

Ram Saran Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Aug-11-1998

Reported in : 1999(1)AWC344; (1998)3UPLBEC1867

Judge : S.R. Singh, J.

Acts : [Constitution of India](#) - Articles 12, 14 and 226; Uttar Pradesh Co-operative Societies Act, 1965 - Sections 122 and 128; Uttar Pradesh Co-operative Societies Employees (Service) Regulations, 1975 - Regulations 2, 84 and 85; Uttar Pradesh Temporary Government Servant (Termination of Service) Rules, 1975 - Rule 4

Appeal No. : C.M.W.P. No. 22048 of 1989

Appellant : Ram Saran

Respondent : State of U.P. and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : K.S. Misra, Adv.

Judgement :

S.R. Singh, J.

1. Disputation in the Instant petition centres round the order dated 16.8.1989 by which the petitioner's appointment as Asstt. Accountant in Chakaundh Farmers'

Services (Co-operative) Society, Chakaundh, Banda, was terminated.

2. Factual matrix bearing on the controversy involved in this petition is that the petitioner entered the service of the respondent-society as Asstt. Accountant on a salary pegged at Rs. 300 per month. The appointment letter dated 24.12.1985 envisaged that the service was liable to be terminated at any time without any notice. The services of the petitioner came to be terminated by means of the order dated 16.8.1989 with immediate effect. The termination of service purports to have been ordered under 'Rule 4 of the U. P. Sahkart Karamchari Seva Niyamawali' and the petitioner was paid a month's advance salary pursuant to the resolution passed by the Sanchalak Mandal of the society.

3. Sri K. S. Misra, appearing for the petitioner, canvassed, relying upon Regulation 85 of the U. P. Cooperative Societies Employees Service Regulation, 1975, that the services of the petitioner were not liable to be terminated except after recourse to disciplinary proceedings against the petitioner in the manner embodied in the said regulation. In opposition, Sri K. M. Sahal, standing counsel, mooted the maintainability of the petition stemming from the submission that the services of the petitioner were not governed by any statutory rules or regulations. The remedy if any, submitted the learned standing counsel, was to invoke the procedure of a suit.

4. In Ram Singh u. Kisan Sewa Sahkari Samiti Ltd., Nehru Nagar Naidu, Distt. Meerut, (1997) 2 UPLBEC 1102, a Division Bench of this Court held the view that Co-operative Societies not coming within the purview of Regulation 2 (ix) of the U. P. Co-operative Societies Employees Service Regulation, 1975, do not satisfy the test of being 'State' or 'Authority' within the meaning of Article 12 of the [Constitution of India](#) and therefore, no writ lay against such Co-operative Societies. The service regulation on which reliance was placed by the learned counsel appearing for the petitioner, commends itself for application to Co-operative Societies falling within the purview of Regulation 2 (ix) which, for ready reference, is excerpted below.

'Co-operative Society means a co-operative society placed under the purview of the Board by Government Notification No. 336-C (xii)/C 3-26-71 dated March

4.1972 as amended from time to time by notification Issued under Section 122 of the Act read with Rule 389 fa) of the Rules.'

5. The Co-operative Society in which the petitioner was employed, had its area of operation in a part of district Banda and there is nothing on record to be eloquent of the fact that it has been placed under the purview of the Institutional Service Board by means of the notification referred to in Regulation 2 (ix) of the Regulations aforesaid. In the aboveconspectus, the regulations referred to above, are not attracted for application to the petitioner and the society in the present case is neither 'State' nor 'authority' within the meaning of Article 12 of the Constitution.

6. Sri K. S. Misra. appearing for the petitioner then cited the decision in *Shin Narain Shukla v. District Asstt. Registrar of the Cooperative Society U. P.. Banda* the ratio decidendi of which was that the termination of the services of an Accountant of Sahkari Samiti without following the procedure contained in Regulations 84-85 of the Regulations was illegal. In the said case, the question whether the U. P. Cooperative Societies Employees Service Regulations, 1975 were intended for application to the concerned society namely Badosa Kshetriya Sahkari Samiti Ltd., Badosa, Distt. Banda was neither examined nor decided in its perspective and in view of conclusion that the society in the present case is not one, falling within the purview of the notification referred to in Regulation 2 (ix) of the Regulations, the petitioner cannot derive dividend from reliance on the said decision which is premised on the provisions of the Regulations aforesaid.

7. In *Vijai Shanker Saini v. District Registrar Societies, O. P., Varanasi and others*. 1997 (1) UPLBEC 262, as well, a learned Judge of this Court held the view that the society not being 'State' or 'other authority' within the meaning of Article 12 of the Constitution does not submit itself to the writ Jurisdiction of this Court. The Court is however, conscious of the fact that the appropriate writ may issue against 'any person' particularly 'any person' discharging public function. The Court is also not oblivious of the fact that the Co-operative Society in the present case is engaged in performing some public function and there is an element of public interest permeating the performance of its duties and assayed in that perspective,

the writ petition would be maintainable even if the society does not fall within the purview of 'State' or 'instrumentality of State' within the meaning of Article 12 of the Constitution in that Article 226 of the Constitution extends beyond the prerogative writs to Issue of any order or direction against 'any person' or 'any authority' (Not being an instrumentality of State) for any other purpose and legal rights of an individual sought to be enforced may be founded upon a contract or a statute or an instrument having force of law. 'The arm of the Court is long enough to reach injustice wherever it is found'. The distinction between public law and private law' remedy by judicial adjudication is gradually getting marginalised and obliterated-- See *Air India Statutory Corporation u. United Union*, 1997 (9) SCO 377. In *K. Krishnamacharyulu v. Sri Venkateshwara Hindu College of Engineering*, 1997 (3) SCC 571, the question was whether private institution catering to the needs of Educational opportunities, is amenable to writ jurisdiction of High Court under Article 226 of the Constitution. The Supreme Court held : 'Private institutions cater to the needs of the educational opportunities. A teacher duly appointed to a post in private institution is entitled to seek enforcement of orders issued by the Government. When an element of public interest is created and institution is catering to that element, the teacher, the arm of the institution, is also entitled to avail of remedy under Article 226; the jurisdiction part is very wide.....It is therefore, held that the writ petition is maintainable.' A Cooperative Society registered under the Co-operative Societies Act, 1965 and the Rules made thereunder may be a private body but it certainly caters to the needs of public and the employees being the arm of 'the society cannot be dealt with by the society in an arbitrary manner. Absence of arbitrariness in action by bodies performing public function is a facet of Article 14 of the Constitution. Violation of Article 14 by public bodies will give rise to a cause of action under Article 226 of the Constitution. However, Section 128 of the Co-operative Societies Act empowers registrar to annul any resolution passed by the Committee of Management or the General Body of any Co-operative Society ; or cancel any order passed by an officer of the Co-operative Society ; if he is of opinion that the resolution or the order, is not covered by the objects of the society or is in contravention of the provisions of the Act, the rules or the by-laws of the society subject to fulfilment of the requirement of the proviso to Section 128, which envisages that the Registrar shall before making any order require the

management committee, general body or officer of the co-operative society as the case may be to reconsider the resolution or the order within such period he may fix but it shall not be less than 15 days and if he deems fit. may stay operation, of that resolution or the order during such period he may fix but it shall not be less than 15 days and if he deems fit, may stay operation of that resolution or the order during such period. The remedy under Section 128 of the Act available to the appellant, is thus quite efficacious one. In the circumstances of the case therefore, it would be but proper to relegate the petitioner to the remedy available to him under Section 128 of the Act.

8. Sri Misra, appearing for the petitioner, also placed credence on Supreme Court decision in U. P. Cooperative Federation Ltd. u. Ram Sirigh Yadav and others. (1998 1 UPLBEC 46 and a decision of this Court in Agya Prasad Pandey v. State of U. P. and others, (1991) 2 UPLBEC 1167. The employee of the Co-operative Federation was removed from Service stemming from the reason that he failed to Join the transferred posting. The employer gave the case a garb of abandonment of service and accordingly, cashiered him from service without following the procedure prescribed in Regulations 84-85 of the U. P. Co-operative Societies Employees Service Regulation. 1975. The Supreme Court held that the order of removal was unsustainable. As noticed above, the provisions of U. P. Co-operative Societies Employees Service Regulation. 1975 do not govern the service condition of the petitioner and hence, the decision of the Apex Court aforesaid will not inure to the benefit of the petitioner. So far as the decision of this Court in Agya Prasad Pandey (supra) is concerned, that was a case of termination of service of a Forest Guard without complying with the requirements of Rule 4 of the U. P. Temporary Government Servant (Termination of Service) Rules, 1975. On the facts of the present case, the said decision too does not commend itself for application.

9. In my opinion, the petitioner may either file a civil suit for appropriate relief or he may approach the Registrar under Section 128 of the U. P. Co-operative Societies Act, 1965 for annulment of the resolution passed by Sanchalak Mandal of the Society pursuant to which the services of the petitioner were terminated. I feel called to observe in the circumstances that in case the petitioner prefers a

representation to the competent authority exercising the power of Registrar under Section 128 of the Act, the latter shall dispose of the representation in accordance with law.

10. As a result of foregoing discussion, the petition falls and is dismissed subject to the observations /directions aforestated.

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