(2015) 02 AHC CK 0129

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 54030 of 2014

Pradeep Sahai APPELLANT

Vs

State of Uttar Pradesh and Others RESPONDENT

Date of Decision : 11-02-2015

Acts Referred:

Banking Regulation Act, 1949 — Section 35-A
Uttar Pradesh Co-operative Societies Act, 1965 — Section 35

Citation : (2015) 3 ADJ 572 : (2015) 110 ALR 594 : (2015) 3 AWC 2479 : (2015) 3 ESC 1236

Hon'ble Judges : M.C. Tripathi, J

Bench : Single Bench

Advocate : Kartikeya Saran, for the Appellant; Rohit Agarwal and Yashwant Singh, Advocates for the Respondent

Final Decision : Allowed

Judgement

Mahesh Chandra Tripathi, J.

1. Heard learned counsel for the petitioner and learned Standing Counsel for respondent Nos. 1, 2, 4 and 5. Shri Rohit Agarwal appears for respondent No. 3. By means of present writ petition, the petitioner has prayed for following reliefs:

"(i) to issue an appropriate writ, order or direction in the nature of certiorari quashing the order dated 26.9.2014 passed by respondent Nos. 3 and 5 (Annexure 35).

(ii) to issue an appropriate writ, order or direction quashing the enquiry being conducted against the petitioner (Annexure-31).

(iii) to issue an appropriate writ, order or direction in the nature of mandamus commanding the respondents to pay the retiral dues of the petitioner for the period he worked in the Bank.

(iv) to issue any other suitable writ, order or direction as this Hon''ble Court may deem fit and proper in the circumstance of the case.

(v) to award the costs of the writ petition to the petitioner."

2. The petitioner claims to be Ex-Secretary of United Commercial Co-operative Bank Ltd., Kanpur (hereinafter called as the Bank). He was going to retire on 31.7.2012 on attaining the age of retirement at 60 years. In the meeting of Board of Directors of the Bank held on 7.7.2012 at Agenda No. 8, the matter relating to retirement of the Secretary from Bank services was considered and a resolution was unanimously passed for extending the services of the petitioner for a period of two years from 1.8.2012 to 31.7.2014. The Chairman of the Bank vide letter dated 27.7.2012 informed the petitioner about the extension of services for two years. On 11.10.2012 the District Assistant Registrar, Co-operative Societies, Kanpur Nagar sent a letter to the President of the Administrative Committee of the Bank for removing the Secretary of the Bank as he had already completed 60 years. After the letter dated 11.10.2012, an inquiry was instituted against the petitioner and on 25.10.2012 the Additional District Co-operative Officer, Kanpur Nagar/Enquiry Officer asked the petitioner to give his comments regarding his extension. The petitioner submitted his reply on 30.10.2012.

3. The Deputy Commissioner reconstituted the Administrative Committee of the Bank on 10.1.2013 and in place of Three-Member Committee, a Four-Member Committee was formed and Shri Vinay Kumar Misra-District Assistant Registrar was made the President of the Administrative Committee. Pursuant to the order dated 10.1.2013, the newly constituted Administrative Committee of the Bank took charge on 11.1.2013 and on the same day after taking the charge, a meeting was convened without any notice or agenda and a resolution was passed retiring the petitioner from the post of Secretary and on the same day, on 11.1.2013 the respondent No. 3 passed an order retiring the petitioner from the post of Secretary. The petitioner filed a Writ Petition No. 8224 of 2013 challenging the action of the Administrative Committee of the Bank, in which an interim order was passed on 24.2.2013 staying the operation of resolution dated 11.1.2013 as well as the consequential order dated 11.1.2013.

4. By the order dated 24.5.2013 the Reserve Bank of India imposed Section 35-A of the Banking Regulation Act on the Bank and the restrictions were imposed for withdrawal of money to a fixed extent by the depositors. The Bank filed a Writ Petition No. 38967 of 2013 challenging the said action and this Court vide order dated 7.8.2013 directed the Reserve Bank of India to consider the request of the Bank and pass an order deciding the representation of the Bank after hearing the Bank and all the parties. Immediately on the next day on 8.8.2013 the petitioner apprised to the respondent No. 3 about the orders of this Court and served a copy of the order on Executive Director, Reserve Bank of India on 12.8.2013. The petitioner further apprised to respondent No. 3 on 28.8.2013 regarding his subsequent visit to Reserve Bank of India on 16.8.2013, 26.8.2013 and 27.8.2013 and further stated that he was seeking appointment on 28.8.2013 or

thereafter. Again on 31.8.2013 the petitioner sent a letter to respondent No. 3 informing him about his subsequent visit to the Executive Director, Reserve Bank of India in view of directions under Section 35-A of the Banking Regulation Act.

5. On 31.8.2013 the respondent No. 3 issued a show-cause notice to the petitioner stating that he was being absent without informing the Bank Head Quarter. On 26.9.2013 the petitioner was suspended on the basis of aforesaid show-cause notice. The petitioner submitted his reply on 30.9.2013 stating that he had gone to the office of Reserve Bank of India in Mumbai to follow the orders of this Court dated 7.8.2013 and had apprised the Chairman, Administrative Committee on every occasion. He stated that in terms of Gazette Notification dated 28.3.2013 the U.P. Co-operative Societies Act was amended and the maximum period for a Committee of Administrator was one year, which expired on 3.9.2013. On 3.10.2013 the petitioner again sent a letter to the Assistant Registrar, who was the Chairman of the Administrative Committee regarding the illegal suspension order. On 19.10.2013 the Assistant Commissioner directed the petitioner to be present before the Chairman, Administrative Committee and hand over the charge to Officiating Secretary Sri Sanjai Yadav. On 8.11.2013 the petitioner replied to the letter dated 19.10.2013 stating that the term of the Committee of Administrator came to an end on 3.9.2013 and no orders could be [passed by the Administrative Committee of the Bank after 3.9.2013. The suspension order dated 26.9.2013 is null and void. In July, 2013 the petitioner moved an application for withdrawal of the Writ Petition No. 8224 of 2013 and this Court vide order dated 28.11.2013 dismissed the writ petition as withdrawn. After passing the order dated 28.11.2013 the respondent No. 3 intimated to the petitioner that he did not hand over the charge of Secretary of the Bank to which he submitted his reply stating that he had handed over the charge of Secretary to Shri Sanjay Yadav on 15.2.2014.

6. The petitioner prayed for payment of salary from 1.8.2013 to 28.11.2013 alongwith his retiral benefits, such as provident fund and gratuity. When the respondent No. 3 did not pay his salary and other retiral benefits, the petitioner sent a reminder on 7.4.2014 and also gave a legal notice on 25.4.2014. The respondent No. 3 informed on 20.5.2014 that he had not received the copy of order of this Court dated 28.11.2013. The petitioner filed a Writ Petition No. 37374 of 2014 for payment of his retiral dues and this Court vide order dated 22.7.2014 directed the respondent No. 3 to decide the petitioner''s representation dated 5.7.2014. By the order dated 26.7.2014 the respondent No. 3 dismissed the petitioner from service and holding that he was under suspension till date. On 21.8.2014 the petitioner submitted his reply to respondent No. 3 stating that after withdrawal of the writ petition No. 8224 of 2013 on 28.11.2013, the earlier order passed by the Administrative Committee and the Chairman, Administrative Committee dated 11.1.2013 compulsorily retiring the petitioner from the post of Secretary of the Bank, revived and he stood retired from 11.1.2013. It was further stated that by order dated 22.7.2014 the Court had directed the respondent No. 3 to decide the

representation of the petitioner. The petitioner received an un-dated notice to which he submitted his reply on 17.9.2014 stating that he stood retired on 11.1.2013 by orders of the Administrative Committee. The respondent No. 3 rejected the petitioner''s representation for payment of retiral dues on 26.9.2014. No charge of embezzlement was made against him in the audit report or by the Reserve Bank of India. On 24.9.2014 the Additional Registrar, Banking informed the respondent No. 3 that in view of the judgment of Hon''ble Apex Court dated 30.6.2014, the enquiry against the petitioner can only be proceeded after taking legal opinion.

7. Learned counsel for the petitioner submits that the respondent No. 3 cannot withhold the retiral dues of the petitioner on the ground of pending enquiry against him. No preliminary enquiry report was ever supplied to him by the respondent. The respondent Nos. 3 and 5 failed to give any finding regarding the fact that once the petitioner stood compulsorily retired by order dated 11.1.2013, there was no occasion for passing dismissal order of the petitioner on 26.7.2014. All the proceedings initiated against the petitioner on 26.9.2013 came to an end and merged with the order dated 28.11.2013 passed by this Court, when the writ petition filed by the petitioner was dismissed and the order dated 11.1.2013 stood revived. The respondents failed to consider that as per the amended Section 35 of the UP Co-operative Societies Act, the maximum period, for which Committee of Administrator can be appointed, is one year and in the present case, the term of the Committee of Administrator i.e. respondent No. 3 came to an end on 3.9.2013. Hence, suspension order passed by the Administrative Committee is null and void.

8. Learned counsel for the petitioner further submits that the respondent No. 3 did not have any power or jurisdiction to suspend the petitioner by order dated 26.9.2013 as the respondent No. 3 became functus officio by the newly amended provisions of the Act and the term of the Committee of Administrator came to an end on 3.9.2013. The respondent Nos. 3 and 5 are not obeying the orders of superior authority i.e. the Additional Registrar, Banking, Co-operative Societies, U.P. Lucknow, who had written a letter calling for an explanation as to the proceedings of enquiry after the judgment of Hon''ble Apex Court dated 30.6.2014. There is no provision in UP Co-operative Societies Act, Rules and Employees Service Regulation as well as the Bye-laws of the Society and Employees Service Rules, which permits an enquiry to continue after retirement of an employee. He submits that Regulation 85 of UP Co-operative Societies Employees Service Regulation, 1975 provides that no employee can be suspended for more than six months. In the present case, the petitioner was suspended by an illegal and arbitrary order dated 26.9.2013 and his services were abruptly dismissed on 26.7.2014, which itself is an illegal act and against the provisions of the Regulations. The respondent No. 3 has no jurisdiction to act and perform duties of Administrative Committee after 3.9.2013 once the term came to an end, pursuant to the provisions of the Act, which could not be extended by any executive action. The petitioner is entitled for payment of his

retiral dues such as provident fund, gratuity and salary for the period he worked in the Bank.

9. A counter-affidavit of Shri Abhinav Asthana, Chairman of the Committee of Management of United Commercial Cooperative Bank Ltd., Civil Lines, Kanpur has been filed stating in paragraph-3 that elections of the Committee of Management was held on 30.9.2014 and an elected Committee of 12 members was formed and is now looking after the management of the Bank.

10. Shri Rohit Agarwal, learned counsel for respondent No. 3 submits that the charge-sheet was issued to the petitioner on 15.5.2014 and the enquiry report was submitted on 26.7.2014 and on the basis of the said enquiry report, the order dismissing the petitioner from services was passed on 26.7.2014. It was found in the enquiry that the petitioner had embezzled huge amount of money and as such, the notice was given to him to deposit the same.

11. Shri Rohit Agarwal further submits that the petitioner did not stood retired as his services stood continued in view of extension granted by the earlier Committee of Management and the term of his services was going to expire on 31.7.2014 and as such, after proper enquiry he was dismissed from service on 26.7.2014. The petitioner was not liable for any of his retiral dues as he had embezzled a huge amount. He submits that the petitioner challenged the order of Administrative Committee dated 11.1.2013 on the ground that he was given extension by the previous Committee of Management for two years and hence the term came to an end on 31.7.2014. This fact was also accepted by this Court while passing the interim order. As such, the petitioner cannot say that he was to retire on 11.1.2013 and not on 31.7.2014. Further the term of the Administrative Committee was extended after 3.9.2013 till a fresh election of Committee of Management was held and the present Committee of Management was duly elected on 30.9.2014.

12. Learned counsel for the petitioner has relied upon a judgment of Hon''ble Apex Court in Dev Prakash Tiwari v. U.P. Co-operative Institutional Service Board and others, Civil Appeal NO (s) 5848-49 of 2014 decided on June 30, 2014 in which it was held that no enquiry can go against a retired employee. The relevant paragraph Nos. 6, 7, 8, 9, 10 and 11 of the judgment are reproduced herein below:

"6. We have carefully considered the rival submissions. The facts are not in dispute. The High Court while quashing the earlier disciplinary proceedings on the ground of violation of principles of natural justice in its order dated 10.1.2006 granted liberty to initiate the fresh inquiry in accordance with the Regulations. The appellant who was reinstated in service on 26.4.2006 and fresh disciplinary proceeding was initiated on 7.7.2006 and while that was pending, the appellant attained the age of superannuation and retired on 31.3.2009. There is no provision in the Uttar Pradesh Co-operative Employees Service Regulations, 1975, for initiation or continuation of disciplinary proceeding after retirement of the appellant nor there is any provision stating that in case misconduct is established a deduction could be made from his retiral benefits. An occasion came before this Court to consider the continuance of disciplinary inquiry in similar circumstance in Bhagirathi Jena''s case (supra) and it was laid down as follows:

"5. Learned Senior Counsel for the respondents also relied upon Clause (3)(c) of Regulation-44 of the Orissa State Financial Corporation Staff Regulations, 1975. It reads thus:

"When the employee who has been dismissed, removed or suspended is reinstated, the Board shall consider and make a specific order:

(i) Regarding the pay and allowances to be paid to the employee for the period of his absence from duty, and

(ii) Whether or not the said period shall be treated as a period on duty."

6. It will be noticed from the abovesaid regulations that no specific provision was made for deducting any amount from the provident fund consequent to any misconduct determined in the departmental enquiry nor was any provision made for continuance of the departmental enquiry after superannuation.

7. In view of the absence of such a provision in the abovesaid regulations, it must be held that the Corporation had no legal authority to make any reduction in the retiral benefits of the appellant. There is also no provision for conducting a disciplinary enquiry after retirement of the appellant and nor any provision stating that in case misconduct is established, a deduction could be made from retiral benefits.. Once the appellant had retired from service on 30.6.95 there was no authority vested in the Corporation for continuing the departmental enquiry even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such an authority, it must be held that the enquiry had lapsed and the appellant was entitled to full retiral benefits on retirement.

7. In the subsequent decision of this Court in U.P. Co-op. Federation case (supra) on facts, the disciplinary proceeding against employee was quashed by the High Court since no opportunity of hearing was given to him in the inquiry and the management in its appeal before this Court sought for grant of liberty to hold a fresh inquiry and this Court held that charges levelled against the employee were not minor in nature, and therefore, it would not be proper to foreclose the right of the employer to hold a fresh inquiry only on the ground that the employee has since retired from the service and accordingly granted the liberty sought for by the management.

8. While dealing with the above case, the earlier decision in Bhagirathi Jena''s case (supra) was not brought to the notice of this Court and no contention was raised pertaining to the provisions under which the disciplinary proceeding was initiated and as such no ratio came to be laid down. In our view the said decision

cannot help the respondents herein.

9. Once the appellant had retired from service on 31.3.2009, there was no authority vested with the respondents for continuing the disciplinary proceeding even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such an authority it must be held that the enquiry had lapsed and the appellant was entitled to get full retiral benefits.

10. The question has also been raised in the appeal with regard to arrears of salary and allowances payable to the appellant during the period of his dismissal and upto the date of reinstatement. Inasmuch as the inquiry had lapsed, it is, in our opinion, obvious that the appellant would have to get the balance of the emoluments payable to him.

11. The appeals are, therefore, allowed and the judgment and order of the High Court are set aside and the respondents are directed to pay arrears of salary and allowances payable to the appellant and also to pay him his all the retiral benefits in accordance with the rules and regulations as if there had been no disciplinary proceeding or order passed therein. No costs."

13. In the present matter, the argument advanced by Shri Rohit Agarwal cannot be sustained in the aforesaid facts and circumstances, specially on the ground that the suspension order had been passed on 26.9.2013 and the petitioner had moved an application in the month of July, 2013 for withdrawal of Writ Petition No. 8224 of 2013, which was eventually dismissed as withdrawn vide an order dated 28.11.2013. Therefore, the interim order, which was passed earlier, ceased to be in existence. There is admitted situation that the petitioner had attained the age of superannuation on 31.7.2012 after attaining the age of 60 years. No doubt, certain resolution had been made for extension of his services for two years, but as indicated above, the term of the Committee of Administrator i.e. respondent No. 3 came to an end on 3.9.2013. Hence, suspension order passed by the Administrative Committee cannot be sustained.

14. In view of the judgment of Hon''ble Apex Court in Dev Prakash Tiwari''s case (supra), if the petitioner had retired from service on 31.7.2012, as there was no authority vested with the respondents for continuing the departmental proceedings for imposing any major penalty, the retiral benefits, which are liable to be paid to the petitioner, cannot be withheld and the petitioner is entitled to get all retiral benefits. The writ petition is allowed and the impugned order dated 26.9.2014 passed by respondent Nos. 3 and 5 are quashed. The respondents are directed to pay the retiral dues to the petitioner within a period of six weeks from the date of production of a certified copy of this order.

