
(2003) 04 AHC CK 0211
In the Allahabad High Court
Case No : C.M.W.P. No. 11302 of 2003

Ram Nagina Singh

APPELLANT

Vs

U.P. Khadi Evam Gram Udyog Board and Others

RESPONDENT

Date of Decision : 04-04-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 3 AWC 2410

Hon'ble Judges : S.K. Singh, J

Bench : Single Bench

Advocate : R.N. Pandey and P.N. Pandey, for the Appellant; Rajiv Sharma, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Singh, J.—By means of present writ petition petitioner has challenged the order dated 24.2.2003 (Annexure-3 to the writ petition) passed by Prashashak/ Mantri, Kshetriya Shri Gandhi Ashram, Maghar (Sant Kabir Nagar) by which petitioner has been placed under suspension. When the matter was taken up at the admission stage, Sri Rajiv Sharma, learned advocate who represents respondent No. 1, U. P. Khadi Evam Gram Udyog Board raised preliminary objection that the writ petition is not maintainable as respondent Nos. 2 and 3 whose action is under challenge are not statutory authority and they are not State within the meaning of Article 12 of the Constitution of India. A short counter-affidavit has also been filed on behalf of the respondent No. 1.

2. In view of the aforesaid, learned counsel for the petitioner and Sri Sharma, learned advocate has addressed the Court on the question of maintainability of this petition.

3. Learned counsel for the petitioner submits on the basis of the fact so stated in the writ petition that petitioner is Class III employee of the Board and at present he is serving in Kshetriya Shri Gandhi Ashram, Maghar in the district Sant Kabir

Nagar which is one of the unit affiliated to the respondent No. 1. It is submitted that respondent Nos. 2 and 3 are discharging the public duties/ functions and, therefore, they are amenable to the writ jurisdiction. Learned counsel has taken the Court to the various provisions of U. P. Khadi and Village Industries Board Act, 1960, to submit that the Board being statutory authority, the action of the respondent Nos. 2 and 3 is liable to be screened by this Court. In support of the submission of maintainability of the writ petition learned counsel has placed reliance on the decision given in case of Narendra Singh Vs. State of U.P. and others, Other decisions as are given in cases of K. Krishnamacharyulu and Others Vs. Sri Venkateswara Hindu College of Engineering and Another, ; Ram Saran Vs. State of U.P. and others, and U.P. State Cooperative Land Development Bank Ltd. Vs. Chandra Bhan Dubey and Others, .

4. In response to the aforesaid submission of the learned counsel for the petitioner, Sri Sharma learned Advocate submits that argument of learned counsel for the petitioner that petitioner is employee of the Board is totally misconceived. Petitioner has never been appointed by the Board and he has been never in the service of the Board rather petitioner was appointed by the respondent Nos. 2 and 3 who is society to which respondent No. 1 has only connection and concern as of a lender and borrower. Respondent No. 1 sanctions and provides loan to the society for carrying on village industries. It is pointed out that respondent No. 1 has nothing to do with the appointment, termination, terms of payment of salary and other conditions of service of the employees of the respondent Nos. 2 and 3. In view of the aforesaid, it is argued that submission of the counsel for the petitioner being on the wrong premises, that petitioner is employee of the Board has to be rejected. It is argued that in the similar set of fact writ petition filed by the employee of Gandhi Ashram has been dismissed being not maintainable by the Division Bench of this High Court (Lucknow Bench) in the case of Swami Nath Tewari and Ors. v. Union of India and Ors., Writ Petition No. 3116 of 1990, decided on 29.7.1992.

5. In view of the aforesaid arguments as placed from both sides the matter has been examined.

6. On examination of the matter there appears to be no dispute about the fact that so far U. P. Khadi and Gram Udyog Board hereinafter referred to as the Board is concerned, it is statutory authority but the petitioner has been never appointed by the Board. On perusal of the pleadings as has been set forth in this writ petition, it is clear that the petitioner has come up to this Court on the premises that he has been appointed by the Board and is an employee of the Board. In para 2 of the writ petition, it is mentioned that the Board is statutory authority amenable under the provisions of Article 226 of the Constitution of India. In paragraphs 4 and 5 of the writ petition, it is stated that petitioner is servicing the Board. Short counter-affidavit, filed by the respondent No. 1/Board clearly states that petitioner has never been appointed by the Board and he is not the employee of the Board. During the course of the argument, there do not

appear any dispute to this aspect. In view of the aforesaid various provisions of U. P. Khadi and Village Industries Board Act, 1960, as has been referred by the learned counsel for the petitioner to submit that the employees of the Board are public servant is of no help to him. The impugned order of suspension refers the petitioner as Karyakarta in the Gandhi Ashram Uttapatti Kendra, Basti. It is mentioned in the order that petitioner has violated the provisions of Gandhi Ashram Karyakarta Sewa Niyamawali. It is mentioned in the order that Vyauasthapak/Incharge of Sri Gandhi Ashram Audit Cell is appointed as enquiry officer. The order was passed by the Prashashak/Mantri of Sri Kshetriya Gandhi Ashram, Maghar. In view of the various references having come in the order, i.e., petitioner being Karyakarta, enquiry is to be conducted by the Vyavasthapak and there being alleged violation of Gandhi Ashram Karyakarta Sewa Niyamawali. The Niyamawali stated above having been supplied by the learned counsel for the parties have been examined. It is clear on a reading of Gandhi Ashram Sewa Niyamawali hereinafter referred to as the Niyamawali that Shri Gandhi Ashram happens to be a registered charitable institution having its registration under the Societies Registration Act. Niyamawali 4 speaks of the definition of various phrases. Niyamawali 4 (2) refers Pradhanmantri who appears to be Chief Executive having overall control in the matter in respect to the management and also in respect to the disciplinary steps taken against the Karyakarta, Vyauasthapak and Mantri Karyakarta to which we have concern is also defined in Rule 4 (7) which takes of a person who is engaged to work in the Gandhi Ashram. Rule 6 of the Niyamawali speaks about the admission to the service of the Ashram which clears that there is no process of any regular selection by inviting the candidature. It is mentioned that person desirous to serve Ashram will just move an application to the Pradhanmantri having recommendation of two respectable persons upon which person can be engaged in the service of the Ashram. Other provisions as contained in the Niyamawali on examination makes it clear that it is for the purpose of managing the affairs of the Ashram, it has been framed so that the various persons serving in the Ashram engaged in various cadre may remain confined in discipline. The Niyamawali referred above under which action has been taken against the petitioner and the impugned order of suspension has been passed cannot be said to be statutory rules so as to invoke writ jurisdiction. Admittedly petitioner's engagement in the Ashram is not through any selection on the basis of any competition out of public lot after any advertisement or any selection process and thus it is clear that he has been just taken to serve the Ashram on the condition as has been provided in the Niyamawali. It is for the authorities so provided in the Niyamawali to examine the correctness in the charges as levelled against the petitioner which on the fact is being disputed by him before this Court. On analysis of the matter it is clear that petitioner is neither governed by any statutory rules nor he is employee of the Board rather he has been engaged by the respondent Nos. 2 and 3 which is just a charitable institution as clearly mentioned in the Niyamawali itself, and thus petitioner cannot invoke writ jurisdiction of this Court. The decision as has been referred by the counsel for the respondents as given in the case of Swami

Nath Tewari (supra) also states that Gandhi Ashram cannot be said to be State within the meaning of Article 12 of the Constitution of India. The decision as has been referred by the counsel for the petitioner as given in the cases of Narendra Singh (supra) and Ram Saran (supra), are the cases of the employees working with the cooperative societies registered under the Co-operative Societies Act, 1965. The other decisions as has been referred by the learned counsel for the petitioner as given in the case of K. Krishnamacharyulu (supra) happens to be the case where employees were claiming parity in the pay scale with the employee of the Government Institutions and their claim were bases on the Government instruction and therefore, Apex Court ruled that the petitioners are entitled to seek enforcement of Government order under Article 226 of the Constitution. The last case which has been referred by the learned counsel for the petitioner in the decision given in case of U. P. State Co-operative Land Development Bank Ltd. (supra). Suffice it to say that in the aforesaid decision it was found that U. P. State Co-operative Land Development Bank Ltd. is controlled by the State Government and service conditions of its employees particularly in regard to disciplinary proceedings are statutory in nature. It is in the aforesaid premises writ petition was held to be maintainable. The U. P. State Cooperative Land Development Bank Ltd. was found to be instrumentality of the State. In view of the aforesaid, it is held that cases as has been referred by the learned counsel for the petitioner have no application to the fact of the present case. The analysis made above makes it clear that the petitioner appears to have filed this petition with the impression and with the stand that he is employee of the Board having been appointed by the Board which during the course of the arguments become an admitted situation that petitioner is not an employee of the Board. It is clear that petitioner happens to be Karyakarta in Gandhi Ashram and the impugned order has been passed for the alleged violation of Gandhi Ashram Karyakarta Sewa Niyamawali which clearly speaks that Shri Gandhi Ashram is a charitable institution and it has its own commitments and guidelines to guide and manage the working and affairs of the institution and to control the discipline within its employees.

7. On detailed examination of the matter this Court is of the considered view that preliminary objection raised by the respondent No. 1 deserves acceptance. With the result this writ petition is to be dismissed as not maintainable. Accordingly, without going into the merits of the claim of the petitioner in respect to the impugned order, this writ petition fails and is dismissed as being not maintainable.