
(2006) 11 AHC CK 0079
In the Allahabad High Court

Provincial Cooperative Union/U.P. Cooperative Union and
District Assistant Registrar, Cooperative Societies, Chairman,
District Committee of Federal Authority (P.C.U.)

APPELLANT

Vs

Presiding Officer, Labour Court and Chandrabali Singh

RESPONDENT

Date of Decision : 06-11-2006

Acts Referred:

Uttar Pradesh Co-operative Societies Act, 1965 — Section 70
Uttar Pradesh Industrial Disputes Act, 1947 — Section 4K

Citation : (2006) 7 AWC 7372

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.U. Khan, J.—Heard learned Counsel for the parties.

2. This writ petition is directed against the award dated 31.10.1984 given by Presiding Officer, Labour Court, Gorakhpur in adjudication case No. 151 of 1980. Through the said award, it was held that termination of services of respondent No. 2 Chandra Bali Singh by petitioner No. 1 was illegal and improper. The date of birth of respondent No. 2 is 17.7.1923 hence in normal course he would have retired on 16.7.1983. The Labour Court therefore directed that as respondent No. 2 had raised the dispute before Conciliation Officer quite late hence he was entitled to wages from the date on which he raised the dispute before Conciliation Officer till the date of retirement i.e. 16.7.1983. In the award, the exact date of raising the dispute before Conciliation Officer was not given. The number of C.P. Case was 84 of 1979. Reference u/s 4-K of U.P Industrial Disputes Act was made on 25.10.1980.

3. There was serious dispute during argument in between the learned Counsel for both the parties regarding the Regulations, which covered service conditions of respondent No. 2. According to learned Counsel for respondent No. 2, U.P Cooperative Societies Employees Service Regulations, 1975 (hereinafter referred

to as Regulations of 1975) were applicable while according to learned Counsel for the petitioner U.P Cooperative Federal Authority (business) Regulations, 1976 covered the service conditions of respondent No. 2.

4. The Labour court in the impugned award held that termination of service of respondent No. 2 was not in accordance with Para (Regulation) 85 of the Regulations of 1975. Under the said provision relating to disciplinary proceedings, it is necessary that employee shall be served with charge sheet and provided opportunity to submit the explanation, to produce evidence and to cross examine the witness of the employer. Even under the business Regulations of 1976 same procedure is prescribed for disciplinary proceedings hence absolutely no difference would be made even if it is held that business Regulations of 1976 applied to the respondent No. 2. I therefore do not consider it necessary to decide the said question.

5. The District Administrative Committee in its report, copy of which is annexure 2 to the writ petition found that respondent No. 2 Co-operative Supervisor embezzled an amount of Rs. 143587/- regarding which FIR had already been lodged. It was also held that as the charge was proved hence his services should be terminated. In the said order, it is mentioned that charge sheet was given on 28.7.1976 to which reply was given by respondent No. 2 on 8.11.1976 he was directed to submit his evidence on 20.12.1976, however, on the said date respondent No. 2 even though appeared but did not give any evidence and requested for perusal of records. It is further observed in the said order that he had already seen the record on the earlier dates even then on the said date documents were again shown to him however he noted that time was over hence he could not inspect the complete records. He was granted time to inspect the records till 28.12.1976, however, he did not appear for inspecting the records. Again notice was sent on 15.1.1977 for inspection of records on 21.1.1977 still respondent No. 2 did not appear on 21.1.1977. Thereafter again notice was sent for inspection of records on 7.2.1977 on which date also he did not appear. Again notice was given to him on 25.2.1977 to give evidence however he did not appear on the said date. Thereafter order was passed after taking into consideration the reply given by respondent No. 2.

6. Regional committee in its meeting on 7.12.1977 approved the report of the enquiry and passed the termination order as well as order of recovery of Rs. 143587/-. Formal termination order was passed by the Deputy Registrar, Gorakhpur on 28.2.1978. Against the said order respondent No. 2 filed appeal on 14.8.1978 which was also dismissed on 20.9.1978 by State level Administrative Committee and order in that regard was communicated to respondent No. 2 on 12.11.1978.

7. Respondent No. 2 in his written statement before Labour Court did not deny the fact that for inspection of documents ample opportunity, as mentioned above, was given to him and he did not appear in the disciplinary proceedings after 20.12.1976. In spite of it, Labour Court held that from the enquiry report

dated 7.12.1977 it appeared that no opportunity of adducing evidence was granted to respondent No. 2. Labour Court further held that employer could not prove that due opportunity was given to respondent No. 2 and principles of natural justice were followed.

8. In respect of proof of misconduct before Labour Court, the Labour court held that even though respondent No. 2 denied that he was arrested in the matter of embezzlement of fertilizer however, it was proved from the record that he was arrested and thereafter released on bail. Labour Court further held that as respondent No. 2 had denied having embezzled the amount and as before him the employer could not prove the embezzlement hence termination order was liable to be set-aside.

9. Departmental enquiry can be ignored by the Labour Court only if it is found that it was not in accordance with the principles of natural justice. Annexure 2, report of the enquiry committee clearly demonstrates that respondent No. 2 deliberately did not participate in the enquiry proceedings and after making repeated requests for inspection of documents, which were accepted respondent No. 2 himself did not come to inspect the record or take part in the disciplinary proceedings. These facts were not denied by the employee.

10. Accordingly Labour court had no jurisdiction to hold that departmental enquiry was not fair. If an employee in the departmental proceedings adopts dilatory tactics and thereafter absent himself then it can not be said that enquiry is not fair. The Supreme Court in Commissioner of Police, New Delhi Vs. Narender Singh, has held that the standard of proof in criminal trial (beyond reasonable doubt) is not applicable to departmental proceedings and in such proceedings "preponderance of probabilities" is the correct approach.

11. Learned Counsel for the petitioner argued that in view of Section 70 Cooperative Societies Act Labour Court has no jurisdiction to decide the dispute of employment and termination of employment. However, this point is squarely covered by an authority of the Supreme Court cited by the learned Counsel for the respondent No. 2 reported in V. Pandey v. Industrial Tribunal Lucknow 2001 (83) FLR 741 (SC). The Supreme Court has held that in the matter of termination of employees of Cooperative Societies Labour court has got full jurisdiction and such matters are not covered by Section 70 of U.P. Cooperative Societies Act. Accordingly this point is decided in favour of respondent No. 2.

12. In view of the findings, that full opportunity of hearing was provided by the employer to respondent No. 2 which he did not avail award given by the Labour court holding that disciplinary proceeding was not fair is liable to be set-aside. The award is therefore quashed.

13. Writ petition is allowed accordingly.