

(1955) 08 AHC CK 0028
In the Allahabad High Court
Case No : Civil Misc. Writ No. 195 of 1955

Dalel Singh

APPELLANT

Vs

Honorary Secretary, Co-operative Union Ltd., U.P., Lucknow
and Others

RESPONDENT

Date of Decision : 09-08-1955

Acts Referred:

Constitution of India, 1950 — Article 226, 311
Penal Code, 1860 (IPC) — Section 409

Citation : AIR 1956 All 43 : (1956) 1 LLJ 242

Hon'ble Judges : V.D. Bhargava, J

Bench : Single Bench

Advocate : Janardan Swarup Gupta, for the Appellant; N.D. Pant, Jr. Standing Counsel assisted by Laxmisaran, for the Respondent

Final Decision : Dismissed

Judgement

V.D. Bhargava, J.—This is a petition under Article 226 of the Constitution. According to the petitioner he was a Supervisor appointed on 17-8-1947 in the Co-operative Union Limited, Lucknow, which is a Co-operative Society registered under the Co-operative Societies Act. He alleges that his services were under the Registrar Co-operative Societies, Lucknow. While he was holding this post he was in charge of the Branch Union at Chandausi. On 8-3-1950 the application went on leave and he entrusted the store in his absence to one Chandrapal.

Kamdar who also after a week, on 16-3-1950, went away without the permission of his superior officer and entrusted the work to one Ganeshi Lal, Salesman of the Union.

In the meantime owing to some ill will his name was mentioned in connection with a case u/s 363, I. P. C. On account of this the Registrar ordered his suspension till the case u/s 363, I. P. C., was decided. Later on the case u/s 363 was not proceeded with. But the cooperative society started investigation against the applicant and the other two persons Chandrapal Kamdar and Ganeshi Lal for

misappropriation that was alleged to have taken place in the Union during the time when the applicant was on leave.

On 19-8-1950 after the investigation a certain explanation was asked for from the applicant and he was asked to give his reply to the Assistant Registrar, Co-operative Societies about the irregularities and charges which were handed over to him

On 29-8-1950 the applicant sent his explanation of all the charges and irregularities which were levelled against him and he in this explanation said that those irregularities and misappropriation had been committed by other employees of the Society when the applicant was on leave.

It appears that the Union and the Assistant Registrar were not satisfied with the explanation and a case u/s 409, I. P. C., was started against the applicant and the two other men Chandrapal Kamdar and Ganeshi Lal and this case was registered on 12-2-1951. The applicant says that he was quite ignorant of these proceedings and, therefore, on 17-2-1951 he applied to the Registrar, that since proceedings of the case u/s 363, I. P. C., had been dropped against him and he was not found guilty of any offence during the investigation of which he had been suspended, he might be reinstated to his original post.

The Honorary Secretary, U. P. Co-operative Union by his letter dated 24-2-1951, asked the applicant to submit his explanation to the Assistant Registrar of the charges which were framed by that officer and to attend the office of the Assistant Registrar at once. It was further ordered that he would be entitled to subsistence allowance. The applicant on 1-3-1951 sent his reply to the Honorary Secretary that he had already submitted his explanation on 29-8-1950 for the charges levelled against him. The case u/s 409, I. P. C; proceeded and it appears that during the pendency of this case nothing was done by the Union about the applicant and he continued to be under suspension.

On 14-7-1950 the Assistant Sessions Judge recorded a conviction of the, applicant u/s 409, I. P. C., and ordered him to undergo a sentence of two years" rigorous imprisonment and to pay a fine of Rs. 2000/- The applicant filed an appeal before the Sessions Judge of Aligarh who on 4-1-1954 acquitted the applicant. Thereafter on 4-2-1954 the petitioner again applied to the Registrar, Co-operative Societies, Lucknow, that since he had been acquitted he might be restored, and on 1/7/1954 he sent a reminder to the Registrar.

It appears that the Registrar forwarded this letter and the reminder to the Honorary Secretary of the Union for necessary action as he was the real person who could restore the applicant. The Honorary Secretary informed the applicant on 10-7-1954 that he was not aware of the judgment of the criminal case acquitting the applicant and, therefore he wanted a copy thereof for necessary action. The applicant submitted a copy of the judgment on 17/7/1954 to which the Honorary Secretary replied that the matter would be placed before the Executive Committee of the Union and its decision would be communicated.

The applicant was also informed by a notice dated 11-8-1954 that the meeting of the local Subcommittee to hear and discuss the case of the applicant would be held on 18-8-1954 at 12 noon, in the office of the Assistant Registrar.

The applicant presented himself before the Committee where he was given an opportunity to say what he had to say before the members of the Committee. According to the petitioner, he narrated his whole woeful story before the members of the committee. On 27-9-1954 the applicant again sent a letter to the Registrar that he was absolutely in the dark about the result of the committee.

The applicant was again asked by the Honorary Secretary, Co-operative Union to present himself before the Executive Committee on 13-11-1954 at Lucknow in the office of the Union. The applicant again presented himself before the Executive committee of the Union and thereafter he received, what he alleges to be, an order of dismissal, dated 16-11-1954.

2. The applicant filed this petition in this Court on 24-2-1955 and he prays for three reliefs:

"(1) that a writ of certiorari may be issued to the Registrar, U. P., Co-operative Societies, Lucknow, Opposite party No. 2 and quash the order dated 16-11-1954.

(2) That a Writ of mandamus may be issued to the Registrar Co-operative Societies, Lucknow, to order him to reinstate the applicant to his original post of service.

(3) That a writ of direction may be issued to warrant the U. P. Government to pay the applicant the arrears of his pay and at least the subsistence allowance with its arrears till the final decision of the case"

3. From the above it appears that the applicant has made no prayer against respondent 1 and respondent No. 3 the Assistant Registrar, Co-operative Societies, Aligarh. His prayers are confined only as against respondent 2, the Registrar, Cooperative Societies and the State of Uttar Pradesh. He has alleged that the appointment was under the Registrar, Co-operative Societies and he considers himself to be an employee of the Government,

He has not filed any letter of appointment by virtue of which he has been appointed to show that he was appointed by any order of the Registrar or of the Assistant Registrar. On the other hand in the counter affidavit filed by Mr. Sohan Lal Pande, Honorary Secretary Co-operative Societies there is Annexure "A" from which it is clear that the appointment was made by Sri G. P. Bajpai Honorary Secretary of the. Union.

The petitioner was appointed on Rs. 25/- p. m. as pay, Rs. 11/- per month was fixed T. A., Re. 1/-per month as contingent allowance, Rs. 7/- p. m. as porter's allowance and Rs. 22/- p. m. as dearness allowance. That letter of appointment clearly shows that he was an employee of the Co-operative Society and not of

the Government and under the circumstances I think no order of reinstatement or appointment can be passed against the Registrar or the State of Uttar Pradesh. They have nothing to do with the appointment or dismissal of an employee of the Co-operative Society.

4. Learned counsel for the applicant had urged that the co-operative society is a statutory body and the Registrar has wide powers of interference with the administration of the Co-operative Societies. Therefore, the Registrar should be deemed to be the head of the Co-operative Society and he should be deemed to have power to interfere in the matters of appointments and dismissals also. I do not think that this proposition is tenable. Co-operative Societies are no doubt a creation of the statute just like any other joint stock company.

The Registrar is given certain powers of general supervision over the societies and he has power either of his own motion or at the request of the Collector or a majority of the committee or of not less than one third of the members to hold an enquiry or direct some person authorised by him to hold enquiry in the constitution, working and financial condition of the Society.

This power can only be exercised in cases where the entire working of the Society is defective and this power has been given to protect the interests of the shareholders and those who have to deal with the Society.

This does not mean that the Registrar has power to interfere in the day to day administration of the Society. Besides Section 35, no other section was brought to my notice where the Registrar had any other greater power. The State Government ;has still less power to do anything in the matter. There is nothing which the Registrar or the Assistant Registrar or the State should have done and which they have failed to do, and, therefore, as I have indicated above, the petition against the Registrar or the State Government is misconceived.

5. It may be noted that the appointment was temporary as is clear from the letter of appointment. It has nowhere been alleged much less proved, that he was made a permanent employee, and if the petitioner was a temporary employee, he could be removed any time by the Union without giving any reason for the same.

6. Learned counsel for the petitioner had argued that after the acquittal he was entitled " to be restored and that order should have been taken as final. The learned Sessions Judge, while allowing his appeal had made the following observation:

"I think the conviction of the present appellant u/s 409, I. P. C., with respect to this item also cannot be sustained. It is possible that the present appellant might be liable department-ally or for its price in the civil Court, but he could not be held criminally liable under the circumstances mentioned above."

It is clear that with respect to these amounts it was open still to the Union to put the liability on the petitioner, if they thought that he was responsible for those

losses, though he may not be criminally liable and on this ground if the executive committee dispensed with the services of the applicant it cannot be said that the Union has done anything which was against the principles of natural justice or amounting to an error of law on account of which this Court would have jurisdiction to interfere in the matter.

7. It was next contended that he had been dismissed without being given any opportunity, of being heard and giving an explanation. According to the affidavit of the applicant himself this contention is not sustainable. It may be pointed out that the order which has been filed as Annexure "L" to the affidavit does not show that the applicant has been dismissed. But it only says that his services have been "dispensed with". If a person is dismissed then there is some amount of slur which attaches to the person thus dismissed. But if a person's services are dispensed with it does not amount to any slur on the person.

It is open to the master to dispense with the services of his servant any time unless he is bound by some agreement. If there are some agreements or some statutory rules, just as in the case of Government servants there are Fundamental Rules, then the position may be different. But in the absence of any agreement or any directive rules retaining services of the servants their services can be dispensed with. It would be another matter if it amounted to an Industrial Dispute-under the Industrial Disputes Act. The tribunal may restore the dismissed employee. But in a writ petition it is not possible to restore the services if they have been dispensed with.

8. The grievance of the petitioner that he was not given an opportunity about the charges is also incorrect. In para 10 of his affidavit he has alleged that the charges were given to him on 19/8/1950 and he was asked to give his explanation to which he replied on 29-8-1950. He was again given an opportunity to be heard by the local committee as is clear from paras 21 and 22 of his affidavit. When the Assistant Registrar asked him to be present on 18-8-1954 before the local Sub-committee he himself presented his case and told his "woeful story", as he says.

A third opportunity was given to him by the Executive Committee which is responsible for appointments and dismissals as is clear from paras 24 and 25 of his affidavit when on the 13-11-1954 he himself again gave his explanation. Thereafter the Honorary Secretary informed him that the matter would be placed before the Executive Committee and he would be informed of the result. The executive Committee after considering the explanation which had already been given and the representation which he had verbally made passed the order dated 6-11-1954 dispensing with the services of the petitioner among others.

9. Learned counsel for the applicant urged that in the order of the Honorary Secretary dated 24th February suspending the petitioner it was mentioned that the applicant would be entitled to subsistence allowance from the date when he started attending the Assistant Registrar's office, and, therefore, in any event,

an order should be passed declaring him entitled to that allowance. Writ proceedings are not meant for declaratory decrees or for giving decrees for money. In case he is entitled to this amount he can file a separate suit.

In cases where there is an alternative remedy this Court does not interfere under the writ jurisdiction. Learned counsel says that the suit would involve considerable time. If this argument of learned counsel were accepted every suit for money should be filed under the writ jurisdiction because otherwise that would mean extraordinary delay. I do not think the applicant is entitled to any such declaration or decree.

10. The first writ claimed is a writ of certiorari against the Registrar, Co-operative Societies to quash the order dated 16-11-1954. A writ of certiorari can issue only to a Court or a quasi judicial body. It cannot be issued in other cases. Moreover, the order of 16-11-1954 is not an order of the Registrar at all. It is an order of the Honorary Secretary of the Union dispensing with the services of the applicant.

Under the circumstances, there is no question of the order of the Registrar being quashed. If there was any order of the Registrar it would be examined and seen whether the order was passed under a quasi judicial jurisdiction or under administrative jurisdiction, if it was a quasi judicial jurisdiction in that event, a writ of certiorari could be issued.

11. The second prayer is to issue a writ of mandamus to the Registrar, Co-operative Societies to order to him to reinstate the applicant to his original post. This is also an order beyond the jurisdiction of this Court. This Court can only direct in mandamus a public officer to act according to law. But it cannot order a public officer to do a particular thing. Further, it is not within the competence of the Registrar to restore the applicant.

It would be the Executive Committee of the Co-operative Union who could restore the applicant if they think proper. No prayer was made against the Honorary Secretary, Co-operative Union. But learned counsel for the applicant made an oral request that he may be permitted to add a ground for a writ in the nature of mandamus to be issued against the Honorary Secretary directing him to restore the applicant to his post.

Even on merits I do not consider that the applicant has any case and I do not think that an amendment at this late stage can be permitted. Apart from this, the Honorary Secretary, Co-operative Union will not be a public officer and it would be doubtful whether any writ of mandamus can be issued against him. However, I do not decide this point because there is no prayer against the Honorary Secretary in the application itself.

12. I see no force in this petition. It is accordingly dismissed with costs.