
(1999) 04 AHC CK 0202
In the Allahabad High Court
Case No : C.M.W.P. No. 9240 of 1996

Mishil Singh Yadav

APPELLANT

Vs

District Co-op. Bank Ltd., Etawah and others

RESPONDENT

Date of Decision : 12-04-1999

Acts Referred:

Citation : (1999) 3 AWC 2099

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Advocate : H.N. Tripathi, for the Appellant; S.C. and S.N. Singh, for the Respondent

Final Decision : Dismissed

Judgement

D. K. Seth, J.—Dr. H. N. Tripathi, learned counsel for the petitioner contends that the petitioner was recruited in the District Co-operative Bank Ltd., Etawah by virtue of Regulation 5 (i) (c) of the U. P. Cooperative Society Employees Service Regulation, 1975 in the post of Clerk. According to him, the petitioner was sought to be posted at a higher post but the Institutional Service Board did not accord approval to the same and held the recruitment to the post of clerk. Subsequently, the Cooperative Society by resolution contained in Annexure-9 purported to appoint the petitioner on the post of Inspector. But this resolution does not bear any date. But Mr. Tripathi contends that the same is part of Annexure-9 which is dated 14.12.1993. Therefore, the said resolution should be treated to be dated 14.12.1993. He claims that on the basis of the said resolution, the petitioner had been working on the post of Inspector continuously though he is being paid his salary on the post of clerk. The petitioner had earlier moved a Writ Petition No. 34282 of 1995 which was disposed of on 30.11.1995 by directing the respondent to decide his representation. Respondent Society had accordingly decided the representation on 19.12.1996 contained in Annexure-15 which has since been challenged in this writ petition. Dr. Tripathi, learned counsel for the petitioner contended that this order is wholly bad since it was the

committee which has to give appointment and the Board is the sanctioning authority, therefore, the committee of management should be directed to take appropriate resolution and forward the same to the Board for approval.

2. I have heard Dr. Tripathi. learned counsel for the petitioner at length.

3. Regulation 5 of the 1975 Regulation prescribe that all appointment in a Co-operative Society under the said 1975 Regulation is to be made through the Board whether such recruitment is by direct recruitment or by promotion or on deputation or otherwise. Thus there is an embargo in the matter of appointment in the Service of the Cooperative Society by reason of Regulation 5 by the committee of management since it is only the Board which can make appointment. The only relaxation which is provided in clause (ii) of Regulation 5 is when appointment can be made by the committee of management without reference to the Board. The petitioner does not claim that he has been appointed in terms of clause (ii) (a) of Regulation 5. The resolution referred to by Dr. Tripathi does not show that it is also an appointment within the meaning of clause (ii) (b) of Regulation. Clause (b) provides that the appointment by promotion can be made as a stop gap arrangement for a period of not exceeding six months and subject to the sanction of the Board. Proviso thereto provides that whether sanctioned or not, such appointment will cease to be operative on the expiry of six months and the person appointed on the said promotional post shall be deemed to have been reverted to the original post held by him on the expiry, of said six months. The second proviso prohibits the appointment in the post after reversion in terms of first proviso. The post is not covered within clause (iv) since the petitioner already held a class III post. Therefore, the appointment could be made only by the Board. Purported resolution not being a resolution in exercise of an authority under sub-clause (ii) (b) of Regulation 5, it is wholly incompetent on the part of the management to appoint him on the post of Inspector without reference to the Board. If there is a post of Inspector vacant, in that event, in terms of Regulation 5, the same is to be intimated to the Board which may take step for appointment according to the prescribed norms. By virtue of working pursuant to such resolution, the petitioner cannot claim that he should be paid his salary in the said post. If such a situation is accepted, in that event, it would amount to circumventing the embargo provided in Regulation 5. Even it was a stopgap arrangement which could have been operated for a period of six months without there being any reappointment. Therefore, even if the resolution of the Board is accepted to be a resolution within the scope of clause (b) of clause (ii) of Regulation 5, in that event, it could have been operative for a period of six months and on the expiry of said period he should be deemed to have been reverted to the original post of clerk. By virtue of said regulation, he could not have claimed to hold the post of Inspector beyond the period of six months. Then again the resolution does not appear to be a resolution on the basis of clause (ii) (b) of Regulation 5 and as such, the same is wholly incompetent and void. When the statute provides a particular procedure and created an embargo, in that event, that has to be interpreted in a

manner congenial to the object and purpose and advances the same. An interpretation which circumvent such procedure is wholly unwelcomed. Therefore, the order impugned being Annexure-16 to the writ petition passed by the committee of management indicate that it is not open to it nor it was empowered to give any appointment to the petitioner in view of Regulation 5 of the 1975 Regulation unless Institutional Service Board permits such appointment. Whereas the Board has refused to give him appointment to a higher post in Group II service. Therefore it is not possible to give appointment or promotion by the Committee. Thus, the order impugned does not appear to suffer from any infirmity. Regulation 5 clearly provides that the committee of management of the society has no authority to give appointment to a higher post except on a stop-gap arrangement for a period of six months. In the present case, it is a case of regular appointment which cannot at all be given except by the Board. In such circumstances, this writ petition fails and is accordingly dismissed.

4. However, this order will not prevent the Society or the Bank to send requisition to the Board if there is any vacancy in the post of Inspector or otherwise. If the Bank or Society send the requisition to the Board, the Board shall consider the question of appointment or promotion of the petitioner along with others in accordance with law having regard to the eligibility or otherwise and other facts as may be brought before it on record.

5. However, there will be no order as to cost.