
(2018) 01 AHC CK 0003
In the Allahabad High Court
Case No : 30179 of 2016

Shobh Nath Singh

APPELLANT

Vs

State Of U.P. And 4 Others

RESPONDENT

Date of Decision : 12-01-2018

Acts Referred:

Citation : (2018) 01 AHC CK 0003

Hon'ble Judges : Siddharth

Bench : Single Bench

Advocate : Upendra Kumar Pandey, Om Prakash Dwivedi, Sujit Kumar Rai

Final Decision : Allowed

Judgement

1. Heard Sri Om Prakash Dwivedi, learned Counsel for the petitioner and Sri Sujit Kumar Rai, learned Counsel for the respondents.

2. The petitioner has filed above noted writ petition, praying for quashing of the order dated 28.04.2016, passed by the respondent no.2, Commissioner, Registrar, Cooperative, U.P., Lucknow, whereby, the representation of the petitioner, praying for arrears of difference of pay scale between the pay scales of cadre secretary of Cooperative Society and Cashier-cum- Clerk in District Cooperative Bank from 04.02.1992 upto 31.12.2004 has been rejected. The petitioner has further prayed that the aforesaid benefit of arrears of differences of pay scale of the two posts may be directed to be paid to him with interest of 18%.

3. The brief facts of the case are that the petitioner was initially appointed as Cadre Secretary in Cooperative Society in 1997 and was suspended on false allegation of misappropriation of Rs.72,115/- from Sadan Sahakari Samiti, Barhanganj, Azamgarh. The aforesaid suspension order was subjected to challenge before this Court by way of C.M.W.P. No.9868 of 1989 and it was stayed by the order dated 10.10.1990. Thereafter, no enquiry was conducted against the petitioner, and the petitioner continued working as Cadre Secretary in

the Cooperative Society.

4. By means of letter dated 30.01.1992, the respondent no.3, Member Secretary District Administrative Committee/ Secretary, General Manager, District Cooperative Bank, Azamgarh transferred and attached him in District Cooperative Bank, Mehnagar, Branch Azamgarh and he rendered his duty as Clerk-cum- Cashier there upto his date of superannuation on 31.12.2004.

5. Since the salary of the post of Clerk -cum- Cashier in the District Co-operative Bank is higher than the salary of Cadre Secretary in Co-operative Society, therefore, the petitioner is entitled to the difference in the salary of both the posts but despite repeated representations it was not paid to him. By the order dated 12.05.2003, this Court in Writ Petition No.20547 of 2003, filed by the petitioner directed the respondents to decide the claim of the petitioner, regarding the payment of arrears of different of salary of the 2 posts, since he has been paid salary of the post of Cadre Secretary only till the date of his superannuation. Thereafter, the petitioner filed another writ petition no.11538 of 2007 before this Hon?ble Court, which was dismissed directing the petitioner to approach the Labour Court. The petitioner approached before the Prescribed Authority under the Payment of Wages Act by filing an application and the claim was allowed but the employer challenged the order passed by the Authority under the Payment of Wages Act and this Court allowed the writ petition by the order dated 08.07.2014 holding that the Payment of Wages Act does not applies to the Employee of the Cooperative Society. Therefore, the petitioner again approached the respondent no.2 by means of representation dated 7.8.2014/09.08.2014, which was directed to be disposed off within a period of 3 months by the order dated 09.02.2016 passed by this Court in Writ Petition No.526/2016. In pursuance of the order dated 09.2.2016 of this Court, the respondent no.2 has rejected the representation of the petitioner and hence he has filed this writ petition against the order dated 28.04.2016, passed by the respondent no.2.

6. A Counter Affidavit has been filed on behalf of respondent no.3, Member Secretary District Administrative Committee/ Secretary, General Manager, District Cooperative Bank, Azamgarh stating that the petitioner was attached to the Branch of the District Coopeative Bank, just to conduct the disciplinary enquiry against him and he was never sent on deputation to the Bank and therefore he was not entitled to the salary of the Bank employee. The order passed against him is in accordance with law and requires no interference. It has been further stated that the petitioner was only attached and transferred to the Bank and he was never sent on deputation. It has been alleged that the petitioner has removed the word "not" mentioned before the word "deputation", in his transfer order, which has resulted in the change of sense in the sentence to the effect that his appointment is on deputation. Further allegation is that by doing this manipulation the petitioner has committed forgery before the Court.

7. Rejoinder Affidavit has been filed by the petitioner stating that the petitioner

was appointed as Cadre Secretary in 1977, but due to typological mistake it has been mentioned as 1997 in paragraph no.4. The petitioner has brought on record, the letter dated 26.04.1995 sent by the respondent no.3 to the District Government Counsel (Civil) Azamgarh, seeking his opinion about the payment to be made to the petitioner. He has admitted in the letter that the petitioner has worked as Cashier-cum- Clerk in the Bank from 04.02.1992 to 22.04.1994 in the Bank but in the paragraph no.8 of the Counter Affidavit contradictory stand has been taken. It has been further stated that the impugned order is cryptic and the finding that there is no evidence led by the petitioner that he was absorbed in the service of the Bank, is illegal, since the respondents themselves transferred him to the Bank.

8. The learned Counsel for the petitioner has argued that the respondents are not admitting his working in the Bank on deputation. This will not make any difference to his claim because there is admission of the respondents on record that in order to conduct fair enquiry into the charges of misappropriation against the petitioner, he was attached and transferred to the District Co-operative Bank, Mehnagar, Azamgarh and he worked on the post of Clerk-cum-Cashier since 1992 to 2004 i.e., upto his date of superannuation.

9. In the case of Umapati Chaudhary Vs. State of Bihar, (1994) 4 SCC 659" the Supreme Court clarified the legal position with regard to deputation as follows:- "Deputation can be aptly described as an assignment" of an employee (commonly referred to as the deputationist) of one department or cadre or even an organisation (commonly referred to as the parent department or lending authority) to another department or cadre or organisation (commonly referred to as the borrowing authority). The necessity for sending on deputation arises in public interest to meet the exigencies of public service. The concept of deputation is consensual and involves a voluntary decision of the employer to lend the services of his employee and a corresponding acceptance of such services by the borrowing employer. It also involves the consent of the employee to go on deputation or not."

In "D.M. Bharati Vs. L.M. Sud, 1991 Supp (2) SCC 162: AIR 1991 SC 940: 1991 Lab IC 423" wherein the Court was dealing with a case whether the employee had got a promotion in the department to which he was sent on deputation. While considering the effect of the said promotion after repatriation the Court observed thus: "7..... that the appellant's promotion as junior draftsman and proposed promotion as Surveyor-cum- Draftsman in the Town Planning Establishment cannot confer any rights on him in his parent department. When he left the Municipal Corporation and joined the Town Planning Establishment he was a tracer and he can go back to the Estate Department or any other department of the Municipal Corporation only to his original post i.e. as tracer, subject to the modification that, if in the meantime he had qualified for promotion to a higher post, that benefit cannot be denied to him."

Thus, the repatriation has to be to the original post and benefit of promotion in

the department to which an employee is deputed is of no consequence, subject to his entitlement of status otherwise available in the parent department.

In "Puranjit Singh Vs. UT of Chandigarh, 1994 AIR SCW 3892: 1994 Supp (3) SCC 471, AIR 1994 SC 2737 it has been held that when a deputation is repatriated he cannot claim promotions in the parent department on the basis of officiation in a higher post in the borrower organization.

In "State of Punjab Vs. Inder Singh, (1997) 8 SCC 372: 1998 Lab IC 133: AIR 1998 SC 7 the learned Judges elaborately adverted to the concept of deputation and the right of a deputation and in that context opined thus:

"18. The concept of "deputation" is well understood in service law and has a recognized meaning. "Deputation" has a different connotation in no help. In simple words "deputation" means service outside the cadre or outside the parent department. Deputation is deputing or transferring an employee to a post outside his cadre, that is to say, to another department on a temporary basis. After the expiry period of deputation the employee has to come back to his parent department to occupy the same position unless in the meanwhile he has earned promotion in his parent department as per the Recruitment Rules."

10. If the stand of the respondents in the Counter Affidavit that the petitioner was not on deputation is accepted, then the respondents are liable to treat the petitioner as employee permanently transferred and absorbed in the service of the District Co-operative Bank. His lien on the post of Cadre Secretary is considered to have come to an end, in case, the petitioner is treated as an employee, who is not in deputation from the post of Cadre Secretary of the Cooperative Society to the post of Clerk-cum- Cashier in the District Co-operative Bank.

11. The lien of an employee in the parent department is always protected, in case he is deputed outside his cadre and as soon as, he is repatriated to his parent department, his service outside the cadre becomes non-est. His officiation on the higher post, carrying better salary and emoluments, becomes in consequential after coming back to the parent department on the post whereon he has his lien.

12. In view of the clear stand of the respondents in their Counter Affidavit that the petitioner was never sent on deputation to the District Co-operative Bank, the only conclusion remains that the petitioner was permanently absorbed in the service of the Bank and therefore he is entitled to relief claimed in the writ petition.

13. In view of the above factual and legal position and the stand of the respondents that the petitioner was not sent to the District Cooperative Bank on deputation, the impugned order dated 28.04.2016, passed by the respondent no.2 is quashed. The respondent nos. 2 and 3 are directed to make the payment of the arrears of difference of pay scale between the posts of Cadre Secretary of

Cooperative Society and Cashier-cum-Clerk in Co-operative Bank from 04.2.1992 to 31.12.2004 to the petitioner with simple interest of 7% per annum within a period of two months from today.

14. The writ petition is allowed. No order as to costs.