
(2016) 02 AHC CK 0034

In the Allahabad High Court

Case No : Civil Misc. Stay Application No. 402328 of 2015 in Civil Misc. Writ
Petition No. 65273 of 2015

Rakesh Bihari and Ors.

APPELLANT

Vs

State of U.P. and Ors.

RESPONDENT

Date of Decision : 02-02-2016

Acts Referred:

Uttar Pradesh Co-operative Societies Act, 1965 — Section 122-A, 29-A
Uttar Pradesh Primary Agricultural Cooperative Credit Societies Centralized Service
Rules, 1976 — Rule 7

Citation : (2016) 3 ADJ 671 : (2017) 1 AILLJ 586 : (2016) 115 ALR 641 : (2016)
2 UPLBEC 1417

Hon'ble Judges : Suneet Kumar, J.

Bench : Single Bench

Advocate : C.S.C, O.P. Singh and Shiv Nath Singh, Advocates, for the
Respondent

Final Decision : Dismissed

Judgement

Suneet Kumar, J. - The petitioners who are 43 in number claim to be serving as incharge/officiating secretary in various Primary Agricultural Cooperative Credit Societies (PACCS) Agra Division, Agra. The petitioners prior being authorised to function as acting/officiating secretary were holding the post of Accountant in their respective societies. The petitioners are seeking (i) Uttar Pradesh Primary Agricultural Cooperative Credit Societies Centralized (Fourteenth Amendment) Rules, 2015 (Rules, 2015) notified on 24 April 2015 be declared ultra vires of 97th Constitution Amendment read with Sections 29-A and 122-A of the U.P. Cooperative Societies Act, 1965 (Co-operative Societies Act); (ii) quashing of the Advertisement dated 6 November 2015 issued by the third respondent, Joint Registrar, Cooperative Societies, U.P., Agra Division, Agra for filing the posts of secretaries in various PACCS; (iii) direction to the respondents to regularise the service of the petitioners on the post of secretary in their respective societies; (iv) to restrain the respondents from proceeding to make appointment on the

post of secretary pursuant to the impugned Advertisement.

2. Sri H.R. Mishra, learned Senior Advocate, appearing for the petitioners, while pressing the stay application, would submit as follows:

(i) By virtue of Uttar Pradesh Primary Agricultural Cooperative Credit Societies (Centralized Services) Rules, 1976 (Rules 1976), all the petitioners stood provisionally absorbed on the date of revival of the Centralized Service Cadre, therefore, these posts cannot be treated as vacant and no recruitment can be made pursuant to the impugned Advertisement;

(ii) The posts of acting/officiating secretaries are referable to Section 29-A of the U.P. Cooperative Societies Act, therefore, the District Administrative Committee would not be competent to appoint secretaries under Rules, 2015.

(iii) The petitioners have legitimate expectation to the post of secretary.

3. In rebuttal, Sri O.P. Singh, Senior Advocate, appearing for the second, third, fourth and fifth respondents, would submit:

(i) The petitioners are accountant in their respective PACCS which being not a post in the Centralized Service Cadre, therefore, cannot claim regularisation on the post of secretaries;

(ii) No right vested upon the petitioners under the Bank Ex-Cadre Regulation, 2012 (Regulation 2012) before being repealed, therefore, upon revival of the Centralized Services Cadre, the petitioners would have no right to appointment/absorption on the post of secretary;

(iii) By way of interim measure, final relief cannot be granted to the petitioners as nothing would remain to be decided by the Court.

4. Rival submission fall for consideration.

5. Before advertizing to the submissions of the parties, it would be relevant to examine the statutory provisions. The appointment of secretaries in PACCS is governed by statutory rules framed by the State Government in exercise of powers conferred under Section 122-A of Cooperative Societies Act. Pursuant thereof, the State enacted Rules 1976, whereby, post of secretaries were declared to be post under the Centralized Services. The State Cadre Authority being the principal policy making body, pursuant to Rule 7 of Rules 1976, framed Uttar Pradesh Primary Agricultural Cooperative Credit Societies (Centralized Service), Regulations, 1978 (Regulations 1978). The Centralized Service Cadre included posts of managing director/secretary of PACCS.

6. It appears that subsequently the centralized service cadre was found unworkable for a number of reasons, particularly, due to the deteriorating financial health of District Cooperative Banks, therefore, drastic amendments, were incorporated by the 11th and 12th amendments brought about in 2003 and 2004 respectively, thereby, amending Rules 1976. The centralized service cadre

was declared "dead cadre" on 30 June 2004, consequently, recruitment of cadre secretaries was stopped. (Rule 23)

7. Pursuant to the 12th Amendment (30 June 2004), the State Cadre Authority vide circular dated 10 January 2005 issued certain clarifications. The circular, inter alia, authorised the Committee of Management of PACCS (para 5) to make interim/alternative arrangement from the existing employees, subject to seniority, competence and work capacity. Such employee could be appointed to work as officiating secretary only upon the cadre secretary being suspended, dismissed, retirement or having died but not otherwise. The circular, inter alia, therefore, did not confer any power on the Committee of Management to engage regular cadre secretary. The petitioners claim to have been appointed officiating secretaries under the provisions of the said circular.

8. In 2007, vide U.P. Act 44 of 2007, Section 29A came to be inserted in the Cooperative Societies Act making special provisions for PACCS, Central Cooperative Banks and Apex Bank. The relevant portion of Section 29-A pertaining to the present controversy is being extracted:

"29-A. Special provision for Primary Agricultural Cooperative Credit Societies, Central Cooperative Banks and Apex Bank. Notwithstanding anything to the contrary in any other provision of this Act, rules and Bye-laws of the society, the Committee of Management of a Primary Agricultural Cooperative Credit Society or a Central Cooperative Bank or an Apex Bank shall exercise such powers and perform such duties as may be necessary and expedient for the purpose of carrying out its functions under this Act which shall include,-

(a) the power to,-

(i)to (vi) ...

(vii) assess the existing man power resources and future requirements in the context of changes that might have taken to ensure availability of the required resources and consider and remove constraints in the process or progress of manpower planning at least once at the beginning of every year;

(viii) appoint officers or other staff to conduct the business of the society and define inter alia their duties, service conditions, leave concessions and disciplinary matters subject to the provisions of this Act, rules and the bye-laws;"

9. It is sought to be urged that pursuant to powers conferred under Section 29-A (viii) read with Circular dated 10 January 2005 Committee of Management was conferred powers to appoint, inter alia, officiating secretaries. Subsequently, vide Circular dated 27 September 2011 issued by the Registrar, Cooperative Societies, the nomenclature of Prabhari Sachiv (officiating secretary) were changed to "Secretary (non-cadre)".

10. Pursuant to a subsequent Government Order dated 19 September 2012, Registrar, Cooperative Societies issued a fresh Circular on 26 September 2012,

inter alia, providing a mechanism for selection/screening of all existing staff to be carried out in two phases. In first phase, the selection committee would fill up the ex-cadre post of secretaries upon screening surplus staff of bank and cadre secretary of PACCS. In second phase, screening of existing acting/officiating secretaries in PACCS were to be considered. The aforementioned Government Order and the subsequent Circular came to be challenged in various petitions before this Court, wherein, the Registrar was given liberty to frame Regulations, while staying the effect and operation of the circulars.

11. In exercise of powers conferred under Section 121(1) of Cooperative Societies Act, the Registrar, Cooperative Societies notified Regulation 2012 which, inter alia, would provide that there shall be one secretary for each PACCS, who shall be the "ex-cadre" employee of the bank. The Regulation 2012 further provided the mechanism to select eligible persons on the ex-cadre in two phases. In first phase of screening, cadre secretary/surplus staff of Bank working were to be included in the ex-cadre; in the second phase, the employees of PACCS including Incharge Secretaries possessing minimum qualification, having 10 years of work experience were to be included. Pursuant thereof, screening was undertaken by the Registrar throughout the State to fill the post of secretary ex-cadre, however, in some Divisions, including Agra Division, process of screening remained pending until repeal of Regulation 2012, therefore, the petitioners claim their inclusion on the post of secretary ex-cadre before regular selections are made under the amended Rules. With the enactment of Rules, 2015 i.e. the 14th amendment which revived the centralized service cadre by inserting amended Rule 23 in Rules 1976. Rules, 2015, inter alia, would further provide that the cadre secretaries and ex-cadre secretaries who were covered by the Regulation, 2012, shall also be deemed to have been merged in the centralized service cadre.

12. Having examined the Cooperative Societies Act, Rules, Regulations framed thereunder and the circulars issued from time to time, I would now proceed to consider the rival submissions.

13. The post of secretary of PACCS is a post of the centralized service created by the State Government in terms of Section 122-A of the Cooperative Societies Act on 19 August 1976. The Act would further provide that all the secretaries working on the date of notification creating centralized service would deem to be provisionally absorbed, which however, was subject to their being found suitable [Sub Rule(3)]. To regulate the service conditions of cadre secretaries who were members of centralized service, Rules 1976 was framed. Rule 20 provided for absorption of the employees working on the commencement of Rules 1976. The 12th amendment came to be notified on 30 June 2004, which amended Rules 1976 declaring cadre of centralized service being "dead cadre". Consequent thereof, the appointment to the centralized service was stopped (Rule 23). The State Cadre Authority on 10 January 2005 issued directions that in the event of suspension, termination, dismissal, retirement or death of the cadre secretary,

alternative arrangement could be made by the Committee of Management of PACCS from the existing employees, subject to their seniority, qualifications and work efficiency. The circular, however, did not confer any power upon the Committee of Management to make appointment of secretaries, it was only a stop gap arrangement upon happening of any of the events noted above. The circular must be read in consonance with Rule 127 of the U.P. Cooperative Societies Rules 1968 which confers powers upon the Committee of Management to appoint any suitable person as officiating secretary pending appointment of a secretary under Rule 125 and 126 subject to provisions of Section 120 and the Regulations framed under Section 121 or 122 of the Cooperative Societies Act. Sub Rule (2) would provide that an officiating secretary appointed under Sub-rule (1) shall hold office for a period not exceeding six months or until the appointment of a secretary under Rule 125 or 126, whichever is earlier. It transpires that on declaring the cadre of secretaries a "dead cadre", therefore, in absence of cadre secretary, PACCS were not properly functioning, therefore, the control of Cooperative Banks financing the PACCS were disturbed, consequently Regulation 2012 came to be notified on 20 December 2012 by the Registrar of Cooperative Societies in exercise powers referable to Section 121 of Cooperative Societies Act. Regulation 2012 provided for appointment/selection of secretary working in PACCS in phases, but during the course of screening of second phase the Registrar Cooperative Societies vide circular dated 3 November 2014 stopped further screening which was followed by 14th amendment substituting Rule 23 in Rules 1976, notified on 24 April 2015 thus, reviving the centralized service. Consequently, Regulation 2012 was repealed by notification dated 29 April 2015.

14. In the intervening period Section 29-A was inserted in the Cooperative Societies Act in 2007. Sub-clause (1) (viii) of Section 29-A conferred power on the Committee of Management to appoint officers or other staff to conduct business of society and define, inter alia, their duties, service conditions subject to the provisions of the Act, Rules and the Bye-laws. Upon plain reading, the provision would necessarily not be applicable to the post of centralized service created under Section 122-A of the Cooperative Societies Act.

15. The petitioners who admittedly were accountants and are employees of PACCS were merely authorised by the Committee of Management to perform the duty of officiating secretary upon their fulfilling conditions specified in the circular. The authorisation to carry on the duties of secretary, in officiating capacity would not in my opinion confer any right on the post of secretary in a centralized service unless the incumbents were either selected/regularized under the Rules or Regulation, 2012. No provision was brought to my notice that an employee working as officiating secretary (ex cadre) can be absorbed in a centralized service upon repeal of Regulation 2012.

16. Under the common law and rule the consequences of repeal of a statute/provision are very drastic. Except as to transactions past and closed, a statute after its repeal is as completely obliterated as if it had never been enacted. The

effect is to destroy all inchoate rights and all causes of action that may have arisen under the repealed statute. Therefore, leaving aside the cases where proceedings were commenced, prosecuted and brought to a finality before the repeal, no proceeding under the repealed statute can be commenced or continued after the repeal. (Refer: Keshavan Madhvava Menon v. State of Bombay, AIR 1951 SC 128; Mohan Raj v. Dimbeswari Saikia and Anr., AIR 2007 SC 232).

17. Section 29-A on which much emphasis was given, merely recognises the authority of the society in the appointment of officers and staff of the society subject to the provisions of the Act, Rules and Bye-laws. The power does not necessarily confer upon the society to appoint ex-cadre secretary which is subject to the conditions specified in the circulars issued from time to time. It is also not the case of the petitioners that the societies have unfettered powers as regard appointment of ex-cadre secretaries, had it been so they would not claim selection/absorption under Regulation 2012 issued subsequent to the insertion of section 29-A in 2007.

18. Further, upon revival of the centralized service, Rule 127 of the U.P. Cooperative Societies Rules 1968 on the other hand would create an embargo upon the Committee of Management to appoint officiating secretary for a period not exceeding six months pending regular appointment of secretary pursuant to Rules or Regulation framed under Section 121 or 122. The impugned amendment inserted Rule 23 in Rules 1976 reviving the centralized service, thereafter, providing a mechanism for direct recruitment on 50 percent of the vacancies, leaving the remaining 50 percent of the posts for eligible employees of the societies. The right, if any, that would have vested in the petitioners, had they been regularized/selected under the Regulation 2012. However, before their selection/regularization, Regulation 2012 stood repealed. The learned Senior Counsel failed to show that the process commenced under the Regulation 2012 would confer any right upon the petitioners upon repeal. Had the process been completed with the issuance of an order selecting/absorbing the officiating secretary, it is only then, a vested right would have accrued upon such person in view of the provisions of the General Clauses Act.

19. Finally, the plea of legitimate expectation. "Legitimate Expectation", is not a legal right. It is an expectation of benefits, relief or remedy, that may, ordinarily flow from a promise or established practise. It should be legitimate, that is, reasonable, logic and valid. A person can have legitimate expectation only in consonance with the statute and the rules framed thereunder and not in contravention of the same. The doctrine cannot be invoked for doing something contrary to law. [Refer: Ram Pravesh Singh v. State of Bihar, (2006) 8 SCC 381]

20. For the reasons stated herein above, the stay application is accordingly, rejected.