
(2011) 02 AHC CK 0156

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 10334 of 1998

Ram Was Rai and Others

APPELLANT

Vs

Registrar, Co-Operative Societies, U.P.

RESPONDENT

Date of Decision : 02-02-2011

Acts Referred:

Citation : (2011) 02 AHC CK 0156

Hon'ble Judges : Arun Tandon, J

Final Decision : Dismissed

Judgement

Arun Tandon, J.—Heard Sri Ashok Khare, Senior Advocate on behalf of the petitioners and Sri D.P. Singh, Advocate on behalf of the District Cooperative Bank Limited, Ghazipur.

2. Petitioners by means of the present writ petition seek quashing of the orders dated 18th March, 1998 issued by the Secretary/General Manager, District Cooperative Bank Ltd., Ghazipur (Annexure14 to the writ petition) as also a writ of mandamus directing the respondents to not to implement the order dated 03.01.1998 and further to absorb the petitioners as Junior Clerk in District Cooperative Bank Ltd., Ghazipur and lastly to ignore the order of the U.P. Cooperative Institutional Service Board, Lucknow dated 24.01.1996.

Facts, in short, giving rise to the present writ petition are as follows:

Petitioners, who are 11 in number, were admittedly appointed as Secretary in Primary Agricultural Cooperative Credit Society (Centralized Service) at different societies of the said category in the State of Uttar Pradesh. On 11th April, 1998 the Registrar, Cooperative Societies U.P. issued a circular with reference to the enforcement of "Sarlikrit Rin Vitaran Pranali" w.e.f. 01st July, 1988, wherein it was resolved that in every cooperative society, distributing loan in rural areas, for every branch two additional posts of CategoryIII be created. Out of said two posts, first be filled by Cooperative Supervisor by way of deputation. In respect of second post i.e. 50% of the new posts it was decided that the same be filled in

following manner (a) 25% by employees working in Grade "C" post in head office of branches where they were in excess, (b) 15% be filled by promotion from Class IV and (c) the remaining 10% be filled by appointment of approved Secretaries and other employees of Primary Agriculture Loan Cooperative Societies in the district including Kisan Sahakari Samiti by way of deputation. It was provided that in respect of such appointments on deputation, a selection committee shall be constituted and a candidate possessed of the qualification prescribed at the end of the circular alone would be entitled to be considered.

3. It is not disputed that the petitioners fall within the last category of employees. Meaning thereby that they were within the zone of consideration, for being appointed on deputation, for selection in terms of the circular aforesaid.

4. The circular specifically provides that these appointments on deputation would be for a period of three years only (Reference Paragraph 6 of the circulation) with a further condition that on being repatriated to the parent department, the services rendered on deputation shall be taken into account for all benefits, however, no arrears in that regard would be paid.

The petitioners with open eyes participated in the process of selection for being appointed on deputation in terms of the said circular. It is the case of the petitioners that after selection, vide select list dated 03rd August, 1988, 13 persons including the present petitioners were selected for being sent on deputation to District Cooperative Bank Limited, Ghazipur under New Check Scheme, as is apparent from the document enclosed as Annexure 3B to the present writ petition.

5. According to the petitioners, even after expiry of period of three years they were continued on deputation and in between a circular was issued by the Registrar, Cooperative Societies dated 25.02.1990 wherein a provision was made for absorption of the employees like the petitioners, who are working on deputation in the employment of the District Cooperative Banks itself. A copy of the circular has been enclosed as Annexure 4 to the writ petition.

The circular provides that the employees working on deputation may be considered for absorption in the service of the bank on the basis of their work and performance and after making necessary provisions for such absorption. This circular was followed by subsequent circulars on the appropriate decision in the matter.

6. According to the petitioners the District Cooperative Bank did pass a resolution on 30th July, 1991 for absorption of the petitioners and for the purpose a requisition was sent to the Cooperative Institutional Board for the approval, which is stated to have been followed by another resolution dated 13th April, 1992.

7. Since the claim of the petitioners, for regularization was not being processed, they approached this Court by means of Writ Petition No. 28234 of 1991 with the

allegation that the bank, instead of taking further steps for their absorption, is proceeding to repatriate them to their parent department.

In the said writ petition an interim mandamus was issued on 04th August 1994 requiring the bank to forward the papers pertaining to the absorption of the petitioners to the U.P. Cooperative Institutional Service Board at Lucknow within the time provided and the Board in turn was required to take appropriate decision thereon.

8. The Board in turn forwarded a letter to the bank asking for certain further information qua the petitioners, as is apparent from the letter dated 03rd September, 1996 (Annexure 8 to the writ petition).

9. The Institutional Board vide order dated 24.01.1996 (Annexure 11 to the writ petition) turned down the proposal for absorption, as forwarded by the bank, for non-supply of the documents asked for. This order of the Institutional Board dated 24.01.1996 has not been challenged by the petitioners in the present writ petition and the only prayer made is that the bank should be directed to ignore the letter of the Board.

10. As a consequential decision taken by the Institutional Board to not to approve the resolution of the bank for absorption of the employees concerned, a letter has been issued by the Registrar, Cooperative Societies dated 03.01.1998 (Annexure 13 to the writ petition) wherein the Assistant Registrar and Secretaries/General Manager of the District Cooperative Bank Limited have been directed to repatriate all such deputationists, whose period of deputation has expired long back, with a further condition that in case any extension of period of deputation is required, a fresh request be made for the purpose and prior approval from the competent authority be obtained.

11. As a consequence to this order, the petitioners have been repatriated by the Secretary/General Manager of the District Cooperative Bank Ltd., Ghazipur under letter dated 18.03.1998. It is against these two orders that the present writ petition has been filed.

12. On behalf of the petitioner it has been contended that since under the circular issued by the Registrar dated 25.02.1990, a provision has been made for absorption of the employees, like the petitioner, on deputation and further since the bank has defaulted in not transmitting the relevant documents, as asked for, to the Institutional Board culminating in the order dated 24.01.1996, the petitioners cannot be permitted to suffer. Fault, if any, for nontransmission of the relevant documents to the Institutional Board by the bank, cannot be a ground for the bank to take adverse action against the petitioners, inasmuch as bank cannot be permitted to take benefit of its own wrong.

13. Lastly it is contended that in respect of Technical Officer, who were similarly sent on deputation, order of absorption has already been issued and therefore no discrimination can be permitted between two categories of employees in the

matter of absorption. Reference has been made to the judgment of the High Court in Writ Petition No. 40124 of 1993 decided on 02.11.1995, wherein a direction of the Allahabad Cooperative Bank, to repatriate its employees, has been set aside with a direction to the bank to forward the relevant papers for absorption of the employees in the bank itself.

13D. Sri D.P. Singh, counsel for the bank, to the contrary submits that the circular issued for absorption of the employees like the petitioners dated 25.02.1990 and the circular relied upon by the petitioners is in respect of Technical Assistance and not for the employees whose substantive post is that of Secretary. A resolution was passed by the bank on 29.09.1994 in terms of the said circular to not to absorb the petitioners. It is in this background that the Institutional Board had not taken a decision for the absorption of the petitioners, resulting in the order of the Institutional Board dated 24.01.1996. He further points out that the Institutional Board had specifically asked for the consent of the parent department of the petitioners, namely District Administrative Committee the appointing authority under the U.P. Primary Agricultural Cooperative Credit Societies Centralised Service Rules, 1976 (hereinafter referred to as "Rules, 1976"), which was never provided to the Board. He, therefore, submits that there being no concurrence of the parent department in the facts of the case and further the bank namely the borrowing department being also not interested in such absorption of the employees, no mandamus can be issued by this Court to absorb the petitioners.

He points out that under the U.P. Cooperative Societies Employees' Service Regulation, 1975 (hereinafter referred to as "Regulations, 1975") appointments in Cooperative Banks like that at Ghazipur could only be made on the recommendation of the Board, as would be apparent from Rule 5(c) of the aforesaid Regulations, 1975 which includes appointment by way of deputation. He further points out that under Rule 15 of Regulation 1975 no appointment in the Cooperative Societies, which are within the U.P. Cooperative Societies Employees Services Regulation Rules, 1975, can be made except in the manner provided under the Regulation, 1975. Meaning thereby in absence of recommendation of the Institutional Board even in the matter of deputation there could have been no appointment of an employee in the society. He submits that it is not in dispute that the post of Clerk in the District Cooperative Bank Limited is within the U.P. Cooperative Societies Service Regulation, 1975 and the said Regulation do apply to the employees of the District Cooperative Bank.

14. The applicability of the Regulation, 1975 to the post in question could not be disputed by Sri Ashok Khare, counsel for the petitioners.

15. I have heard learned counsel for the parties and have gone through the records of the writ petition.

16. From the facts, which have been noticed herein above specifically the Regulation, 1975 being applicable to the post of Clerk in District Cooperative

Bank, this Court has no hesitation to record that in view of Regulation 5 read with Regulation 15 even appointment by way of deputation could not have been made without approval of the Board. Any circular of the Registrar cannot have the effect of overriding the statutory regulations.

17. This Court holds that the order sending the petitioners on deputation itself was bad and de hors the statutory regulation. However, no final opinion in that regard is required to be expressed, inasmuch as the issue, as to whether the petitioners had rightly been sent on deputation or not, is not under consideration before this Court. The issue surviving is as to whether the deputationists like the petitioner could be directed to be absorbed in the employment of the District Cooperative Bank without there being any approval of the Board or not.

18. It is apparently clear that under the order dated 24.01.1996 the Board has refused permission to absorb the petitioners in the employment of the District Cooperative Bank. For whatever reason the order so issued has not been challenged. It is contended that the order of the Board should be ignored. The order passed by the Board refusing permission to absorb the petitioners is referable to the statutory power vested with the Board and order passed by it cannot be permitted to be ignored by the Bank. This Court further finds that the deputation of the petitioners was limited up to the period of three years, which was extended for a further period of one month, as is apparent from the letter of the Registrar impugned in the present writ petition dated 13.01.1998. There was no legal authority either with the bank or with the petitioners to have continued in the employment of the bank thereafter. The employment of the petitioners by deputation came to an end by efflux of time for which it was made and therefore the continuance of the petitioners after expiry of the period is rendered illegal.

19. This Court holds that the counsel for the Bank is justified in contending that the circular providing for absorption of employees like the petitioners in the District Cooperative Bank was only issued on 25.02.1990 for Technical Officers. Even otherwise Bank considered the matter for absorption of the petitioners and ultimately resolved vide resolution dated 29.09.1994 that absorption of deputationists in the employment of the bank was not needed.

Although Counsel for the petitioner submits that there was an earlier resolution dated 13th April, 1992 in their favour. This resolution stood superseded by the subsequent resolution of the bank dated 29.09.1994 and therefore the earlier resolution loses all significance.

20. So far as the judgment relied upon by the counsel for the petitioner in the case of Rajesh Kumar Trivedi and others vs. The State of U.P. and others, passed in Writ Petition No. 40124 of 1993, dated 02.11.1995 is concerned, this Court finds that the Writ Court was of the opinion that the issue of absorption should have been referred to the Institutional Board for consideration in terms of the circular issued. It is for this purpose that the Court directed that the Allahabad District Cooperative Bank to take all necessary steps for absorption.

21. In the facts of this case the bank has decided not to absorb the petitioners in their employment and counsel for the hopelessly failed to establish any statutory provision whereunder such absorption can be insisted upon. A person appointed on deputation can continue in the borrowing department only so long as the period, for which he was sent on deputation, subsisted and no further or only till the borrowing department wants and not contrary to the wishes of the borrowing department. Ref: Division Bench Judgment of this Court dated 15.07.2010 passed in Special Appeal No. 469 of 2010; Ram Sajan and another vs. the State of U.P. and others, wherein it has been held that a deputationist cannot have any right to continue on deputation, unless they are specifically allowed for the purpose and it is always within the domain of the employer to send him back to the parent department.

22. This Court finds that the term of the deputations had expired long back and the bank has taken final decision to not to absorb the petitioners. The circular issued by the Registrar and consequential letter issued by the General Manager are found to be in accordance with law. No interference is warranted from this Court under Article 226 of the Constitution of India.

23. At this stage counsel for the petitioner contends that the parent cadre of the petitioners has been declared to be dead cadre and difficulties are being faced in payment of salaries to the employees of the dead cadre, as a matter of fact their salaries have been ceased.

24. The last issue raised is not subject matter of this petition and therefore no opinion can be expressed in that regard. If the petitioners have any difficulty with their parent department, qua salary etc., they are at liberty to file a fresh writ petition seeking relief, as may be permissible under law, against the parent department.

25. With the aforesaid observation writ petition is dismissed.