

(1977) 04 AHC CK 0039

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 235 of 1977 connected with Civil Miscellaneous W.P. No's. 224, 232 and 240 of 1971

Udai Bir Singh

APPELLANT

Vs

The District Assistant Registrar, Co-operative Societies, Etah
and Others

RESPONDENT

Date of Decision : 29-04-1977

Acts Referred:

Citation : AIR 1977 All 395

Hon'ble Judges : C.S.P. Singh, J;B.N. Sapru, J

Bench : Division Bench

Advocate : D.P.S. Chaube, for the Appellant; M.S. Nagi and J.N. Dubey, for the Respondent

Final Decision : Dismissed

Judgement

C.S.P. Singh, J.—These petitions, raise a common question of law as to whether the administrative directions issued by the U. P. Co-operative Institutional Service Board have binding efficacy before Regulations regarding recruitment, emoluments, terms and conditions of service, disciplinary control etc. of servants of Co-operative Societies are framed.

2. The circumstances in which the present dispute arises may be shortly stated. In Writ Petition No. 235 of 1977, the petitioner was appointed on 9-12-1972 by the President of a Bank, which appointment was approved by the Committee of Management later on. An administrator was appointed for the Bank, who by the order dated 18-12-76 terminated services of the petitioner on the ground that the U. P. Government had constituted the U. P. Co-operative Institutional Board by Notification No. 366/C/12 P-3-36-71 dated 4-3-1972 which alone had been empowered to select suitable candidates for appointment by the committee of management, and as the petitioner had not been selected by the Board which had been functioning from 25-7-72, the petitioner's appointment was illegal. The Administrator while passing the order relied on the directions of the Sewa Mandal

(Board) contained in its letter No. 134/Mandal/76 dated 23-7-76 which directed that all appointments made after 25-7-72 of candidates who had not been selected by the Mandal, be terminated. In writ petition No. 232 of 1977, the petitioner was appointed on 9-12-1972 and his services were terminated by the Administrator on 18-12-1976 on the same ground. In Writ Petition No. 240 of 1977, the petitioner was appointed on the same date and his services were also terminated on 18-12-1976 by the Administrator on the same ground. In Writ Petition No. 224 of 1977 the petitioner was promoted on 13-11-1972 and he was reverted on 18-12-1976 on the same ground. Section 122 of the U. P. Co-operative Societies Act 1965 (hereinafter referred to as the Act) contemplates the constitution of an authority to control the employee of the Co-operative Society. This provision runs as under:

"122. Authority to control employees of co-operative societies. (1) The State Government may constitute an authority or authorities, in such manner as may be prescribed, for the recruitment, training and disciplinary control of the employees of co-operative societies, or a class of co-operative societies and may require such authority or authorities to frame regulations regarding recruitments, emoluments, terms and conditions of service including disciplinary control of such employees and, subject to the provisions contained in Section 70, settlement of disputes between an employee of a co-operative society and the society.

(2) The regulations framed under Sub-section (1) shall be subject to the approval of the State Government and shall, after such approval, be published in the Gazette and take effect from the date of such publication and shall supersede any regulations made u/s 121."

In exercise of powers conferred by the section, the State Government by Notification dated 4-3-1972 constituted the U. P. Co-operative Institutional Service Board. Paragraph 1 of the order sets out the constitution of the Board. Paragraph 2 prescribes the terms of office of the Chairman and the Members. Paragraph 3 provides for the appointment of a secretary. Paragraph 4 for emolument of the Chairman, Members and the staff. Paragraph 5 provides for the Chairman and Members ceasing to hold office in certain contingencies. Paragraph 6 for the removal of the Chairman or the members by the State Government on certain grounds. Paragraph 7 for the Board to undertake the job of training of employees only after prior permission from the State Government. Paragraph 9 for the framing of Rules of business. Paragraph 10 of this Order is relevant and it says:--

"The Board shall frame regulations regarding recruitment, emoluments, terms and conditions of service including disciplinary control within three months of its constitution."

At the initial stage of the argument, there was dispute as to whether the personnel of the Board had been appointed by the State Government. However,

during the course of argument, it became clear that the personnel of the Board had been appointed as from 22-7-1972. It however, transpires that the Board did not frame any Regulations as envisaged by the order constituting it till 3-7-1973, when it framed U. P. Co-operative Societies Employees Service Regulation 1973. During this period, it issued executive orders, one such being issued on 22-7-1972. Paragraph 3 of this order laid down that appointments to all posts of Co-operative Societies would be made by the Mandal i.e. the Board. Paragraph 25 (b) of the. Order prohibited promotions without the prior approval of the Board. In the present case, it is not disputed that the approval of the Board for promotion or for appointment was not taken qua the petitioners and none of the petitioners were selected by the Board. Counsel for the petitioner has, however, urged that inasmuch as the Board had not framed Regulations as contemplated by Section 122 extracted above, and Paragraph 10 of the order dated 4-3-1972 already extracted, it could not impose fetters on the Co-operative Society to make appointments and promotions in accordance with the bye-laws. It was contended that the appointments in the present case had been made strictly in conformity with the bye-laws of the Society and the Rules, and as such the petitioners' services could not be terminated or one of the petitioners reverted, on the ground that they were made contrary to the executive directions issued by the Board. Our attention was drawn to Section 130 which confers power on the State Government to frame Rules. In exercise of that power, Rules have been framed by the State Government known as U. P. Co-operative Societies Rules 1968. Rule 15 provides for matters to be covered by bye-laws and makes them subject to the provision of the Act and the Rules. The bye-laws cover amongst others, appointments, suspensions etc. and are made subject to the provisions of Regulations framed under Sections 121 and 122. Counsel contended that inasmuch as the Rule 15 (xviii) makes the bye-law subject only to Regulations framed u/s 122, till such time that Regulations have not been framed, the Co-operative Societies enjoyed untrammelled power conferred on them by the bye-laws. This argument overlooks the fact that Rule 15 in the opening" part makes the bye-laws subject to the provisions of Section 122. Section 122 empowers the State Government to set up an authority for recruitment, training etc. of employees of Co-operative Societies. In the present case, such a Board has been constituted by the order dated 4-3-1972. Thus as soon as the Board was constituted u/s 122, the bye-laws of the Co-operative Societies in so far as they relate to appointments etc. became subject to the overriding control of the Service Board. The question as we have seen earlier is as to whether the Board in the absence of Regulations could restrict or regulate appointments and promotions. Our attention has been drawn to the decision of a learned Single Judge of this Court in Writ Petn. No. 557 of 1973, Balgovind v. Zila Sahkari Bank Ltd.. Unnao (decided on 23-5-1975) wherein it was held that the Board could even in the absence of Regulations issue administrative directions consonant with the purpose for which it was constituted. We have already adverted to the administrative direction on the point earlier. Apart from the Single Judge decision, there is high authority for the proposition that a statutory power is not

kept in abeyance merely on account of the fact that Regulations envisaged by the Act conferring such a power have not been framed. In *Mysore State Road Transport Corporation Vs. Gopinath Gundachar Char*, , one Gopi Nath was promoted as a statistical superintendent by the General Manager of Mysore State Road Transport Corporation. Thereafter, the General Manager of the Corporation issued a notice inviting applications for appointment of Class II junior posts of assistant/divisional statisticians. Gopinath then filed a petition in the High Court Mysore claiming that the Corporation had no power to issue the notice. The Corporation had been constituted under Road Transport Corporations Act 1950. Section 14 of the Act empowered the Corporation to appoint such officers and servants as it considered necessary for the efficient performance of its functions. Section 14 (3) provided that the conditions of appointments and service and the scales of pay of the officers and servants of a Corporation shall as respects the Chief Executive Officer or General Manager and the Chief Accounts Officer be such as may be prescribed and as respects the other officers be determined by Regulations made under the Act. Section 45 entitled the Corporation to frame Regulations with the previous sanction of the State Government so as not to be inconsistent with the Act and Rules made thereunder. No Regulations had been framed by the Corporation as envisaged by Sections 14 and 4.5 of the Act. The Mysore High Court had held that till such time Regulations were not framed by the Corporation, the Corporation could not appoint officers and servants and lay down their condition of service. This view did not find favour with their Lordships of the Supreme Court and was dissented from in the following words:--

"But until such regulations are framed or directions are given, the Corporation may appoint such officers or servants as may be necessary for the efficient performance of its duties on such terms and conditions as it thinks fit. There is necessarily a time lag between the formation of the Corporation and the framing of regulations u/s 45 (2) (c). During the intervening period, the Corporation must carry on the administration of its affairs with the help of officers and servants. In the absence of clear words, it is difficult to impute to the legislature the intention that the Corporation would have no power to appoint officers and servants and fix the conditions of service unless the regulations u/s 45 (2) (c) are framed."

Similarly, in the case of *T. Cajee Vs. U. Jormanik Siem and Another*, , Regulations had not been framed although envisaged by the Act. yet it was held that appropriate orders could be passed till such time that the Regulations were not formally framed. It was observed on page 281 of the Report as under:--

"The administration could only be carried on by officers like the Siem or chief and others below him, and it seems to us quite clear, if the administration was to be carried on, as it must, that, the Governor in the first instance and the District Councils after they came into exigence, would have power by virtue of the administration being vested in them to appoint officers and others to carry on the administration. Further once the power of appointment falls within the power of administration of the district the power of removal of officers and others so

appointed would necessarily follow as a corollary. The Constitution could not have intended that all administration in the autonomous district should come to a stop till the Governor made regulations under paragraph 19 (1) (b) or till the District Council passed laws under para 3 (1) (g). The Governor in the first instance and the District Councils thereafter were vested with the power to carry on the administration and that in our opinion included the power to appoint and remove the personnel for carrying on the administration. Doubtless when regulations are made under para 19 (1) (b) or laws are passed under para 3 (1) with respect to the appointment or removal of the personnel of the administration, the administrative authorities would be bound to follow the regulations so made or the laws so passed. But from this it does not follow that till the regulations were made or the laws were passed, there could be no appointment or dismissal of the personnel of the administration. In our opinion, the authorities concerned would at all relevant times have the power to appoint or remove administrative personnel under the general power of administration vested in them by the Sixth Schedule. The view therefore taken by the High Court that there could be no appointment or removal by the District Council without a law having been first passed in that behalf under para 3 (1) (g) cannot be sustained."

Counsel for the petitioner contended that these cases are distinguishable as in those cases, in case the view had been taken that the functions could not be discharged till such time that the Regulations had been framed, it would have resulted in administrative chaos, while in the present case no such situation arises. We are not impressed by this argument, We have already extracted the relevant passages which contain the reason for taking the view that the statutory power can be exercised even though no regulations have been framed, as there is always a time lag between the constitution of the authority and framing of Regulations by it. The power to issue administrative directions and to make appointment of personnel by a statutory authority was also upheld by the Supreme Court on the ground that when an administrative power is conferred by a statute, it carries with it the power to appoint or remove administrative personnel under the general power of administration vested in it. In the present case the power of the Board is administrative, and after the constitution of the Service Board, the power which the Societies enjoyed under the bye-law becomes subservient to the power conferred on Board u/s 122, and the Board could once they were invested with the power u/s 122, issue administrative directions for the effective exercise of that power till such time that Regulations were not framed. Counsel drew our attention to Section 31 of the Act which deals with the appointment of a Secretary and his emoluments etc. We are, however, not concerned in this case with the appointment of Secretary and as such it is not necessary to consider as to whether in the case of Secretaries, the Service Board could issue administrative directions so as to bind Societies in respect of appointments and removal etc. of Secretaries. This being so, no useful purpose would be served in this case in considering as to whether Section 31 curtails the rights of the Service Board constituted u/s 122 of the Act, as respects

Secretaries of Co-operative Societies.

3. In view of the conclusions arrived at above, these petitions fail and are dismissed. There shall be no order as to costs.