
(2012) 04 AHC CK 0199

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 16381 of 1988

R.N. Mishra

APPELLANT

Vs

Administration, U.P. Co-operative Sugar Factories Federation
Ltd. and Others

RESPONDENT

Date of Decision : 24-04-2012

Acts Referred:

Limitation Act, 1963 — Section 5

Uttar Pradesh General Clauses Act, 1904 — Section 21

Citation : (2012) 7 ADJ 274

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : B.P. Srivastava, A. Kumar, B.N. Mishra, K.K. Misra, K.N. Tripathi and V.C. Tripathi, for the Appellant; A.K. Mishra and C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

Hon'ble Arun Tandon, J.—Heard Learned Counsel for the parties. Dispute raised in the present writ petition has repeatedly engaged the attention of the Single Judge, Division Bench as well as of the Apex Court. It is not necessary to enter into the history of the litigation, suffice is to refer to the following facts as emerge from the present writ petition.

2. Petitioner, who was working as an employee of U.P. Co-operative Sugar Factories Federation Ltd. (hereinafter referred to as the "Federation"), was dismissed from service under an order dated 18/21st April, 1987. He filed the present writ petition in July, 1988 with the prayer that the order dated 18th April, 1987 may be quashed, and that respondent No. 1 i.e. Administrator, U.P. Co-operative Sugar Factory Federation Ltd./Secretary, Sugar Industries and Cane Development, U.P. Lucknow be directed to decide the appeal dated 16th May, 1987 which was pending before him. The writ petition came to be decided under the judgment and order of the Single Judge dated 28th August, 1995. The writ petition was allowed and the order dismissing the petitioner from service was

quashed only on the ground that approval of the Institutional Service Board as required under Regulation 87 of U.P. Co-operative Society Employees Service Regulations, 1975 (hereinafter referred to as the "Regulations, 1975") had not been obtained.

3. Against the said order of the Single Judge, Special Leave to Appeal (Civil) No. 71 of 1996 was filed by the employer i.e. Federation before the Supreme Court. Special Leave to appeal was dismissed on 19th January, 1996 with the observation that since the appellant wants to bring on record certain new facts, which were not brought to the notice of the High Court, it would be appropriate that the employer may approach the High Court itself, if so advised, in accordance with law.

4. Review application was filed before the High Court being Review Application No. 16372 of 1996. This review application was supported by an application u/s 5 of the Limitation Act. The High Court under order dated 29th September, 1997 did not find sufficient reasons to condone the delay in making of the review application. It was held that the proceedings cannot be reopened on the strength of additional evidence which never formed part of the record of the original proceedings. Review application was dismissed.

5. Not being satisfied with the order so passed by the High Court on review application, respondent-employer filed Special Appeal No. 617 of 1997. The special appeal was allowed vide order dated 2nd May, 2001 and it was held that the employer-federation was taken out from the purview of Regulations, 1975 under the notification dated 31st March, 1987 while the order of termination was passed subsequent thereto to be precise on 18th April, 1987. Therefore, question of obtaining prior approval from the Institutional Service Board did not arise. Order of Single Judge was made without taking into consideration the aforesaid aspect of the matter and therefore, it was held that the Single Judge should have allowed the review application. The Division Bench after setting aside the order of Single Judge allowed the review application and restored the writ petition to be heard by the Single Judge afresh. During the pendency of the hearing before the Single Judge, parties were directed to maintain status quo with regard to service of the petitioner. Respondent-employer was directed to pay salary to the petitioner for the period he has actually worked alongwith other benefits.

6. Against the order of the Division Bench, petitioner-employee filed Special Leave to Appeal (Civil) No. 13578 of 2001 before the Supreme Court. The Special Leave to Appeal was dismissed by the Supreme Court vide order dated 20th August, 2011 with an observation that it shall be open to the petitioner-employee to raise all such arguments in respect of applicability of Regulations, 1975 before the Single Judge and it shall be open to the Single Judge to decide the matter in accordance with law without being influenced with any observation made by the Division Bench.

7. The writ petition has therefore, come up for hearing before this Court today.

Only ground pressed before this Court in support of the present writ petition is that the order of termination could not have been passed by the employer-federation without obtaining prior approval of the Institutional Service Board, as is provided under Regulation-87 of Regulations, 1975.

8. For read reference, Regulation-87 of Regulations, 1975 is being quoted above:

87. Order imposing penalty under sub-clause (e) to (g) of clause (1) of Regulation No. 84 shall not be passed except with the prior concurrence of the Board.

9. Contention so raised on behalf of the petitioner cannot be doubted inasmuch as prior concurrence of the Board is required before inflicting the major penalty under Regulation 87 of Regulations, 1975. However, the issue which remains to be examined is as to whether Regulations, 1975 would apply to the Federation, where the petitioner-employee was working or not.

10. It would be worthwhile to reproduce Regulation 2(ix) of Regulations, 1975, which defines the co-operative society and it is in respect of employees of such cooperative societies that the provisions of Regulation, 1975 would be applicable. Regulation 2 (ix) of Regulations, 1975 reads as follows:

2. Definitions.--

(ix) "Co-operative Society" means a co-operative society placed under the purview of the Board by Government Notification No. 366-CIXI/-C-3-36-71, dated March 4, 1972 issued u/s 122 of the Act read with Rule 389 (A) of the Rules;

11. From simple reading of the aforesaid Regulation 2 (ix), it would be seen that only such cooperative societies and their employees are covered within the Regulations, 1975, qua which Government Notification has been issued. Such notification may be amended from time to time by subsequent notification to be issued u/s 122 of the Act read with Rule 389 (A) of the Rules.

12. From the affidavit filed in support of Civil Misc. Application Nos. A10/1 and All/1 dated 17th February, 1996, this Court finds that a notification dated 31st March, 1987 published in the U.P. Extraordinary Gazette has been enclosed as Annexure-1. The notification has been issued in exercise of powers u/s 122 (1) of U.P. Co-operative Societies Act, 1965 (U.P. Act No. 11 of 1966) read with Rule 389-A of U.P. Co-operative Societies Rules, 1968 and Section 21 of the U.P. General Clauses Act, 1904, under this notification, the earlier notification issued on 4th March, 1972 has been amended. It reads as follows :

AMENDMENT

In the aforesaid notification, in para 1, after the words "U.P. Co-operative Housing Federation" the words "excluding Co-operative Cane Sugar Factories and their apex Society the U.P. Cooperative Sugar Factories Federation Limited, Lucknow" shall be inserted.

13. In view of the said amendments made in accordance with Section 122 (1) of U.P. Cooperative Societies Act, 1965 read with Rule 389-A of U.P. Co-operative Societies, 1968 and Section 21 of the U.P. General Clauses Act, 1904, it cannot be disputed that U.P. Co-operative Sugar Factories Federation Limited, Lucknow stands excluded from the purview of Regulations, 1975, inasmuch as such the federation had been taken out from the notification which was issued in the year 1972 including the said Co-operative Sugar Factories Federation Limited within the definition of "Co-operative Society" to be recovered by Regulations, 1975.

14. In view of Regulation 2 (ix) of Regulations, 1975 read with amended notification dated 31st March, 1987, this Court has no hesitation to record that the employer-federation stood excluded from the provisions of Regulations, 1975, on the date the order of termination was passed and therefore, there was no requirement of obtaining prior concurrence of the Institutional Service Board as contemplated by Regulation 87 of Regulations, 1975. The Regulations, 1975 themselves ceased to apply after issuance of notification dated 31st March, 1987.

15. In view of the aforesaid, this Court finds no good ground to interfere with the order of punishment.

16. In order to keep the record straight, it may be recorded that the petitioner had made an amendment application on 16th April, 1993 stating therein that the appeal as per the service rules framed by the Federation had wrongly been filed by him, inasmuch as under Regulations, 1975, there is no provision for any appeal being filed against the order of major penalty.

17. this Court has already come to a conclusion that the Regulations, 1975 do not apply to the employer-federation and therefore, the reasons for withdrawal of the appeal by the petitioner on the face of it appears to be misconceived.

18. However, in the background of litigation as aforesaid, it is provided that if the petitioner makes an application for restoration of the appeal which had been earlier filed against the order of termination, the same shall be restored and decided by the appellate authority in accordance with law within a period of eight weeks from the date a certified copy of this order is filed before it.

19. Since the petitioner has already retired in the year 2006, the outcome of the appeal would only determine his rights in respect of payment of pensionary benefits etc. Any salary paid to the petitioner during the pendency of the proceedings before the High Court/Supreme Court and because of the order passed by the Writ Court and Division Bench from time to time, shall not be recovered because of the order passed today. The present writ petition is dismissed subject to the observations made above.