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**(1994) 04 AHC CK 0083**

**In the Allahabad High Court**

**Case No :** Special Appeal No's. 827, 828, 829, 830, 831, 832, 847, 848 and 849 of 1993

Birjesh Kumar

APPELLANT

Vs

District Cane Officer and Others

RESPONDENT

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**Date of Decision :** 26-04-1994

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (1994) 2 AWC 1072

**Hon'ble Judges :** S.S. Sodhi, J; R.A. Sharma, J

**Bench :** Division Bench

**Advocate :** G.R. Jain, for the Appellant; Sashi Nandan, for the Respondent

**Final Decision :** Dismissed

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## Judgement

R.A. Sharma, J.—All these special appeals have been filed by the appellants against the identical judgments of the learned Single Judge, whereby their writ petitions have been dismissed. The main judgment was given by learned Single Judge in Writ Petition No. 1450 of 1992, Brijesh Kumar v. The District Cane Officer Bijnor and Ors. which has given rise to Special Appeal No. 828 of 1993. Following the main judgment, writ petitions filed by other appellants have also been dismissed. As the main judgment has been challenged in Special Appeal No, 828 of 1993, we have made this appeal as the leading case with the consent of the learned Counsel for the parties. We have heard learned Counsel for the parties.

2. As the Co-operative Cane Development Union, Naglana, district Bijnor (hereinafter referred to as the society) was not able to prepare its account books and registers in time, the District Cane Officer/Assistant Registrar, Bijnor, vide order dated 30-9-1986, passed under Rule 365 of the U.P. Co-operative Societies Rules, 1968 (hereinafter referred to as the Rules) posted the appellant in the society in the pay scale of seasonal clerk for getting the account books and registers written up according to the requirements of Secretary of the society. By

letter dated 20-6-1988 appellant along with others who were also posted under Rule 365, were informed by the Secretary of the society that their services are no longer required. Appellant has filed a writ petition against the above order dated 20-6-1988, which has been dismissed by the learned Single Judge by judgment dated 5-11-1993, against which this appeal has been filed.

3. Learned Counsel for the appellant has made two submissions in support of the appeal, namely, (i) as the appellant was appointed as seasonal clerk by the District Cane Officer/Assistant, Registrar his services could not have been terminated by the Secretary of the society, who is subordinate to the District Cane Officer, and (ii) the appellant was not given an opportunity of hearing before termination of his services. Learned Counsel for the respondents has disputed the above submissions and has pressed for the dismissal of the appeal.

4. From the perusal of the appointment letter, it is apparent that the appellant was not appointed to any post. He was merely posted under Rule 365 of the Rules in the pay scale of seasonal clerk for completing the record of the society. Rules 365 and 366, being relevant, are reproduced below:

365. The Registrar may, by an order in writing, direct a co-operative society to get any or all of the account books and registers written up to such date, in such form and within such time as may be specified in the order. In case of inability or failure on the part of the society to do so, the Registrar may depute any person to assist the Secretary of the society to have the account books and registers written up.

366. In case where the account books have been written up with the assistance of the person deputed by the Registrar under Rule 365, the Registrar shall be competent to determine, with reference to the time and labour involved in the work, the expenses which the society concerned shall pay. In case of default in payment of the amount of expenses, the same shall be recoverable as arrears of land revenue, the society having in its turn a right to claim the amount from the person or persons whose duty it was to maintain such accounts.

Rule 365 does not contemplate any appointment by the Registrar to any post. It merely provides that Registrar may depute any person to assist the Secretary of the society to have the account books and registers written up, if the society is not able to complete the record within time. Rule 366 empowers the Registrar to fix remuneration, with reference to the time and labour involved in the work, to be paid by the society to the person so appointed. Appointment/posting under Rule 365 is made for doing a particular work. The appellant was also posted under Rule 365 for completing the record of the society. Whenever an appointment is made for fixed term, it comes to an end automatically on the expiry of the term. Similarly when a person is appointed during a particular contingency, his employment comes to an end automatically when that particular contingency terminates. On completion of the terra or termination of the contingency the employee simply goes out, there is no question of termination of

service. A letter by the appointing authority or any other person subordinate to it informing the employee about the completion of the term or termination of the contingency for which he was appointed, cannot be treated to be an order of termination of service. The impugned letter informing the appellant that his services, are not more required, cannot be said to be an order of termination of his service.

5. Learned Counsel for the appellant, however, has placed reliance on two decisions of two learned Single Judge in Writ Petition No. 19665 of 1989 Rohitashwa Singh v. District Cane Officer and Ors. decided on 25-9-1991 and writ petition No, NIL of 1993 Yashwant Singh v. District Cane Officer and Ors. decided on 7-10-1993. In the case of Rohitashwa Singh (Supra) the learned Single Judge has held that as the petitioner therein was appointed as seasonal clerk by the District Cane Officer under Rule 365 his services could not have been terminated by the Secretary of the society who was not his appointing authority. Another learned Single Judge: in the case Yashwant Singh (supra) has taken the similar view. These decisions are based on the assumption that appointment to the post of seasonal clerk can be made under Rule 365 by the District Cane Officer/Assistant Registrar. This assumption is unwarranted, because Rule 365 does not contemplate any appointment to any post. It only authorises the Registrar to depute any person for doing a particular work. A Division Bench of this Court in the case of Gajendra Singh and Anr. v. District Cane Officer Bijnor and Ors. (Writ petition No. 23303 of 1988) decided on 3-1-1989, while dismissing the writ petition filed against the order of termination of service of the petitioner therein who was appointed under Rule 365, has laid down as under:

This Rule does not contemplate any appointment being made by the Registrar. The appointments have to be made in accordance with the provisions of U.P. Cane Co-operative Services Regulation, 1975. Regulation 35 specifically provides that a seasonal clerk can only be appointed by the District Cane Service Authority.

In the instant case the petitioners' appointment was not made by the District Cane Service Authority. It is wholly an invalid appointment made by the Assistant Registrar. Since the appointment itself was wholly invalid, the petitioners have no right to continue on the post in question. In the circumstances, they are not entitled to get any relief under Article 226 of the Constitution of India.

The cases of Rohitashwa Singh and Yashwant Singh (supra), as such, do not lay down good law and are accordingly overruled.

6. For the same reason the second submission of the learned Counsel for the appellant must also fail. The appellant was not appointed to any post. His appointment was for doing a particular work and it came to an end immediately after the work was over. In view of the facts and circumstances of the case, the question of giving any opportunity of hearing to the appellant does not arise.

7. In the end learned Counsel for the appellant has submitted that the appellant has worked for about two years in the society and the society should, as such,

appoint him whenever it requires any additional hands. We cannot issue any such direction to the society. It will, however, be open to the appellant to make representation before the respondents and if such a representation is made, same is liable to be considered sympathetically by the concerned authorities.

8. With the above observations, these appeals are dismissed. In view of the facts and circumstances of the case, there shall be no order as to costs.