
(1992) 05 AHC CK 0073
In the Allahabad High Court
Case No : C.M.W.P. No. 4982 of 1988

Subhash Chandra	Vs	APPELLANT
District Cane Officer and Others		RESPONDENT

Date of Decision : 22-05-1992

Acts Referred:

Uttar Pradesh Co-operative Societies Act, 1965 — Section 130, 365

Citation : (1992) 2 AWC 1265 : (1993) 1 LLJ 255

Hon'ble Judges : D.P.S. Chauhan, J

Bench : Single Bench

Advocate : M.C. Agrawal, A.K. Dwivedi and L.N. Dwivedi, for the Appellant; S.C. Shashi Nandan, for the Respondent

Final Decision : Dismissed

Judgement

D.P.S. Chauhan, J.—These 12 writ petitions posted for admission involve identical questions for determination. Counsel for the parties are also the same. Counter and rejoinder affidavits have been exchanged except in one writ petition. At the request of the counsel for the parties, writ petitions were heard on merits for being decided finally under the second proviso to Rule 2 of Chapter XXII, Rules of Court.

2. Brief facts leading to the petitions are—

(a) Sri Subhash Chandra, petitioner in Writ Petition No. 4982 of 1988, was deputed for completing the records of the Co-operative Cane Development Union Limited, Bijnor, by the District Cane Officer in the capacity as District Assistant Registrar, Cane Co-operative Society, Bijnor (for brevity, "the District Assistant Registrar"). He was deputed in exercise of the powers contained in Rule 365 of the U.P. Co-operative Societies Rules, 1968 (for brevity, hereinafter referred to as "the Rules") vide order dated March 11, 1988 on the remuneration as payable to a seasonal clerk. This order was cancelled by the District Assistant Registrar vide letter No. 2083 /C/Committee dated July 27, 1988, as finds mention in the

impugned communique letter No. 615/C dated October 26, 1988/ November 9, 1988 issued by the Secretary of the Co-operative Cane Development Union Limited, Bijnor, which is the subject matter of challenge in this petition.

(b) Sri Anil Kumar petitioner in Writ Petition No. 643 of 1989, was deputed for completing the records of the Co-operative Cane Development Union Limited, Bijnor, by the District Assistant Registrar, in exercise of powers under Rule 365 of the Rules, vide order dated October 9, 1987 on the remuneration as payable to a seasonal clerk. This order was cancelled by the District Assistant Registrar vide No. 2083/C/Committee dated July 27, 1988, as finds mention in the impugned letter No. 615/C dated October 26, 1988/November 9, 1988 issued by the Secretary, Co-operative Cane Development Union Limited, Bijnor, which is the subject matter of challenge in this petition.

(c) Sri Ram Prasad, petitioner in Writ Petition No. 1410 of 1989, was deputed for completing the records in the Co- operative Cane Development Union Limited, Bijnor, by the District Assistant Registrar, in exercise of power under Rule 365 of the Rules, vide order dated June 3, 1987 on the remuneration as payable to a seasonal clerk, which order was cancelled by him vide letter No. 2083/ C/ Committee dated July 27, 1988, which finds mention in the impugned communique letter No. 618 dated October 26, 1988/ November 9, 1988 issued by the Secretary, Cane Development Union Limited, Bijnor. This order is the subject matter of challenge in this petition.

(d) Sri Asambeer Singh, petitioner in Writ Petition No. 1412 of 1989, was deputed for completing the records in Co-operative Cane Development Union Limited, Najibabad, by the District Assistant Registrar, in exercise of power under Rule 365 of the Rules, vide order No. 2662/C dated August 7, 1986. The services of the petitioner was subsequently terminated on the basis that the season 1987 88 has come to an end vide order dated June 30, 1988 issued by the Secretary, Cane Development Union Limited, Najibabad. This order is the subject matter of challenge in this petition.

(e) Sri Brijendra Singh, petitioner in Writ Petition No. 1413 of 1989, was deputed for completing the records in the Co-operative Cane Development Union Limited, Bijnor, by the District Assistant Registrar in exercise of power under Rule 365 of the Rules vide order dated April 6, 1988, which was cancelled by him vide letter No. 2083/C/Committee dated July 2, 1988, as finds mention in the impugned communique No. 624/C dated October 26, 1988/November 2, 1988 issued by the Secretary, Co-operative Cane Development Union Limited, Bijnor, which is the subject matter of challenge in this petition.

(f) Sri Ranvir Singh, petitioner in Writ Petition No. 1415 of 1989, was deputed for completing the records in Co-operative Cane Development Union Limited, Najibabad by the District Assistant Registrar, in exercise of power under Rule 365 of the Rules, on the remuneration as payable to a seasonal clerk vide order dated May 1, 1987, which was cancelled by him vide order No. 2083/C/ Committee

dated July 27, 1988, as finds mention in the communique letter No. 610/C dated October 26, 1988/November 2, 1988 issued by the Secretary of the Co-operative Cane Development Union Limited, Najibabad, which is the subject matter of challenge in this petition.

(g) Sri Manvendra Pal Singh and Chandra Pal Singh, petitioners in Writ Petition No. 17234 of 1986, were appointed by the District Assistant Registrar, Co-operative Cane Development Union Limited, Bijnor, in the year 1970 as seasonal Payment Clerk (Cashier), as stated in para 1 of the petition. In this case, the services of the petitioners were terminated under the orders of the District Assistant Registrar No. 3920/2 I/Confidential dated October 7, 1986 as per communique issued by the Secretary, Cane Development Union Limited, Bijnor, dated October 8, 1986. In this case the petitioners have not filed their appointment order so as to disclose as to by whom they were appointed and under what powers. In this case, no counter affidavit has been filed by which correct facts could have been ascertained.

(h) Sri Subhash Chandra s/o Sri Chandrapat Singh, petitioner in Writ Petition No. 2827 of 1989, was deputed for completing the records of the Co-operative Cane Development Union Limited, Bijnor, by the District Assistant Registrar, in exercise of powers under Rule 365 of the Rules, on the amount as payable to a seasonal clerk, vide order No. 826/C dated March 19, 1988, which was cancelled by him vide order No. 2083/C/Committee dated July 27, 1988, as finds mention in the impugned communique dated October 26, 1988/November 2, 1988, which is the subject matter of challenge in this petition.

(i) Sri Devendra Kumar, petitioner in Writ Petition No. 2828 of 1989, was posted for completing the records of the Co-operative Cane Development Union Limited, Najibabad, by the District Assistant Registrar, in exercise of power under Rule 365 of the Rules on the remuneration as payable to a seasonal clerk, vide order No. 823/C dated March 19, 1988, which was cancelled by him vide letter No. 2083/C/Committee dated July 27, 1988, as finds mention in the impugned communique letter No. 625/C dated October 26, 1988/November 2, 1988 issued by the Secretary, Co-operative Cane Development Union Limited, Bijnor, which is the subject matter of challenge in this petition.

(j) Sri Yashwant Singh, petitioner in Writ Petition No. 2829 of 1989, was posted for completing the records in Co-operative Cane Development Union Limited, Bijnor, by the District Assistant Registrar, in exercise of powers under Rule 365 of the Rules, vide order dated April 21, 1988 on the remuneration as payable to a seasonal clerk, which was cancelled by him vide order No. 2083/C dated July 27, 1988, as finds mention in the impugned communique dated November 2, 1988 issued by the Secretary, Co-operative Cane Development Union Limited, which is the subject matter of challenge in this petition.

(k) Sri Satyendra Singh, petitioner in Writ Petition No. 4983 of 1989, was deputed for completing the records of the Co-operative Cane Development Union

Limited, Bij-nor, by the District Assistant Registrar, in exercise of powers under Rule 365 of the Rules, on the amount as payable to a seasonal clerk, vide order No. 824/C dated March 19, 1988, which was cancelled by him vide letter No. 2083/C/Committee dated July 27, 1988, as finds mention in the impugned communique No. 617/C dated October 26, 1988/November 2, 1988 issued by the Secretary, Co-operative Cane Development Union Limited, Bijnor, which is the subject of challenge in this petition.

(I) Sri Tej Pal Singh, petitioner in Writ Petition No. 1411 of 1989, was deputed for completing the records of the Co-operative Cane Development Union Limited, Bijnor, by the District Assistant Registrar, in exercise of his powers under Rule 365 of the Rules, on the remuneration as payable to a seasonal clerk, vide order No. 681-82 dated February 17, 1988, which was cancelled by him vide order No. 2083/C/Committee dated July 27, 1988 as finds mention in the impugned communique letter No. 609/C, dated October 26, 1988/November 2, 1988 issued by the Secretary of the Co-operative Cane Development Union Limited, Bijnor, which is the subject-matter of challenge in this petition.

3. That the position of the petitioners in all, the writ petitions except Writ Petn. No. 17234 of 1986, Manvendra Pal Singh v. District Cane Officer, and Writ Petition No. 1412/89 Asambeer Singh v. D.C.O. is identical as in these petitions the petitioners were deputed by the District Assistant Registrar in exercise of powers under Rule 365 of the Rules for the purposes of completion of the records and the order of deputation came to an end by an order passed by the District Assistant Registrar, and as such the cases of all these petitioners can be considered together, as they are founded on identical questions of facts and of law.

4. Heard the learned counsel for the petitioners, Sri M.C. Agrawal, and the counsel for the respondents, Sri Shashi Nandan.

5. Learned counsel for the petitioner submitted that -

(i) the services of the petitioners have not been terminated by the authority who appointed them; (ii) on having completed 240 days of service, the petitioners are deemed to have been regularised and are entitled to be confirmed and the order relating to determination of their services, without a speaking order, is illegal.

6. The first question relates to determination of services of the petitioners. The petitioners were deputed in the concerned co-operative society by the District Assistant Registrar under Rule 365 of the Rules, which is as extracted below:-

"365. The Registrar may, by an order in writing, direct a co-operative society to get any or alt of the account books and registers written up to such date in such form and within such time as may be specified in the order. In case of inability or failure on the part of the society to do so, the Registrar may depute any person to assist the Secretary of the society to have the accounts books and registers written up."

This rule does not create any post on which any appointment has to be made. Under this rule, a purpose is indicated and the purpose so indicated is to keep the account books and registers of the co-operative society written Up-to-date in the forms, as may be specified. The power is an enabling power and come into operation on the failure of the society to do so. The Registrar, under this rule, in the event of the failure of the society to complete its records, may depute any person to assist the Secretary of the Society to have the account books and registers written up. Thus, under this rule, the power is not regarding appointment of any person to any post, but the power is for deputing a person for the purpose of writing the account books and the registers of a co-operative society, which is a temporary purpose.

7. Accordingly, no person who has been deputed for writing the account books and registers in a co-operative society, can claim any right to continue. If in the order of appointment wrong description is given that will not have any adverse impact so far as the power of the Registrar under Rule 365 is concerned.

8. In the present case there is no dispute that the petitioners were not appointed under Rule 365 of the Rules. The fact, as stated in the petition, that the termination order has not been passed by the appointing authority of the petitioner, is denied in the counter affidavit. The impugned order itself discloses that the order regarding determination of the deployment has been done under the orders of the District Assistant Registrar.

8-A. Learned counsel for the respondents pointed out that the impugned order, in fact, is not the order whereby the deployment of the petitioners is determined but is only a communique regarding the order determining the deployment. In that communique so made to the petitioners, the fact regarding passing of the order is mentioned and the petitioners have not denied this fact and have not come forward to establish that the order determining the deployment has been passed by an authority other than the District Assistant Registrar.

9. In the circumstances, the submission as advanced by the learned counsel for the petitioner has no substance and deserves to be rejected.

10. Learned counsel for the petitioner submitted that the petitioners have completed 240 days of their services and they will be deemed to have become permanent and were entitled for being confirmed on the post. This submission has also no substance as the learned counsel for the petitioner has not been able to point out any provision of law which may create right in favour of a person serving in a co-operative society for entitling him for deeming right of regularisation. There is no such provisions whereunder any person can be deemed to have been regularised and as such a fiction cannot be created or accepted except through an authority of law. No authority of law has been pointed out. Since there is no deemed authority in favour of the petitioner, therefore, no question of their regularisation arises and when no right in favour of the petitioners, who have been deployed under Rule 365 of the Rules, is

created, they are not entitled to any relief. This point, thus, also fails.

11. So far as Writ Petition No. 17234 of 1986 is concerned, in this case in para 1 it has been stated that the petitioner has been appointed some time in the year 1970 as seasonal clerk (cashier) in the Co-operative Cane Development Union Limited, Bijnor. Though the averments are not clear, no order of appointment has been filed and it has not been disclosed as to who was the appointing authority of the petitioners. It is correct that the services of the petitioners in this writ petition have been terminated by the District Assistant Registrar as finds mention in the impugned communique issued by the Secretary, Co-operative Cane Development Union Limited, Bijnor, dated October 8, 1986 and, therefore, the case of the petitioners for want of adequate material and plea in the petition cannot be decided on merits. The District Assistant Registrar shall consider the matter on merits. In case his appointment is covered by Rule 365, then he will be governed by the view as has been taken with regard to other petitioners, as mentioned above, and, if it is not so, then they will decide the matter giving reasons within a month of presentation of a certified copy of this order.

12. Learned counsel for the petitioner relied upon a decision given by this Court in Writ Petition No. 22000 of 1988, Rajendra Singh v. District Cane Officer, Bijnor and Ors. This decision is not attracted in the present case as here the position is different. There is no dispute regarding the fact that the petitioners were deployed under Rule 365 of the Rules and order of deployment was determined by the District Assistant Registrar.

13. Learned counsel for the respondent relied upon a decision of this Court in Writ Petition No. 23303 of 1988, Gajendra Singh and Anr. v. District Cane Officer, Bijnor and others which is also not attracted in the present case, as the counsel for petitioner has not argued regarding applicability of the U.P. Cane Co-operative Service Regulations, 1975.

14. The other cases as relied upon by the counsel for the petitioner, which are -

(i) AIR 1966 628; (sic)

(ii) Moin Uddin and Others Vs. Dy. Director of Consolidation and Others, ;

(iii) The State of Orissa Vs. Madan Gopal Rungta, ;

(iv) Director of Endowments, Government of Hyderabad and Others Vs. Akram Ali, ;

(v) 1979 LabIC 426, have no bearing in the context of the present case.

15. So far as Writ Petition No. 1412 of 1989 is concerned, the position is different. The petitioner was appointed under Rule 365 of the Rules for completing the records of the Cane Development Union Limited Najibabad, by the District Assistant Registrar. The impugned order which is dated June 30, 1988 has terminated the services of the petitioner on the ground that the season 1987-88 has come to an end and his services were not required.

16. The Secretary, Co-operative Cane Development Union Limited, Najibabad, is not the appointing authority and as such he had no power to dispense with the services of the petitioner. The view taken in Writ Petition No. 22000 of 1988, *Rejendra Singh v. District Cane Officer, Bijnor and others*, is helpful to the petitioner. Thus, the impugned order dt. June 30, 1988 deserves to be quashed.

17. Under the circumstances, all the writ petitions are dismissed except

(i) Writ Petition No. 17234 of 1986 which is disposed of with the direction given above;

and

(ii) Writ Petition No. 1412 of 1989 which is allowed and the impugned order dated June 30, 1988 (Annexure 6 to the writ petition) is quashed.

18. There will no order as to costs.