

(1997) 11 AHC CK 0107

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 8197 of 1997

Surendra Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 13-11-1997

Acts Referred:

Citation : (1997) AWC 727 : (1998) 1 UPLBEC 280

Hon'ble Judges : S.H.A. Raza, J; R.A. Sharma, J; Bhagwan Din, J

Bench : Full Bench

Advocate : Ram Niwas Singh and Anirudh Pratap Singh, for the Appellant; S.C., Hari Ram Misra and S.K. Rai, for the Respondent

Final Decision : Dismissed

Judgement

R.A. Sharma and Bhagwan Din, JJ.—Heard learned Counsel for the petitioner as well as Sri H.R. Misra and Sri S.K. Rai, learned Counsel appearing for the respondents.

2. The petitioner, who was an Assistant Secretary of Sadhan Sahkari Samiti Limited, Majhgawan, Vikas Khand Rani Ki Sarai, was authorised to carry on the duties of the Secretary. By means of the impugned order, one Sri Hasai Ram, who belongs to Centralised Service and belongs to the cadre of Secretary, was appointed as the Secretary of the said Sadhan Sahkari Samiti. The said order has been assailed by the petitioner on the ground that the impugned order amounts to reversion, inasmuch as, the petitioner, who was holding the post of Secretary, has been reverted to the post of Assistant Secretary. The petitioner remained as Secretary for six years and the respondents have waived their right to demote him. The order impugned was passed without giving any opportunity to show cause and the same is non est. The petitioner was appointed on the post of the Secretary by the order of the Registrar, hence after completing six years of service, his services deserve to be regularised in accordance with the Regularisation Rules, meant for employees, working in the Cooperative Department. It was also contended that the petitioner had undergone the

training for the cadre post. Persons similarly situated i.e. Sarvshri Shobha Ram, Shiv Prasad Singh and Raghupati Singh, who were also sent for the training, have been retained as Secretary, while the petitioner was removed and thus, the order is discriminatory and arbitrary in nature.

3. The Rules regarding the appointment of a cadre Secretary of the Centralised Services under the U.P. Primary Agricultural Cooperative Credit Societies Centralised Service Rules, 1976 are contained in Part VII of the Rules, under the heading "recruitment". Rule-23 provides that no person shall be appointed on any post, included in the Centralised Service, unless he fulfils such conditions as may be prescribed in these Rules in respect of educational qualifications, age, experience and training.

4. Rule-24 deals with the appointment on any post in the Centralised Service shall be-

(i) by absorption in accordance with Rule-21 ;

(ii) by taking on deputation from the cadres of Co-operative Supervisors of Uttar Pradesh Co-operative Union and Inspectors Groups I and II of the Co-operative Department as provided in Rules 4 and 26 (2) ;

(iii) by direct recruitment; or

(iv) by promotion.

5. Rule-25 deals with direct recruitment, which is reproduced below :

"25. Direct recruitment-(1) All vacancies of posts of Category III and twenty percent of vacancies of posts of Categories I and II shall be filled up by direct recruitment by the Regional Committee. For this purpose the Committee shall ask for names of suitable candidates fulfilling the necessary conditions prescribed for the post from the District Employment Officer of all the districts of the region. The names to be asked for from the District Employment Officers shall be three time the number of vacancies to be filled. The Committee may also invite applications, of the employees of the Co-operative Societies and of the retrenched Co-operative Supervisors and Kamdars of the Uttar Pradesh Co-operative Union fulfilling the conditions prescribed under Rule 28 and otherwise eligible for the post through the District Assistant Registrar, Co-operative Societies of all the districts of the region, and by advertising the vacancies in at least two leading newspaper of the State.

(2) The recruitment shall be made by the regional Committee by holding written test and viva as may be prescribed by the Registrar, Cooperative Societies, Uttar Pradesh. The candidates shall be recruited with due regard to the representation of Scheduled Castes, Scheduled Tribes, the dependents of freedom fighters and the ex-servicemen of the Defence Forces as per orders issued by Government from time to time with regard to the representation of the classes in Government Service :

Provided that recruitment in the manner laid down above shall be made by a Selection Committee consisting of the following :

- (i) Deputy Registrar of the Region-Chairman.
- (ii) Chief Development Officer/District Development Office-Member.
- (iii) A nominee of the Registrar, Co-operative Societies, Uttar Pradesh--Member."

6. Rule-26 provides recruitment by promotion, which is quoted below :-

"26. Recruitment by promotion-(i) In accordance with the regularisations framed by the Authority with the approval of the Registrar, eighty per cent of the posts of Category I and II shall be filled up by the District Committee by promotion of the members of a category immediately below of the category, the posts, of which are to be filled up. The promotion shall be made on the principle of seniority subject to rejection of the unfit.

(2) The vacancies in the societies of Category I and II may, wherever necessary be filled up by the District Committee by appointment of Co-operative Supervisors made available by the Uttar Pradesh Co-operative Union or by appointment of the Co-operative Inspectors Group I and II made available by the Registrar, Co-operative Societies, Uttar Pradesh."

7. Rule-27 deals with the probation, which provides that a person recruited to the Centralised Service either by direct⁶ recruitment or by promotion shall be placed on promotion for a period of two years, which period may be extended by the District Committee for a further period of six months.

8. It is pertinent to mention here that the service, which the petitioner belongs, comes within category III, meaning theory that the recruitment by promotion, which is meant for Category I and II, shall not be applicable in the present context. This amply says that the recruitment and appointment on the Post of Secretary Category III can be only by direct recruitment or taking on deputation from the cadre of Co-operative Supervisors, U.P. Cooperative Union and Inspectors Group-I and II of the Cooperative Department, as provided in Rules 4 and 26 (2).

9. The appointment on category III can also be made by absorption, if the existing employees of the Societies have been taken provisionally on the strength of the Centralised Service, shall be finally absorbed in the said Service after their screening arranged in accordance with the instructions issued by the Registrar, Cooperative Societies, in this behalf, as provided under Rule 21.

10. The contention of the petitioner that the petitioner has been reverted, is totally misconceived. The nature of the appointment of the petitioner was neither in the nature of ad hoc appointment, nor officiating or permanent one. He was authorised to carry on certain duties of the Secretary. He was never appointed as Secretary. He could never be appointed as Secretary, because his substantive post is of the Assistant Secretary and he does not come within the field of

eligibility, meaning thereby that he does not belong to the centralised cadre and was not recruited as such in accordance with the provisions contained in Part VII of the Rules, quoted above.

11. A person, who is authorised to carry on some additional work, carries no right, no lien and is not entitled for any pecuniary benefits for doing certain extra work.

12. As far as the contention of the petitioner that the petitioner carried on the work of Secretary for six years and now the authorities are estopped from demoting him, is untenable. What we could understand from the submission, is that the effort of the Counsel of the petitioner is to pursue us to follow the doctrine of promissory estoppel or legitimate expectation. Both these doctrines are not applicable in the present case, because there cannot be promissory estoppel against law. There cannot be legitimate expectation without an authority of law.

13. The question of giving any reasonable opportunity or show cause in the instant case, does not require a detailed discussion, as it has no substance. The petitioner was only authorised to carry on, or to shoulder the responsibilities of the Secretary, having no lien on the post and as a person, belonging to the cadre of the Secretary has been appointed in his place, hence no notice was necessary. If the persons, similarly situated in other Sadhan Sahkari Societies, are still allowed to work as Secretary, it also cannot be a ground for intervention. One wrong does not carry with it a substantive right. Further more, the process of recruitment for the post of Cadre Secretary is an arduous one. It takes considerable time and when batches are recruited, the appointments are made in batches. We take judicial notice of the fact that in several Sadhan Sahkari Societies cadre Secretaries are not available. While sitting at Lucknow Bench, one amongst us (Justice S.H. A. Raza) has directed the respondents to complete the process of recruitment of Cadre Secretary to avoid influx of such writ petitions before this Court. May be due to shortage of the available cadre, certain persons like Accountants or Assistant Secretaries are allowed to work as Secretary of the Sadhan Sahkari Societies, but it does not give them any right to make a claim to the post of Cadre Secretary.

14. In view of the abovesaid discussions, we are not inclined to interfere. The writ petition is devoid of merit. It is accordingly dismissed.