

(2002) 09 AHC CK 0212
In the Allahabad High Court
Case No : C.M.W.P. No. 1236 of 1993

Man Singh

APPELLANT

Vs

District Assistant Registrar, Co-op. Societies

RESPONDENT

Date of Decision : 18-09-2002

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Co-operative Societies Employees Service Regulations, 1975 —
Regulation 19

Citation : (2002) 5 AWC 3717

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : B.K. Srivastava, for the Appellant; H.K. Chaudhary and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—By this petition, the order dated 18.12.1992 passed by the Secretary, Sadhan Sahkari Samiti, Aharan, Vikas Khand Itmadpur, district Agra (hereinafter called as the "Samiti") has been challenged by which the services of the Petitioner have been terminated.

2. The Samiti is registered under the Societies Registration Act. The recruitment, terms and conditions etc. of service of the employees are governed by the provisions of U.P. Cooperative Societies Employees Service Regulations, 1975.

3. The brief facts of the case are that there was only one sanctioned post of Salesman in the Samiti. It is averred in the writ petition that the Petitioner moved an application dated 18.4.1988 for the post of Salesman. A Selection Committee was constituted by the Board and Petitioner was selected and appointed vide appointment letter dated 20.4.1988. The period of probation was one year. The Petitioner pleaded that he had completed the aforesaid period of probation successfully and the Petitioner was thereafter confirmed by order dated 3.8.1991 passed by the District Assistant Registrar, Cooperative Societies, U.P.,

Agra.

4. It is further averred in the petition that Shri Dhiraj Singh and thereafter Sri Pooran Singh Rana, who joined as Secretary of the Samiti, wanted to accommodate some other person on the post of Salesman on which the Petitioner was working, hence he was arbitrarily issued notice that a sum of Rs. 19,060.04 is due against the Petitioner. The notice was replied by the Petitioner denying that any balance was due by letter dated 30.10.1991, inter alia, stating that if an enquiry be held and in case any amount is found due against the Petitioner, he is ready to deposit the same. It is further averred that the Petitioner was given dearness allowance with effect from 1.10.1991 thus, revising his pay and a higher grade was granted vide letter dated 24.2.1992 issued by Respondent No. 1. The Petitioner further contends that had there been any amount due against him, he could not have been given higher pay scale which is promotion. However, again the District Assistant Registrar, Cooperative Societies, U.P., Agra, issued a notice dated 3.11.1992, pointing out that an amount of Rs. 19,060.04 relating to the year 1989-90 was due from the Petitioner in accordance with the balance-sheet of that year. A detailed reply dated 11.11.1991 was submitted by the Petitioner, inter alia, stating that no details of the alleged balance was furnished inspite of repeated requests and Shri Dhiraj Singh had already adjusted the Petitioner's salary from April, 1991 to September, 1991, towards the alleged amount. The Petitioner again prayed that an enquiry by a competent officer be got made and in case any thing is found as balance against the Petitioner, he is ready to deposit the same. The explanation of the Petitioner dated 11.11.1992 has been appended as Annexure-8 to the writ petition.

5. The counsel for the Petitioner submits that Respondent No. 3 i.e., the Secretary, again issued a notice dated 3.12.1992 on the same facts to which the Petitioner again submitted a detailed reply dated 17.12.1992 through registered post reiterating his earlier contentions. The notice and reply of the Petitioner are appended as Annexures-9 and 10 to the writ petition. The grievance of the Petitioner is that his explanation dated 17.12.1992 was not considered and impugned order dated 18.12.1992 was passed by the Secretary of the Samiti terminating the services of the Petitioner illegally and arbitrarily. The impugned order, according to the Petitioner, is without jurisdiction. It is alleged that before passing the impugned order, the Petitioner was not afforded a reasonable opportunity of hearing and Petitioner's bona fide request for furnishing details of the alleged dues or balance amount.

6. It is contended that Regulation 19 of the Employees Service Regulations, 1975, provides that in case of a temporary employee, payment of one month's notice or salary in lieu thereof is a condition precedent before termination of services and in case of a confirmed employee, service can be terminated by 3 months notice. It is argued that since no such notice or pay, as provided under Regulations 19 has been given to the Petitioner, the impugned order is in clear

violation of the mandatory provisions of law. He submits that the Petitioner has worked for about five years on his post after the regular selection and approval after completion of probation his services cannot be terminated in such a manner.

7. The second leg of the argument of the counsel for the Petitioner is that the Petitioner was required to submit an explanation or comply with the notice. The Petitioner sent his explanation dated 17.12.1992 through registered post on 18.12.1992. He contends that Respondent No. 2 Prashasak, Sadhan Sahkari Samiti, Aharan joined on 17.12.1992 in the Samiti and the impugned order was passed on 18.12.1992. He submits that in the aforesaid circumstances, the order could not have been passed on 18.12.1992. In fact, no such resolution was passed on that date.

8. The last contention of the Petitioner is that the impugned order is stigmatic and punitive which cannot be passed until the Petitioner is given opportunity of hearing after holding a domestic enquiry. No domestic enquiry was held and as such the Petitioner has approached this Court under Article 226 of the Constitution of India by means of the present writ petition.

9. When the writ petition was presented before this Court, no interim order was granted. The writ petition has come up for hearing after about 9 years since 1993. The counsel for the Petitioner has made an aspersion on the Court that counter and rejoinder-affidavits have been exchanged between the parties and the petition was listed about 20 times but the hearing could not be held for one reason or the other. The case was listed on 31.7.2002, when the counsel for the Petitioner informed the Court that he was not prepared with the case and the case was directed to be listed in the next supplementary cause list. Again on 7.8.2002, the case was listed before me. On that date, a mention was made through a colleague of the counsel for the Petitioner informing the Court that the counsel for the Petitioner was on his legs in another Court when in fact, the counsel for the Petitioner was present in the Court. On third occasion, i.e., 9.8.2002, when the case was taken up, the Court was informed that the counsel for the Petitioner has gone home when at that time also, he was very much present in Court and appeared before me when this Court declined to adjourn the case. This shows that the counsel for the Petitioner was not serious in arguing the matter. This conduct on the part of the Petitioner's counsel of making requests in aforesaid manner for adjournment of the case, is deprecated.

10. The counsel for the Petitioner has submitted that existence of alternative statutory remedy is not a constitutional or absolute bar to the jurisdiction of the High Court under Article 226 of the Constitution of India.

11. The Apex Court in plethora of cases has also held that even if it is possible to entertain a particular question of law arising in a case between the parties, it would not be a ground for exercise of extra-ordinary jurisdiction under Article 226 of the Constitution and each case has to be examined on the basis of its own facts. In matters arising out of breach of contract of service, three exceptions

have been laid down for exercise of powers by Courts. The cases where reappraisal of evidence is required, the High Court will not exercise its powers under Article 226 unless and until the findings are perverse.

12. In *Manager, St. Thomas U.P. School, Kerala and Another Vs. Commissioner and Secretary to General Education Department and Others*, it has been held that object and scope of exercise of powers under Article 226 is for enforcement of law. In *Director of Settlements, Andhra Pradesh and Others Vs. M.R. Apparao and Another*, the Apex Court has held that the powers of the High Courts under Article 226, though discretionary, must be exercised along the recognised lines and subject to certain self-imposed limitations and for exercising power under Article 226, one of the conditions is that the Court must come to the conclusion that the aggrieved person has a legal right.

13. In the instant case, the argument of the Petitioner that since the writ petition has been entertained, it should be decided is fallacious. The Court admitted the case for decision on basis of prima facie case. Mere pendency would not bring the petition within the realm of hearing, therefore, if the petition fails on the ground of alternate remedy, it can be dismissed even at the time of final hearing.

14. The argument that the petition should be decided as legal issue is involved, is also misconceived. In the instant petition, no legal question is involved. It has been stated in the counter-affidavit that the Petitioner had secured appointment on a recommendation of one Sri Mohar Singh, who was his real uncle and Director of the Board at the relevant time. No advertisement had been issued for the post and his appointment was made on the recommendation of his uncle Mohar Singh which amounts to appointment by backdoor. It has also been submitted that there is no work for the Petitioner but he has been appointed under the influence of his uncle. The counsel for the Respondents has drawn the attention of the Court to paragraphs 6, 7, 8 and 9 of the counter-affidavit. It is stated in the counter-affidavit that work of the Petitioner was not satisfactory. He has not cleared the P. D. S. Account for the last two years. In so far as the sum of Rs. 19,060.04 is concerned, it has been submitted that the Petitioner had deliberately not shown the aforesaid amount in books and stock shown by the Petitioner was also not made available to the Samiti. It has been denied that the Respondents wanted to adjust any other person in his place and prior notice as required under the Act, was given by the Respondents to the Petitioner before termination of his services, which is Annexure-10 to the counter-affidavit. The approval of the termination of the Petitioner has also been taken, which was accorded by the District Registrar, Cooperative Societies, U.P., Agra, vide letter dated 11.1.1993. The Secretary himself had inspected the accounts and verified the working of the Petitioner and found that the Petitioner had not accounted for the sum of Rs. 19,060.04 due against him.

15. In case of *D.C.M. v. Ludh Budh Singh* 1972 SC 1031, it has been held that the employer can justify his action before the labour court. Under the industrial law, labour court can itself hold enquiry upon an evidence even if no enquiry has

been held by the management. The labour courts have been empowered to give opportunity to justify their actions even in cases where no enquiry has been held.

16. The cases cited by the Petitioner do not pertain to the field of labour jurisprudence and are not applicable. The Petitioner can raise an industrial dispute and get the matter adjudicated on facts. The grievance of the Petitioner that his services have been terminated in violation of principles of natural justice is also not tenable as the same have to be proved by evidence and can be looked into by the labour court. The alternate remedy available to the Petitioner is efficacious as has been held by Full Bench decision of this Court in Chandrama Singh v. Managing Director, U.P. Cooperative Union and Ors. 1991 (2) AWC 1005: 1991 (63) FLR 478.

17. From above, I find that the Petitioner has failed to establish a legal right of continuance on his post. The appointment appears to be not legal and against rules, without following fair procedure of selection. As has been held above, this Court should not exercise its powers, in such circumstances, under Article 226 of the Constitution of India.

18. The writ petition is dismissed on merits as well as on the ground of alternate remedy. No order as to costs.