

(1996) 10 AHC CK 0052

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 19652 of 1986

Ram Laraite Prajapati

APPELLANT

Vs

Member-Secretary, Dist. Administrative Committee, Primary
Agricultural Cooperative Credit Society, Farrukhabad & Anr.

RESPONDENT

Date of Decision : 16-10-1996

Acts Referred:

Uttar Pradesh Primary Agricultural Cooperative Credit Societies Centralized Service Rules, 1976 — Rule 24, 30, 4, 6
Uttar Pradesh Primary Agricultural Credit Societies Centralised Services Regulations, 1978 — Regulation 16, 17, 18, 19, 20

Citation : (1996) 10 AHC CK 0052

Hon'ble Judges : D.S.Sinha, J and O.P.Jain, J

Final Decision : Dismissed

Judgement

D. S. Sinha, J.—Heard Sri Shambhoo Nath Srivastava, learned counsel for the petitioner and Sri Ram Krishna, holding brief of Sri Tiloki Nath, learned counsel representing the respondent No. 1. No body has appeared for the respondent No. 2.

2. The order dated 2nd February, 1986, a copy where of is Annexure "2" to the petition, is under challenge in this petition under Article 226 of the Constitution of India. By the impugned order the services of the petitioner, a cadre Secretary, were dispensed with. Alongwith the order a cheque of Rs. 1488/ equivalent to three months" salary was enclosed.

3. With effect from 19th August, 1976 centralised service comprising of the postof Secretaries of Primary Agricultural Cooperative Credit Societies, registered or deemed to be registered under the U. P. Cooperative Societies Act, 1965, was constituted and Rules regulating the strength, scale of pay, qualifications, absorption of certain employees and recruitment etc. were framed. These Rules are known as the Uttar Pradesh Primary Agricultural Cooperative Credit Societies Centralised Service Rules, 1976, here in after called the "Rules".

4. Rule 4 of the Rules, as it then stood, provides scales of pay of Secretaries of different categories of Societies. Four categories of the Societies were stipulated there in. Rule 6 of the Rules provides that strength of the posts of each category of the centralised service shall be fixed categorywise from time to time by the District Committee with the approval of the Secretary of the Authority. The method of recruitment to the centralised services is provided in Part VII of the Rules. Rule 24, as it stood at the relevant time, namely, the date on which the petitioner was absorbed in the centralised service, provides two modes of recruitment. Firstly, by direct recruitment; and secondly, by promotion. A person recruited to the centralised service, either directly or by promotion, was to be placed on probation for a period of two years, which period could be extended for a further period of six months.

5. Part VI of the Rules contemplates absorption of certain employees. Rule 20 figuring in Part VI provides that the existing employees of the societies at the commencement of the Rules shall be deemed to be provisionally absorbed in the centralised service. Rule 21 says that existing employees of the Societies taken provisionally on the strength of centralised services shall be finally absorbed in the said service after their screening in accordance with the instructions issued by the Registrar, Cooperative Societies, in this behalf. Thus, the employees of the Cooperative Societies absorbed, either provisionally or finally, formed a class different from the employees recruited either directly or by promotion. The provision for absorption of the employees was by way of meeting the situation till the regular recruitment was held and to protect the interest of the existing employees of the Primary Agricultural Cooperative Credit Societies.

6. Rule 30 of the Rules enjoined upon the State Cadre Authority for Primary Agricultural Cooperative Societies to frame regularisations, with the approval of the Registrar, Cooperative Societies, U.P. for the members of the centralised service on their service matters which might, inter alia, include method of promotion, appointment, probation, confirmation and termination. Accordingly, the State Credit Authority for the Primary Agricultural Cooperative Societies framed regulation known as the Uttar Pradesh Primary Agricultural Cooperative Credit Societies Centralised Service Regulations, 1978, here in after referred to as the "Regulations".

7. Chapter IV of the Regulations, containing Regulations 16 to 27, deals with recruitment, appointment, probation, confirmation, termination and regularisation. Regulation 23(a) provides that member appointed by direct recruitment or through final absorption as well as by promotion shall be placed on probation for a period of two years which period may be extended by District Committee for a further period of six months. Regulation 24 envisages that a member shall be confirmed by the District Committee on satisfactory conclusion of the probation period. Regulation 25 deals with the termination of the services of a member. It provides that services of a member shall be terminable by the District Committee (a) in case of temporary member on one month's notice in

writing on either side or in lieu thereof by payment of one month's salary by the authority giving the notice, (b) by three months' notice in writing on either side in case of confirmed member.

8. Relying upon the provisions of Regulation 23(a) of the Regulations, learned counsel for the petitioner contended that the petitioner having been finally absorbed would be deemed to have been appointed on probation for a period of two years which could be extended for a further period of six months. His services having not been terminated upon the expiry of the maximum period of probation he would be deemed to have been confirmed even though, indisputably, there is no order of confirmation. In support of this proposition, he placed reliance upon the decision of the Hon ble Supreme Court rendered in the cases of *Om Prakash Mawya v. U. P. Cooperative Sugar Factories Federation, Lucknow* and *M. K. Agarwal v. Gurgaon Gramin Bank and others*, reported in AIR 1986 SC at page 1844 and AIR 1988 SC at page 286, respectively. On this premise, the learned counsel contended that the petitioner being confirmed employee his services could not be terminated by the impugned order treating him to be a temporary members of the service.

9. Countering the submissions of the learned counsel for the petitioner Sri Ram Krishna, holding brief of Sri Triloki Nath, appearing for the respondent No. 1, contended that the petitioner never became a confirmed member of the service. He was appointed purely on temporary basis and his services were liable to be terminated any time on one month's notice or one month's salary in lieu thereof. Therefore, the services of the petitioner were rightly terminated treating him to be a temporary member by paying him three months' salary in lieu of notice.

10. In the backdrop of the pleadings of the parties and the arguments advanced on their behalf, the primary question that arises for consideration of the Court is what is the nature of the services of petitioner, temporary or confirmed.

11. Petitioner was appointed on the post of Secretary in Primary Agricultural Credit Society of category IV in the scale of Rs. 1703230 by the order dated 7th February, 1976, a true copy whereof is Annexure 1 to the petition. Paragraph 1 of the appointment order indicates that the appointment of the petitioner was preceded by his screening for the purpose of final absorption in the centralised service, as envisaged in Rule 21 of the Rules and he was found fit. Paragraph 2 of the order of appointment provides that other conditions of services would be regulated by the orders passed by the relevant authorities from time to time. Paragraph 4 of the appointment order notified to the petitioner that his services were purely temporary and terminable on one month's notice or one month's pay in lieu thereof. Thus, it is apparent that the nature of the service of the petitioner was purely temporary and not substantive. In 1976, when the petitioner was appointed, there were only two sources of recruitment i.e. by direct recruitment or by promotion. No recruitment by absorption was contemplated. Reliance upon Regulation 23 (a) of the Regulations by the learned counsel for the petitioner is, therefore, misconceived inasmuch as this provision

itself came into existence in the year 1973 while the appointment of the petitioner was made in the year 1976. Obviously, the appointment of the petitioner could not be on probation in terms of the Regulation 23 (a), specially when the order of appointment clearly provided that it was purely temporary and terminable on one month's notice. Under the circumstances, the final absorption of the petitioner in terms of Rule is of the Rules cannot be treated to be or equated with substantive appointment on probation contemplated in Regulation 23 (a) of the Regulations.

12. Two decisions of the Hon'ble Supreme Court relied upon by the learned counsel for the petitioner do not help the petitioner as the petitioner was appointed on purely temporary basis and not substantive probation. In those decisions the Hon'ble Supreme Court was considering the case of the incumbents appointed substantively on probation which could be extended only upto a specified period and inspite of expiry of the maximum period of probation the services of the incumbent were not dispensed with. Therefore, the Hon'ble Supreme Court concluded that the incumbent would be deemed to be confirmed.

13. Learned counsel for the petitioner drew the attention of the Court to the fact that alongwith the termination order cheque equivalent to three months' salary was enclosed and argued that this indicated that the petitioner had become confirmed member of service. The foundation of this submission is, perhaps, traceable to clause (b) of Regulation 25 of the Regulations which provides that the services of a confirmed member can be terminated by three months' notice in writing on either side. The submission is misplaced. Clause (b) of Rule 25 talks of three months' notice in writing. It does not provide for payment of three months' salary in lieu of notice. Under this clause three months' notice cannot be waived by making payment of three months' salary in lieu there of, This clause envisages only three months' notice in writing on either side and does not contemplate waiver of the notice by paying three months' salary in lieu there of. The payment of salary in lieu of notice is envisaged only in case of temporary member of the service. No doubt the payment envisaged by clause (a) of Rule 25 is only one month's salary for the purpose of dispensing the services of a temporary member without notice. But payment of three months' salary instead of one month's salary cannot invalidate the notice. In the supplementary counter affidavit filed on behalf of the respondents, it is categorically stated that the petitioner was a temporary employee and he was entitled to only one month's salary in lieu of notice but three months' salary was given only in order to avoid any technical objection or obligation. Thus, the payment in excess of one month's salary stands fully explained.

14. The petitioner, being purely a temporary member of service, had no right to hold the post of Secretary. His services were liable to be terminated in terms of paragraph 4 of the appointment letter as well as under the provisions of Regulation 25 of the Regulations. No umbrage, therefore, can be taken to the termination of the services of the petitioner by the impugned order.

15. Learned counsel for the petitioner also made feeble attempt to attack the impugned order on the ground of discrimination. According to him while persons junior to the petitioner have been retained in service, the service of the petitioner has been dispensed with. In the counter affidavit filed on behalf of the respondent, this fact is disputed. It is also stated that no seniority list has been prepared. The question whether the petitioner is senior than those who are retained in service is basically a question of fact and cannot be decided without considering the relevant evidence in that regard and also without the presence of the persons who are alleged to be junior to the petitioner, as decision on the question may affect them adversely.

16. The Court is afraid, the exercise of determining the question of seniority, on the facts and circumstances of the case, cannot be undertaken by the Court in the present proceedings under Article 226 of the Constitution of India.

17. The foregoing discussion leads to an irresistible conclusion that the impugned order is perfect and does not suffer from any such vice which may warrant interference by this Court. The petition is devoid of substance.

18. In the result, the petition fails and is dismissed. The interim order dated 11th December, 1987 shall stand discharged.

19. There will be no order as to costs.