

(2002) 01 AHC CK 0086

Allahabad High Court

Case No: C.M.W.P. No. 46220 of 1992

Baljeet Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: Jan. 11, 2002

Citation: (2002) 1 AWC 637 : (2002) 2 UPLBEC 1073

Hon'ble Judges: Sunil Ambwani, J

Bench: Single Bench

Advocate: H.N. Singh and Ravi Ranjan, for the Appellant; Triloki Nath and S.C., for the Respondent

Final Decision: Allowed

Judgement

Sunil Ambwani, J.

By this writ petition, the petitioner has challenged the order dated 17.7.1990 passed by District Assistant Registrar, Co-operative Societies, U.P., Etawah, suspending petitioner, and the order dated 17.11.1992 passed by the Deputy Registrar, Cooperative Societies and Chairman, Regional U.P. Provincial Co-operative Union. Kanpur Region, Kanpur, terminating the services of the petitioner as Co-operative Supervisor. By an amendment, the petitioner has also challenged the decision of the State Administrative Committee on the appeal filed by the petitioner.

2. The facts, giving rise to the instant petition, are given below :

"Petitioner was appointed as Co-operative Supervisor by the Deputy Registrar/ Adhyaksha Kshetriya Committee Sahkari Sangh Pradhikari/ P.C.U., Allahabad, by order dated 20th June, 1978. It is submitted that the petitioner's services are regulated by the provisions contained in the U.P. Cooperative Societies Employees Service Regulations. 1975. By Notification No. C/26/2-12-C-76, dated 13th February. 1976, the State Government recognised the U.P. Co-operative Union Limited, Lucknow as Co-operative Federation, for the supervision of Co-operative Societies functioning within its jurisdiction and for supervising the Co-operative Supervisors

and Kamdars. The petitioner was transferred in September, 1985, posted as Supervisor of Jasvantnagar Krya-Vikrya, Sahkari Samiti, Etawah and thereafter again, he was transferred on 30.9.1990 by Prabandh Nideshak/Sadasya Sachiv Sahkari Sangh Pradhikari P.C.U., Lucknow from Etawah to Fatehpur. By an order issued by the Assistant Registrar, Etawah, dated 17.7.1990, the petitioner was placed under suspension on the allegations of certain financial irregularities. A charge-sheet dated 5.12.1990 was received by the petitioner on 27.2.1991. Petitioner filed a writ petition, being Civil Misc. Writ Petition No. 11111 of 1991, challenging the provisions of Sahkari Sangh Pradhikari (Viniyam), 1976 as ultra vires null and void and beyond the authority contemplated u/s 123 of the Co-operative Societies Act. 1965 and also for a writ of mandamus commanding the respondent authorities to pay the petitioner's full salary and allowances. During the pendency of the writ petition, the petitioner was served with an order dated 17.11.1992 terminating his services in exercise of the powers envisaged under Co-operative Federal Authority (Business) Regulations. 1976. The petitioner has challenged both the orders (suspension as well as termination orders) by filing the writ petition."

3. During the pendency of the writ petition, the appeal preferred by the petitioner before the State Administrative Committee (Provincial Co-operative Union) was dismissed on the ground of delay. The appeal was found to have been received in the office of appellate authority on 18.6.1993 and that the appellate authority in its State Level Administrative Committee dated 15.4.1994 resolved not to consider the appeal on merits as it was filed beyond the period prescribed for filing the appeal. By an amendment application, the petitioner challenged the order in appeal. The application was allowed on 7.9.1999 and the amendment has been carried out.

4. I have heard Sri H. N. Singh, learned counsel for the petitioner and Sri Triloki Nath, learned counsel for the respondents.

5. Sri H.N. Singh, learned counsel appearing for the petitioner, submits that the petitioner's services are regulated by the U.P. Cooperative Societies Employees Service Regulations, 1975 and that the respondents have wrongly applied the provisions of U.P. Co-operative Federal Authority (Business) Regulations, 1976, the U.P. Cooperative Union got the status of Cooperative Federal Authority and with the grant of recognition, as such, by the State Government became subject to all the restrictions, etc. as applicable to the Co-operative Federal Authorities and Apex Level Societies ; thus automatically came within the purview of the U.P. Cooperative Institutional Service Board. Since U.P. Co-operative Union itself was recognised as Federal Authority, the Regulations framed by it. made a provision for consideration of Pradhikari Committee for performing the duties of Supervisor as envisaged u/s 123 of the U.P. Cooperative Societies Act, it is submitted that the Pradhikari Committee is not a Federal Authority at all. It is a small body within the frame-work of U.P. Co-operative Union. The U.P. Co-operative Federal Authority (Business) Regulations, 1976, have not been published in the U.P. Gazette so far. In the

aforesaid Regulations, it has been mentioned that vide notification dated 13.2.1976. the State Government has recognised the Union as a Co-operative Federation for the purposes of supervision of Co-operative Societies functioning within its jurisdiction and for supervising the Co-operative Supervisors and Kamdars employed therein. The Business Regulations, 1976 have been framed in exercise of powers u/s 123 of the U.P. Co-operative Societies Act, whereas the Regulations of 1975 have been framed in exercise of powers u/s 122 of the Co-operative Societies Act, which prevail over the provisions as contained in the Business Regulations, 1976. The appointing authority of the petitioner is the Deputy Registrar, Co-operative Societies, Allahabad and since the respondents have wrongly applied the provisions of Business Regulations, 1976, the order terminating the petitioner's services is wholly illegal and void.

6. On merits, Sri H.N. Singh, has submitted that no enquiry was held in the matter. The petitioner was not given opportunity to defend himself and that without waiting for the report of the enquiry officer, a show cause notice was given and further without considering the petitioner's reply to the charges given by the petitioner on 7.9.1992; the Co-operative Federation P.C.U. Kanpur, in its meeting dated 25.9.1992 resolved to terminate the petitioner's services and also directed the District Assistant Registrar, Cooperative Societies, U.P. Etawah, to recover a sum of Rs. 2,88,001.82 from petitioner resorting to the provisions of Section 68 of the U.P. Co-operative Societies Act, 1965, and to register a first information report against the petitioner. He has been punished further by providing only the suspension allowance, during the period under which he was under suspension.

7. Appearing on behalf of the respondents, Sri Triloki Nath has defended the order by submitting that the petitioner's services are regulated by the U.P. Co-operative Federal Authority (Business) Regulations, 1976. The U.P. Co-operative Societies Employees Service Regulations, 1975, do not apply to the staff members (employees) of the Federal Authority/P.C.U. By notification dated 13.2.1976, the U.P. Co-operative Union also known as Provincial Co-operative Union (P.C.U.) has been recognised as Federal Authority. The Business Regulations. 1976, provide for service conditions of the staff members of P.C.U./Federal Authority. These have been framed and approved by the Registrar, Cooperative Societies. The notification dated 13.2.1976 was published in U.P. Gazette in March, 1976. He states that the Business Regulations, 1976 were not required to be published in gazette and that these are valid. The petitioner was recruited under the Business Regulations, 1976 and he worked and drew his salary. Therefore, it is not open to the petitioner to challenge its legality. The petitioner was a Co-operative Supervisor and he was entitled to get subsistence allowance under the Business Regulations, 1976. The petitioner was given full opportunity to defend himself against the charges. A show cause notice dated 20.8.1992 intimating him to appear before the Regional Committee, Kanpur, was given on 3.9.1992. The notice was also published in local news paper on 11.3.1992. He was asked number of times to submit his reply. The adjourned

meeting of Regional Committee of 3.9.1992 was held on 25.9.1992 and notice of the adjournment was given to the petitioner vide letter dated 14.9.1992. Notice was also published in news paper "Dainik Jagaran" dated 19.9.1992 informing the petitioner to appear before the Committee on 25.9.1992. With regard to the reply given by the petitioner and the request for personal hearing, as alleged in paragraphs 27 and 28 of the writ petition, the respondents have denied these allegations in paragraphs 23 and 24 of the counter-affidavit. It has been further stated that petitioner had a remedy by way of appeal under Regulation 70 of the Business Regulations, 1976.

8. This Court is called upon to decide only two questions which arises from the submissions made by the learned counsel of the parties. The first of these relates to the applicability of the services rules to U.P. Co-operative Union and the second, whether the petitioner was afforded adequate opportunity to defend himself and the reply given was considered by the Regional Committee before arriving to the decision to terminate the petitioner's services.

9. The petitioner has relied upon [Om Parkash Maurya Vs. U.P. Cooperative Sugar Factories Federation, Lucknow and Others](#), In this case, appellant Om Prakash Maurya was in the service of Kisan Sahkari Chini Mills Ltd., Bisalpur District Pilibhit, which was a sugar factory run and managed by the Uttar Pradesh Co-operative Mills Federation. He was selected for promotion to the post of Commercial Officer and was appointed on probation for one year against a regular vacancy. The Managing Director of the U.P. Co-operative Sugar Mill Federation Ltd., "Cooperative Society" registered under the U.P. Co-operative Societies Act, 1965, which runs and manages a number of sugar factories, issued an order reverting appellant to the post of Office Superintendent. The High Court held that his probationary period could not be deemed to be confirmed as there was no rule prohibiting the period of extension. The Hon'ble Supreme Court examined the provisions of U.P. Co-operative Societies Employees Service Regulations, 1975 read with subsection (2) of Section 122 of the U.P. Co-operative Societies Act, 1965 and after examining the Regulations 17 and 18, found that on the expiry of the maximum probationary period of two years, the appellant could not be deemed to continue on probation, instead he stood confirmed on the post by implication and acquired the status of a confirmed employee who could not be legally reverted. On behalf of U.P. Co-operative Sugar Factories Federation, it was urged that the U.P. Co-operative Societies Employees Service Regulations, 1975, are not applicable to the appellant as he was an employee of the U.P. Cooperative Sugar Factories Federation and that his services were regulated by the U.P. Co-operative Sugar Factories Federation Service Rules, 1976, framed by Cane Commissioner in exercise of his powers under Sub-section (1) of Section 121 of the Act published in the U.P. Gazette dated September 4, 1976. Upon examination of the provisions of the Act, the Hon'ble Supreme Court found that the Service Rules, 1976, made by Cane Commissioner under Sub-section (1) of Section 122 of the Act do not require the approval of the State Government, while a regulation framed by an authority constituted under

Sub-section (1) of Section 122 requires approval of the State Government and on such approval the regulation so framed supersedes any rule made u/s 121. The scheme of Section 121 and Section 122 postulates that primacy has to be given to rules u/s 122 of the Act. If there are two sets of rules regulating the conditions of service of employees of Co-operative Societies, the regulations framed u/s 122 and approved by the State Government shall prevail. The position was realised by the State Government and for that reason, it issued Notification No. U.O. 402 (11)/C-1-76, dated August 6, 1977, constituting the Commissioner and Secretary Sugar Industry and Cane Development Department as authority under Sub-section (1) of Section 122 for the recruitment, training and disciplinary control of employees of the U.P. Co-operative Factories Federation Ltd. but that by itself do not confer power on the authority to frame any rules or regulations regulating the conditions of service of the employees of the Co-operative Sugar Factories Federation. The draft service regulations were not approved by the Government, and in absence of such approval, such rules do not acquire any legal force. The Hon"ble Supreme Court thus held that the U.P. Co-operative Societies Employees Service Regulations, 1975, continue to apply.

10. Sri Triloki Nath, learned counsel appearing for the respondents, has placed reliance upon Ram Chandra Dixit v. Deputy Registrar, Co-operative Societies 1980 UPLBEC 325; Parmeshwar Dayal Shukla v. Deputy Registrar, Co-operative Societies. U.P., Allahabad Region, Allahabad and Ors. 1982 UPLBEC 398 and Raghunath Prasad v. State of U.P. and Ors. 1986 UPLBEC 1355. In Ram Chandra Dixit v. Deputy Registrar, Co-operative Societies, (supra), a Division Bench of this Court while examining the applicability of Services Regulations, 1975 of petitioner as Supervisor in the U.P. Co-operative Bank, Lucknow, held in para 8 of the decision that Section 123 of the Act empowers the State Government for constitution or recognition of Co- operative Federal Authority to supervise working of the Co-operative Societies. In exercise of the powers u/s 123 read with Rule 390 of the U.P. Co-operative Societies Rules, 1968, and after consulting the Chairman of all the Apex Level Cooperative Societies of Uttar Pradesh, the Governor issued a notification on February 13, 1976, recognising the U.P. Co-operative Union Ltd., (P.C.U.) as Co-operative Federal Authority to supervise the Sahkari Sangh Kraya-Vikraya Samitian. Clause 8 of the aforesaid notification conferred power on the Sahkari Sangh Pradhikari to frame regulations governing its business. On March 9, 1976, the Registrar of the Sahkari Samitian, U.P. issued an order that the employees in the U.P. Cooperative Union Ltd., would be absorbed in the services of Federal Authority created by notification dated 13th February. 1976. The order provided that till the regulations governing the service conditions of those absorbed in the Federal Authority had not been framed, the service conditions were to be governed in accordance with the provisions made in this order and in pursuance to the powers of para 9 of the notification dated February 13. 1976. the Federal Authority framed "Co-operative Federal Authority (Business) Regulations, 1976". Regulation No. 4(1) is

quoted as follows :

"All person who held, at the commencement of these Regulations a lien on the post of Supervisor or Kamdar in the Union irrespective of the authority under those administrative control they may be and those to be recruited henceforth by the authority in connection with the supervision of and assistance to a Cooperative society which falls within the purview of the Authority shall be under the control of the Authority."

It would thus appear that service of a staff member of Federal Authority is governed by the Co-operative Federal Authority (Business) Regulations, 1976, in which the appointing authority is the Regional Deputy Registrar. He has been conferred powers to take action against the supervisor employed in the Federal Authority. A Supervisor of U.P. Cooperative Union Ltd., which is a Federal Authority, can be dismissed by the Regional Deputy Registrar. The expression "Regional Deputy Registrar" has been defined in Section 2(iii)(b) means the Deputy Registrar, Co-operative Societies posted in the Region. In para 11 of the said Judgment, it was held that Section 122 of the Act deals with a situation different than contemplated by Section 123. Section 122 is general in nature, whereas Section 123 made a special provision empowering the State Government to constitute or recognize one or more Co-operative Federal Authorities. For the purpose of giving effect to Section 122, the State had framed Rules, 389A whereas for the Section 123, the rule made was 390. Reading both the sections and rules, the Bench found that the later is special in nature and would apply to Federal Authority alone for the service condition of the specified category of employee working in a Federal Authority. The conflict between Section 122 and Section 123 was not accepted by the Court as these provisions operate in separate areas. Thereafter the Court found that the petitioner in the said case has right to appeal under Rule 70 of the Co-operative Federal Authority (Business) Regulations, 1976 and the petition was dismissed on the ground of alternative remedy.

11. In *Parmeshwar Dayal Shukla v. Deputy Registrar. Co-operative Societies, U.P.*, (supra), this Court had an occasion to examine in detail the provisions of Sections 122 and 123 of the Act and it was found that the notification issued by the Government u/s 123 of the Act had force of law and that when a co-operative society, like the U.P. Co-operative Union Ltd., is recognised as Federal Authority, it gets right to supervise other Cooperative Societies in certain respects and gets contribution from them which can be enforced. The Federal Authority is not registered under the Act but is a body created u/s 123 (1) of the Act. Its management is entrusted not to the Committee of Management of the U.P. Co-operative Union Ltd.. but to the Authority specified in the Notification issued by the Government. The Deputy Registrar, in such cases, passes an order in respect of an employee of the Federal Authority. Since the Deputy Registrar is also the Chairman of the Regional Committee, the Federal Authority becomes an "authority"

within the meaning of Article 12 of the Constitution and is amenable to the Jurisdiction of this Court under Article 28 of the Constitution. Holding that the Business Regulations, 1976, were applicable, the Bench found that the remedy of Regulation 70 for filing an appeal is available. Since the provision of Clause (1) of para 4 of the Business Regulations, 1976, were violated inasmuch as there was no decision of the Regional Committee terminating petitioner's services, the impugned orders were quashed.

12. In *Raghunath Prasad v. State of U.P. and Ors.* (supra), the Bench of this Court again considered the question of termination of services of Kamdar in U.P. Co-operative Union Limited, Lucknow, established u/s 2(a-4) of the Act. Relying upon the judgment of *Ram Chandra Dixits* case 1980 UPLBEC 325, the Court held that the provisions of Regulations, 1976, would govern the service condition and the petitioner was directed to file an appeal under Regulation 70 of the Business Regulations, 1976.

13. In the present case, the petitioner is an employee of Provincial Co-operative Union. It is to be a Federation u/s 123 of the Act. It is a body created u/s 123 of the Act. The present case is distinguishable. The judgment of the Hon"ble Supreme Court in *Om Prakash Maurya's* case (supra) is not applicable in the present case. In the said judgment, the Hon"ble Supreme Court had considered the applicability of service rules of *Kisan Sahkari Chini Mills Ltd., Bisalpur, district Pilibhit*, a sugar factory run and managed by the Uttar Pradesh Co-operative Mills Federation which is co-operative society registered under the U.P. Co-operative Societies Act, 1965 and that since the Regulations of 1975 had received the assent of the Governor and since the U.P. Co-operative Sugar Factories Federation Service Rules, 1976, made by the Commissioner under Sub-section (1) of Section 122 of the Act, their control have been superseded by Regulations, 1975, which were made by the State Government. In the present case, the Provincial Cooperative Union is not a society registered under the Societies Registration Act but had been given the status of a body created u/s 123 of the Act, in pursuance of gazette notification dated 13.2.1976 and the Regulations of 1976 are, therefore, applicable to it which have also been approved by the Registrar, Co-operative Societies. The decision cited by Sri Triloki Nath is applicable to the Provincial Co-operation Union. For considering the issue, the learned counsel for the petitioner has not been able to distinguish the Judgment of this Court. I, therefore, hold that the provisions of Regulations, 1976, regarding service conditions are applicable to the petitioner.

14. There were serious charges of financial irregularities against the petitioner. The Additional District Co-operative Officer, appointed as enquiry officer, had issued notice which was received by the petitioner on 2.9.1992. The petitioner requested for adjournment of the date of hearing and supply of copy of the documents. Without going into the question whether the documents were supplied or not, the Court finds that the District Committee should have awaited the report of the

enquiry officer. Without awaiting the report, it proceeded to examine the charges and concluded that the charges were proved. In response to the show cause notice issued by the Regional Committee, the petitioner had submitted a reply dated 7.9.1992. The proceedings of the Regional Committee were adjourned from 3.9.1992 to 25.9.1992. In para 23 of the counter-affidavit, the contents of para 27 of the writ petition, in which it has been stated that the petitioner has submitted a reply, has not been denied. The contents of para 28 of the writ petition show that the petitioner requested for personal hearing vide his letter dated 3.9.1992 which was sent through registered post. In para 24 of the counter-affidavit, it has been stated that the allegations made in paragraph 28 of the writ petition are wrong and are not admitted. In the circumstances from the record, it is apparent that the petitioner's reply to the charges or his request for personal hearing was refused without giving any reason. The District Committee, who is the competent authority, also did not await the report of the enquiry officer and thus the petitioner was denied of fair opportunity of consideration of his defence.

15. Sri Triloki Nath, learned counsel appearing for the respondents, has placed on record proceedings of the State Level Administrative Committee dated 15.4.1994 in its 68th meeting on proposal No. 5 by which the petitioner's appeal was dismissed. The reasons given in the resolution are that the appeal is barred by seven months and that the condonation of delay was not in its authority. The State Level Committee did not even examine the grounds of delay. The petitioner had submitted that he was suffering from illness and was extremely weak and thus he could not file the appeal within the prescribed period of thirty days. Regulation 70 (1) of Business Regulations, 1976, provides for condonation of delay if the appellate authority satisfied that the reason for delay was beyond the control of the employee. It was, therefore, incumbent upon the appellate authority to have considered the grounds of delay. It erred in law in dismissing the appeal on the ground that the consideration of the grounds of delay are beyond its authority,

16. In the circumstances, the Court finds that the petitioner was denied effective and adequate opportunity of submitting his defence to the charges, and that the competent disciplinary authority did not consider to await the report of the enquiry officer, or consider the request of the petitioner for personal hearing. The petitioner has been denied the reasonable and fair opportunity of hearing causing prejudice to him as on account of the charges, the petitioner's services were terminated.

17. In the aforesaid circumstances, the writ petition succeeds and is allowed. The impugned orders terminating petitioner's services dated 17.11.1992, as well as the appellate order are quashed. The respondents shall be at liberty to reinitiate the disciplinary enquiry from the stage of issuing charge-sheet. In that case, the entire period after the date of termination order, till the date of initiation of disciplinary enquiry, shall be treated as period of suspension, for which the petitioner shall be given the suspension allowance after adjusting the amount already paid, under

Business Regulations, 1976. In case, however, the disciplinary authority does not opt to re-initiate the disciplinary enquiry, the petitioner shall be reinstated in service with half the back wages, with all other consequential service benefits including seniority and promotion.