
(2006) 11 AHC CK 0237
In the Allahabad High Court

Rajesh Tiwari

APPELLANT

Vs

The District Assistant Registrar Co-operative Societies and
Others

RESPONDENT

Date of Decision : 27-11-2006

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 156
Penal Code, 1860 (IPC) — Section 419, 420, 467, 468

Citation : (2006) 7 AWC 7361

Hon'ble Judges : Ran Vijai Singh, J; R.K. Agrawal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.K. Agrawal and Ran Vijai Singh, JJ.—By means of the present writ petition filed under Article 226 of the Constitution of India the petitioner, Rajesh Tiwari, seeks the following reliefs:

(i) issue a writ order or direction in the nature of certiorari quashing the impugned order dated 12.9.2001 passed by the respondent No. 1, District Assistant Registrar, Co-operative Societies, U.P. Deoria (Annexure-15 to the writ petition) and the consequential order dated 14.9.2001 passed by the respondent No. 2, Member Secretary, District Administrative Committee, Co-operative Societies, U.P. Deoria (Annexure-16 to the writ petition).

(ii) issue a writ, order or direction in the nature of Mandamus commanding the respondents not to interfere in the working of the petitioner as the Secretary Incharge in Sadhan Sahkari Samiti Ltd. Leraha, Development Block Gauri Bazar, District Deoria.

(iii) issue any other writ, order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

(iv) award the costs of the writ petition to the petitioner.

2. Briefly stated the facts giving rise to the present petition are as follows:

According to the petitioner, he was initially appointed on 10th August, 1991 as Assistant Secretary in Sadhan Sahkari Samiti Ltd., Vinayak, Block Gauri Bazar, District Deoria, hereinafter referred to as "the Society" pursuant to the resolution passed by the Society. The District Assistant Registrar, Co-operative Societies, U.P., Deoria, hereinafter referred to as "the Assistant Registrar" vide order dated 30th December, 1991 had approved the appointment of the petitioner on the post of Assistant Secretary in the Society. Upon an application made by the petitioner on 20th March, 1993, the Assistant Registrar vide order dated 11th May, 1993 transferred the petitioner to Sadhan Sahkari Samiti Ltd. Leraha, hereinafter referred to as "the Samiti" as Clerk on which post he joined on 15th May, 1993. The cadre of the Clerk and the Assistant Secretary is the same. The post of Secretary of the Samiti on which one Dehari Prasad was working as the Secretary on additional charge basis of the Samiti fell vacant. Pursuant to the order passed by the Member Secretary, District Administrative Committee, U.P. Primary Agricultural Co-operative Societies Centralised Services on 18.11.999, the charge of the Secretary of the Samiti was to be handed over to a person approved by the Governing Body of the said Samiti. The Governing Body of the Samiti passed a resolution on 6th January, 2000 providing for handing over additional charge of Secretary of the Samiti to the petitioner. The resolution was also approved by the Assistant Registrar on 10th January, 2000. The petitioner took over the additional charge of the Secretary of the Samiti on 13.1.2000. According to the petitioner, the Governing Body of the Samiti passed a resolution on 23.10.2000 whereby the salary of the petitioner and one Sri Ram Dulare, Chowkidar, was enhanced to Rs. 1088/- plus Rs. 1362/- as subsistence allowance and Rs. 700/- plus Rs. 300/- as subsistence allowance respectively. The resolution was approved by the Assistant Registrar vide order dated 23.12.2000. The petitioner was paid arrears amounting to Rs. 9,738/- for the period from 1.4.2000 to 30.9.2000. According to the petitioner, he was paid salary at the enhanced rate. One Rama Shanker Yadav, who was the President of the Samiti, filed an application dated 4th May, 2001 to the District Magistrate, Deoria stating therein that the petitioner in connivance with the Branch Manager, District Co-operative Bank, Gauri Bazar, Barhaj, by making his forged signature had withdrawn his salary and arrears of pay, which was forwarded to the Assistant Registrar for holding an inquiry. The Assistant Registrar vide order dated 5th May, 2001 directed the Co-operative Officer(Collection) to hold an inquiry. The Additional District Co-operative Officer, Incharge Rudrapur Tehsil was appointed as Inquiry Officer, who expressed his inability to hold the inquiry and requested that the inquiry be held by a Three-Member Committee. The Assistant Registrar vide order dated 30th June, 2001 constituted a Three-Member Inquiry Committee to inquire into the charges levelled against the petitioner. An application u/s 156(3) of the Code of Criminal Procedure, 1973, was also filed by the Assistant Registrar before the Chief Judicial Magistrate, Deoria, which was registered as Miscellaneous Application No. 108 of 2001. It was allowed by the

Chief Judicial Magistrate vide order dated 28th July, 2001 and the Station House Officer, Police Station Gauri Bazar, Deoria was directed to register a First Information Report against the petitioner under Sections 467, 468, 419 and 420 of Indian Penal Code, 1860. The order of the Chief Judicial Magistrate was challenged by means of a revision filed before the District and Sessions Judge, Deoria, which was dismissed vide order dated 8th August, 2001. The Three-Member Inquiry Committee inquired into the matter and submitted a report on 10th September, 2001. After receipt of the inquiry report the Assistant Registrar vide order dated 12th September, 2001 cancelled its earlier order dated 10th February, 2000 whereby approval was granted to the resolution dated 6th January, 2000 of the Governing Body of the Samiti proposing to give additional charge of the post of Secretary of the Samiti to the petitioner and a further direction was issued to the Samiti to terminate his services. In compliance of the order dated 12th September, 2001, the Member Secretary, District Administrative Committee, Co-operative Societies U.P. Deoria passed an order dated 14th September, 2001 whereby one Triyugi Nath Tripathi was directed to take over the additional charge of Secretary of the Samiti. The two orders are under challenge in the present writ petition on the grounds that the charges levelled against the petitioner have no legs to stand; the petitioner has neither fabricated nor forged any document nor it was done with any ulterior motive; the order has been passed in violation of the principles of natural justice and no opportunity was given to the petitioner before passing the impugned orders; the Inquiry Committee had not found the petitioner guilty inasmuch as two of the Members did not give any positive report and instead have recommended the matter to be examined by a Handwriting Expert while the third Member had given an adverse report. Thus, it was incumbent upon the Assistant Registrar to refer the matter to the Handwriting Expert before drawing any adverse conclusion.

3. In the counter affidavit filed by Sri Ram Pyare Tiwari on behalf of the respondent No. 2, it has been stated that the petitioner could not have been posted as Secretary of the Samiti after the amendment of the Rules in the year 1999 as the post in question became de-cadre, moreover he had no lien on the post and was only appointed to officiate on the said post which has only been taken away. The order does not affect the rights of the petitioner.

4. In the counter affidavit filed by Rama Shanker Yadav on behalf of the respondent Nos. 4 and 5, it has been stated that the petitioner was holding only the additional charge of the Secretary, which charge has been taken away and it does not affect his rights.. The charges has also been tried to be established on merits.

5. In the rejoinder affidavit filed by the petitioner, the pleas taken in the writ petition have been reiterated.

6. We have heard Sri Himanshu Singh, learned Counsel for the petitioner and Sri Ram Niwas Singh, learned Counsel for the respondents.

7. Learned Counsel for the petitioner submitted that the Three-Member Inquiry Committee had not given any unanimous report or even by the majority, holding the petitioner guilty. Instead only one Member has given his positive adverse report whereas two other Members had expressed their inability to come to a definite conclusion regarding charges of forgery and have requested the matter to be referred to the Handwriting Expert and the Assistant Registrar was, therefore, not justified in accepting the report given by one of the Members as the report was not unanimous. Moreover, the impugned order dated 12th September, 2001 passed by the Assistant Registrar is wholly illegal, arbitrary as it has been passed in gross violation the principles of equity, fair play and natural justice, without giving any show cause or any opportunity of hearing to the petitioner, which order is, therefore, liable to be set aside.

8. Sri Ram Niwas Singh, learned Counsel appearing for the respondents on the other hand submitted that against the order dated 12th September, 2001 the petitioner has an adequate alternative remedy by way of filing an appeal. Further, he was discharging the additional functions of the Secretary and had no lien on the said post as his substantive appointment in Samiti was that on the post of Clerk, which has not been affected in any manner, whatsoever, by the impugned order. He, therefore, prayed that the writ petition be dismissed with costs. In support of the aforesaid plea he has relied upon the following decisions:

1. Brijendra Singh Verma v. Registrar of Co-operative Societies, U.P. Lucknow and Anr. 1988 UPLBEC 37.
 2. Surendra Singh Vs. State of U.P. and Others,
 3. General Manager, Kisan Sahkari Chini Mills Ltd., Sultanpur, U.P. Vs. Satrugan Nishad and Others,
 4. State of Punjab and Others Vs. Sukhwinder Singh,
 5. Municipal Council, Sujampur Vs. Surinder Kumar,
9. We have given our anxious consideration to the various pleas raised by the learned Counsel for the parties.

10. It is not in dispute that the petitioner was appointed/additional charge on the post of Assistant Secretary in the Society from where he was transferred on the post of Clerk in the Samiti. His substantive appointment was on the post of Clerk in the Samiti. He was given the additional charge of the post of Secretary in the Samiti. However, he was not appointed substantively on the said post. Certain allegations of misappropriation and forgery were made against him by the President of the Samiti, which were got inquired into by the Assistant Registrar by constituting a Three-Member Inquiry Committee. The Committee in its report dated 10th September, 2001 was not unanimous about the charges having been found to be proved against the petitioner. The two Members expressed their inability to inquire into the matter and to arrive at a definite conclusion and instead requested for referring the matter to the Handwriting Expert, whereas

the third member came to a definite conclusion and gave the finding that the charges against the petitioner stand proved. The Assistant Registrar instead of referring the matter to the Handwriting Expert had acted on the report of one of the Members of the Inquiry Committee and had assumed the function of a hand writing expert and came to the conclusion that the charges levelled against the petitioner stand proved. He, accordingly, directed for the cancellation of the approval granted to the resolution passed by the Samiti for giving additional charge of Secretary to the petitioner.

11. In the case of Brijendra Singh Verma (supra), this Court following the Full Bench decision of this Court in the case of Radha Charan Sharma v. U.P. Co-operative Federation and Ors. 1982 UPLBEC 89, has held that where there was no statutory rule or regulation, the breach of which could be alleged against the society, the writ petition is not maintainable as the society is not a statutory body.

12. In the case of General Manager, Kisan Sahkari Chini Mills Ltd., Sultanpur, U.P. (supra) the Apex Court has held that jurisdiction under Article 226 of the Constitution of India could not be invoked where the Society is not discharging any public function.

13. In the case of Surendra Singh (supra), this Court has held that where a person has been authorised only to carry on or shoulder responsibility of the Secretary having no lien on the post and if he is being removed upon the appointment of a regular Secretary no notice is necessary.

14. In the case of Sukhwinder Singh (supra), the Apex Court has held that even if some kind of preliminary inquiry or fact-finding inquiry is held in which the employee is not afforded an opportunity of hearing, the order of discharge of a probationer cannot be treated as an order of punishment as the appointing authority has to necessarily ascertain all the relevant facts before taking a decision whether the probationer should be retained in service or not.

15. In the case of Municipal Council, Sujampur (supra), the Apex Court has held that for granting relief by way of reinstatement with full wages, the nature of the appointment, the purpose for which such appointment had been made, the duration/tenure of work, the question whether the post was a sanctioned one, should be taken into consideration.

16. It is not in dispute that the Samiti is a private body. However, appointment on the post of Secretary is to be made after getting approval from the Assistant Registrar. In the present case, the Assistant Registrar has cancelled the approval granted to the Samiti for giving additional charge of the Secretary to the petitioner. The petitioner, therefore, did not hold any lien on the post of Secretary as he was only discharging the functions of the post of Secretary while holding the substantive post of Clerk. By the impugned order grant of approval has been cancelled. It does not have any effect on the petitioner's right to hold the post of Clerk in the Samiti. It is not necessary to consider the various decisions cited for the reason that the petitioner was not holding any lien on the post of Secretary.

The inquiry which had been ordered by the Assistant Registrar was only a fact finding inquiry and if he had acted on the basis of the report giving by one Member only, it cannot be said that the petitioner has been adversely affected. He is still continuing on the post of Clerk in the Samiti. Further, we are making it clear that the conclusion drawn on the basis of the report would not in any way affect the petitioner's working on the post of Clerk. However, if the authorities want to take any action against the petitioner, they would proceed in accordance with law and in accordance with the statute, rules and regulations and also after observing the principles of natural justice.

17. In view of the aforesaid discussion, we do not find any merit in the writ petition. Subject to the observations made above, the writ petition is dismissed without any order as to costs.