
(1992) 01 AHC CK 0043
In the Allahabad High Court
Case No : C.M.W.P. 24269 of 1988

Surendra Nath Rai

APPELLANT

Vs

Managing Director, U.P. Co-op. Union and Others

RESPONDENT

Date of Decision : 27-01-1992

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1992) 2 AWC 910 : (1993) 3 LLJ 166 : (1992) 1 UPLBEC 479

Hon'ble Judges : M.L. Bhat, J

Bench : Single Bench

Advocate : S.C. Rai, for the Appellant; Triloki Nath, for the Respondent

Final Decision : Allowed

Judgement

Bhat, J.—In this writ petition the petitioner seeks directions in the nature of mandamus directing the respondents not to interfere with the continuous service of the petitioner and with live functioning of the petitioner on the post of Assistant Clerk. The petitioner seeks further directions for regularisation of his services.

2. The petitioner's case is that he was appointed as junior clerk in the pay scale of Rs. 354-550 in the office of Assistant Registrar Co-operative Societies, Ghazipur. Vide order dated 10.10.83 he is said to have joined his duties on 22.10.83 in the Regional Office at Moradabad. His appointment was ad hoc but the said appointment was continued from time to time and he was still in service. By a subsequent order the petitioner is said to have joined in the office of Assistant Registrar Co-operative Societies Deoria. He was actually transferred to Ghazipur where he joined on 23.7.88. The petitioner is said to have served continuously for more than 240 days in a calendar year. The petitioner's services cannot be, therefore, dispensed with without taking recourse under the provisions of law.

3. The petitioner's case is that he was not being paid salary since 19.9.88.

However, his juniors who were appointed subsequently to the petitioner's appointment are getting salary. He is said to have moved a representation also on 30.11.88 which was recommended by Assistant Registrar, Cooperative Societies, Ghazipur. Despite that the petitioner was not paid salary. The petitioner has not received any notice or any retrenchment compensation. The petitioner's services are liable to be regularised and he is entitled to get pay.

4. In their counter-affidavit, the respondents have submitted that the petitioner is not working as junior clerk at present. The petitioner's services were said to be ad hoc which could be terminated at any time without notice. The petitioner having worked continuously from 1983 is also disputed. However, the petitioner's appointment on ad hoc basis from time to time is admitted but the said appointment is said to be not continuous. Any order of the petitioner's retention in service by the District Registrar is not binding on the Higher Authorities. It is stated that the Industrial Disputes Act does not apply to the petitioner.

5. The respondents have filed supplementary counter also in which allegations raised by the petitioner in their rejoinder affidavit is denied. In the rejoinder-affidavit filed by the petitioner, it is stated that by an order dated 29.12.88, respondent No. 1 had extended the petitioner's service from 21.9.88 to 18.12.88. This order was filed as Annexure-S.R.A.-1 to the supplementary counter affidavit. It may be pertinent to mention here that the respondents have set up that the petitioner has not been in service from September, 1988. By this averment the petitioner wants to disprove that allegation. The petitioner is said to have been allowed to work upto 15.1.90. The District Assistant Registrar has written letters to the Managing Director on various dates intimating that the petitioner has worked on the post of clerk. It was also intimated by the District Assistant Registrar since no order for appointment of the petitioner has been received, therefore, the petitioner has not been paid salary although he was working on the post. After 18.12.88 the petitioner has not been paid salary. In support of his contention the petitioner has placed on record certain documents to show that he continuously remained in service upto 15.1.90. In his supplementary rejoinder-affidavit, the petitioner has stated that the allegations of the respondents about the discontinuance of the petitioner's service from September, 1988 are wrong. The petitioner is said to have worked with respondents as clerk from 22.10.83 to 15.1.90 without any break. If his services are terminated, the termination is in violation of Section 6-N of the U.P. Industrial Disputes Act. The petitioner also states that his services are entitled to be regularised and prays for the same.

6. Learned counsel for the respondents has stated that Section 6-N of the U.P. Industrial Disputes Act does not apply to the petitioner. He is not a workman within the meaning of Industrial Disputes Act. He has not pleaded that he was workman. Even if he is said to be a workman under the Industrial Disputes Act, the petitioner has remedy under the provisions of Industrial Disputes Act. In

support of his contention reliance is placed on an authority of this Court in Chandrama Singh v. Managing Director U.P. Co-operative Union, Lucknow and Ors. 1991 2 CLR 605 it was held that if Section 25 of the Central Industrial Disputes Act or Section 6-N of the State Act are violated, remedy is provided u/s 10 of the Central Act and Section 4-K of the State Act, consequently person aggrieved cannot invoke remedy under Article 226 of the Constitution of India unless he establishes that remedy of reference is not adequate and efficacious. On the basis of this authority it is contended that the petitioner's remedy lies elsewhere and he cannot invoke writ jurisdiction of this Court.

7. The petitioner is said to have been an employee of Federal Authority. The petitioner was only an ad hoc appointee. He could not be regularised because he was not selected by the Authority in accordance with regulations framed under the Act. It is stated that the Assistant Registrar had extended the time of his ad hoc appointment which was subsequently approved by the Managing Director. However, this is not borne out from the record. The Managing Director has himself extended the petitioner's services from time to time. It is also contended that unless the petitioner is selected in accordance with the provisions of Co-operative Societies Rules and the regulations framed therein, his services cannot be regularised.

8. I have heard learned counsel for the parties and considered the record also. Before going into merits of the case, it is necessary to decide the preliminary objection raised by learned counsel for the respondents about the maintainability of the writ petition under Article 226 of the Constitution of India.

9. It is true that Full Bench has held that if a workman governed by the provisions of Industrial Disputes Act is aggrieved against his retrenchment or if his retrenchment is in violation of provisions of law, he can claim remedy under the Industrial Disputes Act. Writ jurisdiction can be invoked only if he established that the remedy of reference under the Industrial Disputes Act is not efficacious. In the present case it is denied by the respondents that the petitioner was a workman or he was an employee under them. After having denied his status as an employee of the respondents or having a claim on the post, it would not be held that remedy of resorting to the provisions of Industrial Disputes Act is efficacious so far as the petitioner's rights are concerned. From going through the pleadings of the respondents, it appears that the Industrial Tribunal's jurisdiction also is sought to be challenged and the petitioner is practically forced to pursue the remedy under Article 226 of the Constitution of India. Had the respondents accepted the petitioner's claim that he was a workman working under them and provisions of Industrial Disputes Act would apply to him, the argument of learned counsel for the respondents could be considered. The very validity of the petitioner's appointment is challenged. It is doubtful whether the Industrial Tribunal could consider the validity or otherwise of the petitioner's appointment. It is also doubtful whether the Industrial Tribunal could consider the effect of the petitioner having rendered more than 240 days of service to the

respondents in a calendar year continuously from 1983 upto 15.1.90. For all these reasons it is necessary to consider all the aspects of the matter in Writ Jurisdiction and not to deny the rights of the petitioner to consider his case under Article 226 of the Constitution of India. Accordingly, the preliminary objection is overruled.

10. Coming to the merits of the case it is established that the petitioner was appointed on ad hoc basis in October, 1983. He was continued in service from time to time, according to the respondents upto September, 1988, but according to the petitioner upto 15.1.90. After his ad hoc appointment artificial breaks were given to his appointment and after giving such breaks his services were continued, which would show that the petitioner was continued in service and allowed to render services for more than 240 days in a calendar year. If he was discontinued subsequently according to the respondents, that would not affect the rights of the petitioner to seek the relief in this writ petition. In fact, the petitioner's case is squarely covered by a decision of Division Bench at Lucknow, of this Court. By their Judgment dated 3.3.89 in Grish Kumar Srivastava and Ors. v. U.P. Provincial Co-operative Federation and Ors., it was held in Writ Petition No. 588 of 1986 Shyam Nath Bajpai v. Administrator District Co-operative Bank Ltd, and Ors., that the petitioner was appointed as clerk in November, 1984 in the office of District Co-operative Bank, Hardoi on ad hoc basis for a period of three months. His appointment was extended from time to time. The petitioner had completed 240 working days during the preceding calendar year entitling him to the benefit u/s 6-N of the U.P. Industrial Disputes Act, failing which discontinuance of his services was invalid. The respondents were directed to treat the petitioner, in that case, as continuing in service with all benefits.

11. In another bunch of writ petitions decided by this Court on 11.10.91 in Anil Kumar Shori v. Rampur District Co-operative Bank Ltd. and Ors., it was held that the petitioners in those cases had rendered 240 working days in the preceding calendar year, therefore, they were entitled to the benefits of Section 6-N of the Industrial Disputes Act and their services could not be discontinued without complying with the provisions of the said Section. It was also held that if the petitioners have rendered three years continuous service, their services were entitled to be regularised under the regulations of 1985. Discontinuance of the petitioner's services were held to be bad and six petitions were allowed. Applying this authority itself to the petitioner's case, it becomes clear that the petitioner is entitled to get the relief and ii he has been discontinued from the service that discontinuance of his service, is legally bad and infirm.

12. Accordingly, the writ petition is allowed. The respondents are directed by a Writ of mandamus to treat the petitioner in continuous service and consider his case for regularisation of service as he has completed more than three years of continuous service with the respondents. The respondents are further directed to pay salary to the petitioner upto 15.1.90 since the date he has worked for the period for which the salary has remained unpaid. They are also directed to take

the petitioner back in service within one month from the date of presentation of a certified copy of this order before them. The petitioner's services can be dispensed with only after following the procedures established by law.

13. From 15.1.90 to the date of the petitioner's reinstatement he will not be entitled to get salary because he has not rendered any work. However, this period i.e. from 15.1.90 to the date of actual reinstatement of the petitioner, shall be counted for the purposes of his seniority alone as his services are to be regularised. The petitioner shall be deemed to be in service for that period, i.e. from 15.1.90 to the date of his actual reinstatement notionally only.

14. The petitioner shall be entitled to the costs of the writ petition.