

(2007) 09 AHC CK 0104

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No.43584 of 2007

Nand Kishor

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 14-09-2007

Acts Referred:

Uttar Pradesh Co-operative Societies Act, 1965 — Section 128
Uttar Pradesh Co-operative Societies Employees Service Regulations, 1975 —
Regulation 86

Citation : (2007) 09 AHC CK 0104

Hon'ble Judges : B.S.Chauhan, J and Arun Tandon, J

Final Decision : Allowed

Judgement

1. Petitioner Nand Kishor was employed as Assistant Manager in U.P. Cooperative Federation Limited, Lucknow (since retired). He was served with show cause notice dated 11th August, 2006 pointing out the loss which has been caused to the Cooperative Society because of Inaction/action on the part of the petitioner. Petitioner submitted reply to the show cause notice. The Managing Director passed an order dated 16th September, 2005 holding that the petitioner was liable to recoup the loss caused to the Federation to the tune of Rs.86,670.60 and the said loss was directed to be recovered from the salary of the petitioner in the ratio 1/3rd of his salary per month. Feeling aggrieved by the said order, the petitioner filed an appeal before the Chairman under the Regulation 85 of U.P. Cooperative Societies Employees Services Regulation, 1975 (hereinafter called the "Regulation, 1975"). The appeal so filed by the petitioner was dismissed under the orders of the Chairman dated 14.12.2006. Not being satisfied by the order, the petitioner approached the Registrar for revocation of the order passed by the Managing Director as well as by the Sabhapati under Section 128 of the U.P. Cooperative Societies Act, 1965 (hereinafter referred to as the "Act, 1965"). The application so made by the petitioner under Section 128 of the U.P. Cooperative Societies Act has been rejected by the Joint Registrar, Cooperative Societies Ltd., Lucknow vide order dated 12.6.2007 holding that the application

under Section 128 of the U.P. Cooperative Societies Act is not maintainable against the order of the Chairman. It is against this order that the present petition has been filed.

2. Learned counsel for the petitioner submits that the orders passed by the Chairman in exercise of powers conferred by the Regulation 1975 draw sources from the provisions of U.P. Cooperative Societies Act, it self, and therefore the provisions of Section 128 of the Act would continue to apply and a person aggrieved by order passed under Regulation 1975 can seek cancellation of the order under the said Section 128. Reliance has been placed upon the Division Bench judgment of this Court dated 3rd October, 2002, passed in Writ Petition No.16188 of 2002, Ram Nath Pandey v. Zila Sahkari Bank Ltd., Basti & Ors.

3. We have heard learned counsel for the petitioner as well as Shri Shrikant Shukla on behalf of respondent Nos.1 and 2, learned Standing Counsel on behalf of respondent Nos.3 and 4. Learned counsel for the parties agreed that petition may be disposed of at this stage itself in view of the order proposed to be passed by this Court today.

4. For appreciating the contentions raised on behalf of the respondents it is worthwhile to refer to Section 122 of the Act 1965 which confers a power upon the State Government to constitute an Authority for regulating the Service condition of the employees of the Cooperative Societies. The Authority in turn has been conferred powers to frame regulations for the purpose. In exercise of powers under Section 122 State Government as constituted Cooperative Societies Service Institutions Board at Lucknow. This Board has framed the Regulation of 1975. Under the Regulation 1986 an appeal to the Chairman against an order of the Managing Director has been provided for. It is in exercise of this power that the Chairman has decided the appeal filed by the petitioner against the order of Managing Director imposing the punishment of recovery of the loss caused. It is thus apparent that the source of power of the Chairman under the Regulations flows from this provisions under Section 122 of the Cooperative Societies Act. Section 128 of the Cooperative Societies Act contemplates that all orders passed by the officers of Cooperative Societies can be cancelled in the cases provided for under the said Section itself.

5. The power conferred under Section 128 is therefore available to an employee who is aggrieved by order of the Chairman passed in appeal preferred by him under the Regulations. The power conferred upon the Registrar under Section 128 of the Act, i.e., the parent legislation is not diluted in any manner by the regulations framed by the Institutional Board which are in the nature of subordinate legislation as reference may also be had to the definition of "Officer" as contained in Section 20 of the Cooperative Societies Act which categorically refers to the Chairman as an officer of the Cooperative Societies. Therefore, the application filed by the petitioner under Section 128 of the Act 1965 was legally maintainable. The order of Additional Registrar dated 12.6.2007 holding otherwise is legally not justified.

6. The conclusion arrived at by us herein above is supported by the Division Bench judgment of this Court in the case of Ram Nath Pandey (*supra*).

7. In view of the aforesaid discussion this writ petition is allowed. The order passed by the Registrar dated 12th June, 2007 is hereby quashed. Let the Registrar consider and decide the application made by the petitioner under Section 128 of the U.P. Cooperative Societies Act on merit after affording opportunity of hearing to both the parties. It is also open to the petitioner to press for an interim order during the pendency of the appeal before the Registrar/ Additional Registrar.

(Petition allowed)