

(2006) 02 AHC CK 0194

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 15518 of 2005

Ram Lal Varma

APPELLANT

Vs

U.P. Cooperative Institutional Service Board, Committee of
Management, District Cooperative Bank Ltd.

RESPONDENT

Date of Decision : 27-02-2006

Acts Referred:

Constitution of India, 1950 — Article 16
Uttar Pradesh Regularisation of Ad hoc Appointments (on post belonging to Co
operative Centralized Service) Rules, 1985 — Rule 27

Citation : (2006) 02 AHC CK 0194

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : M.P. Gupta, for the Appellant; S.K. Rai and O.P. Singh, for the
Respondent

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard counsel for the parties and perused the record.

2. The case of the petitioner is that he was promoted on the post of Branch Manager w.e.f 30.6.1990 in pursuance of reservation policy as he belongs to Scheduled Caste community. The petitioner was allowed to continue in the promotional post till he retired from service w.e.f. 31.1.2005, i.e.. for a period of 16 1/2. years.

3. It is vehemently urged by counsel for the petitioner that it is evident from the above that the petitioner was working as Branch Manager and the impugned order of his reversion from the post and recovery from salary with retrospective effect from 1.1.05 is illegal and deserves to be quashed. He further urged that his services cannot be dispensed with for want of approval by the U.P. Co-operative Institutional Service Board, Lucknow. In support of his argument, he placed implicit reliance upon The Naygarh Co-operative Central Bank Ltd. v. Narayan Rath and Anr. 1977 SCC 532 wherein Hon''ble Supreme Court has held

that:

The writ petition filed by respondent No. 1 could succeed, in our opinion, on the narrow ground that he had been permitted to function for over fifteen years as Secretary of the Bank and that his appointment as Secretary was decided upon in a meeting over which the Registrar of Co-operative Societies had himself presided. The writ petition in substance is directed not against any order passed by the Co-operative Bank but against the order passed by the Registrar disapproving the appointment of respondent No. 1 as Secretary of the Bank. It was not open to the Registrar, in our opinion, to set aside respondent 1's appointment as a Secretary after having acquiesced in it and after having for all practical purposes, accepted the appointment as valid. It is undesirable that appointments should be invalidated in this manner after a lapse of several years.

4. He also relied upon N.S.K. Nayar and Ors. v. Union of India and Ors. 1992 SCC 954 wherein it has been held by Hon"ble Apex Court that :

The object of having Rule 27(b) of the Rules is to provide a source of appointment to meet an administrative exigency of short tenure. It could never be the intention of the framers of the rule to permit the appointments under the said rule to go on for 10 to 15 years, The appointments for such a long period cannot be considered to be purely temporary/officiating or to hold charge. Taking work out of the petitioners in the STS posts for 10/15 years and denying them the right of regularization and the consequent benefits in the said grade, is wholly arbitrary and is violative of Article 16 of the Constitution of India.

It has been further held that :

Taking clue from the said rule we held that the promotee-officers who have worked in STS for a continuous period of 5 years and are holding the posts to date shall be deemed to be regular members of Group "A" service in STS. They shall be entitled to count their seniority in the STS from the date of completing the said period of five years and shall be entitled to be considered for further promotion to JAG and SAG on the basis of the said seniority.

5. Counsel for the petitioner further slated that the provisions of U.P. Employees Service Regulations, 1975 (hereinafter referred to as "the Regulations of 1975") provide for appointment of employees as internal arrangement by the Committee of Management either by direct recruitment or by promotion only for a period of six months and that the management may allow the incumbent of the post to continue even thereafter. In the instant case, the petitioner was allowed by the Committee of Management to continue for 16 1/2 years till he retired from service on attaining the age of superannuation, as such, the petitioner cannot be reverted on the substantive post from retrospective effect.

6. It also urged that U.P. Regulatrization of Ad hoc Appointments (on post belonging to Co operative Centralized Service) Rules, 1985 provides for regularization of such employees working in the establishment before the cut off

dates which were extended from time to time, i.e., 1.5.83. 1.10.86 and 30.8.98. It is stated that the petitioner was promoted in 1990 and by virtue of cut off date 30.8.98, he was entitled to be regularized under the aforesaid Rules but his case was not considered for the reasons best known to the concerned authorities and has been illegally reverted to lower post placing him in basic pay of Rs. 5315/- w.e.f. January, 2005.

7. The impugned order dated 19.2.2005 passed by the Secretary/General Manager, District Co-operative Bank Ltd., which is as under:-

vkns" k

;r% Jh jke yky oekZ deZpkjh oxZ&3 dks oxZ&2 ds in dk osrueku dk;kZy; i=kad 7920&21 @ iz"kk0 fnukad 30&6&90 }kjk rnFkZ vk/kkj ij Lohdkj fd;k x;k Fkk vkSj mudk fu;fer IEcfU/kr izdj.k cSad izcU/k lfeFr dh cSBd fnukad 19&4&04 ds ek;/e ls l{ke izkf/kdkjh @ m0iz0lgdkjh laLFkxr Isoke.My y[kum dks izk=rk fu/kkZj.k gsrq lUnfHkZr fd;k x;k A

vr% m0iz9 lgdkjh laLFkxr Isok e.My y[kum }kjk lacafU/kr inksUufr vuqeU;@ik=rk fu/kkZj.k fo"kd i=kad 2376@9@iks-@3 ls 2@Qk0cSad @ ea0 @ 04 fnukad 28&12&04 }kjk Jh jke yky oekZ dks oxZ&2 ds in gsrq ik= ?kksf"kr ugha fd;k x;k gS A

vr% e.My }kjk xSj vuqeKsfnr deZpkfj;ksa ds izdj.k ij fu;qDr izkf/kdkjh }kjk fy;s x;s fu.kZ; ds dze esa Jh jke yky oekZ dk oxZ&3 ds osrueku 2200&140@10 n0jks0&3600&190@5&4550 255@5&5825 esa ekg tuojh 2005 ls ewy osru eq0 5315 :0 fu?kkZfjr fd;k tkrk gS A

g0 vLi"V ?,u0 ds0 ;kno? ftyk lgdkjh cSad fy0 dkuiqj

8. It is lastly contended by counsel for the petitioner that the petitioner has not been paid his retiral dues though he retired on. 31.1.2005, as such. he is entitled for retirement benefits together with 18% interest. He vehemently urged that the recovery from the retiral dues is illegal as has been held in Sushil Lal Srivastava v. Superintending Engineer, P.W.D. Vth Circle, Allahabad and Anr. (1998) UPLBEC 480 and Rajasthan State Road Transport Corporation and Others Vs. Zakir Hussain,

9. Per contra, Sri O.P. Singh and Sri S.K. Rai, counsel for the respondents- U.P. Co-operative Institutional Service Board submit that the promotion of the petitioner by the Committee of Management was illegal, void ab initio and not in accordance with the provisions contained in the Regulations of 1975. It is stated that the petitioner was promoted vide order dated 30.6.1990 in collusion with the Committee of Management on ad hoc basis which was not approved by the U.P. Co-operative Service Institutional Board. Vide order dated 20.12.2005 as the petitioner was not found eligible for promotion. In support of their contention, they placed the relevant provisions, which are quoted below for the sake of convenience :-

5 (ii) (b) When the Managing Committee or any other authority competent to make the appointment, proposed to fill up as a stopgap measure for a period not exceeding six months a post by promotion from amongst the employees in the just below cadre on the principle of seniority subject to the rejection of the unfit;

Provided that any appointment thus made without consultation with the Board shall in every case, cease to have effect from the date on which the period of six months expires and the employees promoted to the higher post shall unless he has already been reverted to his original post within the said period of six months be deemed to have reverted from that date, to the post held by him immediately before such promotion;

Provided further that the employee appointed to the higher post under this sub-clause shall, in no circumstances, be promoted under this sub-clause to any still higher post within the said period of six months, nor shall be appointed under this sub-clause to the same post again after his reversion under the first proviso.

10. Counsel for the respondents submits that under the aforesaid provisions, the Committee of Management of the Bank is empowered to promote a person in a stop-gap arrangement only for a period of six months and not beyond that period and that too, if the appointment has been made in consultation with the U.P. Co-operative Institutional Service Board, Lucknow (for short "the Board") placing reliance upon *Deo Prabhakar Dubey and Ors. v. District co-operative Bank Ltd. Basti and Ors.* 1982 UPLBEC 358 It is submitted that under Regulation 5 the appointment shall cease to have any effect from the date on which period of six months expires and the employee promoted to the higher post, in the circumstances, shall stand reverted on the substantive post held by him immediately before such promotion. Counsel for the respondents placed Regulation 15(1) of the Regulations of 1975 which clearly provides that no appointment shall be made without approval of the Board. Regulation 15(1) is as under:

15(1) No appointment shall be made except in the manner provided for in the Regulations hereinbefore. Where recruitment through or with the approval of the Board is provided for in Regulation No. 5, no appointment shall be made except of the candidate and in the order mentioned in the list communicated by the Board.

11. He vehemently urged that the promotion in stop-gap arrangement under the aforesaid Regulations cannot be allowed to continue beyond a period of six months otherwise, as in the present case, the Regulations would be redundant by unscrupulous committee of management.

12. Counsel for the respondents next urged that in paragraph 13 of the decision in *Virendra Pal Singh and Ors. v. District Assistant Registrar, Cooperative Societies, U.P. Etah and Anr.* 1980 UPLBHC 202 the Hon'ble Apex Court has held that any appointment/promotion made without consultation with the Board is invalid. Paragraph 13 of the aforesaid decision is as under :-

13. In some of the cases it was urged that some persons who had been appointed before the Co-operative Society Employees Service Regulations, 1975 made u/s 122 of the Act, had been illegally discharged by the Administrator. On a perusal of the relevant affidavits and counter-affidavits, we find that their appointments were made after the constitution of U.P. Cooperative Institutional Service Board in whom vested the power of recruitment of employees of Co-operative Societies u/s 122 of the Act. Pending the making of the U.P. Co-operative Societies Employees Service Regulations prescribing the method of recruitment etc., administrative instructions had been issued to all the Co-operative Societies that appointment to all posts in Cooperative Societies would be made by the Board. If despite the constitution of the Board and the issuance of administrative instructions some Co-operative Societies chose to make appointment, such appointments have necessarily to be held to be invalid. The fact that regulations had not been made when the appointments were made did not empower the Committee of Management to make the appointments usurping the power of the U.P. Co-operative Institutional Service Board.

13. The counsel for respondent Nos. 2 and 3 further submit that in the circumstances, it cannot be said that the petitioner has been reverted by the impugned order as. in fact, he was never appointed as Branch Manager in accordance with law but was wrongly allowed to work as such by the Committee of Management without approval by the Board de hors the Regulations, as such, the petitioner has rightly been placed in his original pay scale. They urged that, since the petitioner was illegally permitted to continue on the post of Branch Manager ever since 1990 as this fact was brought to the notice of the Board only after his retirement, corrective measure was taken in so far as petitioner is concerned and that action is being taken for committing these illegalities against the members of the then Committee of Management and disciplinary proceedings are also going on against the petitioner. It is urged that in the circumstances, the petitioner cannot claim legal right of working as Branch Manager pursuant to so called promotion in collusion with the then Committee of Management. The writ petition, therefore, is liable to be dismissed with costs.

14. I have given my anxious thought to the submissions of counsel for the parties. From the admitted facts culled out from the facts and circumstances narrated above, the following points emerge :-

1. The petitioner was working on substantive post of Clerk-cum-cashier.
2. He was given appointment by the Bank without concurrence of the Board.
3. Neither the Committee of Management nor the petitioner ever brought this fact to the notice of the Board that he was continuing on the post of Branch Manager without concurrence of the Board as it was convenient to both the parties till he retired from service.
4. It was only after retirement of the petitioner that the papers of the petitioner regarding promotion made more than 16 years back as the petitioner could not

have continued beyond a period of six months if the promotion had been in accordance with law were sent to the Board for approval which was rejected by the Board, to annul the illegal promotion as even in stop-gap arrangement.

15. In so far as the contention of the counsel for the petitioner under Regulation 4 of the U.P. Regularization of Ad hoc Appointments (On Posts of Within The Purview Of The U.P. Co-operative Institutional Service Board) Regulations, 1985 is concerned, it deals with the regularization of ad hoc appointments which is as under :

4. Regularization of ad hoc appointment-

(1) Any employee who-

(i) was directly appointed on any post on ad hoc basis in any co-operative Society falling within the purview of the Board on or before May 1, 1983 and is continuing in service, as such, on the date of commencement of these regulations;

(ii) Possessed requisite qualifications prescribed for regular appointment at the time of such ad-hoc appointment and .

(iii) Has completed or, as the case may be, after he has complete three years continuous service.

16. The case of the petitioner does not fall within the ambit of Regulation 4 of the aforesaid Regulations as he was not appointed on any post on ad hoc basis and was continuing as such. In fact, the petitioner was working on a substantive vacancy of Clerk-cum-Cashier and was also permitted to work as Branch Manager without any notice or intimation to the U.P. Co-operative Service Board, Lucknow in contravention of Regulations 5 and 27 of 1975 Regulations.

17. No approval for promotion of the petitioner was ever accorded made by the Board as his papers were sent by the Committee of management after 16 years to cover up and get their illegal acts regularized in order to grant advantage to the petitioner. Hence, the petitioner cannot be promoted as held in paragraphs 3 and 4 of the judgment rendered in Chandra Pal Singh v. U.P. co-operative Institutional Service Board, Lucknow and Ors. 2002 ESC 258 . It is explicit from the Regulations that any appointment in such circumstances made for a period of six months under Regulation 5 of 1975 Regulations which continues even after expiry of six months, the concerned employee cannot claim any benefit of having put in service for a long period on the promotional post. Reference in this regard can be made to paragraphs 20, 23 and 27 of the decision of Hon'ble Supreme court in Director, Institute of Management Development, U.P. Vs. Smt. Pushpa Srivastava, Reference may further be made to paragraph 13 of the Division Bench decision of this Court in Ram Chandra Keshri v. State of U.P. and Ors. 2002(3) UPLBHC 2395 wherein it has been held that long tenure of promotion in violation of the Rules cannot be permitted to sustain on the ground of continuation for a long period. Again in paragraphs 10, 12 and 14 of the decision

in D.K. Saxena Vs. State of U.P. and Others, this Court has held that without concurrence of the Service Institutional Board, the appointment is illegal and does not confer any right to the employee.

18. It is noted that in the instant case the so called promotion of the petitioner was illegal, void ab-initio and de hors the Regulations in collusion with the Committee of Management. No legal right accrues to a person who finds himself in an advantageous position due to fraud or collusion. If this is permitted, chaos will prevail in the society and rule of law will perish.

19. The decisions relied upon by counsel for the petitioner do not apply to the facts and circumstance of the present case. The cases of The Nayagarh Co operative Central Bank Ltd. (supra) and S.K. Nayar N and Ors. (supra) are not where the appointment had been illegally made requiring approval of the statutory Board. In those cases, the Court was considering the Rules, which provides source of appointment to meet the exigencies of service.

20. In the instant case, Regulations 5(ii)(b) and 15(1) are to be read in the light of judgments in Virendra Pal Singh (supra) and Deo Prabhakar Dubey and Ors. (supra) whereby position of law of appointment on the co-operative sector has been very clearly elaborated. These decisions are vital as they throw light on two important facts- (1) appointment cannot be made by the Committee of Management beyond a period of six months and that too with the prior approval of the Board AND (2) If the initial appointment on a post is authorities, such appointment was allowed to continue for a number of years.

21. Admittedly, disciplinary proceedings against the petitioner as well as members of erstwhile Committee of Management, who had colluded with him, are pending. Thus, the petitioner has no legal right to claim any benefit on the basis of his continuance on the post of Branch Manager which were not rendered by him honestly. It is firmly settled by Hon"ble Apex court in Director, Institute of Management Development, U.P. v. Smt. Pushpa Srivastava (supra) as well as by this Court in the cases of Ram Chandra Keshri and D.K. Saxena (supra) that without concurrence of the Board, appointment made by the Committee of Management is absolutely illegal and such illegal appointment cannot confer any legal right to the concerned employee.

22. Moreover, the petitioner was neither entitled nor eligible to work on the post of Branch Manager in view of Regulations 5 and 27 of the 1975 Regulations. His services, therefore, cannot be regularized on the said promotional post of Branch Manager after he retired from service. The respondents have every right to put the record straight by placing him in the basic wage of his substantive post.

23. For the aforesaid reasons, I am of the opinion that since the very appointment of the petitioner was in violation of the Regulations and was made in collusion with the then Committee of Management, which was not approved by the Board, the petitioner has no legal right to the benefits of the post of Branch Manager illegally held by him. Since no promotion was made, there is no

question of his reversion. The writ petition has no force in the facts and circumstances of the case.

24. In the result, the writ petition fails and is dismissed. No order as to costs.