
(2004) 11 AHC CK 0188
In the Allahabad High Court
Case No : C.M.W.P. No. 25950 of 2003

Govind Narayan Shukla

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 29-11-2004

Acts Referred:

Citation : (2005) 1 AWC 439 : (2005) 1 ESC 555

Hon'ble Judges : Vineet Saran, J

Bench : Single Bench

Advocate : M.P. Gupta, for the Appellant; Ashok Kumar Srivastava, S.C., for the Respondent

Final Decision : Allowed

Judgement

Vineet Saran, J.—The petitioner was appointed as a Clerk in the District Cooperative Federation Ltd., Kanpur Nagar in the year 1972. Thereafter in the year 2002 he was instructed to run Wheat Purchase Centre at Rampur in Kanpur Nagar. On certain irregularities having been found in the working of the petitioner, the respondent No. 5, Sushil Kumar Tiwari, who was the Incharge Secretary of the District Co-operative Federation Ltd., Kanpur Nagar, passed order of dismissal of the petitioner on 20.5.2003. Aggrieved by the said order the petitioner has filed this writ petition for quashing the dismissal order dated 20.5.2003 as well as for a direction to the respondents to treat the petitioner in service and pay him his salary month by month and also arrears of salary with effect from 1.1.1993.

2. I have heard Sri M. P. Gupta, learned counsel appearing for the petitioner and Sri Ashok Kumar Srivastava, learned counsel appearing for the contesting respondent-District Co-operative Federation and have perused the record.

3. The main grounds raised by the learned counsel for the petitioner challenging the impugned order can be summarized as under :

(i) the impugned order has been passed by respondent No. 5 as Incharge

Secretary of the Federation. The respondent No. 5 having been appointed as Incharge Secretary on 28.2.2002, as per Rule 127 of the U.P. Cooperative Societies Rules, 1968 read with Regulation 5 of the U.P. Cooperative Societies Employees' Service Regulations, 1975, on expiry of the period of six months, i.e., on 28.8.2002, the said respondent No. 5 ceased to remain as Incharge Secretary and thus the impugned order passed by him on 20.5.2003 was without jurisdiction ;

(ii) the respondent No. 6 not being an employee of the Federation (as he was an advocate) was not competent to be appointed as Enquiry Officer. Further, in view of the fact that the petitioner had raised objections regarding his impartiality in conducting the enquiry, he ought to have been changed. As such the entire enquiry proceedings, on the basis of which the impugned order has been passed, was bad in law ;

(iii) the Committee of Management of the District Cooperative Federation Ltd. was the appointing authority of the petitioner and as such it was only by the resolution of the Committee of Management that the petitioner could have been dismissed from service and not by the order of the Incharge Secretary ; and

(iv) under Regulation 87 of the Regulations of 1975, prior concurrence of respondent No. 2, U.P. Cooperative Institutional Service Board ought to have been obtained before passing of the dismissal order and in the absence of the same, the impugned order is liable to be set aside.

4. Before going into the grounds raised which are based on factual controversies, I shall first consider this case on its legal aspects. In the writ petition a clear assertion has been made that before passing of the impugned order of dismissal the respondent-authorities had not obtained the prior concurrence of the Board. There is no specific denial of this assertion in the counter-affidavit. Admittedly the order of dismissal from service has been passed under Regulations 84 (1) (e) to (g) and as such in the absence of the prior concurrence of the Board no such order could have been passed as provided under Regulation 87 of 1975 Regulations. Thus, this writ petition deserves to be allowed only on this ground as the order has been passed in violation of the provisions of the Regulations.

5. There is an assertion in the writ petition that there was no resolution by the Committee of Management before passing of the impugned order. In the counter affidavit, although there is denial of this fact but no resolution of the Committee of Management has been filed. Sri Ashok Kumar Srivastava, learned counsel appearing for the contesting respondent has stated that such resolution had been passed on 17.5.2003 but due to inadvertence could not be placed on record along with the counter-affidavit. Be that as it may, since I have already held that the impugned order could not have been passed without prior concurrence of the Board, which had not been obtained in the present case, I am not inclined to go into this question of fact as to whether the resolution of the Committee of Management had been actually passed or not. This writ petition deserves to be

allowed only on the aforesaid ground itself that prior concurrence of the Board had not been obtained before the passing of the dismissal order.

6. In view of the statement made by Sri Ashok Kumar Srivastava, learned counsel for the contesting respondent that since the writ petition is being allowed on technical ground, the respondent-authorities may be permitted to initiate de novo proceeding against the petitioner and fresh enquiry may be permitted to be conducted in accordance with law on the basis of which suitable order may be passed, I am not inclined to go into the question as to whether the Enquiry Officer was properly appointed or not.

7. This writ petition is, accordingly, allowed. The impugned order dated 20.5.2003, is quashed. The petitioner shall be entitled to all consequential benefits. He shall be reinstated in service and be paid his salary along with arrears of salary to which he may be found entitled to under law.

8. Having regard to the facts and circumstances of this case, if the respondent-Federation is so advised, it shall be open to them to take suitable action in accordance with law only after conducting fresh enquiry as per the applicable Rules and Regulations, in which the petitioner shall be permitted to participate, and the Federation may pass appropriate fresh orders on the basis of the said enquiry report.