

(1994) 12 AHC CK 0033

Allahabad High Court

Case No: Writ Petition No. 1163 of 1986

Bhagwat Prasad

APPELLANT

Vs

Dist. Administrative Committee
and Another

RESPONDENT

Date of Decision: Dec. 1, 1994

Citation: (1995) 71 FLR 503 : (1996) 1 LLJ 625 : (1995) 3 UPLBEC 1588

Hon'ble Judges: K.C. Bhargava, J

Bench: Single Bench

Advocate: A. Mannan, for the Appellant;

Final Decision: Allowed

Judgement

K.C. Bhargava, J.

The petitioner prays for quashing the impugned order of termination dated January 24, 1986, contained in Annexure-4 to the Writ Petition, and for commanding the opposite parties to keep the petitioner in continued service and pay him salary.

2. The facts, in brief, are that the petitioner was selected for the post of Secretary in the centralised cadre of Sadhan Sahkari Samiti which is also known as U.P. Primary Co-operative Credit Societies. His appointment was made in the year 1976 in accordance with the U.P. Primary Agricultural Co-operative Societies Centralised Service Rules, 1976 (hereinafter referred to as the Rules). After successful completion of training the petitioner was appointed as Secretary in the Society w.e.f. February 22, 1977 and was posted at Bhikhampur Mahigawan Sadhan Sahkari Samiti, Lucknow. A copy of his appointment letter is Annexure-1 to the petition. Thereafter the petitioner efficiently discharged his duties and during the course of his service he was transferred from one place to another. In August 1982 the petitioner was transferred to some other society but as he was ill he could not join and he also could not be relieved due to incomplete handing over of the charge. He submitted joining report at the headquarters on August 3, 1983. The petitioner was again required to hand over the charge to the Branch Manager and not to the

Assistant Development Officer. Thereafter he joined his services again at the headquarters. A news item was published in the newspaper dated August 31, 1983 which was got published by the opposite party No. 1 to the effect that the petitioner was absconding. The petitioner immediately submitted an application to the opposite party No. 2, the Member Secretary on September 1, 1983 which was received on September 2, 1983 indicating that he was performing his duties. This application was duly acknowledged. Thereafter the petitioner was required by the opposite party No. 2, through a letter dated November 2, 1983 to deposit Rs. 7,530.75 paise within fifteen days on the ground that there was some shortage in the funds of the society where the petitioner was earlier posted. The petitioner submitted his reply denying his liability. The petitioner continued to attend to his duties at the headquarters but he was not paid any salary inspite of several applications and his salary remained unpaid since August, 1982. All of a sudden an order was issued on January 24, 1986 by the opposite party No. 2 terminating the services of the petitioner. The basis of the termination of the services of the petitioner was some resolution passed by the District Administrative Committee on January 2, 1986. It is alleged that the appointment of the petitioner was against a substantive vacancy under Rule 25 of the Rules and the services of the petitioner could not have been terminated in the manner mentioned above, treating him to be a temporary employee. The termination order though passed in simple language is in fact by way of punishment. It is further alleged that no enquiry proceedings were conducted against the petitioner in accordance with law. In view of Rule 27 of the Rules, the petitioner stood confirmed after expiry of 2 1/2 years probation period and as such his services could not have been terminated, which is against the Rules.

3. In the counter affidavit filed by the opposite parties it is alleged that the work of the petitioner remained unsatisfactory during his tenure of service. On July 26, 1978 the Additional District Magistrate (Development) Evam Prashasak, District Co-operative Bank, Lucknow complained to the Secretary, District Co-operative Bank, Lucknow that the members of the Sadhan Sahkari Samiti Bhikhampur Mahigawan vide application dated July 26, 1978 intimated that there had been some financial irregularities in the society and enquiry into the matter was held. It is alleged that the petitioner created hindrance in the enquiry by keeping out the current documents. A copy of this complaint is Annexure A-2 to the counter affidavit. It is further alleged that on March 19, 1979 a warning was sent by the Branch Manager, District Cooperative Bank to the petitioner that recovery of loan in the month of February, 1979 was nil and inspite of repeated instructions he did not improve and therefore the General Manager had ordered that the petitioner should hand over the entire charge to Sri Anant Kumar Pandey, Sa-chiv of Sigratau Society. A copy of this letter is annexure A-2 to the counter affidavit. A complaint was made by the Branch Manager, Nagam Branch, against the petitioner that the petitioner committed various irregularities while posted at Sigratau Society and therefore the petitioner was asked to hand over the society's cash book and receipt book but

instead he willfully recovered the loans. A copy of this complaint is Annexure A-3 to the counter affidavit. Thereafter a report was submitted by the Branch Manager, District Co-operative Bank to the General Manager, Co-operative Societies, U.P., Lucknow that Secretary of Sigramau Society had reported on September 26, 1979 that the petitioner while posted at that society had embezzled a sum of Rs. 2,049.94 paise and a sum of Rs. 147.56 paise by engaging an Accountant on a monthly pay of Rs. 150/- without mentioning the same in the cash book. The General Manager/Member Secretary, District Administrative Committee, Lucknow on February 29, 1980, sent a letter to the District Assistant Registrar, Co-operative Societies, Lucknow that the petitioner had been absconding since June, 1979 and had not given charge of the society and that he had kept cash of Rs. 2,049.94 paise with him. The petitioner was also given a warning by the Member Secretary of the District Committee vide letter dated November 3, 1983 that if he did not deposit the amount of Rs. 7,530.75 paise as well as the Work Register of the Society within 15 days his service would be deemed to have been terminated. The Deputy Registrar, (Central) Cooperative Societies on January 4, 1984 sent a letter to the District Assistant Registrar, Co-operative Societies about embezzlement committed by the petitioner for a sum of Rs. 7,530.75 paise. A first information report was lodged against the petitioner when he was posted at Gosainganj by the Additional District Co-operative Officer, Mohanlalganj alleging that a sum of Rs. 20,054.20 paise had been embezzled by the petitioner during the period 1981-82 and 1982-83. The work of the petitioner during the year 1985 was found unsatisfactory and therefore a show cause notice was issued to the petitioner to show cause as to why his services be not terminated. The services of the petitioner could be terminated in terms of the contract i.e., the appointment letter at any time on one month's notice or one month's salary in lieu of the notice.

4. in the rejoinder affidavit the petitioner has denied the allegations of irregularity and embezzlement which have been levelled against him. He has also alleged that he has no knowledge regarding lodging of the first information report. It is further alleged that the petitioner is not responsible for any shortage in the funds of the society.

Learned counsel for the parties have been heard.

5. Learned counsel for the petitioner has argued that the petitioner was recruited in terms of the provisions of Section 25 of the U.P. Primary Agricultural Co-operative Credit Societies Centralised Service Rules, 1976. The relevant provisions of Rules 25 and 27 of the Uttar Pradesh Primary Agricultural Co-operative Credit Societies Centralised Service Rules, 1976 are reproduced below:

"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 voce as may be prescribed by the Registrar, Co-operative Societies, U.P. The candidates shall be recruited with due regard to the representation of Scheduled Castes, Scheduled Tribes and the dependents of freedom fighters as per orders issued by Government from time to time with regard to the representation of these classes in Government services:

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."

27. "Probation - A person recruited to the Centralised Service either by direct recruitment or by promotion shall be placed on probation for a period of two years, which period may be extended by the District Committee for a further period of six months."

Regulation 25 of the Uttar Pradesh Primary Agricultural Co- operative Credit Societies Centralised Service Regulations is quoted below:

"25. The services of a member shall be terminated by the District Committee:

(a) In case of a temporary member on one month's notice in writing on either side or in lieu thereof by payment of one month's salary by the party giving the notice."

6. According to the learned counsel for the petitioner Regulation 25, quoted above does not apply to the case of the petitioner because the petitioner cannot be termed as a temporary employee because his appointment was made against the substantive vacancy under Rule 25 of the above Rules. This fact is also alleged in para 8 of the petition. This para has been denied and it is alleged that the appointment was not made against the substantive vacancy but his appointment was on temporary basis. Annexure-1 is the appointment letter of the petitioner which is dated February 14, 1977 wherein it is mentioned that the petitioner's appointment is purely temporary and can be terminated on one month's notice. Annexure-4 to the writ petition is termination order in which reliance has been placed on Regulation 25 for terminating the services of the petitioner treating him to be a temporary employee.

7. According to the learned counsel for the petitioner his probation was never extended and as such he is deemed to have been confirmed after 2 1/2 years of the service in accordance with Rule 27 of the Rules. Rule 27 of the Rules specifically mentions that a person shall be put on probation for a period of two years and that period can be extended for six months. This Rule is silent about further extension of the period. It has fixed the maximum period of probation to be 2 1/2 years. Once the stipulated period of probation has expired and the order of termination is not passed during the period of probation then the employee stands confirmed. Therefore the fact that the petitioner was allowed to continue even after the expiry of the probation period establishes that the petitioner shall be deemed to have been confirmed. It cannot be said that a specific order of confirmation was required to be passed in this case. There is a definite provision in Rule 27 of the Rules that after two years period of probation the period of probation can be extended for six months. It cannot be said that the petitioner continued to be a probationer and a temporary employee even after the expiry of the maximum period of probation. The principle that the order of confirmation is necessary will only apply if there is no rule to the contrary. A similar view was taken by a Division Bench of this Court in Writ Petition No. 2368 of 1982 (Lakshman Ram Kushwaha v. Committee of Management and Ors.) decided on March 12 1986 (4) LCD 256 wherein it was held that "it would be evident from the regulations quoted above that the maximum period of probation which can be extended beyond two years, is six months. Since the petitioner continued much beyond the maximum period of probation we have no hesitation in holding that the petitioner in the circumstances would be deemed to have been confirmed on the post by implication." This Judgment covers the controversy involved in the present writ petition. Thus in view of what has been said above it is clear that the services of the petitioner could not have been terminated treating him to be a temporary employee. Admittedly there was no enquiry into the matter which was necessary because the petitioner was a confirmed employee and as such the termination order is against the provisions of the Rules and Regulations and is liable to be quashed.

8. The petition is allowed. The order of termination dated January 24, 1986, contained in Annexure-4 to the writ petition, is quashed. The petitioner shall be entitled to the arrears of his salary etc. There will be no order as to costs.