
(1992) 04 AHC CK 0035
In the Allahabad High Court
Case No : Writ Petition No. 23532 of 1991

Ramesh Kumar Saraswat

APPELLANT

Vs

Sachiv/Maha Prabandhak Poorvanchal Sahkari Katai Mills Ltd.
and Others

RESPONDENT

Date of Decision : 01-04-1992

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1992) 3 AWC 1306 : (1992) 2 UPLBEC 1056

Hon'ble Judges : D.P.S. Chauhan, J

Bench : Single Bench

Advocate : H.N. Tripathi, for the Appellant; P. Kumar and Dilip Gupta, for the Respondent

Judgement

D.P.S. Chauhan, J.—Petitioner, who is an Assistant Account Officer working in Poorvanchal Sahkari Katai Mills Ltd. Bahadurganj, district Ghazipur (hereinafter referred to as Textile Mills) has approached this Court under Article 226 of the Constitution of India, impeaching the order dated 26-7-1991, passed by the General Manager of the Textile Mills suspending him and seeking relief for quashing the same.

2. The Textile Mills is a Co-operative Society registered under U.P. Co-operative Society Act, 1965 (hereinafter referred to as the Act) and the Rules framed therein (hereinafter referred to as the Rules) In exercise of power u/s 121(1) of the Act, the State Government constituted an authority known as U.P. Co-operative Institutional Service Board (hereinafter referred to as the Board) for recruitment and disciplinary control of the employees of the class of Co-operative society as mentioned in the Notification No. 366-C/X1IC-3-36-71 dated 4-3-1972 and the Co-operative Textile Mills were one of the categories of the society found placed in the said Notification. The Board so constituted empowered for making Regulations framed Regulations known as U.P. Co-operative Societies Employees Service Regulations, 1975. Subsequently, there has been amendment in the said

Notification dated 4-3-72 from time to time and one of the amendment was vide Notification No. 2752/12-C 2-172-78 dated October 16, 1981 and by this amendment the Co-operative Textile Mills were deleted from the aforesaid Notification.

3. Heard the learned Counsel for the Petitioner and learned Counsel for Respondents.

4. Learned Counsel for Petitioner challenged the aforesaid order as illegal having been passed contrary to the requirement of Regulation 85 of the aforesaid Regulations. Learned Counsel for the Respondents raised following two fold preliminary objections:

(i) that the writ, which is founded it promises that the provisions of U.P. Co-operative Societies Employees Service Regulations, 1975 are applicable in the case of the Petitioner, is not maintainable on the ground of fact that the services of the Petitioner are not governed there under.

(ii) the grievance of the Petitioner, that the authority of the General Manager of the Textile Mills is not competent to pass the impugned suspension order and the same is in violation of the provision of U.P. Co-operative Societies Employees Services Regulations, 1975 can be decided u/s 128 of the Act by the Registrar, Co-operative Societies and on the basis of availability of the alternative remedy the writ petition is maintainable.

5. So far as the first submission of the Respondents is concerned the learned Counsel for Respondents has relied upon the Notification No. 2752-12 C-2-172/78 dated October 16, 1981 whereby the Co-operative Textile Mills have been taken out from the Notification dated 4-3-72 and as a result of which the Textile Mills have become out of the purview of the Board and as such the U.P Co-operative Societies Employees Service Regulations, 1975 are not applicable. The learned Counsel for the Petitioner could not deny the position that the aforesaid Regulations on account of the amendment in the original Notification dated 4-3-1972 are not applicable in the case of the Petitioner, who is an employee of the Textile Mills. However, the learned Counsel for Petitioner submitted that if the aforesaid Regulations are not applicable then the impugned order of suspension is illegal so the General Manager, who is not the appointing authority of the Petitioner under bye-laws of the Textile Mills, was incompetent to pass the order for suspension of the Petitioner. I am not inclined to express any opinion on the merit of the submission as raised by the learned Counsel for the Petitioner, in view of the fact that such a controversy could be decided by the Registrar, Co-operative Societies u/s 128 of the Act, which is as extracted below:

The Registrar may,

(i) annul any Resolution passed by the Committee of Management or the general body of any Co-operative Societies; or

(ii) cancel any order passed by an officer of a Co-operative Societies ; if he is so

of the opinion that the Resolution or the order as the same may be, is not covered by the objects of the Societies or is in contravention of the provisions of this Act, the Rules, or bye-laws of the Societies, whereupon every such Resolution or the order shall become void and inoperative and be deleted from the record of Societies.

6. In this connection learned Counsel for Respondents brought to the notice of the Court a Division Bench's decision of this Court in writ petition No. 1584 of 1982 A.D. Tandon v. The Registrar Cooperative Societies, dated 6-5-1985, which also related to an employee of the Textile Mill, Buland Shahar and in that case the Petitioner, who was an employee of the Textile Mills, was relegated for availing the remedy u/s 128 of the Act. On the basis of the aforesaid decision, it is a case where the Petitioner may also be allowed to approach the Registrar u/s 128 of the Act.

7. The second objection of the learned Counsel for Respondents does not require any decision in view of the fact that the Petitioner is being relegated for availing the remedy u/s 128 of the Act and in this view of the matter it is not proper to express any opinion on the merit of the submission as advanced by the learned Counsel for the Petitioner.

8. Learned Counsel for the Petitioner submitted that some direction may be issued to the Registrar, Co-operative Societies for deciding the representation of the petition u/s 128 of the Act within the period as may be fixed by this Court. The Petitioner has not yet approached the Registrar and it would be premature to issue any such order or direction as it is the violation of the Petitioner to approach the Registrar u/s 128 of the Act or to avail such other remedy as may be available to him under law. However, it goes without saying that the Registrar will decide the representation if made by the Petitioner, expeditiously.

9. Learned Counsel for the Petitioner prayed that the copy of the judgment may be directed to be issued to him on payment of necessary charges at an early date, so that the Petitioner may avail the remedy before the Registrar. Let a copy of this judgment may be made available to the Petitioner on payment of usual charges within three days from the date of making the application.