

(2003) 10 AHC CK 0179

Allahabad High Court

Case No: Civil Misc. Writ Petition No. 23250 of 1993

Sheo Baran Singh
Chauhan

APPELLANT

Vs

Ordinance Equipment
Factory and Others

RESPONDENT

Date of Decision: Oct. 1, 2003

Citation: (2004) 1 UPLBEC 155

Hon'ble Judges: Umeshwar Pandey, J; M. Katju, J

Bench: Division Bench

Advocate: None, for the Appellant; V.K. Burman, for the Respondent

Final Decision: Dismissed

Judgement

M. Katju, J.

This writ petition has been filed against the impugned order of suspension dated 22.6.93, Annexure-7 to the petition and for a mandamus directing the respondents not to interfere with the working of the petitioner as Secretary of the respondent-Society and to pay full salary. The petitioner has also prayed for a mandamus directing the respondents not to hold any enquiry against the petitioner into the charges contained in charge-sheet dated 12.5.92.

2. It is alleged in Para 1 of the petition that the petitioner was working as Secretary in the respondent-Society which is Co-operative Society registered under the Co-operative Societies Act, 1965. It is alleged in Para 2 of the petition that the petitioner was appointed as Secretary u/s 31 of the Act in 1971 by the then Chairman of the Society and the appointment was approved by the Assistant Registrar. Co-operative Societies, Kanpur. The respondent No. 3 is a Society of the workers employed in Ordinance Equipment Factory. It is alleged in Para 4 of the petition that while respondent No. 2 was a member he misbehaved with the petitioner and other members of the Society and hence, a complaint was made by the petitioner against him to the General Manager of the Factory. He was given

punishment of stoppage of two increments and was transferred from Kanpur to Shahjahanpur but later on the transfer order was cancelled. Again he committed misconduct in 1988 which was reported to the General Manager and the Police vide Annexures-1 and 2.

3. Upto 1991 no election of the Board of Directors of the Society was held and the Management of the Society was with the Administrator appointed by the State Government. The Administrator by order dated 30.11.1991, suspended the petitioner and gave him charge-sheet dated 12.5.92, vide Annexure-3. The petitioner submitted his reply and the enquiry was held and the enquiry report submitted. The Enquiry Officer on 31.5.93, submitted his report holding that the petitioner was not guilty of any of the charge vide Annexure-4. The Chairman of the Bank accepted the enquiry report and reinstated the petitioner with full back wages by an order dated 1.6.93, vide Annexure-5. It is alleged in Para 10 of the petition that due to the misfortune of the petitioner respondent No. 2 was elected Chairman of the Board of Director of the respondent-Society on 21.6.93. He suspended the petitioner by order dated 22.6.92 and ordered holding further enquiry into the same charges on which the petitioner had been previously acquitted and reinstated. True copy of the suspension order is Annexure 7. The respondent No. 2 has appointed respondent No. 3 as Enquiry Officer and sent a letter to the petitioner to attend the enquiry proceedings on 9.7.93, vide Annexure- 8. One R.N. Dixit issued notice to the petitioner for holding the enquiry and the enquiry was held and thereafter the petitioner was dismissed from service by order dated 7.11.94. Against that order the petitioner filed Writ Petition No. 36512 of 1994, before this Court in which an interim order dated 17.11.94 was passed staying the termination order. Thereafter the respondent-Society cancelled the termination order but again placed the petitioner under suspension. Thus, the petitioner's suspension is continuing from 22.6.94. Aggrieved this writ petition has been filed.

4. A counter-affidavit has been filled on behalf of respondent Nos. 1 and 2 and we have perused the same. It is stated in Para 4 that the petitioner suspended on 9.3.72 and again on 14.8.80 and then on 25.11.80. Thereafter, the petitioner was suspended by the Assistant Registrar, Co-operative Society on 13.11.91. A preliminary enquiry report was submitted on 8.5.92 and thereafter a charge-sheet dated 12.5.92 was issued by the Assistant Registrar, Co-operative Societies to the petitioner vide Annexure-3 to the petition. The Board of Directors in its meeting on 28.12.92 appointed Ravindra Nath Dixit as Enquiry Officer vide Annexure CA-1. This enquiry continued On different dates upon 15.5.93. On 15.5.93 an application was filed on behalf of the petitioner that he wanted some time for obtaining relevant documents without which no explanation can be submitted, and he requested that the documents mentioned in the application be given to the petitioner at an early date and at least 10 days time may be granted for submission of the explanation. True copy of the application dated 15.5.93 is Annexure CA-3

5. In the meantime certain developments took place. A motion of no confidence was submitted to the District Magistrate against Shri M.P. Tomar the Chairman of the Board of Directors of the Society. The District Magistrate issued orders that the motion of no confidence should be considered on 21.6.93. Copy of the letter intimating Shri M.P. Tomar of this was served on him on 15.5.93 at 1.45 p.m. It is alleged in Para 11, of the counter-affidavit that Shri M.P. Tomar felt that the no motion of confidence would be passed and hence, whatever he had to do, good or bad, he had to do before 21.6.93. In this back ground a letter was obtained from Shri T.N. Shukla, Accountant of the Bank, who was also Presenting Officer for the petitioner, in the enquiry in which a prayer was made for change of the Enquiry Officer. True copy of the letter dated 15.5.93 and the order of the Chairman is Annexure CA-5. On 22.5.93 a letter was issued by the then Chairman stating therein that the enquiry is adjourned, due to unavoidable reasons and the papers were directed to be returned to the petitioner. Copy of letter dated 22.5.93 is Annexure CA-6. On the same day Shri M.P. Tomar, Chairman of the Bank revoked the order of suspension of the petitioner vide Annexure CA-7 and the petitioner joined duty on the same date. It is alleged in Para 14 of the counter-affidavit that on 25.5.93 one A.N. Pandey was appointed as Enquiry Officer. This was done without any resolution of the Board of Directors and was totally illegal and in a pre-planned manner. On 31.5.93 the newly appointed Enquiry Officer submitted his report that the petitioner was not guilty. This was done without recording any evidence, without examining any witnesses, and without filing of any paper before him. On the one hand on 15.5.93, the petitioner was asking for 10 days time, and now the petitioner was acquitted without rendering any evidence. The petitioner was reinstated immediately on the next day with full back wages by order dated 1.6.93 and all arrears amounting to Rs. 83,793.90 paid immediately on 1.6.93.

6. In Para 19 of the counter-affidavit, it is stated that on 1.6.93, a letter purporting to be of the Assistant Registrar, Co-operative Societies, was received in the office of the Bank. In this letter it is stated that it has been noticed by the Assistant Registrar, Co-operative Societies that the orders were passed by the Chairman in the petitioner's favour at a time when the motion of no confidence was going to be taken. It was further stated that, if any, amount other than suspension amount is paid the same was liable to be recovered back u/s 68 of the Act. True copy of the letter dated 5.6.93 is Annexure CA-12.

7. On 21.6.93 the motion of no confidence was passed against Shri M.P. Tomar and Ram Roop was elected as Chairman and Vinod Kumar was elected as Vice-Chairman vide Annexure CA-13. On the said date charge was taken by the new Chairman and the Vice Chairman, and on 22.6.93 suspension order against the petitioner was passed.

8. On the facts of the case we find no merit in this petition.

9. The allegations in Paras 10 to 20 of the counter-affidavit of Vinod Kumar, Vice-Chairman of the respondent-Society speak for themselves. It is very clear that Shri M.P. Tomar knowing that he would be removed from the post of Chairman deliberately changed the Enquiry Officer. The Enquiry Officer without following any proper procedure held the petitioner to be not guilty in the enquiry. This was evidently pre-planned and fraudulent and it is well settled that fraud vitiates all proceedings vide [S. Pratap Singh Vs. The State of Punjab](#), Thus, it is not a case of holding of a second enquiry in the strict sense at all. In our opinion, the first enquiry was totally bogus and was pre-planned. Writ jurisdiction is discretionary jurisdiction as held in [Ramniklal N. Bhutta and another Vs. State of Maharashtra and others](#), , and we are not inclined to interfere in such cases. The petition is dismissed. Petition dismissed.