

Ram Nihor Sharma Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Jul-11-1997

Reported in : 1998(1)AWC313

Judge : R.A. Sharma and ;Kundan Singh, JJ.

Acts : Uttar Pradesh Co-operative Societies Act, 1965 - Sections 122A and 122A(2); Uttar Pradesh Primary Agricultural Co-operative Credit Societies Centralised Services Rules, 1976 - Rule 29; Uttar Pradesh Co-operative Societies Employees Services Regulation, 1975

Appeal No. : C.M.W.P. No. 20496 of 1997

Appellant : Ram Nihor Sharma

Respondent : State of U.P. and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : Baikunth Nath Chaturvedi, Adv.

Judgement :

R.A. Sharma, J.

1. Petitioner is a Cadre Secretary belonging to the Centralised Service created by U. P. Primary Agricultural Co-operative Credit Societies Centralised Service Rules,

1976 (hereinafter referred to as Rules). By order dated April 4, 1997 he has been informed that he will retire on June 30, 1997, on which date he completes 58 years of age. Being aggrieved by the said order, he has filed this writ petition with the following averments :

2. Petitioner joined a Co-operative Society in 1963 as an Accountant under a contract. On 22.2.1966, a settlement (contract) was arrived at between the Co-operative Societies and their Employees Union of which the petitioner was a member, under which the age of retirement of the employees like the petitioner was fixed at 60 years. There is neither any fresh settlement nor any award nor any legislation altering the said settlement. Therefore, he is entitled to continue in service upto the age of 60 years.

3. The sole contention of Sri B.N. Chaturvedi, learned counsel for the petitioner is that in view of the settlement of 1966, it is not open to the respondents to retire the petitioner at the age of 58 years and he is entitled to continue in service upto the age of 60 years. The submission of Sri H.R. Mishra, learned counsel for the respondents is that terms and conditions of the service of the petitioner are governed by the rules which have fixed the retirement age of the Secretary at 58 years vide Rule 29.

4. Section 122A of the U. P. Co-operative Societies Act, 1965 (hereinafter referred to as Act) empowers the State Government to create by Rules Centralised Services of such employees of such co-operative societies or class of co-operative societies as it may think fit. Section 122A is quoted below :

'Centralisation of certain services ;

(1) Notwithstanding anything contained in this Act, the State Government may by rules provide for the 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 prescribe the method of recruitment, appointment, removal and other conditions of service of persons appointed to any such service.

(2) When any such service is created, all employees of such societies existing on the date of creation of such service on the posts included in such service, shall be deemed to have been provisionally absorbed in the service with effect from the date of creation of such service ;

Provided that any such employee may, by notice in writing to the prescribed authority within the prescribed period, intimate his option of not becoming a member of such service, and in that event his services in the society shall stand determined with effect from the date of such notice and he shall be entitled to compensation from the society which shall be-

(a) in the case of a permanent employee, a sum equivalent to his salary (including all allowances) for a period of three months or for the remaining period of his service, whichever is less ;

(b) in the case of a temporary employee, a sum equivalent to his salary (including all allowances) for a period of one month or for the remaining period of his service, whichever is less.

(3) An employee provisionally absorbed under sub-section (2) may be absorbed finally in the service if found suitable after screening in accordance with the instructions issued by the Registrar ; and the services of any such employee as is not found suitable for absorption in the service shall stand determined with effect from the date of issue of orders in that behalf by the prescribed authority and until such authority is prescribed, by the officer specified by the Registrar in that behalf in such instructions and he shall be entitled to compensation as laid down in clause (a) or Clause (b) of sub-section (2) according as he was a permanent or a temporary employee.'

5. The State Government has created the Centralised Service of Secretaries of U. P. Primary Agricultural Co-operative Credit Societies by Rules. The Rules have laid down the method of recruitment/appointment to the Centralised Service, and have also fixed the age of retirement of the members of the Centralised Service at 58 years. The petitioner is a member of the Centralised Service and, therefore, the conditions of service laid down by the Rules including the age of retirement are

binding on him. The contract of service entered into by the petitioner at the time of his entry into the service as well as the settlement reached in 1966 between the co-operative societies and their employees union have been rendered ineffective after the petitioner joined the Centralised Service which is a new service, the terms and conditions of which are regulated by the statutory rules. A co-operative society can neither appoint a Cadre Secretary nor can it make any contract regulating his conditions of service. The Cadre Secretary is appointed by the statutory authority mentioned in the rules. Therefore, no exception can be taken to the impugned order.

6. The learned counsel for the petitioner in support of the petition has relied upon the decision of the Division Bench of this Court in Allahabad District Co-operative Bank v. Lalji Srivastava. 1994 13) UPLBEC 1701. This decision is of no help to the petitioner. A Division Bench of this Court in Shesh Nath Singh v. Member/Secretary, District Administrative Committee. U. P. and others. Special Appeal No. 578 of 1995, decided on 14.12.1995, while rejecting the similar plea as is being raised in the present case has distinguished the decision of Allahabad District Co-operative Bank v. Lalji Srivastava (supra) holding as under :

'The decision of Division Bench of this Court in Allahabad District Cooperative Bank v. Lalji Srivastava, 1994 (3) UPLBEC 1701, which has been relied upon by the learned counsel for the appellant is of no assistance to him. In that case, the conditions of service of the concerned employee were governed by U. P. Co-operative Societies Employees Services Regulation. 1975 under which the terms and conditions of contract of employment fixing age of retirement have been protected under certain circumstances. The conditions of service of the employee in the said case was not governed by the Centralised Services Rules.'

7. This petition, lacks of merit and is accordingly dismissed.