
(2006) 11 AHC CK 0099
In the Allahabad High Court

Mohan Lal, Praveen Kumar, Arun Kumar and Naveen Kumar	APPELLANT
Vs	
U.P. Cooperative Institutional Service Board, Regional Deputy Registrar, Cooperative Societies, Meerut Region and Zila Sahkari Bank Ltd.	RESPONDENT

Date of Decision : 24-11-2006

Acts Referred:

Citation : (2006) 11 AHC CK 0099

Hon'ble Judges : Pankaj Mithal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Pankaj Mithal, J.—All the four petitioners were appointed on Group-IV posts in the District Co-operative Bank, Meerut under the order dated 15.5.1999 issued by the Secretary/ General Manager, District Co-operative Bank, Meerut. However Respondent No. 2, Addi. Registrar (Banking) co-operative Societies U.P. Lucknow vide letter dated 8th July 1999 directed the Secretary/ General Manager, District co operative Bank Limited to immediately cancel all the appointments made on the Group IV posts including that of the petitioners, as the selection and the appointments were not transparent and regular and all the candidates selected and appointed were related to some officers. This letter of respondent No. 2 has been challenged by the petitioner by means of the present writ petition and it has been prayed that the the working of the petitioners may not be disturbed.

2. The contention of the petitioner is that that the petitioners were appointed following the procedure prescribed under the U.P. Co-operative Societies Employees Services Regulations 1975 (hereinafter referred to as Regulations). The posts were duly advertised in the local daily newspaper Heera Times" dated 7.4.1999 and applications were also invited from the Employment Exchange. On 28.4.1999 the duly constituted Selection Committee issued the select list in which the names of the petitioner were also included. The said selection list was approved by the Secretary U.P. Co-operative Institutional Services Board,

Lucknow- respondent No. 1 vide letter dated 13.5.1999. Thereafter the order of appointment dated 15.5.1999 was issued and the appointments of the petitioners were made.

3 Sri K.N. Misra, learned Counsel for the petitioner argued that the services of the petitioner can not be terminated without approval of the respondent No. 1 as provided under Regulation 87 of the Regulations more particularly without notice or affording opportunity of hearing to the petitioners.

4 Sri V.K. Goel, learned Counsel for Respondent No. 1 and Sri V.K. Shukla appearing for respondent No. 4 submitted that this is not a case where any punishment as provided under the Regulations has been imposed upon the petitioners and they have been ordered to be removed from service by way of punishment. The impugned letter has been issued to cancel the appointments of the petitioners as they have been unlawfully appointed. All the candidates in the select list from which the petitioners have been appointed were relatives and favourites of the members of the Selection committee. The Selection Committee prepared the Select list without advertising the post properly in newspapers having wide circulation. The local daily newspaper Heera Times is not a widely circulated newspaper of any standard. The notice was placed on the notice board on 12.4.1999 fixing last day for submitting application as 16.4.1999 and therefore only four days time was given to the applicants to apply. None of the candidates recommended by the Employment Exchange were selected. The relationship of each of the selected candidate with some officer of the Bank has also been described in the counter affidavit. Thus it has been argued that the procedure adopted for the appointment of the petitioners was not transparent and they were unlawfully appointed. Accordingly the respondent No. 2 has committed no illegality in issuing direction for cancelling their appointments. It has also been argued that in the above circumstances, since fraud was played in getting the appointments, therefore, no notice or opportunity of hearing is necessary before cancelling all the appointments. Lastly, it has been submitted that the writ petition is premature, as on the basis of the impugned letter the appointments of the petitioners have not been canceled. directs the Appointing Authority to cancel the appointments of the category IV employees who have been appointed as according to the preliminary Enquiry made by the office of the Commissioner Meerut Division, Meerut it transpired that the selection was not transparent and the appointments were made unlawfully on the basis of favouritism. It is not an order terminating the services of the petitioner. There is, no order pursuant to the above letter by which the services of the petitioners can be said to have been terminated. Therefore, the said order would not amount to order of punishment pursuant to any disciplinary proceeding imposing any penalty upon the petitioners and as such would not be an order which would require prior concurrence of the respondent No. 1 as contemplated by Regulation 87. Thus, the submission of the learned Counsel for the petitioner that the impugned letter is unsustainable as no prior approval of the respondent No. 1 has been taken, is misconceived and has no merit. It is therefore fails.

5. The two authorities 1994 UPLBEC 129 Munne Khan Pathan v. Jalaun District Co-operative Bank Limited and 1992 AWC 780 Shekh Abdul Kalam Azad v. B.M. Bohra, Managing Director/ Chairman, U.P. Co-operative spinning Mill and Ors. cited by the learned Counsel for the petitioner in support of his contention that the services of the petitioner cannot be terminated without the prior petitioner cannot be terminated without the prior concurrence of the respondent No. 1 are of no help to him in so far as the services of the petitioners have not been terminated by way of punishment under the Regulations. Secondly, the direction to cancel the appointment of the petitioners is not an order of punishment as contemplated under the regulations and therefore Regulation 87 of the regulations does not come into play at all.

6. The next submission that the appointments of the petitioners cannot be cancelled without giving them notice or opportunity of hearing is also of no force. First for the reason that so far there is no order cancelling the appointment. Moreover, where fraud has been detected in the matter of appointment such appointment can not be sustained in the eyes of law, as fraud vitiates even the most solemn proceedings in any civilized system of jurisprudence vide Smt. Shrisht Dhawan Vs. M/s. Shaw Brothers, It is a cardinal principal of law that fraud and justice never dwell together and therefore the petitioners who have invoked the discretionary jurisdiction of the Court must have come before the Court not only with clean hands but with clean mind and clean heart. They should not expect the court to promote their malafide intention by upholding their appointments so as to allow fraud to perpetuate. The Hon'ble Apex Court in District Collector and Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram and Another Vs. M. Tripura Sundari Devi, has observed as under:

If by committing fraud any employment is obtained, the same cannot be permitted to be countenanced by a Court of Law as the employment secured by fraud renders it voidable at the option of the employer.

7. The above view has been followed regularly by the Supreme Court and the other Courts in quick succession.

8. In the present case the impugned letter reveals that undoubtedly a fraud has been committed in the process of selection and the appointment of the petitioners,. Therefore any technical infringement or nonobservance of principles of natural justice can not deflect the course of justice. In S.L. Kapoor Vs. Jagmohan and Others, it has been held that where from admitted and undisputed fact, only one conclusion is possible and under the law only one course is permissible to be adopted, the court should not enforce the observance of the principles of natural justice, as it would amount to giving premium to unscrupulous persons by getting a futile writ issued.

9. The aim of following the principles of natural justice is to secure justice and not to perpetuate any illegality.

10. In the present set of circumstances the observance of principles of natural justice is not at all warranted when the conclusion, even if the petitioners were afforded opportunity of hearing, would not have been different. Besides, the entire selection has been found to be stinking therefore, individual innocence has no priority.

11. Sri V.K. Goel in support of his argument has placed reliance upon the judgment of the Division Bench of the All India High Court (2004) 2 U.P.LBEC 1473 Arvind Kumar Pipal and Ors. v. Commissioner, Trade Tax, U.P., Lucknow and Ors. In the said case without giving individual notice to the selected candidates the entire selection process was cancelled. The court held that where irregularities were found in the selection process and the entire selection had been cancelled neither notice nor opportunity of hearing is necessary and no individual notice was required to be given to the selected candidates, as cancellation was passed on valid reasons and the Appointing Authority was within his jurisdiction to cancel the appointments. The above case law squarely applies to the facts and circumstances of the present case and therefore the argument that the principles of natural justice have not been followed falls to the ground.

12. In the last learned Counsel for the petitioner submitted that the impugned letter is without jurisdiction the Addl. Registrar (Banking) Co-operative Societies, U.P. Lucknow has no authority under law to issue such directions. Be as it may be, it is pointless to go into the controversy, as the Appointing Authority is fully empowered under law to take suitable action for cancellation of the appointments, if it is found that the appointments were obtained by misrepresentation, concealment of fact or by playing fraud irrespective or independent of the above letter.

13. In view of the above, the writ petition lacks merit and is accordingly dismissed.