

(1996) 02 AHC CK 0028
In the Allahabad High Court
Case No : C.M.W.P. No. 5611 of 1986

Ram Nihore Karwariya

APPELLANT

Vs

Member-Secretary, District Administrative Committee/District
Asstt. Registrar, Co-operative Societies and Another

RESPONDENT

Date of Decision : 22-02-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 21

Citation : (1996) 02 AHC CK 0028

Hon'ble Judges : R.K. Mahajan, J;B.M. Lal, J

Bench : Division Bench

Advocate : R.G. Padia, for the Appellant; M.S. Negi, for the Respondent

Final Decision : Allowed

Judgement

R.K. Mahajan, J.—The order in this writ petition will also dispose of the Writ Petition No. 14426 of 1986 Arvind Kumar and Anr. v. Muzaffarnagar Paschmi Kisan Sewa Samiti Sahkari Limited, Muzaffarnagar and Ors. as the matter is covered by the Division Bench judgment dated 21.11.1995 in Writ Petition No. 3625 of 1994 and the common question of law is involved in these writ petitions.

2. The facts would be discussed separately. In Ram Nihore"s case, the Petitioner seeks a writ, order or direction in the nature of certiorari quashing the impugned order dated 25.2.1986 passed by the Respondent No. 1 contained in Annexure No. 5. He further seeks a writ, order or direction in the nature of mandamus directing the Respondents not to interfere in any manner with the working of the Petitioner as Secretary of the society and the Respondents be also directed to pay salary of the Petitioner from the month of October, 1985. The Petitioner was appointed as Secretary, Co-operative Societies vide Annexure No. 1 in pursuance of public advertisement issued and written test and interview held vide order dated 29.10.1976. The Petitioner was transferred on 16.8.1985 from one co-operative society to other vide Annexure No. 2 and later on vide Annexure No. 3,. the Petitioner was attached to the Head Quarters. It is alleged that the

Petitioner has been given letter of appreciation on 6.7.89 in respect of 100% recovery for the year 1988-89. The Petitioner's case in nut-shell is that the Petitioner was working as Secretary since 5.8.1977 and his name stands at S. No. 60 in the order dated 22/23.3.1983 (Annexure No. 7 to the writ petition) and later on his services were terminated on 25.3.1986 (Annexure No. 5 to the writ petition) by the individual, i.e., Member Secretary/District Assistant Registrar and not by the administrative committee arbitrarily and illegally. It is further contended by the Petitioner's counsel Shri R. G. Padia that no opportunity has been given before terminating the services. It is also contended that one month notice or salary in lieu thereof was not paid and as such termination is void ab initio. It has been also contended by him that his appointment is permanent in seniority list and he could have been only terminated after following fair procedure of enquiry or in accordance with the regulations framed under Co-operative Societies Act, 1978 (hereinafter referred to as the Act of 1978). It is also contended that there is violation of Regulation 58 of Act of 1978. It appears that no counter-affidavit has been filed in this writ petition.

3. In the connected writ, petition, i.e., Writ Petition No. 14426 of 1986 Arvind Kumar and Anr. v. Muzaffarnagar Pashchmi Kisan Sewa Samiti Sahkari Limited the Petitioners also seek a writ, order or direction in the nature of mandamus commanding the opposite parties to treat the orders dated 31.7.1986 (Annexure Nos. 3 and 4 to the writ petition) as null and void and not to enforce them and not to interfere with the working of the Petitioners as Salesmen. Petitioner No. 1 Shri Arvind Kumar was appointed as Salesman vide resolution dated 18.3.1981 by the Committee of Management of the Society and which was duly approved by Zila Sahaik Nibandhak, Muzaffarnagar vide letter dated 1.4.1985 and he has been working upto 31.7.1986 till the date of his termination by the Respondent No. 3, i.e., Managing Director. The Petitioner No. 2 Shri Surendra Pal Sharma was appointed as Salesman/Accountant vide resolution dated 23.3.1981 by the Committee of Management of the Society and which was duly approved by Zila Sahaik Nibandhak, Muzaffarnagar. The Petitioner No. 2 has been working upto 31.7.1986 till the date of his termination by the Respondent No. 3. The Petitioners submit that the order of termination is unfair and arbitrary as the juniors have been retained in service and as such, the order impugned be quashed. No counter-affidavit is available on record. The Petitioners are coming up after a long time for hearing. No effective assistance has been provided by the Respondents at the time of hearing.

4. We are of the view that the terminations in both the cases are bad in law as they are arbitrary and involve civil consequences. They were not given opportunity to be heard which is against the principle of natural justice. Regarding Writ Petition No. 5611 of 1986, we are of the view that this matter is fully covered by the ratio of judgment rendered in Writ Petition No. 3625 of 1994 *Indravir Singh Rana v. State of U.P. and Ors.* in which it was held that the District Administrative Committee is the competent authority to terminate the services and no other authority under the Act of 1978 is competent to pass the order of

termination. It was further held that the Petitioner has put in experience of more than six years as a Secretary and there is nothing on record to show that he was not eligible for continuation of services. The court was of the view that since fair procedure has not been observed and termination is bad on that ground also, similar ratio applies in the present case. In the connected Writ Petition No. 14426 of 1986, Petitioner No. 1 Arvind Kumar has put in more than four years service and there is nothing on record against him on the record and the termination was also bad in law without giving him a fair hearing and adopting fair procedure. So much so. in both the cases notices of one month or wages of one month in lieu thereof were not given which smacks of arbitrariness also. Enquiry according to the Act of 1978 was also not conducted. It has been held repeatedly that nobody can be deprived of his livelihood without at least following the procedure established by law and in case it is not done so, it is violation of Article 21 read with Article 14 of the Constitution of India. Article 14 of the Constitution of India envisages fairness of procedure.

5. We would like to quote the quotation contained in *The Discipline of Law* by Lord Denning, 1979 edition page 92:

Some of the judgments in those cases were based on fact that the Home Secretary was exercising an administrative power and not doing a judicial act. But that distinction is no longer valid. The speeches in *Ridge v. Baldwin* (1964) AC 40, show that an administrative body may, in a proper case, be bound to give a person who is affected by their decision an opportunity of making representations. It all depends on whether he has some right or interest, or, I would add, some legitimate expectation, of which it would not be fair to deprive him without hearing what he has to say.

6. So at least the Petitioner had a legitimate expectation, rather we would say right to get a hearing before their services could be dispensed with outrightly. According to *Constitutional and Administrative Law* by Stanley De Smith and Rodney Brazier, page 557, 1989 Edition Penguin Edition:

The rules of natural Justice are minimum standards of fair decisionmaking, imposed by the common law on persons or bodies who are under a duty to "act judicially". They were applied originally to courts of Justice and now extend to any person or body deciding issues affecting the right or interest of individuals where a reasonable citizen would have a legitimate expectation that the decision-making process would be subject to some rules of fair procedure. The content of natural justice is, therefore, flexible and variable. All that is fundamentally demanded of the decision-maker is that his decision in its own context be made with due regard for the affected parties' interests and accordingly be reached without bias and after giving the party or parties a chance to put his or their case. Nevertheless, some judges now prefer to speak of a duty to act fairly rather than a duty to observe the rules of natural justice. Often the terms are inter-changeable. But it is perhaps now the case that while a duty to act fairly is incumbent on every decision-maker within the administrative process whose

decision will affect individual interests, the rules of natural justice apply only when some sort of definite code of procedure must be adopted, however flexible that code may be and however much the decision-maker is said to be master of his own procedure. The rules of natural justice are generally formulated as the rule against bias (*nemo iudex in causa sua*) and the right to a fair hearing (*audi alteram partem*). They will be examined first and then a brief explanation of the duty to act fairly, inasmuch as it has a separate existence from natural justice, will be considered...

7. So far the case of the Petitioner in Writ Petition No. 5611 of 1986 is concerned, his termination is totally bad in law and is quashed and he is entitled to get all consequential benefits. So far the case in Writ Petition No. 14426 of 1986 is concerned, the dispensing of Petitioners services are also bad in law and the society is to regularise him in accordance with law and rules and also to give him benefits of experience and age relaxation as observed in judgment dated 21.11.1995 in Civil Misc. Writ Petition No. 3625 of 1994, *Indravir Singh Rana v. State of U.P. and Ors.* We are also of the view that his services were dispensed with and Committee of Management who had earlier given approval to appoint.

8. With these observations, this petition is allowed. This order shall also cover Civil Misc. Writ Petition No. 14426 of 1986, *Arvind Kumar and Anr. v. Muzaffarnagar Paschmi Kisan Sewa Samiti Sahkari Limited, Mazaffarnagar.*