

(2008) 11 AHC CK 0157
In the Allahabad High Court

Prithvi Nath Misra

APPELLANT

Vs

Regional Administrative Committee, Uttar Pradesh Primary
Agricultural Co-operative Credit Societies Central Service,
Basti Region, U.P. Primary Agricultural Co-operative Credit
Societies Centralised Service, Basti Region, District
Administrative Committee, U.P. Primary Agricultural Co-
operative Credit Societies Centralised Service

RESPONDENT

Date of Decision : 28-11-2008

Acts Referred:

Citation : (2009) 1 UPLBEC 649

Hon'ble Judges : Sabhajeet Yadav, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sabhajeet Yadav, J.—By this petition, the petitioner has challenged the orders dated 5.8.1999 and 16.6.2000, contained in Annexures-9 and 11 respectively to the writ petition whereby the petitioner has been dismissed from service while working on the post of Secretary, Sadhan Sahakari Samiti Ltd., Madanpur Vikas Khand, Uska Bazar, District Siddhartha Nagar after holding disciplinary inquiry against him and appeal preferred by the petitioner has been dismissed by Regional Level Administrative Committee, U.P. Primary Agricultural Co-operative Credit Societies Centralized Service, Basti.

2. The brief facts leading to the case are that the petitioner was placed under suspension while working as Secretary in Sadhan Sahakari Samiti, Madanpur, District Siddhartha Nagar by Member Secretary, District Administrative Committee, Siddhartha Nagar on 25.3.1998 in contemplation of disciplinary inquiry. It is stated that an Inquiry officer was appointed by the Member Secretary without any decision of District Administrative Committee to initiate disciplinary proceeding against the petitioner. It is further stated that on the basis of false flimsy allegation District Administrative Committee, Siddhartha

Nagar in its meeting held on 31.7.1999 decided to dismiss the petitioner from service. The order of dismissal was communicated to him by Member Secretary vide letter dated 5.8.1999. The petitioner preferred appeal against the aforesaid order of dismissal before Regional Administrative Committee which too has been dismissed, hence this petition.

Heard Sri Triloki Nath, Advocate for the petitioner and Sri Hemant Kumar, Advocate for the respondents.

Learned Counsel for the petitioner has submitted that the service of petitioner who was member of U.P. Primary Agricultural Co-operative Credit Societies Centralized Service is governed by U.P. Primary Agriculture Co-operative Credit Societies Centralized Service Rules 1976, herein after referred to as Rules 1976 and U.P. Primary Agricultural Co-operative Credit Societies Centralized Service Regulations, 1978 (herein after referred as Regulations 1978).

3. It is further submitted that the petitioner was placed under suspension by the Member Secretary. District Administrative Committee, Siddhartha Nagar respondent No. 4 on a report dated 7.1.1998 received from Assistant Development Officer (Co-operative) Banshi pertaining to Sadhan Sahakari Samiti, Mau, Harbanspur Block Birdpur and Sadhan Sahakari Samiti Ltd., Madanpur Block Uska Bazar, which was not placed before the District Administrative Committee but the respondent No. 4 acted in undue haste in issuing the order of suspension without any decision of the District Administrative Committee to initiate disciplinary proceeding against the petitioner. It is further submitted that a Full Bench of this court in Ram Chandra Pandey Vs. District Administrative Committee U.P. Primary Agricultural Co-operative Credit Societies Centralised Service, Bahraich and others, has held that a member of service can neither be suspended by Member Secretary, District Administrative Committee nor any enquiry officer can be appointed by him in absence of any decision of the District Administrative Committee to initiate disciplinary proceedings against the member of service but in instant case aforesaid suspension order was passed without any such decision of District Administrative Committee to bold disciplinary inquiry against the petitioner, which is appointing authority of the petitioner under Rule 13 of the said Rules.

4. It is also submitted that the inquiry officer was also appointed by respondent No. 4 in gross violation of Regulation 59(i)(e) of Regulations and against the view expressed by Full Bench of this court referred above inasmuch as charge sheet was issued to the petitioner without approval of the District Administrative Committee, which is appointing authority of the petitioner and further entire disciplinary inquiry was conducted in utter violation of aforesaid Regulations and principles of natural justice, therefore entire disciplinary proceeding is vitiated under law. The Appellate authority has also ignored the aforesaid grounds taken by the petitioner, as such impugned orders passed by the disciplinary authority and appellate authority are not sustainable at all.

5. Contrary to it, learned Counsel for the respondents has attempted to justify impugned orders at the strength of various averments made in the counter affidavit filed on behalf of respondents wherein the averments contained in various paragraphs of the writ petition have been refuted and disputed by the contesting respondents as detailed in the counter affidavit. However, while replying para 22 and 23 of the writ petition in para 13 of the counter affidavit it is stated that the charge sheet containing 26 charges has been issued to the petitioner on 28.9.1998 after due approval but it was not disclosed in the said paragraph that by which authority it was approved.

6. At very outset it is necessary to point out that order of suspension dated 25.3.1998 has been merged in the order of dismissal dated 31.7.1999 communicated to the petitioner on 5.8.1999, therefore, the same cannot be held to be in existence so as to enable the court to examine its validity and correctness of the said order of suspension as the same has already been lapsed. However, question remains to be considered is that as to whether in given facts and circumstances of the case the disciplinary inquiry held against the petitioner is faulted with on account of alleged illegality in appointing inquiry officer and further on account of violation of relevant regulations and principle of natural justice while holding disciplinary inquiry against the petitioner.

7. In this connection, it is necessary to point out that from perusal of the order of suspension dated 25.3.1998, it is clear that while passing the order of suspension the Member Secretary District Administrative Committee has also appointed Addl. District Co-operative officer as inquiry officer directing him to hold detail inquiry with regard to the alleged misconduct of petitioner in Sadhan Sahakari Samiti, Madanpur, Mau and Harbanspur and submit inquiry report and prepare charge sheet against the petitioner. Thus the order of suspension cannot be said to be passed by Member Secretary after any decision taken by the District Administrative Committee to hold formal disciplinary inquiry, therefore at the most order of suspension alone could be faulted with in view of decision of Full Bench of this Court rendered in Ram Chandra Pandey Vs. District Administrative Committee U.P. Primary Agricultural Co-operative Credit Societies Centralised Service, Bahraich and others, but in my considered opinion the aforesaid illegality in the order of suspension can not vitiate disciplinary inquiry held against the petitioner, unless it is otherwise faulted with because of the simple reason that the suspension of employee is different from disciplinary inquiry and suspension has to be resorted to merely to facilitate the disciplinary inquiry under certain contingencies warranting such suspension. It is not that in each and every circumstances, the suspension of an employee can be resorted to. In my view the suspension can not be held to be concomitant to disciplinary inquiry. It is always open for the employer to place the employee under suspension or not while holding disciplinary inquiry against employee.

8. Before proceeding further it would be useful to refer aforesaid Full Bench decision of this court rendered in Ram Chandra Pandey's case wherein this Court

in para 15 and 16 of the judgement has observed as under:

15. In all these writ petitions the Member/Secretary while suspending the petitioners has appointed Inquiry Officers to make inquiry into the alleged misconduct of the petitioners 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- proceeding 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.

16. Our answer to the questions referred to before are as under:

(i) The Member/Secretary can suspend a member of the centralised service under Regulation 69(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 by the District Committee contemplating or initiating disciplinary inquiry. The decisions of this Court taking the view contrary to what is contained in this judgement stand over-ruled.

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

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

9. Before analyzing said decision, it would be useful to refer some decisions of Hon"ble Apex court, wherein it has been held that a decision is only an authority for what it actually decides and not what logically follows from various observations made in it. In this connection, reference of few such decision can be made herein after.

10. State of Orissa v. Sudhansu Shekhar Misra AIR 1968 S.C. 647 wherein Hon''ble Apex Court in para-13 of the decision has observed as under:

A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it.

11. In Ambalal Manibhai Patel Vs. State of Gujarat, (vide para 18) Hon''ble Apex Court observed:

The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it.

In Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others, (vide para 59), Hon''ble Apex Court observed:

It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision.

12. Now applying the law laid by Hon''ble Apex Court, I am of considered opinion that Full Bench of this court has decided only issue of suspension of member of Centralized Service in circumstance under which suspension can be resorted to. It has nothing to do with legality or otherwise validity of disciplinary proceeding. Therefore, the aforesaid decision can not be further stretched to apply in the disciplinary inquiry held against the petitioner.

13. Now next question arises for consideration is as to whether entire disciplinary proceeding held against the petitioner can be faulted with on account of alleged illegality in appointment of inquiry officer? In this connection it is necessary to point out that from the records, it transpires that inquiry officer was not appointed after the decision of District Administrative Committee to hold disciplinary inquiry against the petitioner, contrary thereto it appears that member/secretary has appointed inquiry officer without any decision of District Administrative Committee to hold disciplinary inquiry against the petitioner and charge sheet was also issued without prior approval of District Administrative Committee, but the question for consideration is that as to whether such illegality in appointing inquiry officer and issuing charge sheet in given facts and circumstances of the case would vitiate further proceeding or it could be ratified by the disciplinary authority subsequently? In this connection it is necessary to point out that since the case can be decided on other points, therefore, I do not propose to decide the aforesaid questions leaving it open to the decided in appropriate case.

Now next question arises for consideration is that as to whether disciplinary inquiry held against the petitioner is vitiated for want of observance of principle of natural justice and relevant provisions of Regulations? In this connection, it is necessary to point out that in paras 25, 26 and 27 of the writ petition it is stated that notice dated 14.5.1999 was sent to the petitioner to appear in meeting of

District Administrative Committee to be held on 22.5.1999, in pursuance thereof when the petitioner reached to the Cooperative Bank Ltd., Siddharth Nagar on 22.5.1999, there was no such meeting on 22.5.1999 and without further intimation to the petitioner a meeting of District Administrative Committee is shown to have been held on 25.5.1999.

14. It is further stated that on 25.5.1999 earlier inquiry officer was changed and Sri Abdul Hasan, Additional District Cooperative Officer was appointed as inquiry officer, who has neither given personal hearing nor given opportunity to cross-examine any witness nor any opportunity to the petitioner to adduce his defence evidence was given but inquiry officer has submitted inquiry report without holding any inquiry merely on the basis of record and ex-parte version of the department.

15. The reply of aforesaid paragraphs of the writ petition has been given in para 15 of the counter affidavit but there appears neither any specific denial of the averments contained in paras 25, 26 and 27 of the writ petition nor any material has been enclosed in support of fact that the petitioner was afforded adequate opportunity to defend his case before the Inquiry Officer, as such I have no option but to hold that entire disciplinary inquiry was held in utter violation of principles of natural justice embodied under Regulation 59(1)(a) of 1978 Regulations, as such could not be acted upon by the disciplinary authority. Further dismissal order was passed on the basis of show cause notice dated 21.6.1999 sent to the petitioner which was not accompanied by inquiry report submitted by Inquiry Officer, as such on this count also the impugned order of dismissal of the petitioner from service dated 5.8.1999 cannot be sustained and for the same reason the order of Appellate authority dated 16.6.2000 can also not be sustained.

The view taken herein before also finds support from two recent decisions of two Division Benches of this Court rendered in Gopal Chandra Sinha v. State of U.P. and Ors. 2005(4) ESC 2899 : 2005 ALJ 3721 and Shiv Shanker Saxena v. State of U.P. 2006 ALJ 90 wherein this Court, after examining almost all the relevant case laws on the subject has decided somewhat similar issue in quite detail.

16. In view of aforesaid discussion and observations, the impugned orders dated 05.08.1999 and 16.06.2000 passed by disciplinary authority and appellate authority are quashed. In the result the petitioner shall be reinstated in service, but only for the limited purpose of holding disciplinary inquiry against him. He shall be reinstated within a period of 15 days from the date of production of certified copy of the order passed by this Court before competent authority but the petitioner shall be treated to be under suspension during fresh disciplinary inquiry to be held against him.

17. Although I have not expressed any opinion about the validity of charge sheet issued to the petitioner on merits but as abundant caution it would be proper for the disciplinary authority to issue fresh charge sheet to the petitioner within a

period of one month from the date of his reinstatement in service for the purpose of holding fresh disciplinary inquiry on the charges already levelled in the charge sheet of the petitioner. The petitioner shall be given given fresh opportunity to make reply of the said charge sheet and after considering the reply of the charge sheet, in case the disciplinary authority finds it necessary to hold fresh disciplinary inquiry against the petitioner it is open for the authority to proceed further with disciplinary inquiry and conclude the same within another period of three months. It is needless to say that while holding fresh disciplinary inquiry the petitioner shall be given adequate opportunity of hearing including cross-examination of witnesses to be examined on behalf of department and adduce his own defence evidence and witnesses. The petitioner shall also be paid subsistence allowances during disciplinary inquiry admissible to his current pay scale and salary.

18. In case, the petitioner succeeds in disciplinary inquiry finally, the disciplinary authority shall also pass appropriate order with regard to the continuity of service and remuneration payable to the petitioner from the date of his dismissal to the date of his reinstatement while concluding disciplinary inquiry.

19. With the aforesaid observation and direction, writ petition succeeds and is allowed to the extent indicated hereinabove.