
(2001) 12 AHC CK 0036
In the Allahabad High Court
Case No : Writ Petition No. 7048 (SS) of 2001

Pradeep Kumar Dixit

APPELLANT

Vs

Urban Co-operative Bank Ltd. and Others

RESPONDENT

Date of Decision : 21-12-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 2 AWC 1051

Hon'ble Judges : R.R. Yadav, J

Bench : Single Bench

Advocate : Raghvendra Singh, for the Appellant; S.C. Misra and Sudeep Seth, for the Respondent

Final Decision : Dismissed

Judgement

R.R. Yadav, J.—Heard the learned counsel for the parties.

2. With the assistance of the learned counsel for the petitioner I have gone through the order impugned dated 4.12.2001, Annexure-2 to the writ petition.

3. During the course of argument, Sri S. C. Misra, learned counsel appearing on behalf of respondent No. 4 brought to my notice the appointment letter of the petitioner appointing him on the post of Secretary from perusal of which it is evident that he was appointed as officiating Secretary due to sudden demise of Sobran Lal Chaturvedi in a stop gap arrangement till further order of the appointing authority. The aforesaid officiating appointment of the petitioner on the post of Secretary has been approved by the Committee of Management vide Annexure-9 to the writ petition dated 5.6.2001. It is held that terms and conditions stipulated in the appointment letter of the petitioner are binding upon him. The petitioner cannot be allowed to claim benefits beyond the terms and conditions stipulated in his appointment letter which he has accepted with his open eyes.

4. From the averments made in the writ petition and also from the argument

raised by the learned counsel for the parties, it is apparent on the face of record that petitioner was appointed as Secretary in officiating capacity and he has no lien on the post.

5. It is to be imbibed that appointment to a post on an officiating basis is from the nature of employment itself of a transitory character and in the absence of any contract or specific rule regulating the conditions of service to the contrary, the implied term of such an appointment is that it is terminable at any time by appointing authority.

6. It is further to be imbibed that if the order entails or provides for forfeiture of his pay or allowance or the loss of his seniority in the substantive rank or the stoppage or postponement of his future chances of promotion, then that circumstance may indicate that though, in form, the appointing authority had purported to exercise its undoubted right to terminate the employment of the petitioner in officiating capacity in pith and substance, the termination may be held to be by way of punishment. In such a situation veil is to be lifted to ascertain as to whether the order has been passed by way of punishment or the order of termination from the officiating employment is simpliciter. After lifting the veil in the facts and circumstances of the present case, I am of the view that the order terminating the employment of the petitioner from the post of officiating Secretary is simpliciter and it cannot be said to have been passed by way of punishment.

7. It is next contended by the learned counsel for the petitioner that respondent No. 4 who is now appointed in place of the petitioner as Secretary in officiating capacity is the son of one of the Members of Committee of Management, therefore, his appointment on the officiating post of Secretary is per se illegal within the meaning of Rule 124 of the U. P. Co-operative Societies Rules. 1968, which provides that no cooperative society shall appoint any person as its Secretary who does not possess qualifications laid down u/s 120, or who fails to furnish the security as may, if any. be required under that section or who is a near relation of a member of the Committee of Management of Society. Every such appointment shall be subject to the regulations, if any. framed u/s 121 or 122 of U. P. Co-operative Societies Act.

8. Suffice it to say in this regard that if the petitioner or any body else is aggrieved with the appointment of respondent No. 4 on the post of Secretary in officiating capacity on the basis of aforesaid Rule, then it would be open either to petitioner or any body else to file a writ of quo warranto questioning the appointment of respondent No. 4 after laying down foundation in the writ petition about all the ingredients of writ of quo warranto. It is held that foundation for issuing a writ of quo warranto and foundation for issuing a writ of certiorari is not the same. In the present petition no proper foundation is laid to entertain a writ of quo warranto and for this reason the petitioner has rightly not sought relief for issuing a writ of quo warranto,

9. It is well to remember that there can be no wrong without remedy. if illegality has been committed by appointing authority in appointing respondent No. 4 in breach of Rule 124 as submitted by the learned counsel for the petitioner, then this question can be appropriately gone into in a writ of quo warranto , not in the present writ of certiorari.

Upshot of aforesaid discussion is that the instant writ petition lacks merit and it is hereby dismissed in limine.