension order showing that the circumstances contemplated under Regulation 59(f) were not satisfied and therefore, the suspension order could not have been justified under Regulation 59 (f)

19. However, the matter does not rest here. It appears that the aforesaid provisions were interpreted by this Court in different manner in various cases resulting in conflicting decisions. Noticing this situation the matter was referred by a Division Bench in Ram Chandra Pandey Vs. District Administrative Committee U.P. Primary Agricultural Co-operative Credit Societies Centralised Service, Bahraich and others, to consider the entire issue by a larger bench in order to resolve the issue of power of suspension and the procedure of suspension under the aforesaid provisions. Consequently, the Full Bench considered the following questions in Ram Chandra Pandey (Supra),

(i) whether prior concurrence of the Assistant Registrar is a condition precedent for suspending a member of the centralized service even if the order of suspension has been passed by a Member Secretary of the District Committee, who himself is the Assistant Registrar?

(ii) whether the District Committee can suspend a member of the centralized service?

(iii) Whether Member Secretary of District Committee, while suspending a member of the centralized service, can appoint an inquiry officer to hold inquiry into the conduct of the Member and to submit his report?

(iv) Whether the impugned orders of suspension are illegal and without jurisdiction?

20. After analyzing the relevant provisions and relevant case laws, the Full Bench answered the aforesaid questions in para 16 of the judgment in Ram Chandra Pandey (Supra), which is reproduced as under-

Our answer to the questions referred to before are as under-

(i) "The Member Secretary can suspend a member of the centralized service under Regulation 59 (1)(f)(i) in the absence of a decision of the District Committee. Similarly, he can suspend a member under Regulation 59 (1)(f)(iii) without any decision of the District Committee. But a member of the service cannot be suspended by the Member Secretary under Regulation 59 (1)(f)(ii) in

the absence of a decision by the District Committee contemplating or initiating disciplinary inquiry. The decisions of this Court taking the view contrary to what is contained in this judgment stand over-ruled.

(ii) When the District Assistant Registrar is himself a Member Secretary of the District Committee, he can suspend a member of the centralized service without any concurrence of Assistant Registrar. In such a case the provisions requiring the prior concurrence of the Assistant Registrar stand dispensed with.

(iii) The District Committee is fully competent to suspend a member of the centralized service.

(iv) The Member Secretary cannot appoint an inquiry officer to conduct the disciplinary proceedings in the absence of decision of the District Committee initiating or contemplating the disciplinary proceedings.

(v) The impugned orders of suspension are illegal and cannot be sustained.

21. In view of the law laid down by the Full Bench in Ram Chandra Pandey (Supra), it cannot be held that the District Administrative Committee is not competent to suspend a member of centralized service without prior approval of the Assistant Registrar. On the contrary the law is that the District Administrative Committee is fully competent to suspend a member of centralized service under the provision of Rule 59(f). All the judgments, which lay down any law contrary have been over ruled in Ram Chandra Pandey (Supra).

22. Therefore, the first submission of the learned Counsel for the petitioner is rejected.

23. The next contention of learned Counsel for the petitioner is that the impugned suspension is vitiated in law since it does not mention either the factum of contemplation of disciplinary proceeding or its pendency. In support of the above submission, reliance has also been placed on a Division Bench judgment in Mira Tiwari v. The Chief Medical Officer and Ors. 2001 (3) UPLBEC 2057. After careful consideration of the aforesaid submission, I do not find any force in the said contention.

24. A perusal of suspension orders show that the Assistant District Cooperative Officer, Ghazipur, has been appointed as Enquiry Officer and he has been directed to complete enquiry and submit his report within thirty days. Therefore, a reading of the entire order makes it clear that the suspension of the petitioners has been resorted to in contemplation of a departmental enquiry. There is no requirement of law that in a particular manner the competent authority should mention in the order of suspension that an employee is being suspended in a contemplated enquiry or pending enquiry. If the reading of the entire order discloses that a disciplinary enquiry is contemplated or pending that would be a sufficient compliance of law and there is no charm in having the order of suspension worded in a particular manner. It cannot be argued if the suspension order does not mention specifically in so many words that the employee is being

placed under suspension in contemplation of disciplinary enquiry or pendency thereof, it would be bad. The Court does not subscribe to idea that unless the order of suspension clearly mention about contemplation or pendency of inquiry, the same would be vitiated in law. In my opinion if it is possible to infer from the perusal of the entire order of suspension that the same has been passed either in contemplation of the inquiry or its pendency it would not be vitiated. It is only in a case where by no means the order of suspension discloses as to whether it has been passed in contemplation of inquiry or pendency thereof, only in such limited cases, it may be argued that the suspension order is bad. The Division Bench in Meera Tiwari (Supra) found that the order of suspension does not refer to any contemplated inquiry or pendency of inquiry. In this view of the matter it is held that the suspension order is vitiated in law. However, in the case in hand, the recital in the order of suspension directing the Inquiry officer to complete disciplinary proceeding show that it has been issued in contemplation of disciplinary proceeding. In this view of the matter I am clearly of the view that the impugned order of suspension is not assailable on the aforesaid ground. The judgments of this Court in Mewa Ram Bharti (Supra) and Abdul Rauf (Supra) also lend no support to the petitioner having of no assistance on the aforesaid question. The controversy involved and the issues decided in those cases are different. On the other hand, in Hari Nath Sharma v. State of U.P. and Ors. 1997 (3) ESC 1833, this Court while considering a similar question observed:

The close look to the order does not specify that even impliedly it is indicated that the inquiry is contemplated. The order of suspension can only be issued when an inquiry is contemplated and it is to be so indicated in the order itself either expressly or by necessary implication.

25. Therefore, the second submission in view of the aforesaid has no force and rejected.

26. The third and fourth issues can be dealt with together. These questions deal with the prolonged agony and mental torture of an employee under suspension where inquiry either has not commenced or proceed with snail pace. This is a different angle of the matter, which is equally important and needs careful consideration. A suspension during contemplation of departmental inquiry or pendency thereof by itself is not a punishment but is resorted to by the competent authority to enquire into the allegations levelled against the employee giving him an opportunity of participation to find out whether the allegations are correct or not. In case, allegations are not found correct, the employee is reinstated without any loss towards salary, etc., and in case the charges are proved, the disciplinary authority passes such order as provided under law. However, keeping an employee under suspension, either without holding any enquiry, or by prolonging the enquiry is unreasonable and is neither just nor in larger public interest. A prolonged suspension by itself is penal. Similarly an order of suspension at the initial stage may be valid fulfilling all the requirements of law but may become penal or unlawful with the passage of time, if the

disciplinary inquiry is unreasonably prolonged or no inquiry is initiated at all without there being any fault or obstruction on the part of the delinquent employee. No person can be kept under suspension for indefinite period since during the period of suspension he is not paid full salary. He is also denied the enjoyment of status and therefore admittedly it has some adverse effect in respect of his status, life style and reputation in Society. A person under suspension is looked with suspicion in the Society by the persons with whom he meets in his normal discharge of function.

27. A Division Bench of this Court in *Gajendra Singh v. High Court of Judicature at Allahabad* 2004 UPLBEC 2934 also observed as under-

We need not forget that when a Government officer is placed under suspension, he is looked with suspicious eyes not only by his colloques and friends but by public at large too.

28. Disapproving unreasonable prolonged suspension, the Apex Court has also observed in *Public Services Tribunal Bar Association Vs. State of U.P. and Another*, as under-

if a suspension continues for indefinite period or the order of suspension passed is malafide, then it would be open to the employee to challenge the same by approaching the High Court under Article 226 of the Constitution....

29. The statutory power conferred upon the disciplinary authority to keep an employee under suspension during contemplation or pending disciplinary enquiry cannot thus be interpreted in a manner so as to confer an arbitrary, unguided and absolute power to keep an employee under suspension without enquiry for unlimited period or by prolonging enquiry unreasonably, particularly when the delinquent employee is not responsible for such delay. Therefore, I am clearly of the opinion that a suspension, if prolonged unreasonably without holding any enquiry or by prolonging the enquiry itself, is penal in nature and cannot be sustained.

30. In the case, in hand, counter affidavit has been filed by the respondents on 25-9-2005 wherein it is admitted that charge sheet has been issued only in respect to the petitioner Nos. 3 and 7 on 17.5.2005 and 5.9.2005 respectively, but in respect to all other petitioners even the charge sheet has not been issued till the date of swearing of the counter affidavit, although all the petitioners were already under suspension for the last 6-7 months till that time. The learned Counsel for the petitioners has stated that there is no further progress in the matter, and it could not be controverted by the counsel for the respondents. In these circumstances, since more than a year has already elapsed, it cannot be said that continuance of petitioners under suspension is reasonable and valid. Even the allegations contained in the order of suspension prima facie do not construe such serious misconduct which if proved may attract a major penalty. However, without expressing any final opinion on this aspect, I am of the considered opinion that the impugned order of suspension cannot be allowed to

continue indefinitely, and therefore is liable to be set aside. In the result the writ petition is allowed. The impugned orders of suspension dated 13.1.2005 and 23.2.2005 are quashed. The petitioner is entitled for reinstatement in service. However, the question of arrears of salary for the period of suspension shall be decided by the competent authority after conclusion of inquiry and in accordance with relevant rules.

31. It is, however, provided that the respondents are at liberty to continue with the disciplinary proceedings, if any, against the petitioners and this order will not come in their way to conclude disciplinary proceedings and to pass such final orders as permissible in law. It is also made clear that any observation made hereinabove shall not be treated to be an expression of opinion on the merit of the charges or in respect to the disciplinary proceedings, if any, pending against the petitioners.

32. No order as to costs.