
(1997) 01 AHC CK 0012
In the Allahabad High Court
Case No : C.M.W.P. No. 21911 of 1988

Santosh Kumar Srivastava

APPELLANT

Vs

Pradeshik Co-operative Dairy Federation Ltd. and Others

RESPONDENT

Date of Decision : 17-01-1997

Acts Referred:

Citation : (1997) 01 AHC CK 0012

Hon'ble Judges : R.H. Zaidi, J

Bench : Single Bench

Advocate : Arun Tandon, for the Appellant; G.P. Misra, for the Respondent

Final Decision : Allowed

Judgement

R.H. Zaidi, J.—Heard Mr. Arun Tandon, learned counsel for the Petitioner and Sri G. P. Misra, learned counsel for the Respondents.

2. By means of the present petition, Petitioner prays for issuance of a writ order or direction in the nature of certiorari quashing the order dated 19.8.87 contained in Annexure IX to the writ petition, whereby the services of the Petitioner have been terminated. Prayers for a writ of mandamus commanding the Respondents to treat the Petitioner in continuous service with effect from 17.4.1986 and for the payment of salary admissible to Assistant Field Supervisor have also been made.

3. The matrix of the case is that the Petitioner was selected and appointed as Assistant Field Supervisor along with 400 candidates vide order dated 1.4.1986, he was directed to undergo the training for a period of two months. On the strength of the said order, Petitioner went for training in the office of the Co-operative Dairy Training Institute, Lucknow. On 21.4.1986 he has successfully completed his training. Thereafter, he was again sent for training for 62 days to Barabanki Dugdh Sangh and same was also completed by him successfully. After completion of the said training, Petitioner was posted at Unnao. It was on 26.7.86, that Petitioner reported for duty at Unnao Dugdh Sangh. It was on

2.10.86 that an application for leave was made by him. The leave was granted for two days, i.e., 3rd and 4th October, 1986. It has been stated that the Petitioner thereafter, fell seriously ill and was advised bed rest for 30 days by the doctor. Petitioner made an application for leave on medical ground which was supported by medical certificate. It was asserted that the Petitioner thereafter was advised complete rest for four months; but inspite of medical treatment, he did not recover from the ailment and was advised by V. P. Misra, Medical Officer, Moti Lal Nehru Hospital, Allahabad to take rest till he was cured. While Petitioner was seriously ill, he received a letter dated 11.11.1986 calling upon him to Join duty on 15.11.86. On receipt of the said letter, Petitioner sent an application for leave on medical ground for a period of four months. The said application was sent by registered post, which was returned by the post office with an endorsement "Refused to accept". It is stated that the Petitioner suffered from knocks abdomen and was advised rest. Consequently, he had to make another application for leave on medical ground instead of allowing or rejecting the application for leave, the impugned order of termination dated 19.8.87 was passed in exercise of power under Regulation 85 (ii)(b) of the U.P. Co-operative Societies Employees Service Regulations, 1975. Thereafter, the Petitioner sent his representation praying that the order of termination be recalled and he may be permitted to Join the service. The authority concerned did not pay heed to the said representation, therefore, reminders and notices were sent, but in vain. Consequently, Petitioner had to approach this Court and file the present writ petition for the abovementioned reliefs.

4. In the counter-affidavit, it has been asserted that the impugned order of termination has been passed in terms and conditions of the appointment of the Petitioner. It has been asserted that the Petitioner absented from duty without leave and has not completed two years training as required by the conditions 4 and 9 of the order of appointment and that his whereabouts were not known, therefore, Respondents were left with no option, but to pass the impugned order of termination.

5. I have considered the submissions made by the learned counsel for the parties and perused the record carefully.

6. The order of termination dated 19.8.1987 reads as under:

The services of Sri Santosh Kumar Srivastava S/o Sri G. P. Srivastava, Asstt. Field Supervisor who has not completed training successfully having been absent from duties in an authorised manner since 6.10.86, are hereby terminated with immediate effect under Para 4 of his appointment order and under clause 85 (ii) (b) of U.P. Co-operative Societies Employees Service Regulations, 1975.

From the perusal of the aforesaid order, it is revealed that the same was passed on two grounds, i.e., (i) that the Petitioner has not completed the training and (ii) that he has absented from his duties and his whereabouts were not known.

The order of termination is purported to have been passed in exercise of power

under Regulation 85 (ii)(b) of the Regulations.

7. Learned counsel for the Petitioner submitted that the grounds mentioned in the impugned order of termination are factually incorrect and nonexistent, inasmuch as the Petitioner as and when was called upon to undergo the training, he went for training and completed the same successfully. He has referred to the training undergone by him, when he was sent vide order passed on 21.4.86. Therefore, he took training for two months and completed the same successfully. On 20.6.86, he was again called upon to undergo training for another 62 days and was sent to Barabanki Dugdh Centre and the said training was also completed by him successfully, therefore, it cannot be said that the Petitioner has not completed the training successfully.

8. Learned counsel for the Respondents submitted that the Petitioner has not completed two years training in terms of clauses 4 and 9 of the appointment letter dated 1.4.86. The said clauses are reproduced below:

4 He shall be on Institution/on the job-training for two years from the date of joining. The period of training can be extended by one year at the discretion of the Management. He shall undergo such training courses as may be required from time to time, in any of the training centres run by NDDBPCDF/ any other Institution. In case he does not complete any such training successfully, his services without prejudice to other conditions mentioned herein, shall be liable to termination without giving any notice.

9. After successful completion of Institution/on the job-training as mentioned in Para 4 above, he shall be on probation for a period of one year during which he will be expected to attain the standard required by the Federation/Milk Union as to his work and conduct, failing which his probation period may be extended for another one year, at the sole discretion of the management.

9. It may be noted that the Petitioner was appointed on 1.4.86 and his services have been terminated on 19.8.87, the total length of his service is about one year and four months only, therefore, there was no question of completion of two years training. There is no material on the record to show that the Petitioner has ever refused to go for training, if he was called upon to go for the same. The submission made by the learned counsel for the Respondents to the contrary is, therefore, not acceptable to me.

10. So far absence of Petitioner from duty is concerned, he was granted leave for two days, i.e., 3rd and 4th October, 1986 for going to Allahabad. As the Petitioner fell ill and suffered from typhoid, he was advised rest by the doctor for 30 days. Petitioner applied for leave with the medical certificate from 6.10.86 to 6.11.86. Thereafter, ailment persisted and the Petitioner continued under the medical treatment as it is apparent from the facts stated in the writ petition. As and when he was advised by the doctor, he used to make an application for leave on medical ground, which used to be supported by the medical certificate up to September, 1987. In the meanwhile, the order of termination dated 19.8.87 was

passed. There is nothing on record to show that the applications filed by the Petitioner on medical ground were rejected, therefore, it cannot be said that the Petitioner absented from duty unauthorisedly.

11. The impugned order of termination is alleged to have been passed in exercise of power under Regulation 85 (ii)(b) of the U.P. Co-operative Societies Employees Service Regulations, 1975, which reads as under:

85 (ii)(b). Where an employee has absconded and his whereabouts are not known to the society for more than three months.

The power under the said clause can be exercised when an employee has absconded from duty and his whereabouts were not known to the society for more than three months. In the present case, the Petitioner has never absconded from the duty and his whereabouts were always known to the society. The Petitioner has been sending his applications for leave except one, others have been accepted by the Respondent No. 1. The Respondent No. 1 itself has sent letter dated 11.11.1986 calling upon the Petitioner to attend his duties with effect from 15.11.86. On receipt of the said notice/letter, Petitioner submitted his application for leave on medical ground to the Respondent No. 1. The said application was entertained, but no order either allowing or rejecting was passed. Petitioner was thus in touch with the Respondent No. 1 and it had full knowledge of whereabouts of Petitioner. Therefore, the order of termination cannot be said to be justified under Regulation 85 (ii)(b) of the Regulation.

12. Learned counsel for the Respondents further urged that the Petitioner was not entitled to the salary for the period he did not attend to his duties even if the order of termination is set aside by this court, as he did not attend his duties, on the principle of no work no pay. Clause (ii) of Regulation 73 of the said Regulations reads as under:

73. (ii) An employee, who absents from his duty without leave or overstays beyond his leave, except under the circumstances beyond his control, for which he must tender his satisfactory explanation, shall not be entitled to draw any pay and allowances for the period of such absence or overstay and shall further be liable to such disciplinary action as may be imposed on him under the circumstances.

13. Petitioner has applied for leave on medical ground. The applications filed by the Petitioner were not rejected by the competent authority. Nor any enquiry as contemplated under the aforesaid Regulation 73 (ii) was conducted by the said authority, therefore, the Petitioner cannot be blamed for overstaying without leave. However, in case the Respondents are advised, they can exercise their power under the aforesaid Regulation and conduct an enquiry regarding ailment of the Petitioner. The prayer of the Petitioner for direction to his salary for the period he remained absent from the duty shall be subject to the result of the said enquiry.

14. In view of the aforesaid discussions, the writ petition is liable to be allowed and the impugned order of termination deserves to be set aside.

15. Subject to what has been observed, the writ petition succeeds and is allowed. The order of termination dated 19.8.87 is quashed. The Respondents are directed to permit the Petitioner to Join his duties in accordance with law. There shall be no order as to costs.