
(1991) 02 AHC CK 0005

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 15276 of 1985

Gauri Shanker Prasad

APPELLANT

Vs

The Assistant Registrar Cooperative Societies and Another

RESPONDENT

Date of Decision : 07-02-1991

Acts Referred:

Citation : (1991) 1 AWC 441

Hon'ble Judges : R.R.K. Trivedi, J

Bench : Single Bench

Advocate : O.P. Gupta and Vijai Bahadur Singh, for the Appellant;

Final Decision : Allowed

Judgement

R.R.K. Trivedi, J.—In this writ petition counter and rejoinder affidavits have been filed and learned Counsel for the parties are agreed that the petition may be disposed of at this stage.

2. I have heard learned Counsel for the Petitioner and learned Counsel for the Respondents. The short controversy involved in this case is as to whether an order of suspension can survive after conclusion of the enquiry and dismissal of the employee and in case that dismissal order is set aside subsequently by the appellate authority or in any other legal proceeding In the present case, the Petitioner was suspended by order dated 10--8-1982. The order has been filed as Annexure I to the writ petition. Disciplinary proceedings against the Petitioner continued and he was terminated from service by order dated 2-7-1983. Against this order the Petitioner filed an appeal before the Regional Administrative Committee. By resolution dated 18-3-1985, the Regional Administrative Committee remanded the case to the District Administrative Committee for reconsideration. This order has been filed an Annexure CA 1 to the counter affidavit. It appears that the matter is pending since then the proceedings against the Petitioner could not be concluded and they are still pending. The Petitioner has come to this Court against the order dated 10-8-1982 and says

that he is being illegally treated as suspended employee while the order of suspension has merged in the order of termination and has become non-existent after the order of the appellate authority remanding the case back for fresh decision. The learned Counsel for the Petitioner relied on a case *Om Prakash Gupta Vs. The State of Uttar Pradesh*, . Para 12 of this judgment is very relevant for the controversy of this case. In this case it has been held that the order of suspension made against the Appellant was clearly made during the pendency of the enquiry. As the result of the enquiry an order of dismissal by way of penalty had been passed against the Appellant. With that order, the order of suspension lapsed. The order of dismissal replaced the order of suspension, which then ceased to exist. That clearly was the position between the Government of U.P. and the Appellant. Subsequent declaration by a civil court that the order of dismissal was illegal could not revive an order of suspension which did not exist. The same view has been expressed in *H.L. Mehra Vs. Union of India (UOI) and Others*, wherein it has been held that when the order of dismissal was passed on 26-10-1967 the order of suspension dated 11-4-1963 ceased to exist and it did not revive thereafter by the subsequent setting aside of the order of dismissal by the first part of the impugned order.

3. In view of the legal position stated by the Hon"ble Supreme Court, the order of suspension passed against the Petitioner on 10-8-1982 cannot survive after the order of termination passed on 2-7-1983. The order of suspension became non-existent and on the basis of this order the Petitioner cannot be kept out of job and is entitled to be reinstated.

4. For the reasons recorded above, the writ petition is allowed. The Petitioner shall be reinstated on the post and shall not be treated as suspended employee on the basis of the order dated 10-8-1982. He shall be entitled for his salary. There will be no order as to costs.