

(2011) 04 AHC CK 0374
In the Allahabad High Court
Case No : Writ A. No. 38488 of 1992

Dileep Kumar

APPELLANT

Vs

Pradeshik Cooperative Dairy Fed. Ltd. and Others

RESPONDENT

Date of Decision : 01-04-2011

Acts Referred:

Uttar Pradesh Co-operative Societies Employees Service Regulations, 1975 —
Regulation 85, 87

Citation : (2011) 04 AHC CK 0374

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sudhir Agarwal, J.—Heard learned Counsel for the Petitioner and perused the record.

2. The dismissal order dated 30th July 1992 passed by the Respondent No. 2 has been assailed in this writ petition. The only ground pressed before this Court is that the impugned order is in violation of Regulation 87 of U.P. Cooperative Societies Employees, Services Regulations, 1975 (hereinafter referred to as "1975 Regulation") since no prior approval of Institutional Service Board was obtained before passing impugned order of punishment.

3. In the counter affidavit, the Respondents have taken an objection that 1975 Regulation are not applicable to the Dairy Federation, hence the impugned order cannot be assailed on the ground of violation of 1975 Regulation.

4. This issue is no more res Integra having been settled by this Court. Hon'ble Single Judge in Vishwanath Gupta v. Pradeshik Cooperative Dairy Federation and Ors. 1998 (80) FLR 457 has held termination of an employee of Dairy Federation illegal being in violation of regulation 85 of 1975 Regulations.

5. In intra Court appeal i.e. Special Appeal No. 992 of 1997 (Pradeshik Cooperative Dairy Federation Ltd. and Anr. v. Vishwa Nath Gupta and Ors.), the

aforesaid decision of Hon"ble Single Judge was challenged on the ground that 1975 Regulations are not applicable to the Dairy Federation. This issue have been decided by the Division Bench observing as under:

In view of the aforesaid settled legal position it has to be examined in the facts of the present case as to whether the issuance of the notification dated 17.11.1999 whereby the Pradeshik Cooperative Dairy Federation has been withdrawn from the purview of the U.P. Cooperative Institutional Services Board would have effect of making the provisions of U.P. Cooperative Societies Employees Services Regulation, 1975, inapplicable to the employees of the Society. This Court may record that the Hon"ble Single Judge has specifically held that notification dated 17.11.1999 only provided that the Institutional Board shall have no control qua recruitment training and disciplinary control of the employees of Pradeshik Cooperative Dairy Federation. The notification does not provide that Regulation of 1975 would cease to apply. The aforesaid aspect of the matter stands clarified by reason of the communication of the Milk Commissioner who is also the Registrar of the Milk Cooperative Societies dated 17.9.1981 which provided that the statutory Regulations of 1975 would continue to be applicable to the employees of Pradeshik Cooperative Dairy Federation.

The Hon"ble Single Judge has rightly held that at no point of time the applicability of Regulation 1975 was withdrawn qua the employees of Pradeshik Cooperative 3 Dairy Federation Ltd. Once it has been found that the statutory Regulations of 1975 were applicable, it would be seen that the impugned order of termination is in teeth of Regulation 85(II) (b) of the U.P. Cooperative Societies Employees Services Regulation, 1975. This Court, therefore, hold that the judgment of the Hon"ble Single Judge allowing the writ petition is in accordance with law.

6. In view of the above authority, it cannot be said that 1975 Regulations are not applicable to the Respondent Cooperative Society. Since the approval from Institutional Service Board apparently has not been obtained before passing the impugned order, the same cannot sustain.

7. In the result, the writ petition is allowed. The impugned order dated 30th July, 1992 passed by Respondent No. 2 (Annexure No. 21 to the writ petition) is hereby quashed.

8. Since the order of dismissal has been set aside by this Court for non compliance of Regulation 87 of 1975 Regulation, in the facts and circumstances of the case, I do not find it appropriate to grant full back wages to the Petitioner. Therefore, I direct for reinstatement of the Petitioner with 50% back wages. However, this order shall not preclude the Respondents from passing a fresh order in accordance with law.