

(1992) 01 AHC CK 0098
In the Allahabad High Court
Case No : Writ Petition No. 1414 of 1989

Surendra Singh

APPELLANT

Vs

District Cane Officer representing as Sahayak Nibandhak
Sakhan Ganna Samitiyan and Others

RESPONDENT

Date of Decision : 22-01-1992

Acts Referred:

Allahabad High Court Rules, 1952 — Rule 2
Constitution of India, 1950 — Article 226
Uttar Pradesh Cane Co-operative Service Regulations, 1975 — Regulation 34
Uttar Pradesh General Clauses Act, 1904 — Section 16

Citation : (1992) 2 AWC 874

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

Bench : Single Bench

Advocate : M.C. Agarwal, for the Appellant; Shashi Nandan, for the Respondent

Final Decision : Allowed

Judgement

D.P.S. Chauhan, J.—By means of this petition under Article 226 of the Constitution of India, the Petitioner has challenged the order dated 9-11-1988 (Annexure 6 to the writ petition) passed by the Secretary, Cooperative Cane Development Union Limited, Bijnor, whereby his services have been terminated. This order is sought to be quashed in the present petition. Since counter and rejoinder affidavits have been exchanged and there is no other party to be served. With the consent of the counsel for the parties and under the second proviso to Rule 2 of Chapter XXII of the Rules of Court, I consider it proper to dispose of this petition finally as the controversy involved in the present case is already settled in Writ Petition No. 19665 of 1989.

2. The case set up by the Petitioner is that he was appointed as Seasonal Clerk in the Cooperative Cane Development Union Limited, Bijnor, on 5-11-1988 by the District Cane Officer/District Assistant Registrar, Cane Cooperative Societies, Bijnor. Learned counsel for the Petitioner also stated that along with the Petitioner, another person, namely Sri Awadhesh Kumar Pandey, was appointed

in the same situation in which the Petitioner was appointed, but he has been retained in service and the services of the Petitioner have been terminated in an arbitrary manner.

3. Heard learned Counsel for the Petitioner and the learned Counsel for the Respondents Sri Shashi Nandan.

4. Learned Counsel for the Petitioner submitted that:

(i) the impugned order of termination of the services of the Petitioner has been passed in violation of the principles of natural justice and no opportunity was afforded to the Petitioner prior to termination of his services;

(ii) the termination was bad in view of Regulation 34 of the U.P. Cane Cooperative Services Regulations, 1975 (hereinafter referred to as "the Regulations") whereunder his services could be terminated either by the recruiting authority or by the appointing authority and, in the present case, the services of the Petitioner have not been terminated either by the recruiting authority or by the appointing authority, and as such the order terminating the services of the Petitioner is null and void; and

(iii) under regulation 34 of the Regulations, the services of the erstwhile employee are terminable either by one week's notice or with a week's salary in lieu thereof, but, in the case of the Petitioner, his services have been terminated in violation of Regulation 34, and he has neither been given any notice nor paid any salary in lieu thereof by the appointing authority.

5. The case of the Respondents is that another person, Sri Awadhesh Kumar Pandey's appointment was not on similar post as that of the Petitioner and that has no relevance or bearing so far as the case of the Petitioner is concerned.

6. Learned Counsel for the Petitioner could not satisfy regarding his argument that his case is similar to that of Sri Awadhesh Kumar Pandey and this submission accordingly has no substance and is rejected.

7. Learned Counsel for the Respondents has submitted that the appointing authority of the erstwhile clerk under the Regulations is the Cane Service Authority constituted under the Regulations which has provided for its constitution, but, since the Petitioner was never appointed by the Cane Service Authority, as such his services are not governed by the aforesaid Regulations and he is not entitled to claim any protection thereunder. The submission, as advanced by the counsel for the Petitioner, finds substance on perusal of the order of appointment. The Petitioner was appointed by the District Assistant Registrar, Cane Cooperative Societies, in exercise of the powers under Rule 365 of the U.P. Cooperative Societies Rules, 1968. Since the Regulations are not attracted in the case of the Petitioner, the third submission, as advanced by the counsel for the Petitioner, requires no consideration.

8. In the petition, there is no allegation that the Petitioner was appointed by the

Cane Service Authority but the appointment order, as filed with the petition, indicates that the Petitioner was appointed by the District Cane Officer/Assistant Registrar, Cane Cooperative Societies, Bijnor, in exercise of the powers under Rule 365 of the U.P. Cooperative Societies Rules, 1968. Learned Counsel for the Respondents contended that the Petitioner was appointed by the District Cane Officer in exercise of his powers as District Assistant Registrar, Cane Cooperative Societies, under Rule 365 of the aforesaid Rules, Rule 365 is as extracted below:

365. The Registrar may, by an order, in writing, direct a co-operative society to get any or all 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 account books and registers written up.

He also stated that the District Cane Officer, for the purposes of Rule 365, is the Registrar, Cooperative Societies, Regarding his states as Registrar, Cooperative Societies, I am not going to probe into the matter. I am proceeding assuming that he has been conferred powers u/s 3(2) of the U.P. Cooperative Societies Act, 1965. Under the aforesaid Rules, a procedure is laid down. The Registrar has to pass an order in writing directing the concerned cooperative society to get any or all the account books written up till such date and in such form as specified in his order. In the counter affidavit, there is no allegation that any such order was passed by the District Assistant Registrar, Cane Cooperative Societies, Bijnor The power to appoint a person comes in the event of failure to comply with the direction of the Registrar given to the concerned society and, in that event, the Registrar is empowered to depute any person to assist the Secretary of the Society to have the account books and registers written up. It does not mean that he has a power to appoint a person as a seasonal worker in the Cane Cooperative Society. In the present case, the District Assistant Registrar has overstepped his power. Since no body has challenged the validity of the appointment of the Petitioner, I am not expressing any opinion regarding his appointment whether it was valid or not.

9. From the impugned order, it is clear that the District Assistant Registrar, Cane Cooperative Societies, Bijnor, who is alleged to have appointed the Petitioner under Rule 365 of the aforesaid Rules, has not passed the impugned order of his termination. It has been passed by the Secretary, Cooperative Cane Development Union Limited, Bijnor, who is a stranger in the matter having no authority in law to pass such an order. The order is without jurisdiction and is void.

10. Learned Counsel for the Respondents tried to take the shelter u/s 16 of the U.P. General Clauses Act, 1904, which is extracted below:

16. Power to appoint to include power to suspend, dismiss or otherwise terminate the tenure of office:

Where, by any Uttar Pradesh Act, a power to make any appointment is conferred then, unless a different intention appears, the authority having for the time being power to make the appointment shall also have the power to suspend, dismiss, remove or otherwise terminate the tenure of office of any person appointed, whether by itself or any other authority, in exercise of that power.

This provision also does not come to his help as, according to the Petitioner, the appointing authority alone could have passed an order terminating the services of the Petitioner, as there is no other law which has empowered the Secretary, Cane Development Union Limited, Bijnor, in the matter. In the present case, the Petitioner was appointed by the District Cane Officer/District Assistant Registrar, Cane Cooperative Societies, Bijnor. From the material on record, it is apparent that the services of the Petitioner have not been terminated by the District Cane Officer/District Assistant Registrar, Cane Cooperative Societies, Bijnor or by any authority exercising the power of the District Assistant Registrar, Cooperative Societies, Bijnor, but the same has been passed by the Secretary, Cane Development Union Limited, Bijnor, and as such the order passed by an authority, having no authority in law, cannot be justified and cannot be allowed to stand. As already stated, such an order is void.

11. On the other aspects of the matter, as put forward by the learned Counsel for the Petitioner, I express no opinion, but it should not go unnoticed that no material has been placed before this Court to show that the requirement of Rule 365 has been complied with by the District Assistant Registrar, Cane Cooperative Societies, Bijnor, before passing the order of appointment of the Petitioner as seasonal workman.

12. Since in writ petition No. 19665 of 1989, I have already taken the view, as has been stated above, and the present case, on the facts and law, is not different, the Petitioner, in all fairness, is entitled to the same relief.

13. In view of what has been stated above, I consider it a fit case for interference under Article 226 of the Constitution of India.

14. The writ petition accordingly succeeds and is allowed, the impugned order terminating the services of the Petitioner dated 9-11-1988 passed by the Secretary, Cane Development Union Limited, Bijnor (Annexure 6 to the petition) is set aside. The Petitioner shall be entitled to his past employments. It would, however, be open to the concerned authority to act according to law, if it considers it expedient after considering the case of the Petitioner on merits. There will be no order as to costs.