

(1996) 04 AHC CK 0120

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 14393 of 1986

Raj Pati Saroj

APPELLANT

Vs

Regional Administrative Committee, Primary Agricultural Co-operative Credit Society and Others

RESPONDENT

Date of Decision : 12-04-1996

Acts Referred:

Citation : (1997) 1 UPLBEC 311

Hon'ble Judges : R.K. Mahajan, J;B.M. Lal, J

Bench : Division Bench

Advocate : Sakha Ram Singh and I.N. Singh, for the Appellant; S. C. and R.N. Ojha, for the Respondent

Final Decision : Disposed Of

Judgement

R.K. Mahajan, J.—The petitioner has filed the present writ petition seeking a writ in the nature of certiorari quashing the order dated 7-10-1983 passed by the respondent No. 2 and the appellate order dated 18-3-1996 (received by the petitioner on 6-6-1986) Annexure Nos. 5 and 7 to the writ petition. The petitioner has also prayed that a writ of mandamus against the respondents to pay the salary and to treat him in continuous service be issued.

2. At the very outset it may be mentioned that this court passed an order on 12-11-1983 that the petitioner be treated in service within a month of production of certified copy of the order. Another order was passed on 12-5-1983 that the petitioner will be paid the current salary in future regularly from the date he joins and question of back salary will be decided at the time of the final hearing. The brief facts are mentioned hereunder.

3. The petitioner was appointed as Secretary, Primary Agriculture Credit Co-operative Society on 14-5-1978 and was made permanent on 25-2-1982. The petitioner alleges; that he is governed by the provisions of U.P. Primary Agricultural Co-operative Credit Societies (Centralised Service) Rules, 1976,

(hereinafter referred to as the Rules) and Regulations made therein. It appears that the petitioner was suspended on 13-3-1982 for indiscipline and misconduct vide resolution, dated 24-2-1982 by the District Administrative Committee and later on after accepting an explanation in pursuance of show-cause notice dated 22-4-1983 the District Administrative Committee passed a resolution on 6-8-1985 vide Annexure No. 4 reinstating the petitioner. It is alleged that the petitioner was reinstated on 10/11-8-1933. But subsequently his services were terminated by order dated 7-10-1983 for financial irregularities. It is contended by the petitioner that no enquiry was held nor any charge-sheet was served on him regarding the second termination and as such impugned order of termination dated 7-10-1983 is liable to be quashed. It is also averred by the petitioner that there is complete violation of Regulations 58 and 59. The petitioner has also described the order of the appellate authority as illegal as the appellate authority did not take into consideration the explanation submitted by the petitioner. The petitioner in para No. 14 of the writ petition has explained that in fact no fertilizer was available at Makanpur Asravey Kalan Sadhan Sahkari Samiti Limited, Vikas Khand Newada, Allahabad and the petitioner had issued only cheques to the members of the Society and they were provided fertilizer by Kadirpur Sadhan Sahkari Samiti Limited, Vikas Khand, Allahabad and as such he was not responsible for any illegality. On the aforesaid grounds the petitioner has described his termination as arbitrary and inoperative.

4. The counsel for the respondent has submitted that respondent in his counter-affidavit stated that the petitioner is guilty of embezzlement. Enquiry was conducted by Shri K.P. Singh. Neither enquiry report nor copy of the charge-sheet has been annexed with the counter-affidavit. During the course of arguments original file was produced. On 16-3-1983 the proceeding of original file shows that there is charge of misappropriation of Rs. 500. The proceeding on the enquiry dated 25-8-1983 reveals that there was no notice to deposit Rs. 4000. However, the petitioner deposited Rs. 4000 and the enquiry was dropped and the petitioner was reinstated as stated above. It appears that on 13-9-1983 there was embezzlement of Rs. 22,500. But no charge-sheet was submitted.

5. We have heard the learned counsel for the parties. After hearing the counsel for the parties we are of the view that if the petitioner had embezzled Rs. 22,500 there should have been a specific charge framed against him and enquiry should have been conducted. It has been contended by the counsel for the respondent that the petitioner was not co-operating and he was absconding and his whereabouts were not available. Even if the whereabouts of the petitioner were not available the society should have published an advertisement in some vernacular Newspaper which circulate in the area of the society mentioning therein that enquiry had been constituted against the petitioner and in case he did not appear ex parte proceedings would be started or any other convenient mode should have been adopted to inform the petitioner to show that he was not co-operating and refusing to co-operate in the enquiry. This is basic requirement or principle of natural justice and fair procedure even in administrative action

which involves civil consequences should be adopted and delinquent must have a proper notice.

6. We would like to refer Regulations 58 and 59 of U.P. Primary Agricultural Co-operative Credit Societies (Centralised) Service Regulations, 1978. Regulations 58 and 59 are quoted in extenso :

"58 (a) Penalties.-Without prejudice to the provisions contained in any other regulations, a member who commits a breach of duty enjoined upon him or has been convicted for criminal offence or an offence u/s 103 of the Act or does anything prohibited by these regulations, shall be liable to be punished by any one of the following penalties :

- (i) censure;
- (ii) withholding of increment;
- (iii) recovery from pay or security deposit to compensate in whole or in part for any pecuniary loss caused to the society by the member's conduct;
- (iv) reduction in rank or grade;
- (v) removal from services;
- (vi) dismissal from service.

(b) Copy of the order of the punishment shall invariably be given to the member concerned and entry to this effect shall be made in the service record of the member.

(c) No penalty except censure shall be imposed unless a show-cause notice has been given to the member and he has either failed to reply within the specified time or his reply has been found to be unsatisfactory by the punishing authority.

(d) (i) The charge-sheeted member shall be awarded punishment by the appropriate authority according to the seriousness of the offence :

Provided that penalty under Sub-clauses (iv), (v) and (vi) of clause (a) above shall be imposed without recourse to disciplinary proceedings.

(ii) No member shall be reduced in rank or grade or removed or dismissed by an authority other than by which he was appointed unless the appointing authority has made prior delegation of such authority to such other persons or authority in writing.

(e) The appointing authority or person authorised by him while passing orders for stoppage of increments shall state the period for which they are stopped and whether they shall have effect of postponing future increments.

59. Disciplinary proceedings.-(1) (a) The disciplinary proceedings against a member shall be conducted by the Inquiring Officer referred to in clause (b) below with due observance of the principles of natural justice for which it shall be

necessary that ;

(i) the member shall be served with a charge-sheet containing specific charges and mention of evidence in support of each charge and he shall be required to submit explanation in respect of the charges within reasonable time which shall not be less than fifteen days;

(ii) the member shall also be given an opportunity to produce, at his own cost or to cross-examine witnesses in his defence and shall be given an opportunity of being heard in person, if he so desires :

(iii) if no explanation in respect of the charge-sheet is received or the explanation submitted is unsatisfactory the competent authority may award appropriate punishment considered necessary.

(b) (i) where a member is dismissed or removed from service on the ground of conduct which has led to his conviction on a criminal charge; or

(ii) where the member refuses or fails without sufficient cause to appear before the Inquiring Officer when specially called upon in writing to appear;

(iii) where a member has absconded and his whereabouts are not known to the district committee for more than three months; or

(iv) where it is otherwise (for reasons to be recorded) not possible to communicate with him, the competent authority may award appropriate punishment without taking or continuing disciplinary proceedings.

(c) Disciplinary proceedings shall be taken by the District Committee against the member either suo motu or on a report made to this effect by an Inspecting authority or the Chairman of the society under whose control the member is working or may have worked.

(d) The Inquiring Officer shall be appointed by the Member Secretary of the District Committee :

Provided that the Officer at whose instance disciplinary action started shall not be appointed as an Inquiring Officer nor shall the Inquiring Officer be the appellate authority."

7. We are of the view that provisions of U. P. Primary Agricultural Cooperative Credit Societies (Centralised) Service Regulations, 1978 have not been complied with in substance and as such the impugned order is bad in law and it is set aside. We are also of the view that since the petitioner is continuing in service and from the date he has been granted stay and keeping this aspect it would not be advisable to put the clock back and disturb the stability of things. The petitioner will be entitled for the full salary for the entire period in view of the declaration of his termination illegal. However, we may make it clear that it would be open for the authority concerned to take decision whether the petitioner was attending the office whenever (sic) was called for the purpose of

inquiry or available at the Headquarter fixed from the date of his suspension till the date of his termination or not and pass suitable orders for payment of salary during that period. In the circumstances of present case, if the department is so advised, it can conduct enquiry regarding embezzled amount in accordance with law.

8. With these observations the petition is disposed of finally.