
(2006) 09 AHC CK 0120
In the Allahabad High Court

Nagendra Rai

APPELLANT

Vs

Registrar, U.P. Cooperative Societies, Member/Secretary,
District Administrative Committee and District Assistant
Registrar, U.P. Cooperative Societies

RESPONDENT

Date of Decision : 12-09-2006

Acts Referred:

Uttar Pradesh Co-operative Societies Act, 1965 — Section 31
Uttar Pradesh Primary Agricultural Cooperative Credit Societies Centralized Service
Rules, 1976 — Rule 14(V)

Citation : (2006) 4 AWC 4110

Hon'ble Judges : V.K. Shukla, J

Bench : Single Bench

Final Decision : Allowed

Judgement

V.K. Shukla, J.—Nagendra Rai, Secretary, Sahroz Sadhan Sahkari Samiti, Block Kopaganj, district Mau has approached this Court questioning the validity of the order dated 13.04.2006 passed by Member/Secretary, District Administrative by means of which suspension which has been kept in abeyance on the earlier occasion on 30.06.2004 was withdrawn and order of suspension dated 17.06.2004 was restored. Civil Misc. Writ Petition No. 34791 of 2006 has been filed by the same incumbent questioning the validity of the impugned order dated 22.06.2006 placing the petitioner under suspension by the Member/Secretary, District Administrative Committee, Mau.

2. Brief background of the litigation is that petitioner had been performing and discharging duties as Secretary of Sadhan Sahkari Samiti limited. For non-taking of interest in realizing the dues of the society petitioner was sought to be placed under suspension on 17.06.2004 and Inquiry Officer was appointed for conducting the enquiry. In this respect after said suspension order has been passed one Ram Awadh Yadav, President U.P. Sharmjivi Patrakar Union District Mau addressed letter to Cooperative Minister. The Cooperative Minister made endorsement on the said letter on 25.06.2004 and based on the said

endorsement till result of inquiry was not received said order of suspension was kept in abeyance. Thereafter it has been contended that inquiry was conducted and concluded. In the said inquiry material has come forward against the petitioner as such said stay order dated 30.06.2004 was withdrawn. Said order dated 13.04.2006 is subject matter of challenge in Civil Misc Writ Petition No. 25035 of 2006. On the presentation of the present writ petition before this Court, an interim protection was provided to the petitioner on 05.05.2006 thereafter suspension order dated 22.06.2006 has been passed based on various charges. At this juncture Civil Misc. Writ Petition No. 34791 of 2006 has been filed. Both the writ petitions have been directed to be connected to each other and with the consent of parties both the matters are being taken up for final disposal. Counter affidavit has been filed in Civil Misc. Writ Petition No. 25035 of 2006 and therein it has been contended that suspension order dated 17.06.2004 was passed with prior approval of Assistant Registrar, Cooperative Society, District Mau and same was stayed on the directives given by the Cooperative Minister on 25.05.2004 till the inquiry was not completed. It has been mentioned that Inquiry Officer found embezzlement to the tune of Rs 7,56,142/- in this background it has been contended that rightly order of suspension which was kept in abeyance on earlier occasion had been recalled, as such no interference be made by this Court in the order in question.

Civil Misc. Writ Petition No. 25035 of 2006

3. Sri Sanjay Kumar, Advocate, learned Counsel for the petitioner has assailed the validity of the order dated 13.04.2006 by contending that charges leveled against the petitioner is unsustainable and second suspension order on same set of charges is also unsustainable.

4. Sri Satish Misra, Advocate, on the other hand contended that this is not at all second suspension order rather the order dated 10.06.2004 has been recalled and order dated 17.06.2004 has been restored as such no interference be made.

5. After respective arguments have been advanced undisputed position which is emerging is that on 15.06.2004 qua review of recovery of Co-operative dues, it was revealed that against total demand of Rs. 15.54 lacs, only Rs. 3.15 lacs had been been recovered, which was merely 20.27% of the entire recovery. Seeing such state of recovery, adverse presumption were drawn against the petitioner, that interest of the society was being comprises by such low rate of recovery or fictitious loans have been advanced. On 16.06.2004, Deputy Registrar, Cooperative Society asked as matter of policy to suspend said Secretary, wherein recovery ratio has been lowest, by means of letter dated 17.06.2004 petitioner was sought to be placed under suspension. Said order has-been passed with due concurrence of the Deputy Registrar Cooperative Society dated 16.06.2004. Thus the said suspension order was inconformity of Rule 14(V) U.P. Primary Agricultural Co-operative Credit Societies Centralized Service Regulations 1978. After said order has been passed, representation was moved by one Ram Awadh Yadav, President , U.P. Sharmjivi Patrakar Union, district Mau and on the said

representation directives were issued by Cooperative Minister and pursuant thereto suspension order was kept in abeyance till inquiry was not held. Inquiry was conducted and thereafter based on the same charge-sheet has been issued to the petitioner on 07.03.2006 and thereafter on 13.04.2006 as per resolution dated 04.03.2006 earlier order placing the petitioner under suspension kept in abeyance has been withdrawn by means of order dated 13.04.2006. Thus, in the present case as far as order dated 13.04.2006 is concerned same cannot be said to be suffering from any illegality, inasmuch as suspension order had already been passed in the past on 17.07.2004 with the concurrence of Deputy Registrar, and in order to reaffirm the said situation same was kept in abeyance till report was received, and after report has been received and prima facie charges are there, order dated 13.04.2006 has been passed. While passing order dated 13.04.2006, taking of approval as provided under Rule 14 (V) of U.P. Primary Agricultural Co-operative Credit Societies Service Rule 1976 was not at all required in the facts and circumstances of present case.

6. Much emphasis has been placed on the audit report wherein in enquiry conducted no infirmity has been found and on the basis of same it has been sought to be conducted that in cases of financial irregularity in Bank or, Credit Societies, two types of inquiries are required (a) internal (b) external and internal enquiry is conducted by departmental authorities and external by Audit team, and here Audit team has given clean chit as such proceedings be dropped. As far as this Court is concerned this Court will not enter into disputed question of fact and will not step into the shoes of Inquiry Officer who has to inquire the charges leveled against the petitioner. Departmental inquiry is undertaken to maintain discipline in service and efficiency of public service, and the enquiry is for the purposes to find out as to whether any misconduct as defined and mentioned under service rules has been committed by incumbent or not. Suspension during contemplation of enquiry or pendency thereof, by itself is not a punishment however said authority is exercised by appropriate authority till incumbent is reinstated with full benefits, and in the event charge being proved, disciplinary authority takes decision, as per his wisdom, looking to the facts and circumstances of the case.

7. Scope of judicial review relating to suspension has been noted in detail in Division Bench judgment of this Court in the case of Dr. Subhash Chandra v. State reported in 2005(4) ESC 2823 following the judgment of Hon''ble Apex Court in paragraph 42,43,44 are being quoted below:

(42) Now at this juncture, it is necessary to refer some case laws wherein the scope of judicial review relating suspension vis-a-vis circumstances under which it can be resorted to have been dealt with by Hon''ble Apex Court. In U.P. Rajya Krishi Utpadan Mandi Parishad and Ors. v. Sanjiv Rajan (1993) 3 UPLBEC 1569 in para 5 and 10 of the decision Hon''ble Apex Court has held as under:

5...Ordinarily, when there is an accusation of defalcation of the monies, the delinquent employees have to be kept away from the establishment till the

charges are finally disposed of. Whether the charges are baseless, malicious or vindictive and are framed only to keep the individual concerned out of the employment is a different matter. But even in such a case no conclusion can be arrived at without examining the entire record in question and hence it is always advisable to allow the disciplinary proceedings to continue unhindered. It is possible that in some cases, the authorities do not proceed with the matter as expeditiously as they ought to, which results in prolongation of the sufferings of the delinquent employee. But the remedy in such cases is either to call for an explanation from the authorities in the matter, and if it is found unsatisfactory to direct them to complete the inquiry within a stipulated period and to increase the suspension allowance adequately....

10. We find from the charge-sheet that the allegations against the 1st respondent are grave in as much as they indicate that the amounts mentioned there in are not deposited in the bank and forged entries have been made in the pass book of the relevant accounts and the amounts are shown as having been deposited. In the circumstances, the High Court should not have interfered with the order of suspension passed by the authorities. The Division Bench has given no reason for upholding the learned Single Judge's order revoking the suspension order. In matters of this kind, it is advisable that the concerned employees are kept out of the mischiefs range. If they are exonerated, they should be entitled to all their benefits from the date of the order of suspension. Whether the employees should or should not continue in their office during the period of inquiry is a matter to be assessed by the concerned authority and ordinarily, the Court should not interfere with the orders of suspension unless they are passed mala fide and without there being even a prima facie evidence on record connecting the employees with the misconduct in question....

(43) In *State of Orissa Vs. Bimal Kumar Mohanty*, , while dealing with the issue at length in para 12 of the decision Hon"ble Apex Court has held as under: "12. It is thus settled law that normally when an appointed authority or the disciplinary authority seeks to suspend an employee, pending inquiry or contemplated inquiry or pending investigation into grave charges of misconduct or defalcation of funds or serious acts of omission and commission, the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind by disciplinary authority. Appointing authority or disciplinary authority should consider the above aspects and decide whether it is expedient to keep an employee under suspension pending aforesaid action. It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegation imputed to the delinquent employee. The Court or the Tribunal must consider each case on its own facts and no general law could be laid down in that behalf. Suspension is not a punishment but is only one of forbidding or disabling an employee to discharge the duties of office or post held by him. In other words

it is to refrain him to avail further opportunity to perpetrate the alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee could get away even pending enquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the enquiry or investigation or to win over the witnesses or the delinquent having had the opportunity in office to impede the progress of the investigation or enquiry etc. But as stated earlier, each case must be considered depending on the nature of the allegations, gravity of the situation and the indelible impact it creates on the service for the continuance of the delinquent employee in service pending enquiry or contemplated enquiry or investigation. It would be another thing if the action is actuated by mala fide, arbitrary or for ulterior purpose. The suspension must be a step in aid to the ultimate result of the investigation or enquiry. The authority also should keep in mind public interest of the impact of the delinquent's continuance in office while facing departmental enquiry or trial of a criminal charge.

(44) In *Secretary to Govt. Prohibition and Excise Department v. L. Srinivasan* 1961 3 SCC 157 in para 3 of the decision the Hon'ble Apex Court has held as under:

3. The respondent while working as Assistant Section Officer, Home, Prohibition and Excise Department has been placed under suspension. Departmental inquiry is in process. We are informed that charge-sheet was laid for prosecution for the offences of embezzlement and fabrication of false records etc. and that the offences and the trial of the case is pending. The Tribunal had set aside the departmental enquiry and quashed the charge on the ground of delay in initiation of disciplinary proceedings. In the nature of the charges, it would take a long time to detect embezzlement and fabrication of false records, which should be done in secrecy. It is not necessary to go into the merits and record any finding on the charge levelled against the charged officer since any finding recorded by this Court would gravely prejudice the case of the parties at the enquiry and also at the trial. Therefore, we desist from expressing any opinion on merit or recording any of the contentions raised by the counsel on either side. Suffice it to state that the Administrative Tribunal has committed grossest error in its exercise of the judicial review. The member of the Administrative Tribunal appears to have knowledge of the jurisprudence of the service law and exercised power as if he is an appellate forum dehors the limitation of judicial review in quashing the suspension order and charges even at the threshold. We are coming across such orders frequently putting heavy pressure on this Court to examine each case in detail. It is high time that it is remedied.

8. To sum up, whether incumbent should or should not continue in office during continuance of enquiry is matter to be assessed by concerned authority and ordinarily interference is not solicited by Court till it is reflected that said exercise is outcome of malafide exercise of authority and there is not even prima facie evidence on record connecting the employee with the misconduct in question.

Suspension order should not be passed as an administrative routine or outcome order, rather concerned authority has to keep in mind the gravity of misconduct and the nature of allegation imputed and the nature of evidence in support of the same, and thereafter after due application of mind and objective consideration said power be exercised. Here reasons have been assigned.

9. Consequently order dated 13.04.2006 is upheld.

Civil Misc. Writ Petition No. 34791 of 2006

10. Sri Sanjay Kumar, Advocate, learned Counsel for the petitioner has assailed the validity of the impugned order dated 22.06.2006 primarily on the ground that the allegation against the petitioner is of less recovery and for the said affair petitioner singly cannot be held responsible and placed under suspension without recording any finding that result of ultimate enquiry may result in dismissal or removal or reduction in rank and further it has been contended that in the present case there being no resolution of the District Administrative Committee then by no stretch of imagination Inquiry Officer can be appointed and inquiry can be directed and in the absence of approval by Deputy Registrar Member Secretary cannot pass order of suspension as such order dated 22.06.2006 is liable to be quashed.

11. Sri Satish Misra, Advocate on the other hand countered the said submission by contending that the authority who has passed the order has full authority and competence to pass such order and valid reasons are there, as such no interference be made.

12. First question to be adverted is can Secretary of Cooperative Society be suspended qua the charge that required target has not been achieved? In order to answer this question Section 31 of U.P. Cooperative Societies Act 1965 is being looked into.

Section 31 of U.P. Cooperative Societies Act 1965:- [(1) Except in the case of an apex society there shall be a secretary of every co-operative society, to be appointed and removable by the society subject to the provisions of the rules and regulations framed u/s 121 and 122. The emoluments and other conditions of service of the Secretary shall be such as may be prescribed in the bye-laws of the society made in conformity with the rules and regulations made in this behalf.

Provided that where a service for the post of Secretaries common to any class of Co-operative societies has been created u/s 122-A the recruitment, appointment, removal and other conditions of service of persons appointed to such posts, including persons appointed to such posts before the creation of such service shall be governed by the provisions of that section and the rules made thereunder.

(2) The Secretary shall be Chief Executive Officer of the society and subject to such control and supervision of the Chairman and the Committee of Management as may be provided in the rules or the bye-laws of the society shall

- (a) be responsible for the sound management of the business of the society and its efficient administration;
- (b) carry on the authorized and normal business of the society.
- (c) subject to the provisions of the bye-laws of the society, operate its accounts and except where the society has a cashier or treasurer, handle and keep in his custody its cash balances:
- (d) sign and authenticate all documents for and on behalf of the society;
- (e) be responsible for the proper maintenance of various books and records of the society and for the correct preparation and timely submission of periodical statement and statements and returns in accordance with this Act, the rules the bye-laws and the instructions of the Registrar or the State Government:
- (f) convene meetings of the general body the Committee of Management and any sub-committee constituted by the Committee of Management and maintain proper records of such meetings : and
- (g) perform such other duties and exercise such other powers as may be imposed or conferred on him under the rules or the bye-laws of the society.

13. Section 31 of U.P. Cooperative Societies Act 1965 deals with Secretary, his emoluments and functions.

14. A bare perusal of Section 31(1) of the U.P. Cooperative Societies Act 1965 would go to show that except in the case of an apex society there has to be a Secretary of every co-operative society, to be appointed and removable by the society subject to the provisions of the rules and regulations framed u/s 121 and 122. The emoluments and other conditions of service of the Secretary is to be such as may be prescribed in the bye-laws of the society made in conformity with the rules and regulations made in this behalf. Secretary is to be the Chief Executive Officer of the society in terms of Section 3(2) and has to function under control and supervision of the Chairman and the Committee of Management as may be provided in the rules or the bye-laws of the society. The very first function of the Secretary of the society is that it is he who is responsible for the sound management of the business of the society and its efficient administration and also for carrying on the authorized and normal business of the society-Operate accounts, sign and authenticate documents for and on behalf of society responsible for proper maintenance of various books and records of society and for correct preparation and timely submission of periodical statement and returns. Convening meeting of the General Body, Committee of Management and maintaining proper records of such meeting. Secretary is thus, pivot of the society and has been vested with vide exclusive power over the business and affairs of the society, and his functioning is subject to control and supervision of the Chairman and Committee of Management, so that Secretary may not function arbitrarily or his inactions may be checked, before the business of society is effected. By means of amendment known as U.P. Primary

Agricultural Co-operative Societies Centralized (11th Amendment) Rules 2003 amendment has been made that onwards salary of Secretaries shall be payable from the society where they are posted. By means of further amendment made known as U.P. Primary Agricultural Cooperative Credit Societies Centralized (12th Amendment) Rules, 2004 amendment has been incorporated to the effect that post of secretary is untrasferrable.

15. In exercise of power conferred on it by Section 122-A of the U.P. Cooperative Societies Act, 1965 (hereinafter referred to as the Act) the Government of U.P. has created centralized service of Secretaries of the Primary Agricultural Co-operative Credit Societies and has framed Rules Known as Uttar Pradesh Primary Agricultural Co-operative Credit Societies Centralized Service Rules, 1976 (hereinafter referred to as the "Rules") for regulating their conditions of service, Rule 7 vests the supervision and control of centralized service in State cadre Authority, Regional Administrative Committee & District Committee and has laid down the constitution of these Committees. Sub-rule (4) of Rule 7 provides for constitution of the District Committee in each District and on various occasion its constitution has been changed.

7[(4) There shall be a District Administrative Committee in each District which shall consist of the following:

Before 23.05.1995 the position of Sub-rule (4) of Rule 7 was as under:

(i) Chairman of the Bank of District Ex-Officio Chairman (ii) District Assistant Registrar of the Member District (iii) A Block Development Officer Member nominated by the A.D.M.(P)/ District Planning Officer of the District (iv) Chairman of a society to be Member nominated by the Regional Deputy Registrar of the region (v) District Audit Officer Member (vi) Secretary/Managing Member Director of the Bank.

By noti. No. 1617/XLIX-1-1-95, dated 23.05.1995, the position of Sub-rule (4) of Rule 7 as under:

(4) There shall be a District Administrative Committee in each District, which shall, consist of the following:

(i) Chairman/Administrator of the District Co-operative Bank Ex-Officio Chairman (ii) District Assistant Registrar of the District Member (iii) Chairman of a Primary Agricultural Member Co-Operative Credit Society to be Nominated by the Regional Deputy Registrar of the region (iv) District Audit Officer Member (v) Secretary of the District Co-operative Bank Member/Secretary

Substituted by Notification No, 2659/49-1-2002 7(7)-95 dated 18.09.2002

7[(4) There shall be a District Administrative Committee in each District which shall consist of the following:

(i) Chairman or the Administrator, as the case Ex-officio may be of the Bank of the District Chairman (ii) District Audit Officer, Co-operative Societies Member

and Panchayats (iii) District Assistant Registrar, Cooperative Member/ Societies of the District Secretary

Now by means of amendment introduced, known as U.P. Primary Agricultural Cooperative Credit Society Centralized Service (Twelfth Amendment) Rules 2004 Sub-rule (4) of Rule 7 is as

?4? lcaf/k ftyk lgdkjh cSad dh izcU/k lfeFr gh ftyk iz"kkIfud desVh gksxh rFkk bl cSad ds lfpo@ egkizcU/kd lnL; lfpo gksxsA

izcU/k lfeFr ?ftYk iz"kkIfud desVh? vius leLr ;k fdUgh vf/kdkjks dks ,slh milfeFr dks izfrfu/kfur dj ldrh gS tks m?kj izns"k lgdkjh lfeFr fu;ekoyh 1968 ds fu;e 393 rFkk lacf/kr ftyk lgdkjh cSad dh mifof/k;ksa ds izkfo/kkuksa ds vUrxZr bl iz;ksatu gsrq xfBr dh x;h gks!

16. Now as per the existing provisions the Managing Committee of District Cooperative Bank of the concerned district would be District Administrative Committee and the Secretary/Managing Director of Bank would be the Member/Secretary. District Administrative Committee has been vested with the authority to delegate all or some of its functions to any sub-committee constituted in terms of provisions as contained under Rule 393 U.P. Co-operative Societies Rules 1968 or as per by-laws of the concerned bank.

13. Powers and duties of the District Administrative Committee- (1) The District Committee shall be the appointing authority of the members of the centralized services in the district and shall also have the following duties and responsibilities:

(i) to exercise general control and supervision over the members of the Centralized Service in the district.

(ii) to transfer the members from one place to another within the district

(iii) to ensure recovery of the contribution

(iii) to ensure recovery of the contribution levied on the Society in the district;

(iv) to classify the societies in the district in various categories according to their annual lending as provided in Rule-4

(v) to arrange absorption of the existing employees of the societies after their screening in accordance with the instructions issued by the Registrar, Cooperative Societies U.P.

(vi) to evaluate the work of members of Centralized Service every year in the district.

(vii) to maintain category-wise correct seniority list of the members of the Centralized Service; and

(viii) to perform such other duties and functions as may be entrusted to it by the

Authority or Regional Committee.

(2) The meeting of the District Committee shall be called by the Member Secretary as and when he deems fit and upon a direction to this effect from the Chairman or the District Assistant Registrar. Such meeting shall be called at least once in 3 months. The quorum of the meeting shall there.

(3) The Chairman when present, shall preside over the meeting of the District Committee. He shall have power of suspending a member of the Centralized Service with prior concurrence of Assistant Registrar.

Rule 14 : Power and duties of the Member/Secretary of the District Committee- Subject to the Control and supervision of the Chairmen of the District Committee the Member/Secretary of the Committee shall-

(i) be responsible for the proper maintenance of the Account Books and other records of the District Committee and for the correct preparation and timely submission of periodical statements and returns to the Regional Committee and the Authority as and when required;

(ii) convene meeting of the Committee and maintain proper record of such meetings;

(iii) Arrange to carry on correspondence on behalf of the District Committee.

(iv) ensure effective supervision over the members of the Centralized Service;

(v) have power of suspending a member of the Centralized Service with the prior concurrence of Assistant Registrar ;

(vi) ensure proper and up-to-date maintenance of the service books, character rolls and personal files of the members of the Centralized Service in the district;

(vii) ensure speedy disposal of all service matters of the members of the Centralized Service;

(viii) arrange disbursement of salaries of the members of the Centralized Service in the district out of contribution made to the State Primary Centralized Service Fund created under Rule 15;

(ix) ensure proper maintenance of the office of the District Committee and its smooth functioning; and

(x) perform such other duties and exercise such power as may be impose or conferred on him by the District Committee.

17. In view of Rule 13 the District Committee is the appointing authority of he members of the centralized service. The said Rule has also conferred various other powers enumerated therein including the powers to exercise control and supervision over the members of the centralized service in the district. Rule 14 defines the power of the Member/Secretary of the District Committee and one of

his power is the power of suspending a member of the centralized service with the prior concurrence of the Assistant Registrar.

18. Although Rules 13(3) and 14 (v) empower the Chairman and the Member/ Secretary of the District Committee to suspend a member of centralized service; but the circumstances under which such a power can be exercised, have not been specified in the Rules. The only condition laid down in Rule 14 (v) is that a member of the centralized service can be suspended with the prior concurrence of the Assistant Registrar, Rules also do not provide for disciplinary proceedings, penalties, termination of service etc. But Rule 30 has given power to the State Authority to frame Regulations with the prior approval of the Registrar, Co-operative Societies U.P. Rule 30 is reproduced below;

Rule 30 Miscellaneous- (1) Subject to the provisions of these Rules the Authority shall frame Regulation with the prior approval of the Registrar Co-operative Societies, U.P. for the members of Centralized Service on their service matters which may inter alia, include:

- (i) Method of promotion, appointment, probation, confirmation and termination.
- (ii) Service records, seniority reversion, retrenchment and resignation;
- (iii) Pay Scales, allowances, increment, joining time leave, efficiency bar etc.
- (iv) Conduct and discipline, penalties, disciplinary proceeding and appears;
- (v) Provident fund, gratuity, security and advance.

(2) So long as the regulations referred to in Sub-rule (1) are not framed all or any matters referred therein shall be governed by such orders or directions as may be issued by the Authority with the approval of the Registrar;

(3) Any matter not covered in these rules, shall be governed by such directions as may be issued by the Authority with the approval of the Registrar.

(4) If any doubt or dispute arises in the application of these rules, the reference shall be made to the Registrar whose decision shall be final and binding on all concerned.

In exercise of power conferred by Rule 30, Regulation known as U.P. Primary Agricultural Co-operative Credit Societies Centralized Service Regulations, 1978(hereinafter referred to as the Regulations) have been framed. Regulation 58 has laid down penalties including reduction in rank, removal and dismissal from service. Proviso to Regulation 58 (d) prohibits imposition of reduction in rank or grade, removal and dismissal from service under Sub-clauses (iv) (v) and (vi) of Clause (a) of the said rule without recourse to disciplinary proceedings. Regulation 58 is quoted below:

58(a) Penalties- Without prejudice to the provisions contained in any other regulations, a member who commits a breach of duty enjoined upon him or has been convicted for criminal offence or an offence u/s 103 of the Act or does

anything prohibited by these regulations, shall be liable to be punished by any one of the following penalties.

(i) Censure

(ii) Withholding of increment

(iii) recovery from pay on security deposit to compensate in whole or in part for any pecuniary loss caused to the society by the member's conduct,

(iv) Reduction in rank or grade:

(v) Removal in rank or grade

(vi) dismissal from service

(b) Copy of the order of the punishment shall invariably be given to the member concerned and entry to this effect shall be made in the service record of the member.

(c) No penalty except censure shall be imposed unless show cause notice has been given to the member and he has either failed to reply within the specified time or his reply has been found to be unsatisfactory by the punishing authority.

(d) (i) The charge sheeted member shall be awarded punishment by the appropriate authority according to the seriousness of the offence;

Provided no penalty under Sub-clause (iv)(v) and (vi) of Clause (a) above shall be imposed without recourse to disciplinary proceedings.

(ii) No member shall be reduced in rank or grade or removed or dismissed by an authority other than by which he was appointed unless the appointing authority has made prior delegation of such authority to such other person or authority in writing.

(e) the appointing authority or person authorised by him while passing orders for stoppage of increments shall state the period for which they are stopped and whether they shall have effect of postponing future increments.

Regulation 59 deals with the disciplinary proceedings, relevant extract of which is reproduced below:

59, Disciplinary proceedings-(1) (a) The disciplinary proceeding against member shall be conducted by the Inquiring Officer referred to in Clause (b) below with due observance of the Principles of natural justice for which it shall be necessary that:

(i) the member shall be served with a charge sheet containing specific charges and mention of evidence in support of each charge and he shall be required to submit explanation in respect of the charge within reasonable time which shall not be less than fifteen days.

(ii) the member shall also be given an opportunity to, produce at his own cost or to cross-examine witnesses in his defence and shall be given an opportunity of being heard in petition, if he so desires;

(iii) if no explanation in respect of the charge sheet is received or the explanation submitted is unsatisfactory the competent authority may award appropriate punishment considered necessary

(b) (i) where a member is dismissed or removed from service on the ground of conduct which has lead to his conviction on a criminal charge or

(ii) Where the member refuses or fails without sufficient cause to appear before the Inquiring Officer when specifically called upon in writing to appear or

(iii) Where a member has absconded and his whereabouts are not known to the district committee nor more than three months; or

(iv) Where it is otherwise (for reasons to be recorded) not possible to communicate with him the competent authority may award appropriate punishment without taking or continuing disciplinary proceedings.

(c) Disciplinary proceedings shall be taken by the District Committee against the member either suo motu or on a report made to this effect by an Inspector authority or the Chairman of the society under whose control the member is working or may have worked.

(d) The Inquiring Officer shall be appointed by the Member-Secretary of the District Committee;

...

(f) A member other than one referred to in Clause (e) above may be placed under suspension by the District Committee or any other officer authorised for the purpose in the following circumstances;

(i) when the said authority is satisfied that a prima facie case exists, which is likely to result in the removal, dismissal or reduction in rank of the member.

(ii) When an inquiry into his conduct is immediately contemplated or is pending and his further continuance on his post is considered detrimental to the interest of the society or the authority;

(ii) When a complaint against him of any criminal offence is under police investigation for which he has been arrested or he is undergoing trial in a court of law for an offence under the Indian penal Code, U.P. Co-operative Societies Act 1965 or any other Act or charges have been proved against him by a Criminal Court;

(g) The order of suspension may be revoked:

(i) by the authority which passed the order or

(ii) by the District Committee;

If there are sufficient reasons for revocation and the same shall be recorded in the order of revocation.

19. On the touch stone of provisions quoted above, question raised is being looked into;

20. Regulation 58 (a) starts with safeguarding other provisions which are available in any other Regulations qua imposition of penalties and in fact it gives an independent authority and discretion to disciplinary authority to take action, against a member who commits breach of duty enjoined upon him, and to punish him for the same. Thus, for breach of duty a member can be punished.

21. Bare perusal of the provisions would clearly show that it is the Secretary who is the Chief Executive Officer of the Society and is responsible for sound management of the business of the society and for its efficient administration it is Secretary who is responsible to carry on authorized and normal business of the society. Once Secretary fails on this score and is not in a position to run properly the business of the society and on administrative side also fails to carry on the authorized and normal business of the society, then certainly it is breach of duty for which action is warranted for the simple reason that if Secretary fails to perform and discharge his duties and there is dereliction of duty on his part in banking business as extending of loan is not the only function of the Bank its recovery is equally important function, and if in case there is dis-balance in between the two i.e. extending of loan on one hand and non recovery of the amount in question on the other hand then the day will not be far of when entire banking business would come to stand still and Bank in question would fail. Thus, if there is dereliction in getting loan amount recovered, then same is breach of duty enjoined upon and certainly disciplinary action against incumbent in question is warranted and for the same order of suspension can be passed and such action can not be faulted on this score.

22. Here in the present case factual position which has been noted is to the effect that for year 2005-06 the total amount advanced by Bank towards the society by way of loan is Rs. 21.83 lacs out of which Rs. 18.30 lacs is due. For recovery of said amount Registrar Co-operative Societies had written letter dated 11.07.2005, fixing therein target of 40% recovery of the amount due and current demand in between 01.07.2005 to 30.06.2006. Out of total target fixed qua 40% from Rs. 7.32 lacs, only 1.07 only was recovered and of current demand of 100% out of demand of Rs. 3.53 lacs merely 0.32 lacs was recovered. This non-achievement of target was perceived as laxity in compliance of directives and its implication was also noted that for year 2006-07, requisite finance would not be made available and that would effect the business of society, and farmers would not get fertilizer and seed in time. Charges have also been leveled of non-deposit of amount in the requisite amount, and thus, committing embezzlement. Non production of documents have also been alleged against the petitioner. Entire

gamut of charges leveled against the petitioner, are all contra to the duties enjoined upon Secretary of the Society in terms of Section 31 of U.P. Co-operative Societies Act 1965, and breach of same enjoins Disciplinary Authority to take disciplinary action in terms of Regulation 58 of U.P. Primary Agricultural Cooperative Credit Societies Centralized Service Regulation 1978 after following due procedure provided for in Regulation 59. Suspension is an act of Disciplinary Authority/Appointing Authority forbidding or disabling an employee to discharge the duties of office or post held by him, till incumbent does not clear him/her of the charge. The said step is taken in public interest keeping in view the impact of delinquents continuance in office while facing departmental enquiry. Regulation 59 (1) (f) of 1978 Regulations, specifies three circumstances in which District Committee or any other officer authorised for the purpose can suspend a Member. Full Bench of this Court in the case of Ram Chandra Pandey v. District Administrative Committee and Ors. reported in (1997) 3 UPLBEC1747 has concluded as follows and covers the entire field. Relevant extract of paragraphs 6 to 16 are being quoted below:

6. Rule 14 (v) empowers the Member/Secretary of the District Committee to suspend a member of the centralized service with the prior concurrence of the Assistant Registrar. Expecting the condition of prior concurrence of the Assistant Registrar there is no other fitter on the power of the Member/Secretary to suspend a member. Regulations have been framed under Rule 30 and, therefore, they are subordinate to the Rules. Hence power conferred by Rule 14 (v) on the Assistant Registrar cannot be whittled down or curtailed by the regulations. In the event of any conflict between the two, the Rule will prevail over the Regulations.

7. Regulation 59(1)(f) has specified the following these circumstances in which "the District Committee or any other officer authorised for the purpose" can suspend a member;

(i) When the competent authority is satisfied that a prima facie case exists which is likely to result in dismissal, removal or reduction in rank of the member,

(ii) When an Inquiry into his conduct is immediately contemplated or is pending and his further continuance on his post is considered detrimental to the interest of the society or the authority; and

(iii) when a complaint against him of any criminal offence is under police investigation for which he has been arrested or he is undergoing trial in a court of law for an offence under the Indian Penal Code, U.P Co-operative Societies Act or any other Act or charges have been proved against him by a Criminal Court.

The Member/Secretary is " the officer authorized" by Rule 14 (v) to suspend a member. Therefore he can exercise the power of suspension in any of the circumstances referred to in Regulation 59 (1) (f). If the Member/Secretary is satisfied that a prima facie case exists which is likely to result in any of the three major penalties he can suspend a member under regulation 59 (1) (f) (i). The

power to suspend in such a contingency has not been subjected to any condition or limitation. There is also no necessity of the prior decision of the District Committee before suspending a member under the said provision. But the power to suspend a member in the second contingency referred to in Regulation 59 (1) (f)(ii) can be exercised only during the pendency or in contemplation of an inquiry into the conduct of the member, if his further continuance of his post is detrimental to the interest of the society or the authority. The word "Inquiry" has not been "defined in the Act Rules or Registration. Although the word "inquiry" may have more than one meaning but its actual meaning depends on the context in which it has been used. In service jurisprudence there are two kinds of inquiries namely, (i) preliminary inquiry : and (ii) departmental/disciplinary inquiry. The purpose, nature and the depth of both these inquiries are different. The former is resorted to in order to find out the truth of the allegations made against an employee and or to determine as to whether disciplinary inquiry should be started against him. But the disciplinary inquiry is initiated in order to punish the employee for misconduct. For the reasons given below the inquiry referred to in Regulation 59 (1) (f) (ii) is the disciplinary inquiry and not a preliminary inquiry:

(i) Suspension under Regulation 59 (1) (f) (ii) can be ordered during or in contemplation of an inquiry. If the inquiry referred to therein the preliminary inquiry then the suspension order passed during the pendency or in contemplation of such an inquiry has to come to an end and the suspended member has got to be reinstated after the said inquiry is over, even though the District Committee decided to initiate disciplinary proceedings against such a member. Such a situation/eventuality has to be avoided while interpreting the Rule otherwise the very purpose of the suspension and the disciplinary inquiry in many cases may be frustrated.

(ii) An order of suspension under Regulation 59(1) (f) (i) can be passed when the authorised officer is satisfied that a prima facie case exists, which is likely to result in any of the three major penalties. Such a satisfaction can normally be reached after holding a preliminary inquiry in order to determine the truth of allegation of misconduct raised against the employee unless the authorized officer is satisfied prima facie about the correctness of the allegations on the basis of the material already on the record including the complaint itself Preliminary inquiry is thus, covered by Sub-clause (i). Such an inquiry therefore, cannot be a ground for suspending a member under the second sub-clause: It cannot be presumed that same ground/reason for suspending a member has been referred to in the two independent sub-clauses of the same Regulation. (III) It Sub-clause (ii) is taken to refer to preliminary inquiry only the member of the service may be unnecessarily harassed by frequent complaints because in order to ascertain the truth of the allegations made therein some kind of preliminary inquiry has to be contemplated or held giving cause for passing the order of suspension in contemplation or during the pendency of such an inquiry. The ground realities of the present day's affairs cannot be lost sight of. The device

and the mechanism through which honest and efficient officials are harassed and victimized by high-ups in the administration are well known.

8. For the reasons given above, the Member/Secretary can suspend a member of the centralized service under Regulation 59 (1) (f)(i) in the absence of a decision of the District Committee. Similarly, he can suspend a member under Regulation 59(1) (f) (iii) without any decision of the District Committee. But a member of the service cannot be suspended by the Member/Secretary under Regulation 59(1)(f)(ii) in the absence of a decision contemplating or initiating disciplinary inquiry. In view of Regulation 59 (1) (c) disciplinary proceedings can be taken by the District Committee only. Therefore, unless such a decision is taken by the District Committee the Member/Secretary cannot suspend the member of the service. But if the District committee has taken a decision contemplating or initiating the disciplinary proceedings, it is open to the Member/Secretary to suspend the member of the service pending disciplinary inquiry. The Act, Rules and Regulations do not provide for suspension of the member pending disciplinary inquiry by the District Committee alone. Such an inference cannot be drawn by implication also, specially in view of the fact that Rule 14 (v) gives power to the Member/Secretary to suspend a member without any restriction as regards circumstances in which he can exercise his power of suspension.

Question No. 2- The power of the District Committee to suspend a member of the centralised service: 12. Rule 13 has made the District Committee as the appointing authority of the member of centralised service in the district. By the said Rule the District Committee has been given various other powers also including the power to exercise control and supervision over the members. Rule 7 (1) also vests such power in the District Committee. An appointing authority is entitled to suspend the employee pending disciplinary inquiry into his conduct.

That apart, Regulation 59 (1) (a) the disciplinary proceeding against a member is to be conducted by an Inquiry Officer appointed in Clause (d). As per Regulation 59 (1) (c) disciplinary proceeding can be taken by the District Committee only. Till the disciplinary proceeding has been taken by the District Committee, the question of conducting such proceeding by an Inquiry Officer does not arise. Although the appoint an Inquiry Officer, by he can do so only after the disciplinary proceedings has been taken by the District Committee. He, therefore, cannot appoint an Inquiry Officer in the absence of initiation of disciplinary proceedings by the District Committee.

Question No. 4 Impugned orders of suspension:

15. In all these writ petitions the Member/Secretary while suspending the petitioners has appointed Inquiry Officer to make inquiry into the alleged misconduct of the petitioner and submit their report. The Member/Secretary can appoint an Inquiry Officer for conducting disciplinary inquiry but he can do so only after the disciplinary proceedings had been taken by the District Committee. It is admitted position in all these cases that the District Committee has not

taken a decision initiating or contemplating the disciplinary proceedings against the petitioners. Under the circumstances the Member/Secretary could not have appointed Inquiry Officers for conducting inquiry. From the tenor of the impugned orders it is apparent that the Member/Secretary while suspending the petitioners has also initiated the disciplinary proceedings. Such a course is not open to him. That apart, no attempts have been made by the respondents to justify the impugned orders by placing the relevant materials before the Court in spite of the averments alleging the orders to be arbitrary and illegal. The impugned orders, therefore, cannot be sustained.

Our answer to the question referred to before are as such:

(i) The Member/Secretary can suspend a member of the centralized service under Regulation 59 (1) (f)0) in the absence of a decision of the District Committee. Similarly, he can suspend a member under Regulation 59 (1)(f) (iii) without any decision of the District Committee. But a member of the service cannot be suspended by the Member/Secretary under Regulation 59 (1) (f) (ii) in the absence of a decision by the District Committee contemplating or initiating disciplinary inquiry. The derision of this Court taking the view contrary to what is contained in this judgment stand overruled,

(ii) when the District Assistant Registrar is himself a Member/Secretary of the District Committee, he can suspend a member of the centralized service without any concurrence of Assistant Registrar. In such a case the provision:: requiring the prior concurrence of the Assistant Registrar stand dispensed with.

(iii) The District Committee is fully competent to suspend a member of the centralized service.

(iv) The Member/Secretary cannot appoint an Inquiry Officer to conduct the disciplinary proceedings in the absence of decision of the District Committee initiating or contemplating the disciplinary proceedings.

(v) The impugned orders of suspension are illegal and cannot be sustained.

For the reasons given above, these writ petitions are allowed. The impugned orders are quashed. In view of the facts and circumstances of the case, there shall be no order as to costs.

23. On the touchstone of provisions noted above and the dictum of Full Bench impugned order of suspension has been looked into. Order of suspension no doubt notes down breach of duty, authority of Member/Secretary to pass order of suspension is also not disputed in terms of Rule 14 (v) 1976 Rules, specially when in the present case order of suspension has been passed on the directives of Assistant Registrar, Co-operative Societies, Azamgarh Region Azamgarh dated 03.04.2006 and 14.06.2006 respectively. Member/Secretary has exercised power of suspension with prior concurrence of Assistant Registrar. Competence to exercise power of suspension is not an issue raised. The issue is whether the prerequisite terms and condition for exercise of power of suspension has been

fulfilled or not. Here District Administrative Committee has not exercised and invoked power of suspension and to the contrary record reflects that Member/Secretary has exercised power of suspension. As per full Bench judgment of this Court in the case of Ram Chandra Pandey (supra) Member /Secretary can suspend, a member of Centralized Service under Regulation 59 (1) (f)(i) in the absence of decision of District Committee. Similarly he can suspend a Member under Regulation 59(1)(f)(iii) without any decision of District Committee, but a member of Service can not be suspended by the Member/Secretary under Regulation 59(1)(f)(ii) in the absence of decision of District Committee contemplating or initiating disciplinary inquiry. Here order impugned in the absence of resolution of Disciplinary Committee is clearly referable to exercise of authority under Regulation 59(1)(f)(i) wherein power of suspension can be exercised when satisfaction is recorded that prima-facie case exists which is likely to result in dismissal removal or reduction in rank of Member. Here Member/Secretary has clearly failed to record any satisfaction, in the order impugned that prima facie case which exists, same is likely to result in dismissal removal or reduction in rank of Member. In the absence of such satisfaction, being recorded impugned order of suspension is unsustainable. Such satisfaction should be reflected either from the order or from the record. Here from no source such inference is referable.

24. Next question which has been raised in the present case that there is no resolution of the District Administrative Committee to take disciplinary proceedings against the petitioner as such Member Secretary has no authority to direct inquiry by appointing Inquiry Officer. As per conclusion arrived at by the Full Bench, referred to above Member Secretary is not at all empowered to appoint Inquiry Officer to conduct disciplinary proceedings in the absence of decision of the District Committee initiating or contemplating the disciplinary proceedings. Consequently in the present case without there being any resolution of the District Administrative Committee for initiating or contemplating the disciplinary proceedings, the Member Secretary cannot appoint an Inquiry Officer to conduct the inquiry, as such, disciplinary proceedings under taken against the petitioner by the order of Member Secretary by appointing Inquiry Officer cannot be permitted to proceed.

25. Consequently Civil Misc. Writ Petition No. 25035 of 2006 is dismissed. Civil Misc. Writ Petition No. 34791 of 2006 is allowed.

26. As Civil Misc. Writ Petition No. 25035 of 2006 has been dismissed. Consequently on the strength of first order petitioner shall remain to continue under suspension, and District Committee is directed to take decision in respect of inquiry undertaken against the petitioner and finalize the said inquiry within next three months from the date of presentation of certified copy of order of this Court.

27. No orders as to cost.