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## **Amar Singh Rathor Vs State of U.P. and Others**

**C.M.W.P. No. 4111 of 1983**

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**Court:** Allahabad High Court

**Date of Decision:** Sept. 14, 1995

**Acts Referred:**

Constitution of India, 1950 " Article 14, 311(2)

**Citation:** (1996) AWC 300 Supp : (1995) 3 UPLBEC 1581

**Hon'ble Judges:** R.A. Sharma, J; I.M. Quddusi, J

**Bench:** Division Bench

**Advocate:** A.C. Dutt, for the Appellant;

**Final Decision:** Allowed

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### **Judgement**

R.A. Sharma, J.

In 1970, Petitioner was appointed as Credit Supervisor, District Co-operative Bank, Jhansi. Up to 1976, he claims to

have done the work of Secretary of Co-operative Societies also. After the Government, in exercise of its power u/s 122A of the U.P. Co-

operative Societies Act, 1965 (hereinafter referred to as the Act), has created centralised service of Secretaries of the Primary Agricultural Co-

operative Credit Societies and framed rules known as the U.P. Primary Agricultural Co-operative Credit Societies Centralised Service Rules,

1976 (hereinafter referred to as the Rules) for regulating the conditions of service of the members of the centralised service, Petitioner was

provisionally absorbed in the centralised service. He claims to have been absorbed finally in 1976 after he was selected by the Screening

Committee constituted u/s 122-A of the Act read with Rules 20 and 21. He continued to work thereafter as Secretary in various Co-operative

Societies. The Secretary, District Administrative Committee issued a notice dated 24.12.1982 containing allegations of misappropriation of

fertiliser to the Petitioner. By that notice, he was called upon to show cause within three days from the date of its receipt, failing which it shall be

presumed that he accepts the allegations contained therein, entitling the Committee to take stern action against him. This notice was served on the

Petitioner on 3.1.1983. He filed his reply dated 5.1.1983, denying the charge of misappropriation and further raising serious allegations of mala

fide against Sri. K. P. Agarwal, the then Secretary of District Administrative Committee. By letter dated 5.1.1983 issued by the Secretary of the

District Administrative Committee, Petitioner's service was terminated with immediate effect by offering one month's salary in lieu of notice. Being

aggrieved by it, Petitioner has filed this writ petition.

2. The Respondents have filed counter-affidavit and the Petitioner has filed rejoinder-affidavit in reply thereto. We have heard learned Counsel for

the parties.

3. Learned Counsel for the Petitioner has raised the following contentions in support of the writ petition : (i) service of the Petitioner, who was a

permanent/regular Secretary belonging to the centralised sendee, could not have been terminated by one month's notice or pay in lieu thereof; (ii)

order of termination of service is absolutely arbitrary and has been passed without applying the mind to the facts and circumstances of the case and

without taking into consideration the reply of the Petitioner filed by him in response to the show cause notice; (iii) the impugned order has been

passed at the Instance of Sri K. P. Agarwal, the then Secretary of the District Administrative Committee, who was motivated and was having

strained relation with the Petitioner; (iv) service of the Petitioner could not have been terminated without regular departmental inquiry; (v) in the

absence of inquiry from the concerned Co-operative Society regarding the alleged misappropriation of fertiliser, no action could have been taken

against the Petitioner; (vi) termination of service is a device employed by the Respondents in order to deprive the Petitioner of arrears of salary

regarding which the Deputy Registrar has written a letter; and (vii) District Administrative Committee had no Jurisdiction to terminate the service of

the Petitioner. Sri M. S. Negi, learned Counsel for the Respondents has disputed the above contentions.

4. It is not necessary to deal with all the contentions raised by the learned Counsel for the Petitioner, as this writ petition is liable to be allowed on

the basis of first two submissions only.

5. Sub-section (1) of Section 122A of the Act empowers the State Government to provide by rules for creation of one or more services of such

employees of such Co-operative Societies or class of Co-operative Societies as the State Government may think fit, common to such Co-

operative Societies and prescribed the method of recruitment, appointment, removal from service and other conditions of service of persons

belonging to such service. Sub-section (2) of the said section has laid down that after such a service is created, all employees of such societies

existing on the date of creation of such service stand provisionally absorbed in such service with effect from the date of its creation. Sub-section (3)

of the same section has provided for final absorption of the provisionally absorbed employees, if they are found suitable after screening. This sub-

section further provides that services of those employees, who are not found suitable for final absorption by the Screening Committee, shall stand

determined with effect from the date of Issue of orders in that behalf by the prescribed authority. in this connection. Rules 20 and 21 being relevant

are reproduced below:

20. The existing employees of the societies at the commencement of these rules shall be deemed to be provisionally absorbed in the Centralised

Service:

Provided that the employees provisionally absorbed shall continue to draw their salaries and other allowances in their respective old scales from

the Societies concerned.

21. The existing employees of the societies taken provisionally on the strength of the Centralised Service shall be finally absorbed in the said

service after their screening arranged in accordance with the Instructions Issued by the Registrar, Co-operative Societies, in this behalf.

It has been stated in paragraphs 4, 5 and 26 (a) of the writ petition that the Petitioner appeared before the Screening Committee in March, 1976

and was selected by it and was finally absorbed in the Centralised Service. Paragraphs 4, 5 and 26 (a) of the writ petition are reproduced below:

4. That on centralisation of the post of Secretary of Co-operative Credit Societies made in 1976 the Petitioner was asked to present himself for

screening according to the provisions of the newly amended Section 122A of the U.P. Co-operative Societies Act, which he did in March, 1976.

5. That thereafter the Petitioner was selected in the centralised service for Secretaries of Co-operative Agricultural Credit Societies and was

posted from March, 1976 as the Secretary in M/s Babina Chhavni Sadhan Sahkari Samiti wherein he worked up to 14th January, 1978.

26. (a) As the Petitioner was holding the post of Secretary, Cooperative Societies, earlier than the formation of the centralised service itself and

having been legally absorbed in such service, the authorities under the Centralised Service Rules have no jurisdiction to terminate his service.

It has further been stated in paragraphs 6 and 7 of the writ petition by the Petitioner that after his absorption, he continued to work as Secretary

and in 1978 he was sent to Training College for training. For this purpose, an agreement was executed between the State Cadre Authority and the

Petitioner in which it was mentioned that after completing the training, Petitioner will serve on the post Included in the centralised service as per

Rule 3 for a period not less than three years and if he fails to do so, he will refund to Government/Authority the whole of the cost of the training as

may be determined by the Principal of the Cooperative Training Centre. Petitioner completed the training successfully. Thereafter he was

transferred from district Jhansi to district Jalaun and has worked there as Secretary of the centralised service up to the time of termination of his

service.

6. Although the Respondents have filed the counter-affidavit but they have not denied the allegations contained in the aforesaid paragraphs of the

writ petition. in paragraph 14 of the counter-affidavit, it has, however, been submitted by them ""that the Petitioner was a temporary employee and

no confirmation order was issued in respect of the service of the Petitioner."" Such a plea cannot be accepted. All employees of the concerned

societies existing on the date of creation of the centralised service stand ""taken provisionally on the strength of centralised service."" Rule 21 makes

their final absorption, if found suitable after screening, mandatory. Neither Section 122A nor Rule 21 contemplate an order of confirmation of

service of those, who were selected after screening for final absorption in the centralised service. It is only in the case of those persons, who are

not found suitable after screening for final absorption that the order is required to be issued by the prescribed authority from the date of which their

service stand determined. Therefore, the Petitioner cannot be treated to be a temporary employee on the ground that no confirmation order was

issued in respect of his service. That apart, as the Respondents have not denied the selection of the Petitioner by the Screening Committee and his

final absorption in the centralised service, it is not open to them to say that the Petitioner is a temporary Secretary. The aforesaid averments in the

counter-affidavit, therefore, cannot be accepted. Termination of the service of the Petitioner, who is not a temporary employee, by offering one

month's notice or pay in lieu thereof under Regulation 25 (a) of U.P. Primary Agricultural Co-operative Credit Societies (Centralised Service)

Regulations, 1968, was, therefore, not Justified, because under the said Regulation, service of only a temporary employee can be terminated by

giving one month's notice or pay in lieu thereof.

7. In this connection, another aspect of the case relating to the transfer of the Petitioner from district Jhansi to district Jalaun and the consequence

arising therefrom may also be mentioned, because learned Counsel for both the parties have used it in support of their submissions. in pursuance of

the order of his transfer dated 3.1.1978 from district Jhansi to district Jalaun, he was relieved from Jhansi on 25.7.1978 and Joined district Jalaun

on 1.8.1978. Transfer order, relieving and Joining reports of the Petitioner have been filed as annexures to the counter-affidavit. Although the law

did not specifically provide for transfer of a Secretary from one district to another, but such transfers used to be made from time to time with the

approval of the District Administrative Committees of both the districts. Later on. State Cadre Authority has also issued an order dated

17.8.1978, sanctioning inter-district transfer of such Secretaries with the approval of the District Administrative Committees of both the districts

subject to condition that the Secretary so transferred shall be deemed to have been newly appointed in the district to which he is transferred. The

contention of the learned Counsel for the Respondents is that the Petitioner after his transfer cannot take advantage of his final absorption in the

centralised service, because he will be treated to have been newly appointed in district of Jalaun to which he was transferred. Learned Counsel for

the Petitioner has, however, disputed the above contentions. Submission of the learned Counsel for the Respondents cannot be accepted for the

following reasons : (i) there is no order appointing the Petitioner afresh in district Jalaun. He joined that district in pursuance of an order of transfer

passed by the Deputy Registrar in which it has been mentioned that he is being transferred under special circumstances. Neither the order of his

transfer nor the reports relieving him from Jhansi and joining at Jalaun indicate the fresh appointment; (ii) Petitioner was never informed that after he

transfer, he will be treated as a new appointee. Such a condition was neither mentioned in the order of transfer nor was it communicated to him;

(iii) even if the Petitioner is treated as a new appointee in district Jalaun, he cannot be deprived of his final absorption in the centralised service.

There is no such order taking away the benefit of the final absorption from him; and (iv) Petitioner was transferred from district Jhansi to district

Jalaun by order dated 3.1.1978 but this order could not be implemented because of his training for a period of six months regarding which he has

executed an agreement. He was, therefore, relieved from Jhansi in pursuance of the order of his transfer on 25.7.1978 and joined at Jalaun on

1.8.1978. The aforesaid order dated 17.8.1978 of the State Cadre Authority was passed after the Petitioner has been transferred and Joined at

Jalaun in pursuance thereof. The said order of the State Cadre Authority, therefore, cannot be used against him. in the absence of applicability of

the said order of the State Cadre Authority unless the Petitioner is appointed afresh by a separate order in district Jalaun to which he was

transferred and or has been informed of the consequences of the transfer, he cannot be said to be newly appointed Secretary in that district. There

is no such order. There is also no order depriving him of the benefit of final absorption in the Centralised Service.

8. The second submission is also liable to be accepted. Secretary, District Administrative Committee gave a notice dated 24.12.1982 containing

serious allegations of misappropriation of fertiliser to the Petitioner. This show cause notice was received by the Petitioner on 3.1.1983. He

submitted his reply on 5.1.1983. But the District Administrative Committee has passed the order, removing the Petitioner from service even before

Petitioner's reply could reach it. in this connection in paragraph 26 (d) of the writ petition, it has been stated by the Petitioner that no proper show

cause notice was given to him ""and the authorities decided even before the Petitioner's reply had reached them."" These allegations have not been

denied in the counter-affidavit. Therefore, it has to be accepted that the District Administrative Committee passed order, terminating the service of

the Petitioner without considering his reply. The sequence of event, such as the service of the show cause notice dated 24.12.1982 on the

Petitioner on 3.1.1983, giving him three days" time only for filing reply, holding of the meeting of the District Administrative Committee on

5.1.1983 and passing the resolution terminating the service of the Petitioner before his reply could reach them, clearly demonstrates that action of

the Respondents was hasty and arbitrary. Removing a person from service without considering his reply, which is submitted in response to the

show cause notice is an arbitrary action. It amounts to condemning a person on certain charges without taking into consideration his version. Such

an order has to be declared as unfair, unreasonable and arbitrary.

9. The District Administrative Committee is a statutory authority created by the Rules and it exercises the statutory powers while terminating the

service of a Secretary of the centralised service. The power to terminate the service of a member of the centralised service like every other power

has to be exercised by the concerned authorities fairly and reasonably. That is a mandate of Article 14 of the Constitution of India binding on all

persons, who are exercising the statutory powers. In this connection reference may be made to The Manager, Government Branch Press and

Another Vs. D.B. Belliappa, , wherein Supreme Court has laid down that the principles contained in Article 14 of the Constitution are available

even to a temporary Government servant, if his service has been arbitrarily terminated. Reference may also be made to Shankar Dass Vs. Union of

India (UOI) and Another, , wherein while dealing with a case of imposition of penalty under Clause (a) of the second proviso to Article 311(2) of

the Constitution, Hon"ble Supreme Court has laid down that ""that power like every other power has to be exercised fairly, justly, and reasonably,

and the concerned authority cannot pass an order in a huff without applying its mind to the relevant consideration. The rule that the power has to

be exercised in a manner which is Just, fair and reasonable and not in an unreasonable or arbitrary manner, has also been highlighted by the

Hon"ble Supreme Court in Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, . The aforesaid principles are equally

applicable when service of a Secretary belonging to the centralised service is terminated by the District Administrative Committee.

10. For the reasons given above, this writ petition is liable to be allowed. After the order of termination of service of an employee is set aside by a

court, he is entitled to be reinstated with full back wages unless he was gainfully employed elsewhere during the period after the termination of his

service and before his reinstatement. in the instant case there is nothing on the record to show that the Petitioner was employed elsewhere after the

termination of his service. He is, therefore, entitled to be reinstated with full back salary.

11. This writ petition is accordingly allowed with costs. Resolution dated 5.1.1983 passed by the District Administrative Committee and the order

dated 5.1.1983, passed by the Secretary, District Administrative Committee, Jalaun are quashed. Respondents are directed to reinstate the

Petitioner forthwith with full salary and other consequential benefits for the period during which he was prevented from discharging his duties as

Secretary due to the impugned order till the date of his reinstatement.