
(2012) 11 AHC CK 0115
In the Allahabad High Court
Case No : Writ Petition No. 1177 (S/B) of 2012

Vishwa Bharti Arya

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 01-11-2012

Acts Referred:

Uttar Pradesh Rajya Sahkari Krishi Evam Gramya Vikas Bank Employees Services
Rules, 1976 — Rule 7, 9

Citation : (2012) 11 AHC CK 0115

Hon'ble Judges : Rajiv Sharma, J and Surendra Vikram Singh Rathore, J

Final Decision : Allowed

Judgement

Surendra Vikram Singh Rathore, J.—Heard learned counsel for the petitioner and learned Standing Counsel for the State and perused the record.

2. The instant writ petition has been filed challenging the impugned order dated 30.7.2012 passed by the Managing Director, U.P. Sahkari Gram Vikas Bank Limited (respondent no. 4) whereby the petitioner was transferred on the post of Branch Manager, Branch Sirauli Gauspur, district Barabanki.

3. The admitted facts in the present controversy are that the petitioner was working on the post of Assistant General Manager, U.P. Sahkari Gram Vikas Bank Limited in the pay scale of Rs. 10,00015,200/ and because of the malafide of respondent no. 6, the petitioner was transferred, by the impugned order on the post of Branch Manager, which is a Group II post whereas the petitioner is substantively appointed as Assistant General Manager/Regional Manager, which is a Group I post. The grievance of the petitioner is that he will have to work on a post which is two ranks lower to the post, which he is holding at present. Apart from it, the pay scale of the Senior Branch Manager is Rs. 800013,500/ and the pay scale of the Branch Manager is 50008000/. It is further submitted that vide letter no. 10569:75&76 :18&19:76 the works and duties of Branch Manager have been specified and the same are entirely different from the duties assigned to a Assistant General Manager.

4. The case of the respondents is that vide order dated 30.06.2012, 20 branches of the Bank have been upgraded and it was provided in the said order that as per requirement, Deputy General Manager/Assistant General Manager may be appointed on the post of Branch Manager in the upgraded branches. In compliance of the aforesaid order of the Principal Secretary, Cooperative, the Managing Director vide order dated 30.06.2012 had notified 20 branches including the branch to which the petitioner has been transferred, therefore, there is no illegality in the impugned order and the pay scale of the petitioner has not been reduced.

5. It is submitted on behalf of the petitioner that as per the Rules governing the service of the petitioner, the work and duties of Assistant General Manager have been assigned and therefore, a person who is holding a post of higher rank cannot be designated and transferred to a post which is two steps lower in rank. It is further submitted that the decision of the Principal Secretary cannot override the existing rules, and therefore the said order could not have been implemented without the amendment in the rules.

6. Per contra, learned counsel for the respondents submits that the petitioner has not challenged the aforesaid order dated 06.06.2012 in the instant writ petition and therefore, any other order passed in compliance thereof cannot be challenged by the petitioner.

7. Perusal of the order shows that vide order dated 10.4.2012 the petitioner was assigned the work of General Manager training in the Training Centre and thereafter by the impugned order he was transferred to the post of Branch Manager, Sirauli Gauspur, district Barabanki. There is no dispute with the fact situation that the pay scale and pay grade of the Assistant General Manager and Branch Manager are entirely different. Therefore, the only question remains to be answered is whether the petitioner without amending the rules could have been transferred on a lower rank or not?

8. The services of the petitioner are governed by the Uttar Pradesh Rajya Sahkari Krishi Evam Gramya Vikas Bank Limited Framed under Regulation 142 of the U.P. Rajya Sahakari Vikas Bank Employees Services Rules, 1976(hereinafter referred to as Rules, 1976). Perusal of the Rule 7 of the Rules shows that the Bank, with the previous approval of the Registrar shall fix the strength of the Staff and the Cadre of the posts in accordance with its financial resources, budget and business requirements. Rule 9 of the said rules further provides for the classification of the staff. The post of the petitioner under this classification was Assistant General Manager, which is Class I post and the post of Branch Manager has been classified as a Class II in General Subordinate Cadre.

9. Regulation 6 of U.P. Cooperative Societies Employees Service Regulation 1975 provides that every Cooperative Societies with the previous approval of the Board categorize the post in every cadre and its staff in categories 1, 2, 3 and 4 keeping in view the emoluments, duties and functions of the employees. This

regulation clearly shows that any classification or the conferment of the duties and liabilities shall be made keeping in view the emoluments, duties and functions of the employees. Rule 3 of the Rules, 1976 provides that the Committee of Management may alter, amend, add or withdraw any or all the rules herein from time to time subject to prior approval of the Service Board and the Registrar. Thus the rules of the 1976 Rules makes it crystal clear that unless and until rules are amended and the approval of the service Board and the Registrar has been obtained, the same cannot be given effect to.

10. The grievance of the petitioner is that without following the said procedure as provided under the Rules, the post of Branch Manager could not have been upgraded and that the work of a Branch Manager could have been assigned to the Assistant General Manager.

11. Learned counsel for the respondents along with his counter affidavit dated 22.8.2012 has filed a copy of order dated 30.6.2012 which provides that the Managing Director has upgraded 20 branches including the branch to which the petitioner was appointed and it was provided that as per the requirement, officers of the category of Deputy General Manager and Assistant General Manager may be posted on the post as Branch Manager to the said post.

12. The argument of learned counsel for the respondents is that the petitioner has not challenged the said order, therefore, he could not challenge the consequential order. But in the facts of this case, this ground is not tenable as the rules are clear and must be given effect to over administrative order. Admittedly the petitioner was working on the post of Assistant General Manager and by the impugned order, he was posted as Branch Manager.

13. Hon''ble the Apex Court in the case of ViceChancellor, L.N. Mithila Vs. Dayanand Jha reported in [(1986) 3 SCC 7] has considered this point whether a person working on higher post can be transferred to a lower post though there was no change in the salary or other emoluments. In the facts of that case, one Principal was posted on the post of Reader and therefore, Hon''ble the Supreme Court has held that the post of Principal cannot be treated as equivalent to the post of Reader and order of the Patna High Court was upheld. In the facts of that case interpretation of the Bihar State Universities Act, 1976 was under challenge. Section 10(14) of the said Act provides that the Vice Chancellor has power to transfer any teacher occupying a post in any department or college maintained by the University or to any equivalent post in any department or college. The Apex Court held that the post of Principal and Teacher were not equivalent, therefore, the said order was found to be not in accordance with the Act. Likewise in the case of C.C. Padmanabhan and others Vs. Director of Public Instructions and others reported in [(1980) Supp. SCC 668] Hon''ble the Apex Court has considered the similar controversy. In the facts of that case, the appellant was posted as A.E.O. for six years when he was reverted in implementation of the instructions issued by State Government through a letter to the effect that every A.E.O. should be transferred back as H.S.A. after six

years of service of A.E.O. and this reversion order was under challenge, which was held to be not in accordance with law. In the facts of that case, the A.E.Os were admittedly holding higher posts than the H.S.As.

14. In the facts of present case also there is no quarrel to the fact that the petitioner is holding the post of Assistant General Manager, which is a higher post than the post of Branch Manager. The argument of learned Counsel for the respondents that due to financial and administrative exigencies the order dated 30.6.2012 was passed because these banks were incurring higher liabilities than their assets and such an exercise cannot be said to be wrong but this argument is not tenable in the eyes of law because financial and administrative exigencies cannot be a ground for flouting statutory Rules. Moreover, the same cannot be permitted to flout the Rules because in case such a liberty is given to an Institution then it will lead to a situation, which cannot be welcomed in any manner.

15. Learned counsel for the respondents has also placed reliance at paragraph 56 of the Rules 1976 but that has no application in the facts of the present case because Rule 56 forms part of chapter VI of the Rules which deals with conduct and discipline and does not deal with the day today administration of the working of the bank. The basic pay and responsibility of the Assistant General Manager and Branch Manager are entirely different, their working area is also entirely different, therefore, the posting of a person, who is holding the post of Assistant General Manager at the Headquarter to the post of Branch Manager to a small branch of Sirauli Gauspur cannot be sustained in view of the rules referred above. As such, the impugned order dated 30.7.2012 cannot be sustained under the law.

16. The writ petition deserves to be allowed and is hereby allowed and the order dated 30.7.2012 passed by the Managing Director, U.P. Sahkari Gram Vikas Bank Limited, Lucknow (respondent no. 4) is hereby quashed.