

**(1991) 01 AHC CK 0135**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No. 596 of 1990

Zila Sahkari Bank Ltd.

APPELLANT

Vs

Labour Court and Another

RESPONDENT

**Date of Decision :** 23-01-1991

**Acts Referred:**

Uttar Pradesh Co-operative Societies Act, 1965 — Section 121, 122  
Uttar Pradesh Co-operative Societies Employees Service Regulations, 1975 —  
Regulation 103, 19, 5  
Uttar Pradesh Industrial Disputes Act, 1947 — Section 4K  
Uttar Pradesh Intermediate Education Act, 1921 — Section 16F(1)

**Citation :** (1991) 1 AWC 362 : (1991) 2 UPLBEC 1262

**Hon'ble Judges :** Palok Basu, J

**Bench :** Single Bench

**Advocate :** A. Kumar, for the Appellant; Hari Shanker Misra, for the Respondent

**Final Decision :** Dismissed

## Judgement

Palok Basu, J.—Zila Sahkari Bank Ltd Jhansi has filed this writ petition against the Award of the Labour Court dated 31-7-1989 whereby it has directed that Munna Lal Vyas, an employee in the said Bank should be reinstated with full back wages. At the admission stage the Respondent Munna Lal Vyas was present to oppose the writ petition as a result of which an opportunity to him to file an affidavit was granted. A reply in the shape of rejoinder affidavit has come from the Petitioner, and, as such, the writ petition is being disposed of finally at the admission stage.

2. The facts lie in a narrow compass. It is admitted that the Petitioner is a cooperative society being governed by the provisions contained in the U.P. Cooperative Societies Act, 1965, hereinafter referred to as the Act. It is also not in dispute that in the view of the provisions contained in Sections 121 read with Section 122 of the Act. Regulations for appointment of various employees in the Cooperative Societies could be framed and have infact been framed known as U.P. Cooperative Societies Employees" Service Regulations, 1975, hereinafter

referred to as the Regulations. it is also not in dispute that the State Government has made a reference to the Labour Court in view of Section 4-K of the U.P. industrial Disputes Act, 1947, hereinafter referred to as the I.D. Act. It was stated in the reference as to what relief, if any, would be granted to the Respondent if the termination of the employment of the Respondent on "28-6-1985 is found or held illegal. The initial appointment of the Respondent was made by the society on 9-1-1984 for a period of three months which was extended till 11-4-1984 only. There ensued a break in his employment because the second term of employment of the Petitioner allegedly began admittedly on 14-4-1984 and ended on 9-11-1984. The third break began on 12-11-1984 and saw its end on 17-1-1985. The fourth term came to an end on 28-6-1985 giving rise to the aforesaid reference before the Labour Court.

3. Sri A. Kumar, learned Counsel for the Petitioner has vehemently argued that the Award of Labour Court in holding the aforesaid terms as a consolidated one so as to give benefit of Section 25-N of the I.D. Act is illegal in as much as the initial appointment was a "term appointment" It was, therefore, argued that this case has been wrongly treated to be a case of retrenchment and, as such, no relief should have been granted to the Respondent and, therefore, the writ petition should be allowed and the Award dated 31-7-1989 (Annexure-1 to the writ petition) should be quashed by issuing a writ in the nature of certiorari. Certain provisions contained in various enactments and Regulations as referred to above, have been referred.

4. Sri Hari Shanker Misra, Advocate, appearing for the Respondent No. 2 has argued emphatically that the Award as passed by the Labour Court must be upheld not only in order to do substantial justice but also to protect the interest of persons, such as the Respondent who are inducted in service and are thrown out at the mercy of some individual disregarding the provisions of law.

5. It may be noted that the regulations shall have to apply to the various appointments which are made by the Board constituted under Regulation 5. However, Sub-clauses (3) and (4) carve out an exception where the appointment of an employee can be made by society for a "stop gap arrangement". Initially this stop-gap-arrangement should not exceed 180 days but may be extended by another 120 days. A combined reading of the Sub-clause of the said Regulation make it possible that an employee in a given case be appointed for a period of more than 240 days after which period, it may be remembered that under the I.D. Act, retrenchment compensations, etc. have been made payable. In other words there is force in the argument of the learned Counsel for the Respondent No. 2 that while on the one hand relief has got to be claimed and if found correct must be granted under the I.D. Act to a person who may have worked for more than 240 days, the Society may not normally have the power to appoint a person beyond 180 days. He, therefore, rightly contended that there is inconsistency in the provision contained in the I.D. Act and the Regulations framed under the Act. Therefore, strong reliance has been placed by Sri Misra on Regulation 103. It

may be useful to quote the said Regulation for ready reference.

103. The provisions of these regulations to the extent of their inconsistency, with any of the provisions of the Industrial Disputes Act, 1947, U.P. Dookan Aur Vanijya Adhishthan Adhiniyam, 1962, Workmen's Compensation Act, 1923 and any other labour laws for the time being in force, if applicable to any cooperative society or class of Co-operative Societies, shall be deemed to be inoperative.

Sri A. Kumar has, however, drawn the attention of this Court to a Division Bench decision wherein it was held that since the appointment in that given case was made by the society in contravention of the Regulations-5 and 19, the employee could not get relief under the Act or even under the I.D. Act. That decision is given in Civil Misc. Writ Petition No. 5496 of 1985 decided on 8-7-1988. It may be stated here that neither Regulation 103 of the Regulations has been noticed therein nor was that a case of having actually worked for a period of more than 300 working days as are the facts in the present case.

6. Sri A. Kumar then placed a reliance upon a decision in *Aryakanya Pathashala v. Smt. Manorama Devi Agnihotri* 1971 ALJ 983, in order to lend support to his argument that if an appointment is made in breach of some statutory provisions the appointee cannot get advantage of having been so appointed. In the cited case the provisions of the Intermediate Education Act, 1921 were considered and it was held that the appointment had not been approved by the Regional Deputy Director of Education as required under the mandatory provisions contained in Section 16-F(1) of the said Act, and, therefore, the appointment was not an appointment at all. The case is distinguishable with the facts of the present case.

7. The other arguments of Sri A. Kumar was that the Labour Court has mis-directed itself in having treated the respective term appointments as continuous appointment and, therefore, the relief should not have been granted to the Respondent. This argument has to be mentioned only to be rejected. It is apparent from the dates noted above that the Petitioner has worked on the post where he was initially appointed even though with intermittent breaks but they were voluntarily caused at the behest of the employer. It is this attitude which has been deprecated over and over again by the Supreme Court and the latest of the cases is the relating to the ad hoc appointment of the teacher in State of Haryana. It is also not in dispute that once the initial appointment is held to have been rightly made as empowered by Regulation-5 then the continuation for a period of 300 days would certainly induct the provisions of Industrial Disputes Act. As noted above, Regulation 103 would empower the matter to be adjudged lawfully by authorities or the court appointed under the I.D. Act and pass an Award in accordance with law. That having been done no grievance can be raised by the Petitioner.

8. It may be noted that the post to which the Respondent was inducted initially was permanent one and no incumbent had ever come through the Board as appointed under the Regulations and for that reason it must be held that the

appointment of the Respondent had to be continued as on every occasion on behalf of the society it was stated that there was dire need for appointment of a typist and that alone was the justification for continuing the appointment of the Respondent. It may further be mentioned here that the allegations of the Petitioner at some point of time that the work of the Respondent was not satisfactory and, therefore, his services were done away with has been found to be negated by the evidence led before the Labour Court and no interference whatsoever is called for with the findings of fact. It may be emphasised that so far as the Respondent is concerned he was continuing on the post again and again with the result that the allegations of the Petitioner that at some point of time his work was not to the satisfaction appears to have been made only to absolve itself from the legal responsibilities accruing under the I.D. Act.

9. With the aforesaid discussions it has to be held that the petition is devoid of any merit and is accordingly dismissed. Summarily at the admission stage. Costs easy.