

Om Parkash Maurya

Vs

U. P. Cooperative Sugar Factories Federation, Lucknow and Others

Civil Appeal No. 491 of 1985

(O. Chinnappa Reddy, K. N. Singh JJ)

09.05.1986

JUDGMENT

SINGH, J. :-

1. This appeal is directed against the order of the High Court of Allahabad (Lucknow Bench) dismissing the appellant's writ petition made under Article 226 of the Constitution challenging the order dated September 2, 1983 reverting the appellant from the post of Commercial Officer to that of Superintendent.
2. The appellant joined service in Kisan Sahakari Chini Mills Ltd., Bisalpur District Pilibhit, a sugar factory run and managed by the Uttar Pradesh Cooperative Mills Federation. While the appellant was working as Office Superintendent, he was selected for promotion to the post of Commercial Officer and by order dated August 29, 1980 appointed on probation for one year against a regular vacancy with a condition that his probationary period may be extended further and during the period of probation he could be reverted to the post of Office Superintendent without any notice. On July 2, 1981 the appellant was transferred from Bisalpur to Majohla Sugar Factory where he continued to work as Commercial Officer. By an order dated October 2, 1981 the appellant's probationary period was extended for one year till September 4, 1982 the period so extended expired on September 4, 1982 but no further order either extending the probationary period or confirming him on the post was issued, and the appellant continued to work as Commercial Officer. The Managing Director of the U. P. Cooperative Sugar Mill Federation Ltd., a "cooperative society" registered under the U. P. Cooperative Societies Act, 1965, which runs and manages a number of sugar factories in the State of Uttar Pradesh issued order on September 2, 1983 reverting the appellant to the post of Office Superintendent. The appellant challenged the validity of the reversion order before the High Court on the sole ground that on the expiry of the probationary period he stood confirmed, and he could not be reverted treating him on probation. The High Court held that on the expiry of the probationary period the appellant could not be deemed to be confirmed as there was no rule prohibiting the extension of probationary period.
3. The U. P. Cooperative Institutional Service Board constituted by the State of Uttar Pradesh in accordance with sub-section (2) of Section 122 of the U. P. Cooperative Societies Act. 1975 has framed the U. P. Cooperative Societies Employees Service Regulations, 1975 which regulate the condition of service of employee of all the cooperative societies placed under the purview of the Institutional Service Board by the Government Notification No. 366-C/XII-C-3-36-71 dated March 4, 1972. These regulations contain provisions for recruitment, probation, confirmation, seniority and disciplinary control. Regulation 17 provides for probation; it lays down that all persons on appointment against regular vacancies shall be placed on probation for a period of one year. Proviso

to the regulation lays down that the appointing authority may, in individual cases, extend the period of probation in writing for further period not exceeding one year, as it may deem fit. Clause (ii) of the regulation provides that if, at any time, during or at the end of the period of probation or the extended period of probation, it appears to the appointing authority that the employee placed on probation, has not made sufficient use of the opportunity offered to him, or has otherwise failed to give satisfaction, he may be discharged from service, or reverted to the post held by him substantively, if any, immediately before such appointment. Regulation 18 provides for confirmation of an employee on the satisfactory completion of the probationary period. Regulations 17 and 18 read together, provide that appointment against a regular vacancy is to be made on probation for a period of one year, this probationary period can be extended for a period of one year more. The proviso to Regulation 17 restricts the power of the appointing authority in extending period of probation beyond the period of one year. An employee appointed against a regular vacancy cannot be placed on probation for a period more than two years and if during the period of probation the appointing authority is of the opinion that the employee has not made use of opportunity afforded to him he may discharge him from service or revert him to his substantive post but he has no power to extend the period of probation beyond the period of two years. Regulation 18 stipulates confirmation of an employee by an express order on the completion of the probationary period. The regulations do not expressly lay down as to what would be the status of an employee on the expiry of maximum period of probation where no order of confirmation is issued and the employee is allowed to continue in service. Since Regulation 17 does not permit continuation of an employee on probation for a period more than two years the necessary result would follow that after the expiry of two years' probationary period, the employee stands confirmed by implication. This is implicit in the scheme of Regulations 17 and 18. In *State of Punjab v. Dharam Singh* a Constitution Bench of this Court held :

Where, as in the present case, the service rules fix a certain period of time beyond which the probationary period cannot be extended, and an employee appointed or promoted to a post on probation is allowed to continue in that post after completion of the maximum period of probation without an express order of confirmation, he cannot be deemed to continue in that post as a probationer by implication. The reason is that such an implication is negatived by the service rule forbidding extension of the probationary period beyond the maximum period fixed by it. In such a case, it is permissible to draw the inference that the employee allowed to continue in the post on completion of the maximum period of probation has been confirmed in the post by implication.

4. In the instant case the order of appointment promoting the appellant to the post of Commercial Officer merely indicated that his probationary period could be extended and he could be reverted to the post of Office Superintendent without any notice. Stipulation for extension of probationary period in the appointment order must be considered in accordance with the proviso to Regulation 17(1) which means that the probationary period could be extended for a period of one year more. Indisputably on the expiry of the appellant's initial, probationary period of one year, the appointing authority extended the same for another period of one year which also expired on September 4, 1982. During the period of probation appellant's services were neither terminated nor was he reverted to his substantive post instead he was allowed to continue on the post of Commercial Officer. 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 in the post by implication. The appellant acquired the status of a confirmed employee on the post of Commercial Officer and the appointing authority could not legally revert him to the lower post of Superintendent.

5. Learned counsel appearing for the U. P. Cooperative Sugar Factories Federation urged that the U. P. Cooperative Societies Employees Service Regulations, 1975 do not apply to the appellant as he was an employee of the U. P. Cooperative Sugar Factories Federation, as the condition of service of the appellant and other employees of the U. P. Cooperative Sugar Factories Federation are regulated by the U. P. Cooperative 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. Rule 3 of the U. P. Cooperative Sugar Factories Federation Service Rules, 1976 (hereinafter referred to as the Federation Service Rules) provides that these rules shall apply to all the employees of the federation. Rule 5 provides that every employee shall be appointed on probation for such period as the appointing authority may specify and the period of probation may be extended by the appointing authority from time to time; the rule does not prescribe any limit on the extension of the probationary period. Rule 6 provides that upon satisfactory completion of probationary period an employee shall be eligible for confirmation. Placing reliance on Rule 5 learned counsel for the respondents urged that since there was no order of confirmation the appellant's probationary period stood extended, therefore, he could be reverted at any time to his substantive post. It is true that Rule 5 of the Federation Service Rules does not place any restriction on the appointing authority's power to extend the probationary period, it may extend the probationary period for an unlimited period and in the absence of Confirmation order the employee shall continue to be on probation for indefinite period. It is well settled that where appointment on promotion is made on probation for a specific period and the employee is allowed to continue in the post after expiry of the probationary period without any specific order of confirmation he would be deemed to continue on probation provided the rules do not provide contrary to it. If Rule 5 applies to the appellant he could not acquire the status of a confirmed employee in the post of Commercial Officer and he could legally be reverted to his substantive post.

6. There are two set of Rules (i) The U. P. Cooperative Societies Employees Service Regulation, 1975 (ii) the U. P. Cooperative Sugar Factories Federation Employees Service Rules, 1976. The question is which of rules apply to the employees of the Cooperative Sugar Factories Federation. While considering this question it is necessary to advert to the relevant provisions of the Act and the Rules framed thereunder and the Notifications issued from time to time. Section 121 of the Act confers power on the Registrar, (an officer appointed as such by the State Government under Section 3) to frame regulations to regulate the emoluments and conditions of service of employees in a cooperative society or class of cooperative societies. Section 3(2) confers power on the State Government to appoint officers to assist the Registrar and to confer on them all or any of the power of the Registrar. An Officer on whom powers of Registrar are conferred by the State Government, has authority to frame rules regulating conditions of service under Section 121(1) of the Act. Section 122(1) confers power on the State Government to constitute an authority for the recruitment training and disciplinary control of the employees of the cooperative societies or class of cooperative societies and it may further require such authority to frame regulations regarding recruitment, employments, terms and conditions of service including disciplinary control of such employees. Regulations so framed require approval of the State Government under sub-section (2). Once approval is granted, the regulations take effect from the date of publication. The State Government in exercise of its powers under Section 122(1) issued a Notification No. 366-C/XII-C-3-36-71 dated March 4, 1972 constituting the U. P. Cooperative Institutional Service Board as an authority for the recruitment, training and disciplinary control of the employees of the Apex Level Societies Central or Primary Societies, and it further conferred power on the Institutional Service Board to frame regulations regarding recruitment, emoluments, terms and conditions of service of the employees of the cooperative societies of the Apex Level Societies Central or Primary Societies.

In pursuance thereof the International Service Board framed the U. P. Cooperative Societies Employees Service Regulation, 1975 regulating the conditions of service of the employee of these cooperative societies which were placed under the purview of the Institutional Board by the Government Notification No. 366-C/XII-C-3-36-71, dated March 4, 1972. This Notification states that the Board shall have authority to frame regulations for the recruitment, training and disciplinary control of the employees of the Apex Level Societies, Central, or Primary Societies. Section 2(a-4) which defines "Apex Level Societies", expressly specifies the U. P. Cooperative Sugar Factories Federation Ltd. as an Apex Level Society. Since the Institutional Service Board was conferred power to frame regulations regulating the conditions of service of the employees of Apex Level Societies, the regulations framed by the Board apply to the employees of the U. P. Cooperative Sugar Factories Federation Ltd. The respondents have failed to place any Notification before the Court to show that the power of the Institutional Service Board to frame regulations, regulating the conditions of service of the employees of Apex Level Societies including that of U. P. Cooperative Sugar Factories Federation Ltd., was ever withdrawn.

7. The U. P. Cooperative Sugar Factories Federation Service Rules, 1976 have been framed by the Cane Commissioner under Sub-section (1) of Section 122 of the Act. These Rules provide that they shall apply to all the employees of the U. P. Cooperative Sugar Factories Federation Ltd., but the question is whether rules so framed by the Cane Commissioner would override the Service Regulations, 1975. As noted earlier, the Institutional Service Board was constituted an authority under Section 122(1) of the Act and authorised to frame regulations regulating the conditions of service of employees of the cooperative societies including those of Apex Level Societies. Sub-section (2) of Section 122 provides that on approval of the Regulations by the State Government any rule or regulations framed by the Registrar in exercise of its powers under Section 121(1) would stand superseded. Sub-section (1) of Section 121 confers power on the Registrar which may include any other subordinate officer or authority to frame rules regulating the condition of service of employees of cooperative societies, such rules do not require 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 rules made under Section 121, the scheme of Section 121 and Section 122 postulates that primacy has to be given to regulations framed by the authority under Section 122 of the Act. If there are two sets of rules regulating the conditions of service of employees of cooperative societies the regulations framed under Section 122 and approved by the State Government shall prevail. In this view the provisions of the U. P. Cooperative Sugar Factories Federation Service Rules 1976 do not override Service Regulations of 1975. It appears that this position was realised by the State Government and for that reason it issued Notification No. U. O. 402(II) /C-I-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. Cooperative Factories Federation Ltd.

8. The learned counsel for the respondent urged that since the Government had constituted the Commissioner and Secretary of the Cane Development Department as the competent authority for framing regulations for the recruitment, training and disciplinary control of the employees of the U. P. Cooperative Sugar Factories Federation Ltd., 1975 regulations framed by the Institutional Service Board do not apply. We find no merit in this submission. Firstly, the Notification dated August 6, 1977 merely designates the Commissioner and Secretary Sugar Industry and Cane Development Department as the authority for the recruitment, training and disciplinary control of the employees of the U. P. Cooperative Sugar Factories Federation, it does not confer power on the authority to frame any rule or regulations regulating the conditions of service of the employees of the Sugar

Factories Federation Ltd. But even if any such power can be inferred, admittedly no rules or regulations regulating the conditions of service of the employees of the Cooperative Sugar Factories Federation have as yet been framed. Learned Counsel for the respondents conceded that draft service regulations have been prepared but those have not been approved by the government as required by sub-section (2) of the Act. In absence of approval of the State Government as required by sub-section (2) of Section 122, regulations, if any, framed by the Commissioner and Secretary Sugar Industry and Cane Development Department do not acquire any legal force. In this view 1975 Regulations framed by the Institutional Service Board continue to apply to the employees of the U. P. Cooperative Sugar Factories Federation Ltd.

9. In view of the above discussion it is manifestly clear that the appellant's services were regulated by the U. P. Cooperative Societies Employees Services Regulations, 1975. Since under those Regulations appellant's probationary period could not be extended beyond the maximum period of two years, he stood confirmed on the expiry of maximum probationary period and thereafter he could not be reverted to a lower post treating him on probation. The Order of reversion is illegal. We accordingly allow the Appeal, set aside the order of the High Court and quash the order of reversion dated September 2, 1983 and direct that the appellant shall be treated in service and paid his wages and other allowances. The appellant is entitled to his costs which is qualified as Rs. 1,000.

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