
(1997) 08 AHC CK 0112

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 32387 of 1996

Jai Ram Singh

APPELLANT

Vs

President Banda Central Consumer Co-operative Stores Ltd.
and Others

RESPONDENT

Date of Decision : 01-08-1997

Acts Referred:

Citation : (1997) AWC 499 : (1997) 3 UPLBEC 1852

Hon'ble Judges : S.K. Phaujdar, J

Bench : Single Bench

Advocate : K.M. Mishra, for the Appellant; Ramendra Asthana and S.C., for the Respondent

Final Decision : Partly Allowed

Judgement

S.K. Phaujdar J.

1. The above two matters were heard together at length on the point of admission and all the points in controversy having been agitated and argued, the matters are being finally disposed by this judgment.

2. Jai Ram Singh, the petitioner in both the said petitions, had been working as store keeper in Banda Central Consumer Co-operative Stores Ltd. which is said to be a Central Co-operative, and, according to the petitioner, his service conditions are governed by the provisions of the U.P. Co-operative Societies Employees' Service Regulations, 1975. The employers in further lines of this judgment would be described as the "consumer stores" and the Regulations relied upon by the petitioner would be referred in short as the "Regulations of 1975". The respondents had taken an objection in these petitions that the law applicable to the service conditions of the petitioner are those contained in the set of Rules framed in 1979 and the same would be described as the "Rules of 1979" in further lines of this judgment.

3. In the first mentioned writ petition, an order dated 1-5-1996 recorded by the

President of the Co-operative Stores was challenged and through this letter the petitioner was suspended pending a disciplinary enquiry. Subsequently, the prayer in this writ petition was amended together with amended averments and grounds, and through these subsequent amendments a transfer order following the suspension was challenged. In the first mentioned writ petition it was the plea of the petitioner that under the Regulations of 1975 the appointing authority was the Committee of Management or any other authority empowered under the said Regulations or by the bye-laws of the Society and as per the bye-laws the Secretary/Managing Director had been authorised to discharge the functions of the Managing Committee. The petitioner was appointed under an order of the Secretary of the Consumer Stores and was subsequently confirmed in his post as a Store keeper. It was alleged that the President of the Consumer Stores had made certain illegal appointments and one of the appointees was his son-in-law. These irregularities were allegedly brought to the notice of the District Assistant Registrar of the Co-operative Societies at Banda by the present petitioner, and thereby he earned the displeasure of the President. The President, thereafter, made illegal orders of transfer in respect of Class IV employees, namely, Asha Ram and Kailash Singh, and a notice of the transfer order was given to the present petitioner as also to one Ram Raj Singh in their capacity as Store Keepers in two different depots with a direction that they should relieve the Class IV employees working under them, in terms of the aforesaid order. It is stated in the writ petition that the Secretary of the Consumer Stores had further directed that Kailash Singh was to submit his joining report at Tendurari (where the petitioner had been working) and the petitioner was directed to accept the joining of Kailash Singh and to relieve Asha Ram already working there. Kailash Singh however, never submitted his joining report to the petitioner and, accordingly, the petitioner could not abide by the direction. Kailash Singh made a false complaint that the petitioner was not accepting his joining report. Thereafter, the President directed the petitioner to submit his explanation failing which he was threatened with suspension. Immediately, the petitioner relieved Asha Ram and informed the President. In spite thereof, the President mala fide recorded a transfer order directing the petitioner to report to the headquarters at Kapra Godam. In pursuance to this order the petitioner took charge at the headquarters at Kapra Godam. Even thereafter the petitioner was placed under suspension under the orders of the President dated 1-5-96 alleging that he had failed to comply with the orders passed earlier. The petitioner asserted that there was no refusal or failure on his part to comply with the orders and on facts he was not liable to be suspended. He took a further plea that the suspension order could not have been passed by the President as only the appointing authority could have done it and it was the Committee of Management or a person authorised by it by a resolution or by any bye-law.

4. In the amended application, it was alleged that the transfer order dated 24-7-1996 transferring the petitioner to the cloth godown at Banda was also passed by the President who was not competent to do so and this order was also

proposed to be challenged on the ground of mala fide on the part of the President as also on the part of lack of jurisdiction. The transfer application was allowed,

5. In this writ petition an interim order was passed on 10-10-1996 staying the suspension order. After the prayer for amendment was allowed, by another interim order, the transfer order was also stayed.

6. In the second mentioned writ petition, the petitioner challenged the charge-sheet dated 4-10-1996 issued to him in the name of the Secretary/General Manager of the Consumer Stores. In the charge sheet it was alleged that without obtaining leave he had abstained from duty in the office/godown and he was, therefore, liable for violation of the U.P. Consumer Co operative Stores Service Regulations, 1976, precisely of Rules 49 and 50 of Chapter 6 thereof: concerning the conduct and discipline. He was further charge-sheeted for irregularities in distribution of controlled commodities as he had given away the controlled commodities to persons of his choice without an order of the authorities. He was alleged to have defied the orders of the Registrar. In a third charge in the same charge-sheet, it was alleged that he had made forged bills, in the name of different Co-operative Societies and had misappropriated the money of the Consumer Stores. It was alleged further that he did not deposit the security that he was liable to deposit under the law. It was also alleged that he was transferred to Baberu go-down but he did not make over charge at the headquarters and did not move to Baberu, There were other charges of like nature and he was directed to submit his answer within the period required under the law.

7. The petitioner challenged the charge-sheet on the ground that some of the charges related back to incidents 10 or 15 years old. It was stated that the charges were levelled against him in a motivated and calculated manner. This charge-sheet was submitted against him in pursuance to a disciplinary proceeding initiated under the orders of the President who was not at all authorised to do so. It was reiterated in this case also that only the Committee of Management or a person to whom is power delegated could initiate such a proceeding. There was no resolution of the Committee of Management for initiating a disciplinary proceedings and the entire disciplinary proceeding including the charge-sheet was liable to be set aside. It was further stated that even if the disciplinary proceeding is though to be permissible at the instance of the President, Regulation No. 85 of Regulations of 1975 contemplated that charge-sheet is to be submitted by the Enquiry Officer. In the present case, the Vice-President of the Consumer Stores was nominated as the Enquiry Officer and he had not submitted any charge-sheet. Accordingly, the charge-sheet at the instance of the Secretary/General Manager was also illegal.

8. On presentation of this second writ petition on 13-11-1996 the respondents were noticed and further proceedings in the domestic enquiry following the charge-sheet were stayed.

9. Appearing for the respondents, Sri Ramendra Asthana took up a preliminary objection, firstly, on the ground that an alternative remedy was available to the petitioner in both the writ petitions and, as such, the present two writ petitions should not be entertained. It was further urged by him that the service conditions of the petitioner were guided not by the Regulations of 1975 but by the U.P. Co-operative Consumer Stores Centralised Service Rules, 1979.

10. In the charge-sheet reference was made to the U.P. Upbhokta Sahkari Bhandar Seva Niyamawali, 1976 (U.P. Consumer Co-operative Stores Service Regulations, 1976). The petitioner stated in the writ petition that the provisions herein were para materia to the Regulations of 1975. In their reply in the counter affidavit, the respondents categorically stated that the U.P. Consumer Co-operative Stores Service Regulations, 1976, had not been published in the gazette and thus could not be said to be applicable to the employees of a co-operative society. This submission is of utmost importance as the provisions of these Regulations only were thought to have been violated as per the charge-sheet and if, according to the respondents, these Regulations were not at all applicable as having not been published in the gazette, a question would automatically crop up if the provisions thereof could be invoked in charge-sheeting an employee.

11. It is, therefore, a question before this court whether the Regulations of 1975 or the Rules of 1979 will govern the conditions of services of the present petitioner who was, admittedly, a store keeper under a Co-operative Consumer Store.

12. It is not denied that the concerned Consumer Store was a Central Cooperative Society. u/s 2(d)(1), a central society or a central cooperative society means a cooperative society which has any other cooperative society as its ordinary member and is not a primary cooperative society. Under the Regulations of 1975, the Act would mean the U.P. Cooperative Societies Act. A cooperative society would mean a cooperative society placed under the purview of the Board by Government notification No. 366 C/XII-03-36-71 dated March 4, 1972, as amended from time to time by notifications issued u/s 122 of the Cooperative Societies Act, read with Rule 389 (1) of the Rules made thereunder. Section 122 of the Cooperative Societies Act empowers the State Government to constitute an authority for the requirement of training and disciplinary control of the employees of the cooperative societies or a class of cooperative societies and may require such authority or authorities to frame Regulations regarding recruitment, emoluments, terms and conditions of service including disciplinary control of such employee. The Regulations so framed are to be subject to the approval of the State Government and on such approval, are liable to be published in the gazette and to take effect from the date of such publication. The State Government under this power constituted three authorities and one of those authorities was the U.P. Cooperative Institutional Service Board. It was done through the notification as mentioned above dated 4-3-1972. The Board

under this Regulation, as amended on 24-4-1973, is to work for the recruitment, training and disciplinary control of the following classes of cooperative societies :

1. Apex level societies, and
2. Central or primary societies having jurisdiction in more than one district.

The learned counsels were interpreting the disjunctive term "or" in the description of class of cooperative societies under this notification between the words central "and" primary societies followed by the words "having jurisdiction in more than one district."

13. Under the light to this notification it is necessary to go through certain definitions under the Cooperative Societies Act again concerning apex society, central society and primary society. A central cooperative society would be considered to be an apex society if it includes in its membership at least one other central cooperative society in the same line of business or trade, and its area of operation covers the whole of Uttar Pradesh and its primary object is to facilitate the operation of the cooperative societies affiliated to it as an ordinary member. There is no averment that the central Cooperative society in question (that is, the Consumer Stores) is an apex society under this definition and, as such, it does not automatically come under the purview of the Board being an apex level society. From the definitions of central cooperative society or central society and primary society, it is seen that there is no indication that they must have operation in more than one district. To reiterate, a central society means a cooperative society which has any other cooperative society as its ordinary member and is not a primary cooperative society, while a primary society means a cooperative society ordinary membership whereof is not open to any other cooperative society.

14. In the notification apex level societies have been brought under the purview of the Board and the next clause states that the Board would have under its purview such central or primary society which are having jurisdiction in more than one district. The disjunctive term "or" has been placed between the words "central" and "primary" and only thereafter the term "societies" has been mentioned. This suggests that whether it is a central society or a primary society, it must have its jurisdiction in more than one district to come under the purview of the Board under the aforesaid notification. The contention of the petitioner that he would be guided by the Regulations of 1976 may not, therefore, be accepted as these Regulations are applicable to such cooperative societies which come under the purview of the Board under the aforesaid notification. It has already been admitted that due to non-publication of the Regulations, as required by Section 122, the Regulations of 1976 are not admittedly applicable it is found from the discussion made immediately above that the Regulations of 1975 are also not applicable to cover the service conditions of the present petitioner.

15. It may now be seen if the Rules of 1979 have any bearing or control over

service conditions of the present petitioner These Rules, as relied upon by the respondents, are the U. P. Cooperative Consumers Stores Centralised Service Rules, 1979. The word "service" under these Rules means the cooperative wholesale consumer stores centralised service (see definition, Rule 2 (i) of the Rules). Again, in Rule 4 it is clarified that the post of secretary of stores shall constitute the U. P. Cooperative stores centralised service. Under these Rules, the cadre authority shall have the power of making Regulations with the prior approval of the State Government relating to the conditions of service including the disciplinary control of the members of the service. It is further provided that till such Regulations are framed such matters as are to be covered by the Regulations, shall be governed by such orders or directions as may be issued by the cadre authority with approval of the Registrar. The respondents did not come up with any Regulations framed under Rule 7 or any order or direction issued by the authority. In the absence of any Regulation or order placed before me by the parties, it is difficult to find as to what would be the conditions of service of or the procedure for disciplinary action against a member of the service. Crowning all, "service" under these Rules would mean the centralised services and only the secretaries of the stores would constitute such centralised services, the applicant being a mere storekeeper may not be covered by these Rules it thus appears from the above discussion that the Regulations of 1975 and Rules of 1979 as relied upon by the contending parties, are not applicable to the proceedings against the applicant. The third set of Rules, as indicated in the charge-sheet, were allegedly framed in 1976 but, according to the own case of the respondent, these Rules were never notified through gazette and are, therefore, not to be deemed in existence. The action against the petitioner, therefore, must be judged, in the absence of any specific Rules or Regulations under the principles of natural justice.

16. It was contended on behalf of the respondents that the petitioner in both the writ petitions had an alternative remedy, as he could have approached the Registrar, u/s 128 of the U.P. Cooperative Societies Act. A reading of this section indicates that it covers the Registrar's power to annul a resolution of a cooperative society or cancel an order passed by an officer of the cooperative society in certain cases. The Registrar may under this section annul any resolution passed by the committee of management or the general body of any cooperative society or cancel any order passed by an officer of a cooperative society if the Registrar is of the opinion that the resolution or the order is not covered by the object of the society or is in contravention of any "provision of the Act or any Rule or bye-law of the society. Upon an order passed by the Registrar under this section. the order shall become void and inoperative. The power of the Registrar under this section appears to be exercisable if the order impugned is not covered by the objects of the society or it contravenes any provision of the Act or Rules or bye-laws. It is not indicated in the writ petition if any provision of the Act has been contravened. It is also not been indicated what object of the society has not been covered by the impugned order. The

respondent or the petitioner did not come up with any bye-laws of the society alleging contravention thereof. I have already stated that they have also failed to bring on record the Rules covering disciplinary proceedings against the petitioner,

17. It may, therefore, be reiterated that the action against the petitioner is to be judged from the point of violation if any of Rules of natural justice. Three actions of the respondents are under question, (1) the transfer order recorded by the President, (2) a suspension order recorded by the President on suggestion of definite derelictions on the part of the petitioner, and (3) a charge-sheet issued under the name of the secretary.

18. So far the transfer is concerned, it must be deemed to be within the administrative competence of the higher authorities to transfer a person from one unit of an institution to another subject to administrative exigency. The transfer order dated, 27-4-1996 was recorded by the president in the absence of Rules, it may not be stated that the President was not empowered to make a transfer. There is no allegation that administrative exigency was not there, only the competence of the President was challenged in the writ petition impugning the transfer order. The transfer order was said to have been tainted With mala fide as the President desired that his son-in-law should be appointed and that was reported to the higher authorities by the present petitioner. Counter affidavit has come on this point to say that the person who subsequently became the son-in-law of the President was appointed long prior to his marriage with the daughter of the President. In my view, the transfer order does not suffer from any patent mala fide and in the absence of Rules, as discussed above, it may not be stated to be without jurisdiction, and as such the impugned transfer order may not be interfered with.

19. So far the question of suspension is concerned, it is closely connected with the charge-sheet. The suspension order is annexed in annexure-1 to the writ petition No. 32387 of 1996. The suspension order indicate four charges against the petitioner, viz (1) non-compliance of the orders dated 20-3-1996, 27-3-1996, 23-4-1996 and 27-4-1996, (2) negligence towards duty, (3) non-opening of the work premises every day and (4) absence of discipline. It was indicated in the suspension order dated 1-5-1996 that it would take effect immediately. It was further indicated that the petitioner would be entitled to subsistence allowance and he would be given a charge-sheet which shall be enquired into by the vice-president. The charge-sheet dated 4-10-1996 which stands challenged in W. P. 34676 of 1996 is in annexure 9 to this petition. The opening lines of the charge-sheet make a reference to the suspension order dated 1-5-1996 and in this chargesheet the suspension order is described to have been issued for making unlawful entries in the account books and for irregularities in distribution of stored materials. These two allegations were absolutely absent in the suspension order and were introduced in the charge-sheet as if the same were there in the suspension order. The charge-sheet, from the very context of it, is an action that was spoken of in the suspension order. The very introduction of allegations which

were not in the suspension order suggests mala fide and that goes to the root of the suspension order. Moreover, the second head of charge speak of irregularities that were allegedly committed during 1980-81 and the action was proposed in 1996, The charge-sheet further makes reference to the Rules of 1976 which are yet to come in legal existence as per the case of the respondents themselves It thus appears that the power net yet given has been exercised and the suspension was a prelude to exercise of that power and that certainly speaks of mala fide and is against the principles of natural justice,

20. It is, therefore, necessary that the concerned transfer order is to be complied with. The petitioner is to join in terms of the transfer order within 7 days of the present order. The writ petition in so far as it challenges the transfer order stands dismissed. However, in view of the observations made above, the two writ petition in so far they challenge the suspension order and the charge sheet must be allowed and the same are allowed and the suspension order and the charge-sheet are quashed. It is however, made clear that on proper charges, a proceeding against the petitioner shall not be barred under any interpretation of this order. The W. P. No 32387 of 1996 is, therefore, partly allowed, while W. P. No. 34676 of 1996 is allowed as per the above directions.