

(1996) 05 AHC CK 0015
In the Allahabad High Court
Case No : Special Appeal No. 134 of 1991

Vaqil Mishra

APPELLANT

Vs

District Administrative Committee, U.P. Co-operative
Societies Centralised Service and Others

RESPONDENT

Date of Decision : 24-05-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1996) 05 AHC CK 0015

Hon'ble Judges : D.P. Mohapatra, C.J.;Sudhir Narain, J

Bench : Division Bench

Advocate : H.N. Tripathi, for the Appellant; A.K. Misra, for the Respondent

Final Decision : Dismissed

Judgement

D.P. Mohapatra, C.J.—Feeling aggrieved by the judgment rendered by a learned single Judge of this Court on 8th October, 1991 in Civil Misc. Writ Petitions No. 3665 of 1991, 3480 of 1991, 3481 of 1991, 3509 of 1991, 3482 of 1991 and 134 of 1991 both the parties in the cases have filed Special Appeals assailing the judgment. The operative portion of the judgment reads as follows:

In view of the above discussion Writ Petition No. 134 of 1991 falls and is dismissed. In so far as Petitions No. 3665 of 1991, 3480 of 1991, 3481 of 1991, 3509 of 1991, 3482 of 1991 are concerned, they are allowed. The Respondent are directed to offer appointment to the Petitioners Shiv Kumar, Bhagwati Prasad, Shesh Nath Singh, Ram Brikash Verma and Ram Asrey on the basis of the selection list prepared by the Selection Committee in its meeting held on 12.4.1984 under Rule 25 of the Rules against the existing or future vacancy. The parties are directed to bear their own costs.

While Special Appeal No. 134 of 1991 has been filed by Vaqil Mishra, the Petitioner in Writ Petition No. 134 of 1994 the remaining Special Appeals have been filed by the opposite parties in the cases, that is, Writ Petitions No. 3665 of

1991, 3480 of 1991, 3481 of 1991, 3509 of 1991 and 3482 of 1991. District Administrative Committee, U.P. Co-operative Societies Centralised Service, Gorakhpur, Member-Secretary, District Administrative Committee/District Assistant Registrar, Co-operative Societies, Gorakhpur and the Deputy Registrar, Co-operative Societies, U.P., Gorakhpur, against the order allowing the writ petitions.

2. The core question that falls for determination in all the cases is whether the writ Petitioners are entitled to be appointed as Secretaries of the Primary Agricultural Co-operative Societies (shortly referred to as Primary Societies) on the basis of the select list prepared by the District Committee without any approval of the State Cadre Authority? If the question is answered in the affirmative, then it is to be further considered whether the learned single Judge is right in holding that Vaqil Mishra, Appellants in Special Appeal No. 134 of 1991, was not entitled to the relief granted to other writ Petitioners, or to put it differently, whether his case is separate and distinguishable from other writ Petitioners. It may be stated here that the case of the opposite parties is that though the writ Petitioners were included in the select list prepared by the District Committee, the said list was never approved by the State Cadre Authority and therefore, they could not claim appointment on the basis of inclusion in the select list.

3. The factual back-drop of the case, on which there is no dispute, may be stated thus. The posts for which the Petitioners were selected were all in respect of Category 4 Primary Societies. The post of Secretary is included in the Centralised Service. On being selected by the Selection Committee, the names of the writ Petitioners found place in the list of 35 candidates selected for appointment. Since no appointment orders were issued to them, the writ Petitioners filed writ petitions seeking a writ of mandamus to the opposite parties to issue appointment letters in their favour. It is the case of the writ Petitioners that the recruitment was made in terms of Rule 25 of the Uttar Pradesh Primary Agricultural Co-operative Credit Societies Centralised Service Rules, 1976 (for short the Rules), which makes no provision for approval of the select list prepared by the Selection Committee. Therefore, submit the writ Petitioners, the opposite-parties were clearly in error in declining to issue appointment orders to them on the plea of want of approval of the State Cadre Authority.

4. The gist of the case of the opposite-parties is that recruitment of the writ Petitioners for the post of Secretary was made under the order issued by the Registrar, Co-operative Societies, U.P. dated 16.4.1981 (Annexure C.A.-1) and not under Rule 25. In the said order of the Registrar, it is specifically stated that on the select list prepared by the Selection Committee being approved by the State Cadre Authority, appointments will be made in the available vacancies. Alternatively, the opposite-parties have pleaded that in case the recruitment is held to have been made under Rule 25, then the condition prescribed therein that a candidate must appear in a written test has not been fulfilled by the writ

Petitioners. Therefore, submit the opposite-parties, viewed from any angle the writ Petitioners' claim of appointment as Secretaries of Primary Societies is not tenable in law.

5. To complete the narration of facts, it may be stated here that in so far as the case of Vaqil Mishra, the Appellants in Special Appeal No. 134 of 1991, is concerned, the learned single Judge declined to grant relief to him for the reason that he had been appointed Secretary in 1986 on an ad hoc basis, but was reverted to his substantive post on grounds connected with misconduct involving misappropriation of funds. In the circumstances, the learned single Judge held the view that it would not be proper to issue a writ under Article 226 of the Constitution in his favour.

6. The contention raised on behalf of Vaqil Mishra is that the observation of the learned single Judge is wholly without any basis inasmuch as the writ Petitioner was not promoted as Secretary, but he was kept in charge of the said post for a short period. In the writ petition he was claiming appointment on the basis of his selection in the direct recruitment for the post of Secretary in respect of which the short term arrangement made in the Department was not relevant. On the pleadings of the parties and contentions raised on their behalf, the gist of which has been noted above, the question formulated earlier arises for consideration.

7. For the proper appreciation and adjudication of the dispute raised, it will be convenient and helpful to note some relevant provisions of the U.P. Co-operative Societies Act, 1965 (for short the Act) and the Rules. Section 122 of the Act makes provision for centralisation of certain services. In Sub-section (1) thereof, it is provided, inter alia, notwithstanding anything contained in the Act the State Government may by rules provide for the creation of one or more service of such employees of such co-operative societies or class of co-operative societies as the State Government may think fit, common to such co-operative societies and prescribe the method of recruitment, appointment, removal and other conditions of services of persons appointed to any such service. In exercise of the powers conferred by Section 122, the Governor of Uttar Pradesh framed the Rules. Part VII of the Rules contains provisions regarding recruitment. In Rule 23, it is laid down that no person shall be appointed on any post included in the Centralised Service unless he fulfils such conditions as may be prescribed in the Rules in respect of educational qualifications, age, experience and training. Rule 24 provides for appointment on any post included in the Centralised Service either by the direct recruitment or by promotion. Rule 25, which is very material for the purposes of the present case, is quoted hereunder:

25. Direct Recruitment.-All vacancies in the Societies of Category IV 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 Officers of all the districts of the Region. The names to be asked for shall be three times of the number of vacancies to be filled. The recruitment shall be made by the Regional

Committee by holding a written test and viva as may be prescribed by the Registrar, Cooperative Societies, U.P. (emphasis supplied). The candidates shall be recruited with due regard to the representation of Scheduled Castes, Scheduled Tribes and the dependents of freedom fighters as per order issued by Government from time to time with regard to the representation of these 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) Additional District Magistrate (Planning)

District Planning Officer of the district ... Member

(iii) A nominee of the Registrar Co-operative Societies, U.P. ... Member.

This rule was amended with effect from 8th June, 1984. Concededly, the amendment was prospective in character. The recruitment in the present case having been made in April, 1984, the amended Rule has no application to the case. However, it may be stated here that the only major change made in the amended Rule is to the effect that Category IV society has been abolished and included in Category III. It is not disputed before us that there is no specific provision in the Act and the Rules empowering the Registrar or any other authority to grant exemption or make an exception from the Rules in case of any particular recruitment. Therefore, the position that is manifest is that the recruitment is to be made in accordance with the provisions of the Rules, particularly provisions of Rule 25.

8. That brings us to the question whether the provisions of Rule 25 have been fulfilled in the case of recruitment of the writ Petitioners. It is not in dispute that the writ Petitioners possess the eligibility qualifications prescribed under the Rules for the post of Secretary, but the requirement of the Rules that the recruitment shall be made by the Regional Committee by holding a written test and viva as may be prescribed by the Registrar Co-operative Societies has not been satisfied by the Petitioners. Indisputably, the Selection Committee did not hold any written test and the selection was made only on the basis of viva voce. The learned single Judge has answered this question in favour of the writ Petitioners holding that the expression "written test and viva" should be read as written test or viva as may be prescribed by the Registrar, Co-operative Societies, U.P. His further finding in this regard is that since the Registrar by his order dated 16.4.1981 prescribed only viva voce test for the recruitment in question, the Selection Committee cannot be faulted for not having held a written test and the writ Petitioners cannot be denied benefits of the selection. The question is whether the interpretation of the Rule made by the learned single Judge is correct? The specific reason stated in favour of the view taken by the learned single Judge is that Rule 25 is an enabling provision and in that context,

and" should be read as "or". No doubt, at times and" may mean "or" and vice versa. In a statutory provision, the interpretation depends on the context in which the word is used, meaning that the provision conveys and the necessity for such interpretation for the purposes of carrying out the intent and purpose of the statute/rule. In the present case, neither it is stated in the judgment of the learned single Judge nor has our attention been drawn by the Counsel for the writ Petitioners to any provision in the Rules from which it is clear that in the context of things "and" means "or" in Rule 25. In this connection, it is necessary to consider what is meant by the expression "as may be prescribed by the Registrar, Co-operative Societies, U.P. On a first look, it may give an impression that the Registrar is vested with the discretion to prescribe either written test or viva. But on a closure look at the provision and scrutiny in the context of intent and purpose of the Rule, it is our considered view that the expression means and connotes that the Registrar will prescribe the mode and manner of holding the written test and viva, that is, the marks for which the written test and viva will be held, the subjects, the papers and the standard of written test, etc. The Rule does not make any provision vesting discretion in the Registrar to dispense with one of the examinations, either written test or viva, in a recruitment. Accepting such a contention is likely to lead to an anomalous situation whereupon in a particular recruitment, the Registrar may insist upon both, written test and viva; whereas on another occasion for recruitment for similar post, he may dispense with one of the tests. Then there would be no uniformity of standard of selection of candidates and the main purpose for recruitment, which is to select most meritorious candidate, must be frustrated. Further, there is no provision in the Rule on what basis and the manner in which the discretionary power of the Registrar will be exercised. Such discretionary power of the Registrar will be totally unguided, unbridled and will lead to arbitrariness.

9. For the aforementioned reasons, we are unable to persuade ourselves to accept the reasoning of the learned single Judge in interpreting the expression "and" as "or" in Rule 25. The position that follows is that since the Selection Committee did not hold any written test, the selection was not in accordance with Rule 25 and consequently, the writ Petitioners are not entitled to any benefit on the basis of such illegal selection. It follows that all the writ petitions are liable to be dismissed.

10. If any authority in support of the view taken by us is needed, we may notice the decisions of the Apex Court in the cases of Sri Nasiruddin Vs. State Transport Appellate Tribunal, and State (Delhi Administration) v. Puran Mai AIR 1985 SC 741.

11. Accordingly, Special Appeals No. 186 of 1991, 187 of 1991, 188 of 1991, 189 of 1991, 190 of 1991 and 191 of 1991 are allowed, the judgment of the learned single Judge, in so far as it relates to Writ Petitions No. 3665 of 1991, 3480 of 1991, 3481 of 1991, 3509 of 1991 and 3482 of 1991 is set aside and the writ petitions are dismissed. Special Appeal No. 134 of 1991 is dismissed. Parties

shall bear their respective costs in all the cases.