

(1992) 01 AHC CK 0102

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 12226 of 1983

Pukh Raj Mantri

APPELLANT

Vs

U.P. Co-operative Spinning Mills, Federation Ltd.

RESPONDENT

Date of Decision : 13-01-1992

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 226, 32

Citation : (1992) 2 AWC 1121

Hon'ble Judges : S.R. Singh, J

Bench : Single Bench

Advocate : Jagdish Prasad, for the Appellant;

Final Decision : Allowed

Judgement

S.R. Singh, J.—The Petitioner was appointed Manager (Cotton) on starting pay of Rs. 1700/ per month in pay scale of Rs. 1600-50-1850 E. B. 75-2000/ in the U.P. Cooperative Spinning Mill Federation Ltd., Kanpur (hereinafter referred to as the Federation) on terms and conditions embodied in appointment letter dated 13-10-1982 (Annexure-1 to the writ petition) issued under the signature of T. Blah, I.A.S. Managing Director of the Federation. The appointment was permanent in nature and the Petitioner was placed on probation for one year from the date of joining the post. He joined the post but subsequently tendered his resignation from service vide letter dated 30-7-1983, which was accepted by the Managing Director of the Federation vide letter dated 3-8-1983 to be effective from the date of Petitioner's relieve from the post. It was stipulated in the letter dated 3-8-1983 that the Petitioner would be relieved of his duty as soon as suitable arrangement was made in his place by the Federation. But before any arrangement could be made, the Petitioner sought to withdraw his resignation vide letter dated 6-8-1983 (Annexure-4 to the writ petition). It appears that the Federation accepted the Petitioner's resignation from service as an accomplished fact and advertised the post held by him vide advertisement as published in Hindustan Times on 21-8-1983 (Annexure-5 to the writ petition).

The petition in hand was filed on 21 -10-1983 praying therein that this Court may issue a writ or mandamus directing the opposite party not to make any selection or appointment of any other person on the post held by the Petitioner. It is alleged in the writ petition that the resignation tendered by the Petitioner was not free and voluntary instead it was given under coercion and pressure from the Managing Director of the Federation and it is further alleged that the resignation having been withdrawn before its acceptance became effective, there was no question of treating the post held by the Petitioner as vacant and to fill the same pursuant to the advertisement (Annexure-5 to the writ petition).

2. The petition was allowed *exparte* vide order dated 28-8-1991, but on an application moved on behalf of the Respondent through Sri S. N. Upadhyaya, who was subsequently engaged in place of original counsel Sri G. N. Verma, the *exparte* order dated 28-8-1991 was recalled and the parties counsel were heard at length.

3. Learned Counsel for the Respondent raised a preliminary objection as to the maintainability of the writ petition under Article 226 of the Constitution on the ground that the Federation is not State within the meaning of Article 12 of the Constitution and further that the services of the Petitioner were not regulated by any Statutory Rules and therefore, the Federation is not amenable to writ jurisdiction under Article 226 of the Constitution.

4. So as the contention of Sri S. N. Upadhyaya that at the relevant time there were no Statutory Rules governing the services of the Petitioner, is concerned, I find that Clause (9) of the appointment order stipulates that the Petitioner's services would be governed by rules/orders of the Federation/ Cooperative Spinning Mills as applicable to its employees from time to time. It appears that the Federation has not yet framed regulations governing the service conditions of its employees. It is not disputed before me that by means of Notification No. 366 C/XII C-3-36-71 published in U.P. Gazette Extra Ordinary dated 4-3-1972 issued under the provisions of Sub-section (1) of Section 122 of the U.P. Cooperative Societies Act, 1965 read with Rule 389A of the U.P. Cooperative Societies Rules, 1968, the Governor was pleased to constitute an authority known as the U.P. Cooperative Institutional Service Board for the recruitment, training and disciplinary control of the employees of certain apex level societies including Cooperative Textile Mills, but by means of a subsequent Notification No. 2752/XII C-2/72-78, dated Lucknow October 16, 1981 issued under the same provision of law; the aforesaid Notification dated 4-3-1972 was amended by omitting the words "Cooperative Textile Mills". Consequently the provisions of U.P. Cooperative Societies Employee's Service Regulation, 1975 framed by the U.P. Cooperative Institutional Service Board were not applicable to the Petitioner, though the aforesaid regulations have since been adopted by the Federation vide resolution No. 6 passed by the Committee of Management of the Federation in its meeting held on 14-3-1991 and the earlier Resolution No. 10 dated 4-3-1983 passed in connection with adoption of U.P. S.T.C. Service Rules etc. has been cancelled.

However, from Annexure 2 to the supplementary affidavit dated 10-10-1991 filed on behalf of the Federation by Sri B. P. Sinha, Manager Personnel (Industrial Relation) it is evident that the Committee of Management of the Federation in its meeting held on 4-3-1983; "resolved that till the Federation is able to frame its own Service Rules, T. A., Medical, other allowances and Advances Rules for the staff of the Federation and the Rules prevailing in this direction in the U.P. State Textile Corporation Limited may be adopted as they are". The result is that at the relevant time i.e. in July-August. 1983, services of the Petitioner were governed by such Service Rules/Order of the Federation/ Cooperative Spinning Mills as were applicable to its employees from time to time in terms of paragraph 9 of the appointment order dated 13-10-1982 (Annexure I to the writ petition) and the Service Rules prevailing in the Uttar Pradesh State Textile Corporation Limited, in terms of the decision taken by the committee of Management of the Federation in its meeting held on 4-3-1983 (Annexure. 2 to the supplementary affidavit filed by Sri B. P. Sinha on behalf of the Federation as aforesaid.

5. "Federation" as defined in the Bye laws means the Uttar Pradesh Cooperative Spinning Mills Federation Ltd. It exercises all functions and powers of Apex Society vide by law No. 62 "Cooperative Spinning Mills" as defined in Clause(2)(f) of the Bye law of the Federation means machanised Spinning Malls under the Cooperative Sector in U.P. The term so defined is vide enough to include U.P. S.T.C. Ltd. and the expression used in para 5 of the appointment order, to my mind, too has the same meaning. Sri Jagdish Prasad, learned Counsel for the Petitioner invited my attention to by law No. 6 of the U.P. State Cooperative (General Service Condition) Bye laws, 1978, which according to him was applicable in view of the resolution dated 4-3-1983. The rule may be quoted as below:

6. Option of Permanent Employee to quit service:

(1) Every permanent employee shall have the option to quit the service by giving to the appointing authority three months" notice or praying to the Corporation an amount equal to his pay for three months, or such lesser period by which the notice falls short of three months:

Provided that the appointing authority may, in any special case, waive the required period of notice or realisation of the amount in lieu of notice, in whole or in part;

(2) Such quittal shall have the effect of disentitling the employee of all such terminal benefits as are admissible to employees retiring superanuating in normal course under the Applicable rules:

Provided that nothing in this bye law shall deprive the employee from receiving back the amounts deposited by him with the Corporation from time to time together with interest, if any, allowable on such deposits in normal course.

(3) As an exception to sub bye law (1), it shall be open to the appointing

authority to disallow the exercise of option if any disciplinary proceedings are pending or are contemplated against the employee.

6. Similar is the provision contained in Regulation 30 of the U.P. Cooperative Societies Employee's Service Regulations, 1975, which deals with the resignation of an employee of a cooperative society. The Service Regulations of 1975 were at the relevant time not applicable to the Petitioner as already stated herein before but the Bye-laws framed by the U.P. Textile Corporation Ltd., were to my mind, applicable to the Petitioner in view of the decision taken by the Committee of Management of the Federation in its meeting held on 4-3-1983 adopting the service rules prevailing in U.P. State Textile Corporation Ltd. Though the resolution gives an impression that the Rules prevailing in U.P. State Textile Corporation Ltd., were adopted by the Federation in limited filed but when the resolution is read in the light of the relevant agenda it becomes clear, that the general service conditions as contained in the U.P. Textile Corporation (General Service Conditions) Bye Jaw. 1978 governed the service conditions of the employees of the Federation. These Bye laws laying down the general service conditions of the employees have statutory force and it would not be correct to say that there were no service rules governing the services of the Petitioner at the relevant time. Any other view may be destructive of the concept of rule of law envisaged by Article 14 of the Constitution. The resolution dated 4-3-1983 has to be considered reasonably so that the General Service Conditions Bye law, 1978 referred to above may be attracted to govern the service conditions of the employees so long as the decision dated 4-3-1983 of the Federation continued to be operative. It is a matter of public policy that an employee of public body is governed by fair and reasonable rules of service. The right of an employee of a public institution/ body to be governed on fair and reasonable terms and conditions of service is, in fact, in the nature of a fundamental right and such right necessarily carries with it the right to approach this Court under Article 226 of the Constitution for an appropriate writ in the event of the public body/ institution violating the right of the employee or committing breach of its obligation to act or deal reasonably and fairly with its employees.

7. Coming new to the question as to whether the Federation is an instrumentality of the State within the meaning of Article 12 of the Constitution, it may be pointed out in Haryana Urban Development Authority and Others Vs. Sunita Rekhi, , Supreme Court has ruled that a writ under Article 226 can be issued against any person or authority and that the term "authority" must receive a liberal meaning unlike the term in Article 12 of the Constitution. The relevant observation of the Supreme Court may be quoted as below:

"The term" authority used in Article 226, on the context must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words "any person or authority" used in

Article 226 are, therefore, not to be confined only to Statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed. If a positive obligation exists mandamus cannot be denied.

8. Relying upon the aforesaid pronouncement of the Supreme Court it was held by this Court (Hon. R. R. K. Trivedi, J.) in *U.P. Bank Employees Union v. District Cooperative Bank Ltd.* (1991) 2 UP LB EC 1267, that a writ under Article 226 of the Constitution can be issued for enforcement of any legal right even against a non statutory authority or body which is not an instrumentality of the State. The only requirement is that the person seeking issuance of writ must have a legal right and the authority or the body against whom writ is sought to be issued must have a public or legal duty to perform, the non-performance of which may result in denial of legal right sought to be enforced by the person seeking the writ. In view of this discussion it is not possible to accept the contention of the learned Counsel for the Respondent that the writ petition is not maintainable, even if it be assumed for the sake of argument that the Federation is not an instrumentality of the State within the meaning of Article 12 of the Constitution. However, the bye-laws of Federation indicate that the activities of the Federation are governmental in nature and that the Federation is an instrumentality of the State within the meaning of Article 12 of the Constitution. The State Government may subscribe 60% or more of the total share capital of the Federation and the Chairman of the Federation being the Chief Controlling and supervising Officer of the Federation vide bye law No. 53 (a), the State Government has ample control over the affairs of the Federation in view of the fact that according to bye law No. 38 as it then stood, the Secretary of the Industries Department Lucknow was to act as Chairman and the Registrar/Director, Handloom and Textile as Vice Chairman. The Managing Director of the Federation has to be appointed in accordance with the provisions of Section 31A of the U.P. Cooperative Societies Act, 1965, which provides that the Managing Director of every apex society shall be a government servant not below the rank of a class I Officer nominated by the State Government. Admittedly at the relevant time Managing Director of the Federation was an I.A.S. Officer. The only amendment that was made in bye law No. 38 vide Registrar (H.L.'s) Orders dated 2-12-1983 is that the Chairman of the Federation need not be the Secretary of the Industries Department but he may be any person nominated by the State Government. The public character of the Federation is not disputed before me and being a public institution the Federation cannot claim immunity from the judicial review under Article 226 of the Constitution of its action/dealings in respect of its employees. Rules or no rules, the Federation is under constitutional obligation to deal with its employees on fair and reasonable terms. That being so the writ petition is maintainable against the Federation at the behest of the Petitioner. In view of this discussion, I am of the

opinion that the Federation is an instrumentality of the State within the meaning of Article 12 of the Constitution and as such it is amenable to writ jurisdiction under Article 226 of the Constitution for enforcement of any legal right.

9. Coming now to the merits of the case, I find that the resignation of the Petitioner was accepted with a condition that it would be effective from a prospective event and before such event could happen, the Petitioner withdraw his resignation. The principle of law laid down by the Supreme Court in *Union of India (UOI) and Others Vs. Gopal Chandra Misra and Others*, *J.K. Cotton Spinning and Weaving Mills Company Ltd. Vs. State of U.P. and Others*, and *Punjab National Bank v. P.K. Mittal* AIR 1986 SC 1083, is applicable on the facts of the present case. In the case of *Punjab National Bank v. P.K. Mittal* (Supra) the Supreme Court was considering the following Service Regulations;

20. (1) Subject to Sub-regulation (3) of regulation 16, the bank may terminate the services of any Officer by giving him three months' notice in writing or by paying him three months' emoluments in lieu thereof (2) N(c) officer shall resign from the service of the bank otherwise than on the expiry of three months from the service on the bank of a notice in writing of such resignation Provided further that the competent authority may reduce the period of three months, or remit the requirement of notice.

10. While interpreting Clause (2) of regulation 20 (supra) the Hon'ble Supreme Court has held as under:

Clause (2) of regulation 20 makes it incumbent on an officer of the bank before resigning to serve a notice in writing of such proposed resignation and the clause also makes it clear that the resignation will not be effective otherwise than on expiry of three months from the service of such notice. There are two ways of interpreting this clause One is that resignation of an employee from service being a voluntary act on the part of an employee, he is entitled to choose the date with effect from which his resignation would be effective and give a notice to the employer accordingly. The only restriction is that the proposed date should not be less than three months from the date on which the notice is given of the proposed resignation On this interpretation, the letter dated 21st January, 1986 sent by the employee fully complied with the terms of this clause. Though the letter was written in January, 1986 the employee gave more than three clear months notice and stated that he wished to resign with effect from 30th of June, 1986 and so the resignation would have become effective only on that date The other interpretation is that, when an employee gives a notice of resignation, it becomes effective on the expiry of three months from the date thereof. On this interpretation, the Respondent's resignation would have taken effect on or about 21-4-1986 even though he mentioned a later date. In either view of the matter, the Respondent's resignation did not become effective till 21-4-1986 or 30-6-1986. It would have normally automatically taken effect on either of these dates as there is no provision for any acceptance or rejection of the resignation by the employer, as is to be found in other rules such as the Government Service

Conduct Rules.

11. The Hon"ble Supreme Court went on to hold further as under:

Much reliance was placed on the the terms of the proviso to Clause (2) of Regulation 20 to justify the action of the bank in terminating the Respondent"s services earlier but we do not think that the proviso can be interpreted in the manner suggested by learned Counsel for the bank. The resignation letter of the officer has to give at least three months" advance notice under the main part of the clause. What the proviso contemplates is that in a case where the employee desires that his resignation should be effective even before the expiry of the period of three months or without notice being given by him, the bank may consider such a request and waive the period or requirement of notice if it considers it fit to do so. That question does not arise in the present case because the employee had not requested the bank to reduce the period of notice or to waive the requirement of notice Dr. Anand Prakash seeks to interpret the proviso as empowering the bank even without any request on the part of the employee to reduce the period or waive the requirement of notice. In other words, he says that bank has power to accept the resignation with immediate effect even though the notice is only of a proposed future resignation We do not think this contention can be accepted As we have already mentioned, resignation is a voluntary act of an employee. He may choose to resign with immediate effect or with a notice of less than three months if the bank agrees to the same. He may also resign at a future date on the expiry or beyond the period of three months but for this no further consent of the bank is necessary. The acceptance of the argument of Dr. Anand Prakash would mean that, even though an employee might express a desire to resign from a future, date, the resignation can be accepted, even without his wishes, from an earlier date. This would not be the acceptance of a resignation in the terms in which it is offered. It amounts really to forcing a date of termination on the employee other than the one he is entitled to choose under the regulations. As rightly pointed out by the High Court, the termination of service under Clause (2) becomes effective at the instance of the employee and the services of the employee cannot be terminated by the employer under this clause.

Dr. Anand Prakash emphasises that as Clause (2) and its proviso are intended only to safeguard the bank"s interest they should be interpreted on the lines suggested by him We are of the opinion that Clause (2) of the regulation and its proviso are intended not only for the protection of the bank but also for the benefit of the employee. It is common knowledge that a person proposing to resign often wavers in his decision and even in a case where he has taken a firm decision to resign, he may not be ready to go out immediately In most cases he would need a period of adjustment and hence like to defer the actual date of relief from duties for a few months for various personal reasons. Equally an employer may like to have time to make some alternative arrangement before relieving the resigning employee. Clause (2) is carefully worded keeping both

these requirements in mind It gives the employee a period of adjustment and rethinking. It also enables the bank to have some time to arrange its affairs, with the liberty, in an appropriate case, to accept the resignation of an employee even without the requisite notice if he so desires The proviso in our opinion should not be interpreted as enabling a bank to thrust a resignation on an employee with effect from a date different from the one on which he can make his resignation effective under the terms of the regulation We, therefore, agree with the High Court that in the present case the resignation of the employee could have become effective only on or about 21st April, 1986 or on 30th June, 1986 and that the bank could not have "accepted" that resignation on any earlier date The letter dated 7th February, 1986 was, therefore, without jurisdiction

12. In view of the above discussions of the principles of law laid down by the Hon"ble Supreme Court in the cases referred to above, I am of the opinion that the resignation tendered by the Petitioner could not become legally effective before expiry of the notice of three months as visualised by bye law No. 6 of the U.P. Textile Corporation (General Service Conditions) Bye laws, 1978 referred to herein before and further the resignation was legally withdrawn before it could become effective even in terms of the letter of acceptance dated 3-8-1983 and therefore, the Petitioner shall be deemed to be in service of the Respondent and the Respondent has no authority in law to appoint any other person in place of the Petitioner in pursuance of the impugned advertisement until his services are terminated in accordance with law.

13. In the result the petition succeeds and is allowed. The Respondent Federation is directed to treat the Petitioner's resignation as lawfully withdrawn and to treat him in continuous service for all purposes except for the purpose of arrears of salary. The appointment, if any, in place of the Petitioner shall cease to be operative in terms of the interim order dated 29-11-1983 and she Petitioner would be allowed to resume his duty within 15 days of the presentation of a certified copy of this "judgment before the Managing Director of the Federation and paid his salary with effect from the date of this judgment.