

(1995) 07 AHC CK 0008
In the Allahabad High Court
Case No : C.M.W.P. No. 38533 of 1994

Shesh Nath Singh

APPELLANT

Vs

Member/Secretary, District Administrative Committee, Uttar Pradesh Primary Agricultural Co-operative Credit Society and Others

RESPONDENT

Date of Decision : 18-07-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1995) 07 AHC CK 0008

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

Bench : Single Bench

Advocate : O.P. Singh, for the Appellant;

Final Decision : Dismissed

Judgement

R.H. Zaidi, J.—By means of this writ petition Under Article 226 of the Constitution of India, the Petitioner challenges the validity of the order dated 16.11.1994 passed by Respondent No. 1 and prays for issuance of a writ of mandamus commanding the Respondents to permit the Petitioner to remain in service till he attains the age of 60 years and to pay him salary and other allowances on the post of Accountant in the society, have also been made.

2. The facts of the case In brief are that the Petitioner was appointed as an Accountant on 1.8.1962 in Sadhan Sahkari Samiti Ltd. Gahni Block, Ratanpur, district Ballia which was a Primary Agricultural Co-operative Credit Society, registered Under U.P. Co-operative Societies Act. 1965. He continued to hold the said post till 2.5.1979. In the service record his date of birth is recorded as 15.12.1936. In the meanwhile, the Petitioner was appointed as Cadre Secretary and at present he is working on the said post. The contention of the Petitioner is that his age of retirement is 60 years and he cannot be retired on attaining the age of 58 years. The Petitioner further contends that at the time of his recruitment as Accountant a resolution was passed by the Society, which is

contained in Annexure 1 to this writ petition, wherein there is a categorical averment to this effect that the age of retirement of the Petitioner shall be 60 years. Other terms and conditions of the service were also mentioned. The Petitioner submits that he will be governed by the U.P. Co-operative Societies Employees Service Regulations, 1975 (hereinafter referred to as the Regulations) and in view of the provisions of Regulation 24, he will retire on attaining the age of 60 years and not before.

3. In paragraph Nos. 19, 20 and 21 of the writ petition, it has been categorically admitted by the Petitioner that Petitioner was appointed as Preacher Sativa of Primary Agricultural Co-operative Credit Societies named therein.

4. The Respondents, on the other hand, in their counter-affidavit state and contend that the Petitioner opted for and was appointed on the post of "Cadre Secretary" on 27.7.1979, which is a centralized post. They contend that the provisions of the U.P. Primary Agricultural Co-operative Credit Societies Centralized Service Rules, 1976, (hereinafter referred to as the Rules) will apply in the present case and not the provisions of the Regulations.

5. I have heard learned Counsel for the parties.

6. It is not disputed that at present the Petitioner is holding the post of Cadre Secretary. It is one of the posts which is centralized. A reference in this regard may be made to Rule 3 of the Rules, which provides for formation of centralized service. Secretaries of Primary Agricultural Credit Societies, on enforcement of Rules, have become members of centralized service. Petitioner has also become the member of centralized service by operation of law. Therefore, I am of the firm view that the provisions of the U.P. Primary Agricultural Co-operative Credit Societies Centralized Rules, 1976 will apply in the present case and not the provisions of the U.P. Co-operative Societies Employees Service Regulation, 1975. Rule 29 of the Rule is:

29. Age of retirement. The age of superannuation of Members of centralized service shall be 58 years:

Provided that any member of the centralized service may be retired compulsorily after attaining the age of 50 years, if it is considered necessary so to do in public interest by the appointing authority by notice in writing for a period of three months" of pay in lieu thereof.

7. The age of retirement of the Petitioner, as it is apparent from the aforesaid Rule is 58 years and not 60 years.

8. In view of the aforesaid discussion, it is not open to the Petitioner to hold the post of Cadre Secretary which is one of the centralized post and contend that he will retire at the age of 60 years.

In this view, the writ petition fails and is dismissed.

No order as to costs.