

(1996) 08 AHC CK 0058

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 18253 of 1996

Km.Poonam Srivastava

APPELLANT

Vs

U.P.Industrial Co-operative Association Kanpur Nagar & Ors.

RESPONDENT

Date of Decision : 22-08-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1996) 08 AHC CK 0058

Hon'ble Judges : B.S.Chauhan, J

Final Decision : Dismissed

Judgement

Dr. B. S. Chauhan, J.—This Court vide its order dated 17/1996 dismissed this writ petition in which the petitioner Km. Poonan Srivastava has sought the quashing of the impugned order dated 13/5/96. By the said impugned order the promotion of the petitioner which was given to her in the payscale of 16002660 vide order dated 28/4/95 had been recalled. However, as the order dated 13/5/96 spelled out that the petitioner had been promoted illegally without following any procedure and without considering the claim of other employees which were 32 in numbers, the said promotion order had been recalled. On 17/96 while dismissing the writ petition, the respondent No. 3 Shri Devender Chaudhary, the then Managing Director of U.P. Industrial Co-operative Association (UPICA) was impleaded in the case in personal capacity and was directed to explain the circumstances in which the petitioner was granted promotion in the case in personal capacity and was directed to explain the circumstances in which the petitioner was granted promotion. In response to the order dated 17/96 the respondent No. 3 has filed the counter affidavit.

2. Heard Shri V K. Birla, learned counsel for the UPICA and Shri Rakesh Dwivedi, learned Additional Advocate General for respondent No. 3 and perused the counter affidavit filed by respondent No.3.

3. The documents which have been filed alongwith the counter affidavit by Shri Devender Chaudhary revealed that the entire administration of UPICA so far as the service matters of the employees are concerned had always been run by the

law of jungle. All the orders regarding promotions of the employees etc. had been passed in flagrant violation of the statutory rules.

4. Shri Rakesh Dwivedi, learned Additional Advocate General has fairly conceded that the impugned promotion order dated 28495 cannot be defended as it was passed in flagrant violation of regulations framed for this purpose. However, Shri Dwivedi has shown the documents which made the Court much more concern regarding this case.

5. The petitioner in the instant petition Km. Poonam Srivastava had been granted promotion earlier by the predecessor of Shri Devender Chaudhari in the same manner. The respondent No. 3 has take over as the Managing Director of UPICA in May, 1993 and had been transferred from there on 29495. Annexure7 to the affidavit filed by the respondent No. 3 makes it clear that Shri R. N. Chaturvedi, who was the Managing Director of the UPICA earlier had passed the order dated 10588 for dividing the work amongst the various employees of the UPICA and the another Managing Director namely, Shri Sudhir Kumar had promoted the petitioner, Km. Poonam Srivastava and three other employees of the UPICA which includes Smt. Rajni Gupta, who is the petitioner in Writ Petition No. 14882 of 1995 wherein the promotion order dated 28495 been challenged.

6. So for as the legal position is concerned, Section 31A of the U.P. Cooperative Societies Act, 1965 deals with the appointment of the Managing Director instead of Secretary for Apex Societies. Clause V of Subsection 4 of Section 31A provides that the Managing Director shall be responsible for the general conduct, supervision and management of the daytoday business and affairs of the society. Section 122 of the Act provides for the authority to control employees of the cooperative societies, but the service conditions of the employees are Governed by U.P. Cooperative Societies Employees Services Regulations, 1975. Clause IV of Regulation 2 defines the "Board" which means the U.P. Cooperative Institutional Service Board and as per Regulation 5 every appointment or promotion made in the said society shall be made with the consultation of the Board.

Provide to Regulation 5 reads as under:

Provided that any appointment thus made without consultation with the board shall in every case, cease to have effect from the date on which the period of six months expires and the employees promoted to the higher post shall unless he has already been reverted to his original post within the said period of six months be deemed to have reverted from the date, to the post held by him immediately before such promotion.

(Emphasis added)

Provided further that the employee appointed to the higher post under this subclause shall, in no circumstances, be promoted under this subclause to any still higher post within the said period of six months, nor shall be appointed under this sub clause to the same post again after his reversion under the first

proviso.

7. It appears from the record of the case that the appointments made so far and the promotion given to the employees there had been no consultation whatsoever with the board as mandatorily required under the Act and the Regulations, according to the proviso quoted above, such appointments and promotions become ineffective after the period of six months as it is a mandatory requirement of law, but it is strange that the employees of the UPICA had been appointed and promoted without following the procedure provided under the Regulations and the appointments and promotions which should have become ineffective after the lapse of six month's period, are continuing for decades and nobody has considered regarding the validity of the appointments and promotions, made in violation of the statutory provisions.

8. The officers including respondent No. 3 have passed the orders in such irresponsible manner that there is no hesitation to the Court to declare their conduct reprehensible. They had passed the orders like the Czar. The arbitrary manner in which the orders of appointments and promotions have been passed unerringly creates an impression that the order had been passed without any rationality and without any degree of sensibility. The appointments and promotions though may not have been made for extraneous consideration but to some extent they seem to have been passed for extraneous consideration. Nobody had examined the validity of the appointments and promotions made in flagrant violation of the mandatory provisions of the statute.

9. In *Erusion Equipment and Chemical Limited v. State of West Bengal*, AIR 1975 SC 266, the Supreme Court observed as under:

"The activities of the Government have public elements and therefore there should be fairness and equality. The state need not enter into any contract with anyone, but if it does so, it must do so fairly without discrimination and without unfair procedure."

10. Similarly, in *Ramanna Dayaram Shetty v. The International Airport Authority of India and others*, AIR 1979 SC 1628, The Apex Court observed as under:

"It is indeed unthinkable that in a democracy governed by the rules of law, the executive Government or any of its power should possess arbitrary power over the interest of the individual. Every action of the executive Government must be in form of reason and should be free from arbitrariness. That is the very essence of rules of law and its bare minimum requirement."

Thus, the decision taken in an arbitrary manner contradicts the principle of legitimate expectation and the plea of legitimate expectation relates to procedural fairness in decision making and forms a part of the rule of nonarbitrariness. Vide *Ghaziabad Development Authority v. Delhi Auto General Finance Limited*, 1994(4) SCC42.

11. The rule of law inhibits arbitrary action and any arbitrary action is liable to be

invalidated. Every action of the State or its instrumentalities should be fair, legitimate and above board. The action should be without any affection or overweening. It should not be even suggestive of discrimination. The acts of the State instrumentalities should not even apparently be given the impression of bias, favoritism and nepotism. Vide *Haji T. M. Hassan Rawther v. Kerala Financial Corporation*, AIR 1988 SC 157.

12. In *Delhi Transport Corporation v. D. T. C. Mazdoor Congress*, AIR 1991 SC 101, the Supreme Court observed as under:

"In a system governed by a rule of law discretion when conferred upon the executive authorities, must be confined within definite limits. The rule of law from this point of view means that decision should be made by the application of known principles and rules and in general, such decisions should be predictable and the citizen should know whether he is."

13. It is settled law that when the action of the State or its instrumentalities is not as per the rules or regulations or supported by a statute, the Court must exercise its jurisdiction to declare such an act to be a nullity.

14. In *Sirisi Municipality v. Cocelia Kom Francis Tellis* AIR 1973 SC 855, the Supreme Court observed that the ratio is that the rules or the regulations are binding on the authorities."

15. Similarly, the Constitution Bench of the Supreme Court in *Sukhdeo Singh and others v. Bhagat Ram Sardar Singh Rajvanshi and others*, AIR 1995 SC 1981 has observed as under:

"The statutory authorities cannot deviate from the conditions of service. Any deviation will be enforced by legal sanction of declaration by courts to invalidate actions in violation of rules and regulations. The existence of rules and regulations under statute is to ensure regular conduct with a distinctive attitude to that conduct as a standard. The statutory regulations in the cases under consideration give the employees a statutory status and impose restriction on the employer and the employee with no option to vary the conditions. An ordinary individual in a case of master and servant contractual relationship enforces breach of contractual terms. The remedy in such contractual relationship of master and servant is damages because personal service is not capable of enforcement. In cases of statutory bodies there is no personal element whatsoever because of the impersonal character of statutory bodies. In the case of statutory bodies it has been said that the element of public employment or service and the support of statute require observance of rules and regulations. Failure to observe requirements by statutory bodies is enforced by courts by declaring dismissal in violation of rules and regulations to be void. This court has repeatedly observed that whenever a man's rights are affected by decision taken under statutory powers, the Court would presume the existence of a duty to observe the rules of natural justice and compliance with rules and regulations imposed by statute." (Emphasis added)

16. Similar view has been taken by the Supreme Court in *Ambica Querry Works v. State of Gujarat*, AIR 1987 SC 1073 and *Commissioner of Police v. Gordhan*, AIR 1952 SC 16, where in both the cases the Apex Court relied upon the observations made by the House of Board in *Julius v. Lord Bishop of Oxford*, (1880) 5 AC 214.

17. In *Commissioner of Police (Supra)*, the Apex Court observed as under

"Public authorities cannot play fast and looses with the powers vested in them and persons to whose detriment orders are made are entitled to know with exactness and precision what they are expected to do or forbear from doing and exactly what authority is making the order....."

While in above referred cases the reliance has been placed on the following observations made in *Julius (Supra)* are as under:

"There may be something in the nature of thing empowered to be done, something in the object for which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty and make it the duty of the person in whom the power is reposed, to exercise that power when called upon to do so."

In the case of *Commissioner of Police (supra)*, the Court made the following observations:

"An Enabling power of this kind conferred for public reasons and for the public benefit is, in our opinion, Coupled with a duty to exercise it when the circumstances so demand. It is a duty which cannot be shirked or shelved nor it be evaded, performance of it can be compelled."

18. Similarly, the Supreme Court has taken the same view in *Ram Chand and others v. Union of India and others*, (1994) 1 SCC 44 and held that the exercise of the power should not be made against the spirit of the provisions of the statute, otherwise it would tend towards arbitrariness.

19. It will not be out of place to mention here that any appointment or promotion in contravention of the said regulations of 1975 is liable to be set aside and question of estoppel against the UPICA administration cannot be raised by its employees who are taking the benefit of such illegal appointments and promotions. Vide *Smt. Ravinder Sharma v. state of Panjab*, 1995(1) SCC 138.

20. On 1796 this Court examined the case of the petitioner in the instant petition and dismissed the petition so far as the petitioner was concerned, but the facts were found to be stinking and smelling arbitrariness, which forced this Court to implied the then Managing Director of the UPICA, respondent No, 3 in his personal capacity and direct him to explain the circumstances under which the promotion was granted to the said petitioner on 28495 and after examining the counter affidavit filed by respondent No. 3, the court is fully satisfied that it is better not to have any Managing Director rather to

appoint such irresponsible officer who had reasons to treat this apex societies as his personal property and run its administration on his own whims and to make appointments and promotions without considering any statutory regulations and without making reference to the board or removing the employees from their respective posts after the lapse of six months" period on which date" their appointments/promotions had ceased to be effective for want of the approval of the board. The Court express its grave concern over the sad state of affairs prevailing in the state instrumentalities. The affairs have to be run by the rule of law and not by rule of thumb.

21. It is not possible for this Court to go into the entire illegalities particularly, in view of the fact that neither the earlier Managing Directors nor the present employees of the UPICA are the parties before"this Court and thus nothing can be said against them behind their back, but "being the custodian of law, the Court cannot close its eyes and become a silent spectator to such an illegality. This type of appointments and promotions breeds corruption, force the aligible and competent candidates to commit suicide out of frustration as the candidates who can lick the boots of the bosses succeed in their mission.

22. In the case of Andhra State Financial Corporation v. Gar Re: Rolling Mills, (1994) 2 SCC 647, the Supreme Court has observed as under:

"A Court of equity, when exercising its equitable jurisdiction under Article 226 of the Constitution of India, must so act as to prevent perpetration of a legal fraud and the courts are obliged to do justice by promotion of good faith, as far as it lies within their power. Equity is always known to defend the law from Crafty evasions and subtleties invented to evade law."

23. Similarly, the Supreme Court in the case of State of Maharashtra and others v. Prabhu, (1994)2 SCC 481, has observed as under:

"It is responsibility of the High Court as custodian of the Constitution to maintain the social balance by interfering where necessary for the sake of justice and refusing to interfere where it is against the social interest and public good."

Thus, it is desirable to examine the service record or the employees by the state particularly, in view of the regulations as most of the employees should be holding the posts in flagrant violation of the said regulations and under the law they do not have any right to hold such posts.

24. In the case of Gurdeep Singh v. State of J&Kand others, 1995 Suppl. 1 SCC 188, Supreme Court observed as under:

"We are afraid, unduiy lenient view of the Courts on the basis of human consideration in regard to such excesses on the part of the authorities, has served to create an impression that even where an advantage is secured by stratagem and trickery, it could be rationalised in courts of law. Courts do and should take human and sympathetic view of matters. That is the very essence of justice. But considerations of judicial policy also dictate that a tendency of this

kind where advantage gained by illegal means is permitted to be retained will jeopardise the purity of selection process itself, engender cynical disrespect towards the judicial process and in the last analysis embolden errant authorities and candidates into a sense of complacency and impunity that gains achieved by such wrongs could be retained by the appeal to the sympathy of the court such instances reduced the jurisdiction and discretion of courts into private benevolence. This tendency should be stopped."

25. The state is required to examine the whole issue. An enquiry is required to be held to assess the circumstances which impelled the authorities therein to pass such illegal orders of appointments and promotions and the circumstances under which the appointments and promotions which had become ineffective after a lapse of six months for want of approval of the board were allowed to continue.

26. In view of the above, the Government of U.P. through its Chief Secretary is directed as follows:

(1) To ensure that in future all the appointments and promotions shall be made strictly in accordance with the mandatory provisions of the statute and regulations applicable in the case of the employees and to scrutinise the appointments/promotions made earlier.

(2) The Government of U.P. will scrutinize the conduct of the Managing Directors who had been there for the last ten years and if there is sufficient incriminating against them, it is further required to be examined whether in future the officers who had acted so irresponsibly can be given a post where good conscience and sound reason has any part to play.

(3) The petition is kept pending only for the purpose that the State Government through its Chief Secretary will inform this Court regarding the steps taken in pursuance of the above directions.

Direction issued