
(1996) 02 AHC CK 0027
In the Allahabad High Court
Case No : C.M.W.P. No. 18966 of 1985

Shiv Narain Shukla

APPELLANT

Vs

District Assistant Registrar, Co-operative Societies and Others

RESPONDENT

Date of Decision : 24-02-1996

Acts Referred:

Citation : (1996) 2 UPLBEC 754

Hon'ble Judges : R.K. Mahajan, J;B.M. Lal, J

Bench : Division Bench

Advocate : M.C. Gupta, for the Appellant;

Final Decision : Allowed

Judgement

R.K. Mahajan, J.—This is a writ petition filed by the Petitioner seeking a writ, order or direction in the nature of certiorari quashing the impugned order dated 30.8.1985 (Annexure 3) to the writ petition) whereby the services of the Petitioner were terminated. The Petitioner also seeks a writ, order or direction in the nature of mandamus commanding the Respondent Nos. 1 to 3 to treat the Petitioner as in service as Accountant with Respondent No. 3 and to pay the salary of the Petitioner from March 1983 to May 1984 and of August 1985 and continue to pay his salary month to month during the pendency of the Petitioner.

2. The Petitioner was appointed on 16.12.1980 as Accountant with the Respondent No. 3, Badosa Kshetriya Sahkari Samiti Ltd., Badosa, district Banda and according to the Petitioner, he has been performing his duties satisfactorily and nothing has been communicated adverse to him. The Petitioner's grievance is that he has been terminated without conducting any enquiry under Regulation 85 of the U.P. Co-operative Societies Employees' Service Regulations, 1975 (hereinafter referred to as the Regulations) framed under the U.P. Co-operative Societies, Act, 1965. It is alleged that without conducting the enquiry, the punishment of termination could not have been inflicted under Regulation 84 of the aforesaid regulations framed under the Act. It is further averred that on 10th

September, 1985, the Petitioner has received an order dated 30th August, 1985 whereby he had been terminated on account of embezzling the amount and the termination order is thus void. It is also averred that the termination order is bad as no opportunity was given to him to defend and the approval of the Board was not taken as prescribed under the Regulations.

3. On the behalf of the Respondents, counter affidavit of Sri Dwarika Prasad Srivastava has been filed refuting the allegations made in the writ petition.

4. The petition is taken up in revised list. However, none appears for the Respondents. We have heard Sri Prabhat Agarwal, learned counsel for the Petitioner.

5. Having heard the learned counsel for the Petitioner and perused the Petitioner, we are of the view that in this case, there is violation of Regulation 85 regarding not giving opportunity to defend to the Petitioner. In this context, we would like to quote Regulations 84 and 85 with advantage as under:

84. Penalties. -- (i) Without prejudice to the provisions contained in any other regulations, an employee who commits a breach of duty enjoined upon him or has been convicted for criminal offence or an offence u/s 103 of the Act or does anything prohibited by these regulations shall be liable to be punished by any one of the following penalties:

(a) censure,

(b) withholding of increment,

(c) fine on an employee of Category IV (Peon, Chaukidar, etc.).

(d) recovery from pay or security deposit to compensate in whole or in part for any pecuniary loss caused to the co-operative society by the employee's conduct,

(e) reduction in rank or grade held substantively by the employee,

(f) removal from service, or

(g) dismissal from service.

(ii) Copy of order of the punishment shall invariably be given to the employee concerned and entry to this effect shall be made in the service record of the employee.

(iii) No penalty except censure shall be imposed unless a show-cause notice has been given to the employee and he has either failed to reply within the specified time or his reply has been found to be unsatisfactory by the punishing authority.

(iv)(a) The charge-sheeted employee shall be awarded punishment by the appropriate authority according to the seriousness of the offence:

Provided that no penalty under Sub-clause (e), (f), or (g) of Clause (i) shall be imposed without recourse to disciplinary proceedings.

85. Disciplinary proceedings. -- (i) The disciplinary proceedings against an employee shall be conducted by the Inquiring Officer (referred to in Clause (vi) below) with the observance of the principles of natural justice for which it shall be necessary that:

(a) the employee shall be served with a charge sheet containing specific charges and mention of evidence in support of each of charge and he shall be required to submit explanation in respect of the charges within reasonable time which shall not be less than fifteen days;

(b) such an employee shall also be given an opportunity to produce at his own cost or to cross-examine witnesses in his defence and shall also be given an opportunity of being heard in person, if he so desires;

6. Regulations 84 and 85 have to be read together since it was a termination and the foundation of the termination was embezzlement. We have also perused the annexures annexed with the writ petition as well as with the counter affidavit. From the perusal of Annexure CA-1 to the counter affidavit, it appears that Rs. 526.84 of the society had been spent by the Petitioner and he has undertaken to adjust the same.

7. The Court can always lift the veil to adjudge whether the termination is simpliciter or by way of punishment. The view of the Apex Court is that "where the Petitioner complains that the order of discharge was made with the object to punishing the Petitioner for some misconduct, the Court would go behind the terms of the order of discharge and examine all the attendant circumstances, in order to find out whether the form of the order was only a camouflage for an order of dismissal for misconduct, which could not be made without complying with Article 311(2)". See *Jarnail Singh v. State of Punjab* (1986) 2 UJ SC 235 (Paras 30-31); *Anoop Jaiswal Vs. Government of India and Another*, ; *Nepal Singh Vs. State of U.P. and Others*, .

8. The perusal of the record shows that the Petitioner was suspended and no enquiry had been conducted. This is also fatal. A person has legitimate expectation to have a fair procedure in the matter involving deprivation of his job which ultimately involves the question of livelihood and nobody can be deprived of job without following fair procedure and fair hearing prescribed under the law. The department should have taken the matter to logical conclusion by conducting enquiry and should not have left the matter in mid-stream. We hold that the impugned order is stigmatory and is permeated with civil consequences and there is complete violation of principles of natural Justice and as such, the impugned order is liable to be quashed and the Petitioner deserves to get all benefits.

9. In the result, the petition succeeds and is allowed. The impugned order dated 30.8.1995 contained in Annexure 3 to the writ petition, is hereby quashed. The Petitioner is entitled to get all the consequential benefits forthwith. In the circumstances of the case, there will be no order as to costs.