

(1992) 09 AHC CK 0008

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 13636 of 1990

Jagdish Tiwari

APPELLANT

Vs

Sachive/General Manager, District Co-Operative Bank Limited
and Others

RESPONDENT

Date of Decision : 21-09-1992

Acts Referred:

Uttar Pradesh Co-operative Societies Act, 1965 — Section 12, 122

Citation : (1993) 2 AWC 767

Hon'ble Judges : D.P.S. Chauhan, J

Bench : Single Bench

Advocate : U.S.M. Tripathi, for the Appellant;

Final Decision : Allowed

Judgement

D.P.S. Chauhan, J.—Petitioner, who was taken on deputation by the District Cooperative Bank, Deoria (for brevity hereinafter referred to as the Bank") was reverted back to this parent employer during the currency of deputation period under the order of the Secretary/General Manager of the Bank dated 19-2-1990. The present petition is directed against this order.

2. The brief facts of the case, as set out in the petition are:

(a) That the Registrar, Cooperative Societies, U.P. issued a Circular No. C-180/Adhi/Sa-Pra/Cheque Pranali, dated April 11, 1988, addressed to all the District Asstt. Registrars, Cooperative Societies and all the Secretaries of the District Cooperative Banks in the State, advising for making appointments of additional staff in the Bank in connection with simplification of loan distribution system through process of cheque. This Circular, inter alia, provided that extension/technical officers working in the Primary Agricultural Cooperative Credit Societies, may be appointed on deputation for a period of three years and such employees taken on deputation were made liable to be sent back even before expiry of period of deputation. For the purpose of selection for taking a person on

deputation the Registrar constituted a Committee consisting of four persons.

(b) Petitioner was extension/Technical officer working in the Primary Agricultural Cooperative Credit Society Ltd. Baitalpur (for brevity hereinafter referred to as Primary Agricultural Society"). The Committee selected the Petitioner on behalf of the Bank for taking him on deputation in the Bank on the post of Asstt. Clerk in group III. The Petitioner was appointed consequent upon the Resolution of the Committee of Management of the Bank No. 3 dated 30-6-1988 and he worked since thereafter In the various branches of the Bank.

(c) The secretary/General Manager of the Bank on 10-2-1990 passed an order reverting back the Petitioner to this parent post, where he was having his Hen, after cancellation of his deputation.

3. In the counter affidavit, which has been filed on behalf of the Bank, it has been stated that the deputation of the Petitioner with the Bank was cancelled, as it was determinable even before the competition, by the Secretary/General Manager of the Bank and reverted back to this parent post through his order dated 19-2-1990, which was subsequently ratified by the Committee of Management under its Resolution No. 12(2) dated 30-3-1990, It has also been stated in the counter affidavit that there were serious complaints against the Petitioner by the Branch Manager regarding his work and conduct, whereon the Executive Officer of the Bank, was deputed for making enquiry who after making such enquiry submitted a report to the Secretary of the Bank on 14-2-1990 reporting following Irregularities:

(a) As per the working of the Bank affiliated Samiti to be distributing the fertilizer to the farmers takes loan from the Bank for purchasing fertilizer and the said loan is granted to the Samiti with the interest at higher rate of 13.5%.

(b) The Samiti in turn issues cheque books to the members (farmers) for the purchase of fertilizer. The member has to issue cheques in the name of the Samiti and purchases fertilizers on credit basis for amount of cheque issued and the Samiti in turn submits the cheques to the Bank for adjustment and the concerned party (member) is debited.

(c) The bank thereafter charges interest at a lower rate of interest at the rate 6.75% from the Samiti instead of 13.5% on the cheque issued by the farmers for the purchase of fertilizer.

(d) That for the purpose of calculating interest the Bank has to adjust the cheque received by them from Samiti in their books and in the interest of Samiti the cheques are to be adjusted Immediately to lower down the interest.

On the basis of the said report of the enquiry officer the Secretary of the Bank passed the impugned order reverting back the Petitioner from services of the Bank after cancelling his deputation.

4. Heard the learned Counsel for the Petitioner and learned Counsel for the

Respondents.

5. Learned Counsel for Petitioner made three fold submission.

(i) Istly, it is the authority of the Registrar, Cooperative Societies, who is the competent authority in the matter, to revert the Petitioner to his parent employer after cancelling his deputation with the Bank and no order having been passed by him, the impugned order is null and void.

(ii) The authority of the Secretary/General Manager of the Batik was incompetent to cancel the Petitioner's deputation with the Bank end to revert him to his original post and the impugned order having been passed by an authority not otherwise competent in the matter is null and void, which could not have been ratified by the Committee of Management subsequently.

(iii) That the impugned order dated 12-2-1990 having been passed on the basis of the inquiry conducted against the Petitioner through its Executive Officer, in violation of principle of natural Justice, being punitive in nature is illegal not having followed the requirements under Sub-clause 5 of Regulation 85 of the U.P. Co-operative Societies Employees Service Regulations, 1975 (for brevity hereinafter referred to be the Service Regulations).

6. So far as the first question is regarding authority of the Registrar, Cooperative Societies for cancelling the deputation of the Petitioner with the Bank is concerned it has no substance. Under the Act, the Rules and the Service Regulations, the Registrar has not been conferred with any such authority. Under Rule 126 of the U.P. Co-operative Societies Rules, 1968 (hereinafter referred to as the "Rules"), which is as extracted below:

Notwithstanding the provisions of Rules 124 and 125, a co-operative Sociality may request-

(i) the Registrar or the State Government through the Registrar to land for a specific period to the society on deputation or free or on contribution basis the services of any Government servant to hold the office of the Secretary of the Society;

(ii) any central society to place the services of any of the employees on deputation with the co-operative society to hold the office of Secretary in the Society for specific period.

The Registrar can make available a Government servant on deputation to a Cooperative Society for being appointed as the Secretary and in the other case, the Central Society can place its employee on deputation with another Cooperative Society for holding the office of the Secretary. In the present case the position is different. The Petitioner is not a Government servant and was not gives on deputation by the Registrar for being appointed as Secretary, in the Bask, Further, the Society, which has given the Petitioner on deputation to the Bunk, is not the central society and the deputation is not for the purpose of

appointing him as Secretary in the Bank. Thus Rule 126 of the Rules is not (sic).

7. The Registrar has also not framed deputation in this regard u/s 12 of U.P. Cooperative Societies Act 1965 (for short the Act). The Regulations as framed u/s 122 of the Act do not authorise the Registrar for giving any person, who is not a Government servant, on deputation to any cooperative society. The circular dated 11-4-1988 as relied on by the Petitioner has no statutory force. The Registrar Acts as a friend, philosopher and guide in the cooperative movement and in view of that he, it appears issued the said circular, which cannot confer any right for advancing any legal pleas. Thus the Registrar do not come in the picture in the case like present one for cancellation of the deputation and reverting back the Petitioner to his parent post

8. The second submission, as advanced by the learned Counsel for the Petitioner that the authority of the General Manager, the Secretary of the Bank is incompetent to cancel the deputation and revert him back to his parent post. In this connection, it was pointed out that the Petitioner was appointed by the Committee of Management through resolution No. 3 dated 30-6-1988 and under the Service Regulations, the appointing authority is the Committee of Management. The Secretary who is the Executive Officer, under Rule 15, is authorised only to issue appointment order and thus the Petitioner cannot be said to have been appointed by the Secretary and as such the authority of the Secretary was incompetent in the matter and order passed by him is null and void.

9. Learned Counsel for the Respondents submitted that the order passed by the Secretary of the Bank has been ratified subsequently by the Committee of Management through its Resolution No. 12(2) dated 30-3-1990. This resolution is on the record of this case. On the basis of this submission, the question as emerges out is as to whether the order, which is null and void, can subsequently be resuscitated to life by the Committee of Management. The position of law is not unsettled. The action of the {Secretary can not be justified on the basis of the principle that what may be done directly cannot be allowed to be done indirectly as that would be an evasion of statutory duties and functions, the statutory provision cannot be evaded by shift or contrivance. Thus, the order passed by the Secretary of the Bank cannot be held to have been ratified by the subsequent resolution of the Committee of Management. The Committee of Management did not even consider the report of the enquiry officer.

10. Learned Counsel for the Respondents submitted that under the Regulation 5 of the Service Regulations, the appointment could be made in the Bank only through the U.P. Cooperative Institutional Board and not otherwise, in the present case, the Respondents Bank has not come forward with the case that he was appointed not through the U.P. Cooperative Institutional Board Since there is no material on the record in this regard, I refrain myself from expressing any opinion regarding legality or otherwise of the appointment of the Petitioner.

11. The third submission advanced by the Petitioner is that the impugned order, as is evident from the facts pleaded in the counter affidavit, is founded on the basis of the enquiry report conducted against the Petitioner, wherein the charges as mentioned above were found correct against him, wherefore he was not given any opportunity. It is true that Regulation 85(V) of the Service Regulations provides a procedure for disciplinary action and suspension of a person of deputation with the Bank but in the present case no such power is invoked and no such procedure is followed. In the facts and (sic) of the present case whether the procedure regarding punishment is followed or not followed (sic) immaterial, but as the impugned order is founded on certain facts wherefor the Petitioner in all fairness entitled for opportunity, which was not given. Such order cannot be sustained being in violation of principles of natural justice.

12. In view of what has been stated above, the writ petition succeeds and is allowed. The impugned order dated 19-2-1990 passed by the Secretary of the Bank and the Resolution of the Committee of Management dated 30-3-1990, which are held to be invalid, are hereby quashed. The Petitioner shall be taken back on deputation. However, this order would not come in the way of the Bank to take proper (sic) in the matter; as it may like but not prejudicially, regarding retention of the Petitioner on deputation or for taking the disciplinary action against him and for absorbing him in the service of the Bank. The Petitioner to be (sic) on his deputation post from the date of service of this order on the Bank. He shall not be entitled to claim his wages from the Bank on the basis of the impugned order having been quashed as there was no interim order in his favour for his continuation on deputation with the Bank. Costs easy.