
(1991) 05 AHC CK 0009

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 14461 of 1991

Jasraj Singh Sajwan and Others

APPELLANT

Vs

District Co-operative Bank Ltd. and Others

RESPONDENT

Date of Decision : 10-05-1991

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Co-operative Societies Act, 1965 — Section 121, 122, 122(1), 70
Uttar Pradesh Co-operative Societies Employees Service Regulations, 1975 —
Regulation 14, 15, 5, 6

Citation : (1991) 2 AWC 142 : (1991) 2 UPLBEC 998

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

Bench : Single Bench

Advocate : Sudhanshu Dhulia, for the Appellant;

Final Decision : Dismissed

Judgement

D.P.S. Chauhan, J.—The writ Petitioners who are the employees of the District Cooperative Bank Limited, Garhwal, feeling victim of the greed, have made a belated attempt for relief in the matter of their inter se seniority by filing the present writ petition under Article 226 of the Constitution of India.

2. The controversy involved in the petition requires a cat-scan of the back grounds of the facts developed with the legal proposition for its diagnosis with a view of therapy.

(a) The District Cooperative Bank Limited, Garhwal (for brevity, hereinafter referred to as "the Bank") is a Central Cooperative Society registered under the U.P. Cooperative Societies Act, 1965 (for brevity, hereinafter referred to as "the Act").

(b) The Legislature through legislative provisions u/s 122 of the Act empowered the State Government for constituting an authority or authorities for recruitment, training and disciplinary control of the employees of the Cooperative Societies or

class of Cooperative Societies and also requiring it for framing the regulations regarding recruitment, emoluments, terms and conditions of service including disciplinary control of such employees. Section 122 of the Act reads as--

122. Authority to control employees of Cooperative Societies--

(1) The State Government may constitute an authority or authorities, in such manner as may be prescribed, for the recruitment, training and disciplinary control of the employees of co-operative 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 employees, and, subject to the provisions contained in Section 70, settlement of disputes between an employee of a cooperative society and the society.

(2) The regulations framed under Sub-section (1) shall be subject to the approval of the State Government and shall, after such approval, be published in the Gazette, and take effect from the date of such publication and shall supersede any regulations made u/s 121.

(c) The State Government, in exercise of its power under Sub-section (1) of Section 122 of the Act, constituted an authority known as the U.P. Cooperative Institutional Service Board (for brevity, hereinafter referred to as "the Board") for recruitment, training and disciplinary control of the employees of the cooperative societies including the district or central cooperative banks in the State vide Notification No. 366-C (XH-C-3-36-71 dated 4-3-1972 (published in U.P. Gazette Extraordinary dated 4-3-1972) directing it for framing regulations as required under Sub-section (2) of Section 122 of the Act.

(d) The Board so constituted was manned on 27-7-1972. However, it could not frame regulations as envisaged by the order constituting it till 3-7-1973 when it framed the regulations known as U.P. Cooperative Societies Employees Service Regulations, 1973, vide Notification No. 2524-C (1)/XII/-C-3-36 (3) 71 dated 3-7-1973 (published in U.P. Gazette Extraordinary dated 3-7-1973). During this period, the Board issued executive orders. One such being issued on, 2-7-1972 and paragraph 3 thereof laid down that the appointments to all the posts of cooperative societies establishment by the Board and paragraph 25 (b) prohibited for making even promotions without its approval. Ignoring the said directions of the Board, appointments were made in some of the cooperative banks during this period. The Board through its letter No. 134/Mandal/76 dated 23-7-1976 directed that all the appointments made after 25-7-1972 of the candidates who had not been selected by the Board, be terminated. Such termination became the subject matter of challenge before this Court in Writ No. 235 of 1977 connected with Writ Nos. 224 and 240 of 1977 and a Division Bench of this Court upholding the termination took the following view:

In the present case, the power of the Board is administrative and after the constitution of the Board, the power which the society enjoyed under the bye

laws become subservient to the power conferred on the Board u/s 122 and the Board could, once they were invested with the power u/s 122, issue administrative direction for effective exercise of that power till such time the regulations were not framed.

(e) By means of a Notification No. 7514-C (D/XII-C-2-36 (3)-71 dated 31-12-1975 (published in U.P. Gazette Extraordinary dated 6-1-1976) the aforesaid regulations of 1973 after being rescinded were replaced by regulations known as U.P. Cooperative Societies Employees (Service Regulations, 1975 (for brevity, hereinafter to be referred to as "the Service Regulations"). Regulations 5 and 15 are relevant in the context of the controversy in the present case and the same are extracted below:

5. Recruitment.

(i) Recruitment for all appointments in a cooperative society shall be made through the Board whether the recruitment is:

(a) direct, or

(b) by promotion from employee already in the service of the society, or

(c) by taking on deputation or otherwise a person who is already in the service of any other society registered or deemed to have been registered under the Act.

(ii) Notwithstanding anything in Clause (i) no reference to the Board shall be necessary in the following cases:

(a) when it is proposed to fill with the concurrence of the Registrar any post by means of deputation of a Government servant, or

(b) when officiating promotion is made by the appointing authority from a lower rank to the next higher rank for a period not exceeding six months.

(iii) The Board may, pending selection, permit stop gap arrangements to be made by the appointing authority for such period as the Board may consider necessary. Intimation of such appointment shall be given to the Board within a month of such appointment.

(iv) To facilitate the performance of the duties enjoined upon the Board under Clause (i), every cooperative society shall communicate to the Board by 31st December every year the approximate number of vacancies likely to arise during the course of the next calendar year by reasons of creation of new posts, retirement, deputation or otherwise.

(v) Notwithstanding anything contained in Clause (i), recruitment to the post of Category IV employees mentioned in Regulation No. 6 shall be made by a selection committee consisting of (a) secretary of the appointing society, (b) a nominee of the Board who shall be the chairman of the selection committee and (c) Assistant Registrar of the district concerned.

(vi) Selection made by the selection committee referred to in Clause (v) and appointments made on the basis thereof shall be provisional and be subject to the approval of the Board.

(vii) Notwithstanding the provisions of Clause (iv), a co-operative society in which appointment is to be made shall send to the Board a requisition in the form specified in Appendix "A" at least three months before the vacancy is sought to be filled up.

(viii) In making recruitment to any post, the Board may require the appointing society or the society to which the appointing society is affiliated to send one of its officers to the Board, and when the recruitment is to be made for a technical post or a post requiring specialised knowledge or skill, the Board may also request any appropriate institution or authority to depute a technical adviser to assist the Board.

15. (i) No appointment shall be made except in the manner provided for in the regulations herein before. Where recruitment through or with the approval of the Board is provided for in Regulation No. 5, no appointment shall be made except of the candidate and in the order mention in the list communicated by the Board.

(ii) Subject to the provisions of Clause (i), appointment shall be made by the committee of management of the society or by such authority as may be specified in the bye laws;

Provided that the letter of appointment shall, in the case of Secretary, be issued by the Chairman, and in all other cases, it shall be issued by the Secretary of the Society. The letter of appointment shall contain the name of the post, place of posting, nature of appointment, such as regular or temporary, probationary period and security, if, any, salary with scale and conditions referred to in Regulation No. 14 and the date by which he has to join.

(f) The Petitioners are alleged to have been appointed in the Bank as Clerk on adhoc/temporary basis during the period between 1974 and 1990. In the context of the controversy, it is not relevant to give the dates of their appointment. However, the appointments were not made according to the Service Regulations after selection through the Board. They were made illegally and in an irregular manner by the Committee of Management of the Bank in the teeth of the prohibition under Regulation 15 owing to administrative exigencies. Under the Service Regulations, the Committee of Management, which is the appointing authority, had no authority to make appointment in the Bank on any post in substantive capacity in a regular manner except through the Board. The appointing authority, under Clause (iii) of Regulation 5 of the Service Regulations, was authorised only for making appointments y way of stop gap arrangements pending selection by the Board for such period as may be considered by the board necessary for the purpose wherefor the Board was to be intimated. Clause (iii) of Regulation 5 was subsequently substituted by following vide Notification No. 432/XII/6-2 -85-77 dated 17-5-1983, which came into

effect from 30-7-1983:

(iii) The Board may, pending selection for post to be filled in any direct recruitment, permit stop-gap arrangement to be made by the appointing authority for a period not exceeding 180 days:

Provided that the intimation of such appointment is given to the Board forthwith and it is ensured that proper requisition for the post, as also additional information required by the Board, if any, has been furnished to it,

Provided further that the Board may in special circumstances, and at the request of the appointing authority, extend the period of 180 days, by a period not exceeding 120 days:

Provided also that the appointment made under this clause shall cease to have effect from the date on which the original period or the extended period of appointment under this clause expires.

The Supreme Court in the case of Virendra Pal Singh's case 1980 UJ (SC) 673 did not recognise such appointments made by the Banks subsequent to the constitution of the Board and prior to framing of the Service Regulations which appointments were held to be invalid. The position of the persons who were appointed in the Banks subsequent to the framing of the Service Regulations, otherwise than through the Board, stood even on a worst footing.

(g) Almost in all the Cooperative Banks in the State appointments were made on adhoc/temporary basis without there being pending any selection with the Board, without giving any intimation to the Board, without giving any requisition to the Board and without any selection through the Board, which developed an alarming proportion. However, to meet the catastrophic situation caused due to illegal appointments in the cooperative banks all over State, the State Government came to rescue for salvaging the fate of such employees from being denuded of their right of livelihood and got framed a scheme for regularization of such employees, known as the U.P. Regularisation of Adhoc Appointments (On posts within the purview of the U.P. Cooperative Institutional Service Board (Regulations, 1985 (for brevity, hereinafter to be referred to as "the Regularization Regulations"), vide Notification No. 3124/XII-C-2-151 (5)-83 dated 30-7-1985 (published in U.P. Gazette Extraordinary dated 30-7-1985). The Regularization Regulations had been framed u/s 122(2) of the Act under the directions of the State Government and are statutory. The relevant Regulations 4, 6 and 7 of the Regularization Regulations are extracted below:

4. Regularisation of Adhoc Appointment

(1) Any employee who

(i) was directly appointed on any post on ad hoc basis in any Cooperative Society falling within the purview of the Board on or before May 1, 1983 and is continuing in service, as such, on the date of commencement

(ii) possessed requisite qualifications prescribed for regular appointment at the time of such ad hoc appointment; and

(iii) has completed or, as the case may be, after he has completed three years continuous service;

shall be considered for regular appointment in permanent or temporary vacancy as may be available on the basis of his record and suitability before any regular appointment is made in such vacancy in accordance with the relevant service rules, regulations or orders.

Explanation--In computing the period of continuous service every break in the service for a period not exceeding thirty days shall be ignored and the employee shall be deemed to be continuing in service.

(2) In making appointments under these regularisations reservation for candidates belonging to Scheduled Castes, Scheduled Tribes, Backward Classes and other categories shall be in accordance with the orders of the State Government in force at the time of recruitment.

(3) For the purpose of Sub-regulation (1) a Selection Committee shall be constituted as under:

(a) In case of Apex Cooperative Societies.

(i) Chairman of the Board or a Member of the Board nominated by him. (ii) An Officer not below the rank of Deputy Registrar to Member be nominated by the Registrar. (iii) Managing Director or the Secretary of the Society. Member/Convener (b) In case of other Co-operative Societies-- (i) Chairman of the Board or a Member of the Board nominated by him. (ii) District Assistant Registrar Co-operative Societies. Member (iii) Secretary of the Society Member/Convener

(4) The appointing authority shall prepare an eligibility list of the candidates arranged in order of seniority as determined from the date of order of their initial appointment and if two or more persons are appointed together, from the order in which their names are arranged in the said appointment order. The list shall be placed before the Selection Committee alongwith their character rolls, if any, and such other records pertaining to them, as may be considered necessary to judge their suitability.

Note--If two or more orders are issued on the same date, the person mentioned in the order issued earlier shall be deemed to be senior.

(5) The Selection Committee shall consider the cases of the candidates on the basis of their records referred to in Sub-regulation (4).

(6) The Selection Committee shall prepare a list of selected candidates the names in the list being arranged in order of seniority, and forward it to the appointing authority.

6. Appointments be deemed to be under relevant service rules, regulations etc.

Appointments made under these regulations shall be deemed to be appointments under the relevant rules, regulations or orders, if any.

7. Seniority

(1) A person appointed under these regulations shall be entitled to seniority only from the date of the order of appointment after selection in accordance with these regulations and shall, in all cases, be placed below the persons appointed in accordance with the relevant service rules, regulations or orders, or, as the case may be, the regular prescribed procedure, prior to the appointment of such persons under these regulations.

(2) If two or more persons are appointed together, their inter se seniority shall be determined in the order mentioned in the order of appointment.

(h) The Petitioners, after the selection under the Regularization Regulations, were appointed as Clerks in the Bank and the placement of their inter se seniority in the gradation list was in accord with Regulation 7 of the Regularization Regulations that they were given their seniority from the date of order "of their appointment after their selection under Regularization Regulations and their placement was subsequent to those regularly appointed persons selected by the Board prior to their selection and appointment.

(i) The Petitioners, who were selected under the Regularization Regulations, were issued the appointment letters by the Secretary of the Bank on 22-8-1986 and the seniority list was published by the Bank in respect of the employees of Grade III in which category the Petitioners come and their placement was according to Regulation 7 of the Regularization Regulations.

(j) The Petitioners, by means of a representation, represented to the Chairman of the Board raising their objections against their inter se seniority in the gradation list alleging that the Bank authority did not pay any heed to their grievance regarding their inter se seniority and published a final gradation list on 7-7-1988. It was stated that the persons mentioned at serial No. 11 to 22 in the impugned gradation list, within which the Petitioners also come, have been treated in an arbitrary manner by giving them place below the candidates who were selected by the Board and the basis of the claim of the Petitioners was that for the purpose of reckoning their seniority the date of their initial appointment on ad hoc basis should have been treated as the date for the purposes of seniority.

(h) The Board decided the representation of the Petitioners and the same was communicated by the Secretary of the Bank on 25-3-1988 pointing out that their interse seniority in the gradation list had been fixed as per Regulation of the Regularization Regulations.

3. The Petitioners while challenging the gradation list dated 7-7-1988 (Annexure 1 to the petition) in the present petition have claimed relief for quashing of the

same and also a writ of mandamus to the Bank for preparing a fresh seniority list vis-a-vis their initial appointment in the Bank on ad hoc basis.

4. Heard the learned Counsel for the Petitioners. He in support of his challenge to the gradation list submitted that for the purposes of seniority of the Petitioners their services on ad hoc basis anterior to their appointments after their selection under the Regularization Regulations should have been counted and the same not having been done has resulted in the gradation list being wrong.

5. Learned Counsel for the Petitioners though pressed on the merits of the claim regarding seniority but the Bench Secretary brought to the notice of the Court that the Stamp Reporter had reported the petition as belated by 2 year 187 days beyond time. I first propose to consider the delay before dilating into the matter on merits.

(i) Normal accepted period for filing a petition under Article 226 of the Constitution of India is settled as 90 days. The remedy under Article 226 is purely discretionary and the petition may be refused upon consideration of the circumstances regarding the conduct of the Petitioners which may disentitle them from getting the relief and in this regard laches is one of such circumstances. Laches is a French word of slackness, negligence or for not doing, but it is explainable.

(ii) In para 22 of the petition, an explanation has been given that the Petitioners were making representation before the authorities concerned and they had full faith that the inter se seniority list would be amended. This explanation is devoid of any substance as the Petitioners were communicated the decision on their representation by the Secretary of the Bank on 25-3-1988. However, looking into the fact and circumstances of the present case, and in view of the fact that on the basis of the impugned gradation list no benefit has accrued to any body, i.e. by way of promotion or otherwise, I do not think it worth to throw away the petition on the ground of laches.

6. In support of the submission, learned Counsel for the Petitioners placed reliance on a decision of the Supreme Court in *The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others*, , and has relied on the proposition contained in paragraph 44, which is:

If the initial appointment is not made by following the procedure laid down by the rules but the appointee continued in the post uninterruptedly till the regularization of his services in accordance with the rules, the period of officiating service will be counted.

7. The proposition is not applicable in the case of the Petitioners as the Regularization Regulations provide the procedure to fix the inter se seniority between direct recruits under the Service Regulations and selectees under the Regularization Regulations.

8. Apart from this, the appointment of the Petitioners was initially void not

having been made through the Board and the same was in the teeth of prohibition under Regulation 15 of the Service Regulations.

9. The Supreme Court in Virendra Pal Singh's case (supra) has taken the view that the appointments not made through the Service Board have to be held as invalid. Present is not a case where there was any procedure irregularity in the matter of appointment, but the question was of competence of the authority to make the appointment breach of the prohibition under Regulation 15 of Service Regulations. The principle laid down by the Supreme Court in Direct Recruits' case (supra) in Clause (A) of paragraph 44 is material, which is as under:

(a) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.

The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as stop gap arrangement, the officiation in such post cannot be taken into account for considering the seniority

(Emphasis supplied)

10. The Direct Recruits' case (supra) came into consideration before a Constitutional Bench of the Supreme Court in the case of Keshav Chandra Joshi and others etc. Vs. Union of India and others, . Their Lordships said that "we are of the considered view that it is not expedient to hark back into the past precedents and we prefer to adhere to the ratio laid down in Direct Recruits' case". Their Lordships held that:

The quintessence of the propositions is that the appointment to a post must be according to rules and not by way of ad hoc or stop gap arrangement made due to administrative exigencies. If the initial appointment thus made was dehors the rules, the entire length of such service cannot be counted for seniority. In other words the appointee would become a member of the service in the substantive capacity from the date of his appointment only if the appointment was made according to rules and seniority would be counted only from that date.

11. In view of this, the position as stands in the present case that the appointments of the Petitioner on the post of Clerks in the Bank initially were not made according to the Service Regulations and, therefore, their inter se seniority has to be reckoned from the date on which they were appointed regularly after selection under the Regularization Regulations in accordance with Regulation 7 thereof. On the basis of decision in Keshav Chandra Joshi's case (supra), the following principle can be deduced

If the concerned rules provide the procedure to fix inter se seniority between two modes of appointees, the seniority has to be determined in that manner.

12. In view of what has been discussed above, I find no merits in this petition.

13. The petition is accordingly dismissed with no order as to costs.