

(2001) 07 AHC CK 0042
In the Allahabad High Court
Case No : Writ Petition No. 6673 of 1985

Daya Shankar Trivedi

APPELLANT

Vs

Secretary, Lakhimpur Central Consumers" Co-op. Stores Ltd.
and Others

RESPONDENT

Date of Decision : 27-07-2001

Acts Referred:

Constitution of India, 1950 — Article 12, 226, 311
Uttar Pradesh Upbhokta Sahkari Bhandar Sewa Niyam, 1976 — Rule 60, 61

Citation : (2002) 1 AWC 342 : (2001) 91 FLR 1057 : (2001) 3 UPLBEC 2688

Hon'ble Judges : R.H. Zaidi, J

Bench : Single Bench

Advocate : Robin Mitra, for the Appellant; C.S.C, for the Respondent

Final Decision : Allowed

Judgement

R. H. Zaidi, J.—Heard learned counsel for the petitioner, learned counsel for the respondents and also perused the record.

2. By means of this petition, the petitioner prays for issuance of a writ, order or direction in the nature of certiorari quashing the order of termination dated 4.12.1985 contained in Annexure-1. Prayer for a writ, order or direction in the nature of mandamus commanding the respondents to continue the petitioner in service on the post of Branch Manager of respondent No. 1 has also been made.

3. It appears that the petitioner was initially appointed as Assistant Salesman on temporary basis vide appointment letter dated 5.6.1976. The order of appointment is contained in Annexure-2 to the writ petition, which provides that the services of the petitioner are purely temporary and were liable to be terminated at any time. After his appointment, the petitioner was permitted to continue for a period of three years. Thereafter, the petitioner and other candidates had to appear before the selection committee which was constituted for making permanent appointments on the posts in question. The selection committee selected the petitioner and three other candidates for appointment on

29.10.1979. After the petitioner was selected. the appointment letter which is contained in Annexure-3 was issued to the petitioner, on the basis of which he continued to work on the said post and to discharge his duties in permanent capacity. All of a sudden, the order dated 4.12.1985 was passed by the respondent No. 1 whereby services of the petitioner were terminated without following the procedure prescribed under the law and without affording an opportunity of hearing to the petitioner simply saying that the services of the petitioner were no more required, therefore, they were terminated. Hence, the present petition.

4. Learned counsel for the petitioner vehemently urged that the petitioner having been appointed in permanent capacity, his services could not be terminated except in accordance with law. The order of termination was passed in violation of Article 311 of the Constitution of India as well as Regulation No. 61 of the Uttar Pradesh Upbhokta Sahkari Bhandar Sewa Niyam, 1976, for short, "the Rules". It was also urged that the petitioner was not afforded an opportunity of being heard in any manner before the impugned order was passed, therefore, the Impugned order of termination was liable to be quashed.

5. On the other hand, learned counsel appearing for the contesting respondents submitted that the writ petition as framed and filed was legally not maintainable because the Lakhimpur Central Consumers" Cooperative Stores Limited. Lakhimpur Kheri, respondent No. 1, does not come within the definition of the State as provided under Article 12 of the Constitution of India. The petitioner, if so advised, could seek remedy elsewhere. The writ petition was. therefore, liable to be dismissed. It was also urged that the petitioner was a temporary employee as he was not appointed on probation, therefore, his services were rightly terminated.

6. I have considered the submissions made by learned counsel for the parties.

7. A Joint reading of Annexures-1, 2, 3 and 4 to the writ petition reveals that the petitioner was initially appointed on temporary basis but was subsequently selected for appointment by duly constituted Selection Committee and appointed on permanent basis on the post in question. The submission made by learned counsel for respondents, to the contrary, therefore, cannot be accepted. The petitioner admittedly had to face the Selection Committee. The Selection Committee on 29.10.1979 selected the petitioner and three other candidates for permanent appointment on the posts in question. Since, they were already working, therefore, they were permitted to continue. The services of the petitioner, therefore, could not be terminated without following the procedure prescribed under the law. Legally, it was not necessary that one should be appointed on probation before he is confirmed on a particular post. Even a temporary employee could be selected for permanent appointment and could be appointed on permanent basis. The order of termination was, thus, hit by Article 311 of the Constitution of India as well as Regulation 61 of the Service Regulations referred to above. The submission made by the learned counsel for

the respondent, to the contrary, is, thus, apparently incorrect. The Regulation 61 provides detailed procedure for taking disciplinary action against the employees of the Uttar Pradesh Upbhokta Sahkari Bhandar which has admittedly, not been followed Inasmuch as neither any charge was levelled against the petitioner nor he was afforded opportunity of being heard nor any enquiry was conducted nor any show cause notice was Issued nor evidence was permitted to be produced and the impugned order was t passed wholly arbitrarily and illegally, which is liable to be quashed.

8. So far as the preliminary objection regarding maintainability of the writ petition under Article 226 of the Constitution of India is concerned, the question with respect to the maintainability of the writ petition against a society came to be considered before the Apex Court in *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, , wherein it was held that an authority falling within the expression "other authorities" is, by reason of its inclusive definition of "State" in Article 12 of the Constitution, will be subject to the same constitutional limits as the Government and is equally bound by the basic obligation to obey the constitutional mandate of the Fundamental Rights enshrined in Part III of the Constitution. It was further held that the test for determining if an authority falls within the definition of "State" under Article 12 is whether it is an instrumentality or agency of the Government. The concept of instrumentality or agency of the Government is not limited to a corporation created by a statute but is equally applicable to a company or society and in a given case, it would have to be decided, on a consideration of the relevant factors, whether the company or society is an instrumentality or agency of the Government so as to come within the meaning of the expression "authority" under Article 12. The law laid down in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, . was held to be not conclusive or clinching. Applying the principles laid down in the case, ft was held that the Society registered under the Jammu and Kashmir Registration of Societies Act. which was established and carried on the administration and management of the Regional Engineering College, Srlnagar was an instrumentality or agency of the State and the Central Government and was an "authority" within the meaning of Article 12. It was also held that the said Government and the Central Government had full control over the working of the Society and the Society was nothing but a projection of the State and of the Central Government.

9, Again the said question came to be considered before the Apex Court in *U.P. State Cooperative Land Development Bank Ltd. Vs. Chandra Bhan Dubey and Others*, , wherein it was held that if the affairs of any society are controlled by the State Government, though it functions as a co-operative society, it is certainly an extending arm of the State and is thus an instrumentality of the State or authority as mentioned under Article 12 of the Constitution. It was ultimately held in the said case as under :

"We, therefore, hold that the appellant is an authority controlled by the State

Government and the service condition of the employees of the appellant particularly with regard to disciplinary proceedings against them are statutory in nature and thus writ petition was maintainable against the appellant."

10. Similar view was taken by the Apex Court in AIR 1995 400 (SC)

11. At this juncture, a reference may also be made to a decision of a Full Bench of this Court in Aley Ahmad Abidi v. District Inspector of School. Allahabad and Ors. 1976 AWC 731 (FB). In which it was ruled by the Full Bench that a writ petition can be filed even against the Committee of Management (a private body) if it is for the enforcement of performance of any legal obligations or duties imposed on such a Committee by a statute and is maintainable.

12. Learned counsel appearing for the contesting respondents in support of his submissions referred to and relied upon certain decisions of this Court but no decision of the Supreme Court, contrary to the decisions, referred to above, was cited by him. I, therefore, do not consider it necessary to deal with the said decisions as, they are liable to be ignored.

13. In the present case, it is not disputed that the affairs of the Cooperative Stores in question are also controlled by the State Government. A reference in this regard may be made to the Rules, referred to above, framed under Rule 12 (1) of the U. P. Co-operative Societies Rules, framed under the U. P. Co-operative Societies Act. Rule 3 (Ga) of the Rules provides for the constitution of Board of Directors by the Government in accordance with the provisions of the U. P. Co-operative Societies Act, which plays vital role in the affairs of the society. Rule 3 (Cha) of the Rules provides for the appointment of the Registrar of the Society by the Government. Rule 6 of the Rules provides for constitution of a selection committee, the President of which is required to be nominated by the Registrar. Rule 9 (Sa) of the Rules refers to Section 122 of the U. P. Cooperative Societies Act and provides for appointment of the employees with the approval of the committee appointed u/s 122 of the U. P. Co-operative Societies Act. Similarly, Rule 60 of the Rules provides for detailed procedure for taking disciplinary proceedings against the employees of the society. Rule 62 of the Rules provides for appeal before the Regional Deputy Registrar or District Assistant Registrar, as the case may be. Thus, it is evident that the State Government has got full control over the affairs of the society, particularly in service matters. It is also not disputed that the Co-operative Stores in question renders public service. Therefore, the writ petition filed by the petitioner against the said Cooperative Stores (Society) is legally maintainable.

14. The writ petition succeeds and is allowed. The order of termination dated 4.12.1985 is hereby quashed. The petitioner shall be entitled to be reinstated in service with all consequential benefits on the post of the Branch Manager within three weeks from the date a certified copy of this order is communicated to the competent authority.