
(2004) 06 UK CK 0013
In the Uttarakhand High Court
Case No : Writ Petition No. 102 of 2003

Rajvanshi Prasad

APPELLANT

Vs

State of Uttaranchal and Others

RESPONDENT

Date of Decision : 15-06-2004

Acts Referred:

Citation : (2004) 06 UK CK 0013

Hon'ble Judges : Rajesh Tandon, J

Bench : Single Bench

Advocate : K.S. Bora, for the Appellant; Learned Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

Rajesh Tandon, J.—By the present writ petition, the Petitioner has prayed for issue of a writ, order or direction in the nature of certiorari for quashing the order of retirement dated 17th September, 2002 issued by Respondent No. 3 i.e. District Asstt. Registrar Cooperative Societies, Udham Singh Nagar retiring the Petitioner w.e.f. 30.6.2002. A further prayer is made in the nature of mandamus directing the Respondents to allow the Petitioner to work till he attains the age of 60 years and to pay him all consequential benefits of the Government Service accruing from time to time.

2. Brief facts giving rise to the present writ petition according to the Petitioner are that the Petitioner was appointed as Kurk Amin by Respondent No. 4 on 8th August, 1973 for realisation of outstanding dues of the various Cooperative Societies as arrears of land revenue. He was appointed on commission basis. He was given 6% of collection/recovery from the month of August to March and 4% from the month of April to July.

3. The grievance of the Petitioner is that he should have been treated as the Government Servant keeping in view the judgment of the Apex Court in State of U.P. and Others Vs. Chandra Prakash Pandey and Others Etc., and he should

have been retired at the age of 60 years and as such, the letter dated 17th September, 2002, which was given to the Petitioner on 19th September, 2002 informing him that he is being treated as retired on 30th June, 2002 is wholly illegal.

4. A counter affidavit has been filed on behalf of the State, wherein it has been stated that the judgment of the Apex Court in *State of U.P. v. Chandra Prakash Pandey* (supra) is concerned only to cooperative Kurk Amins those who have been given appointment on the salary basis and since the Petitioner has rendered his services as commission agent with the cooperative society, therefore, the Petitioner is not entitled for any benefit in the garb of the judgment passed by Hon"ble Apex Court and therefore, the Petitioner has rightly been retired at the age of 58 years.

5. Learned Counsel for the Petitioner has also filed a rejoinder affidavit, wherein, it has been stated that according to the Hon"ble Supreme Court's judgment in the case *State of U.P. v. Chandra Prakash Pandey* (supra), Kurk Amins appointed on commission basis are like the Kurk Amins appointed on salary basis and they are the holders of civil posts and hence, they cannot be denied the benefit given to their counterparts.

6. Learned Counsel for the Petitioner has also referred the Government Order dated 15.6.2002 in this regard, which reads as under:

7. In the case of *State of U.P. and Others Vs. Chandra Prakash Pandey and Others Etc.,* , the Hon"ble Apex Court has held as under:

Undisputedly the decision of the Allahabad High Court that the Kurk Amins, appointed on salary basis for realisation of dues of cooperative societies held civil posts and became Government servants has attained finality as its correctness has not been challenged by the State of Uttar Pradesh by bringing the matter to this Court, rather the same got approval of this Court while remanding the matter to the High Court for considering the question whether the cases of Kurk Amins appointed on commission basis stand on the same footing as that of Kurk Amins appointed on salary basis in whose cases it was declared that they held civil posts and would be entitled to the same salary as is payable to Kurk Amins of Revenue Department.

The question as to when a person can be said to be holder of a civil post has been subject matter of consideration before this Court on numerous occasions. In the case of *State of Assam and Others Vs. Shri Kanak Chandra Dutta,* , a Constitution Bench of this Court was considering a case where a Mauzadar was appointed for collection of land revenue under the Mauzadari System prevailing in the Assam Valley whose primary duty was to collect land revenue and other Government revenues. He was working as Revenue officer and ex-officio Assistant Settlement Officer exercising delegated powers of the Government and the State had the power and right to select and appoint him inasmuch as power to suspend and dismiss. The Mauzadar was drawing not a regular salary but

commission by way of a remuneration. The Court observed that there must be existence of relationship of master and servant between the State and its employees and such a relationship can be established by presence of all or some of the ingredients. After due consideration of the entire matter, the Court laid down the law as follows:

Judged in this light, a Mauzadar in the Assam Valley is the holder of a civil post under the State. The State has the power and the right to select and appoint a Mauzadar and the power to suspend and dismiss him. He is a subordinate public servant working under the supervision and control of the Deputy Commissioner. He receives by way of remuneration a commission on his collections and sometimes a salary. There is a relationship of master and servant between the State and him. He holds an office on the revenue side of the administration to which specific and onerous duties in connection with the affairs of the State are attached, an office which falls vacant on the death or removal of the incumbent and which is filled up by successive appointments. He is a responsible officer exercising delegated powers of Government. Mauzadars in the Assam Valley are appointed Revenue Officers and ex-officio Assistant Settlement Officers. Originally, a Mauzadar may have been a revenue farmer and an independent contractor. But having regard to the existing system of his recruitment, employment and functions, he is a servant and a holder of a civil post under the State.

From a bare perusal of the aforementioned decisions of the two different Benches of the High Court it would be clear that after taking into consideration all relevant factors as laid down by this Court in its judgment referred to above, the High Court has come to the conclusion and recorded a finding of fact that Kurk Amins appointed on commission basis for recovery of outstanding dues of the cooperative societies were members of service and government servants.

8. Further in the judgment of this Court in the case of Jagpal Singh v. State of Uttaranchal and Ors. bearing writ petition No. 383 (S/S) of 2003, a reference has also been given to the Notification of the Government of Uttaranchal dated 28.02.2003 enhancing the age of superannuation of the employees working in the Co-operative Societies from 58 years. It was held in the said judgment as under:

The Co-operative Cane Unions are also Co-operative Societies under the Co-operative Societies Act and the Registrar defined under the Cooperative Societies Act is inclusive in terms which read as under:

Registrar: (1) The State Government may appoint a person to be the Registrar of Co-operative Societies for the State.

(2) The State Government may, for the purposes of this Act, also appoint other persons to assist the Registrar and by general or special order confer on any such person all or any of the powers of the Registrar.

(3) Where any order has been made under Sub-section (2) conferring on any person all or any of the powers of the Registrar under any provision of this Act, such order shall be deemed to confer on him all the powers under that provisions as may be amended from time to time.

Therefore, the word "Registrar" used in the said notification dated 28.02.2003 will be read including all the Registrars appointed by the Government for all the Cooperative Societies. The restricted meaning as submitted by the learned Counsel for the Respondent if assigned to the word "Registrar" used in the Government order issued by the State Government, it will be discriminatory as the age of employees of the Cooperative Societies will be 60 years while the age of employees of other Cooperative Societies like Co-operative Housing Societies, Co-operative Milk Unions and Co-operative Cane Unions will remain only 58 years.

9. Consequently, the writ petition is allowed. Writ of certiorari is issued. The order dated 17th September, 2002 issued by Respondent No 3 i.e. District Asstt. Registrar Cooperative Societies, Udham Singh Nagar is quashed. The Respondents are directed to treat the Petitioner in service as the age of superannuation is 60 years and extend all the benefits to the Petitioner treating him as in service.