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Yogesh Kumar Singh Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Apr-05-1999

Reported in : 1999(3)AWC2181

Judge : D.K. Seth, J.

Acts : Constitution of India - Articles 12 and 226; Uttar Pradesh Co-operative Societies Act - Sections 128; Co-operative Federal Authority (Business) Regulation, 1976; Bank Act; Uttar Pradesh Co-operative Land Development Bank Rules, 1971

Appeal No. : C.M.W.P. No. 13329 of 1999

Appellant : Yogesh Kumar Singh

Respondent : State of U.P. and Others

Advocate for Def. : G.D. Mishra, S.C.

Advocate for Pet/Ap. : Rajendra Kumar Pandey, Adv.

Judgement :

D.K. Seth, J.

1. The petitioner was transferred from Lucknow to Dehradun by an order dated 31.3.1998 and thereafter by an order dated 26.10.1998, the petitioner was again

transferred from Dehradun to Lucknow. The said order was challenged in Writ Petition No. 37211 of 1998 since been disposed of on 8.12.1998. In the said order dated 8.12.1998, the respondents were directed to consider the petitioner's representation, if made. The representation of the petitioner was rejected by an order dated 4.3.1999.

2. Mr. R. K, Pandey, learned counsel for the petitioner as sails these two orders dated 26.10.1998 and 4.3.1999 contained in Annexures-4 and 9 respectively, on the ground that the petitioner's daughter is studying in High School and is appearing in the final examination from Dehradun. Therefore, he should not be transferred at this Juncture and he should be permitted till the examination of his daughter is over. He further contends that so far as the order dated 4.3.1999 by which his representation was rejected is concerned, the same does not contain any reason as to on which ground his representation was rejected. Since the order does not specify any reason the same is liable to be quashed and the respondents be directed to decide the question once again and pass appropriate order supported by reason.

3. Shri G. D. Mishra learned counsel for respondents, on the other hand, took a preliminary objection as to the maintainability of the writ petition on the ground that the respondents of whom the petitioner is an employee is a Co-operative Society against which no writ lies. Since such co-operative society is not a State within the meaning of Article 12 of the Constitution. He further contends that the petitioner is not governed by any statutory rules nor his services were governed by any statutory regulations as such the respondents not being State within the meaning of Article 12 of the Constitution and was not discharging any statutory or public duty in order to make it amenable to writ Jurisdiction. On these grounds he prays that the writ petition should be dismissed.

4. Mr. Pandey, however, hadcontested the said contention of Mr. Mishra by relying on various decisions, to which reference would be made at a later stage, and argued that the Co-operative Society being registered under the Co-operative Societies Act it discharges public duty as such it is an instrumentality and agency of the State and therefore, an authority within the meaning of Article 12 of the

Constitution. He further contends that even assuming but not admitting, the co-operative society is not a State within the meaning of Article 12 of theConstitution and is not discharging any statutory duty even then in the discharge of public duty, it is an authority against whom writ lies.

5. I have heard learned counsel for the parties at length.

6. Mr. Pandey had relied on the decision in the case of Sri Ram Sevan v. State of U. P and others, 1998 (3) UPLBEC 1867, by learned single Judge of this Court wherein it was held that even against a private authority, the writ lies provided it performs public duty. In the said case, the petitioner was also an employee of the co-operative society as Assistant Accountant in Chakaundh Farmers' Services (Cooperative) Society. Relying on the decision in the case of Vijai Shanker Saini v. District Registrar Societies, U. P., Varanasi and others, 1997 (1) UPLBEC 262 the learned Single Judge agreed that the distinction between public law and private law remedy judicial adjudication is gradually getting marginalised and obliterated and if private institution performs public duty, in that event, it is amenable to writ jurisdiction. But the said decision did not take into consideration the decision of this Court in the case of Radha Charan Sharma v- U. P. Co-operative Federation and others, 1982 UPLBEC 89, rendered by the Full Bench which is still holding the field. However, in the said decision Ram Saran (supra), it was found that the petitioner has an alternative remedy by way of filing a civil suit or by approaching the authority under Section 128 of U. P. Co-operative Societies Act and thus the Court has not exercised its discretion. The decision In the said case, however, does not say that even when a body does not discharge public or statutory duty, it becomes amenable to writ jurisdiction.

7. In this case, it has not been shown that the petitioner's services are governed by 1975 regulation and that the society in relation to its' employees Js discharging public or statutory duty even though, it may discharge public duty in relation to its customer which fact is also denied and disputed by Mr. Mishra.Therefore, the said decision in the case of Sri Rom Saran (supra), does not help the petitioner.

8. Mr. Pandey had also relied on the decision In the case of Harsh Vardhan Agarwal v. Director General Indian Council of Medical Research, Ansari Nagar,

New Delhi and others, 1998 (2) UPLBEC 1423 in which learned single Judge of this Court had held that the scope of Article 226 of the Constitution is wide enough to Include an authority which is not a State within meaning of Article 12 of the Constitution even if such body Is not a statutory authority or instrumentalities of the State provided that such authorities discharge statutory or public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. In the present case, we have not been able to find out that the nature of any duty as has been cast upon the society which comes within the ambit of statutory duty. Thus this decision is also distinguishable and cannot be attracted in the facts of the present case.

9. He then relied on the decision in the case of V. K. S. Chauhan v. U, P. Co-operative Mills Federation B-1, Kanpur and others. 1991 (1) UPLBEC 32, in which a Division Bench of this Court had dismissed the writ petition against a co-operative society solely on the ground of alternative remedy available under Section 128 which was found to be an equally efficacious remedy. This case has also not specifically held that the writ petition Is maintainable against co-operative society. Therefore, the said decision also does not help Mr. Pandey.

10. On the other hand in the case of Bhagat Prasad Yadau v. Milk Commissioner, Dugdh Sahkari Sangh Limited and others, in Writ Petition No. 2518 of 1995, decided on 1.2.1995, it was held that the Co-operative Milk Union is not State within the meaning of Article 12 of the Constitution and it does not discharge any statutory duty in relation to its employees therefore, the writ is not maintainable relying on the decision in the case of RadhaCharan Sharma (supra) (Full Bench), Dinesh Chandra Kansal v. U. P. Upbhokta Sahkari Sangh Limited, 1982 UPLBEC 294, and Ashok Kumar Yadav v. Assistant Housing Commissioner and others, in Writ Petition No. 26121 of 1991, decided on 6.12.1994 as well as to the case of Parmeshwar Dayal Shukla v. Deputy Registrar Co-operative Societies and others, 1982 UPLBEC 398, wherein it was distinguished that when statutory body is created in the form of Cooperative Federal Authority (Business) Regulation. 1976 tt cast statutory duty on the body though it is not a State.

11. Mr. Pandey had also relied on the decision in the case of U. P. Co-operative Land Development Bank Ltd. v. Chandra Bhan Dubey and others etc., 1999 (1) UPLBEC 296, In the said decision, the Apex Court had taken a view that U. P. State Cooperative Land Development Bank Ltd having been constituted under the Bank Act and the services of the employees having been governed by U. P. Co-operative Land Development Bank Rules 1971, it had distinguishing feature and had specific ingredients of State within the meaning of Article 12 of the Constitution which fact is absent in the present case and as such the said decision being based on facts distinct and different from the facts of the present case, the ratio decided therein cannot be attracted in this case.

12. Identical question was involved in the case of Jagveer Singh U. Chairman Mills, Co-operative Textile Mills Ltd. in Writ Petition No. 1J429 of 1999, decided on 27.3.1999, wherein. 1 have considered majority of the judgments on the question and had taken the same view that the cooperative society Is not a State within the meaning of Article 12 of the Constitution unless it satisfies the ingredients specified in the case of Roman Daya Ram Shetty v. International Airport Authority of India and others. AIR 1979 SC 1628, or unless it discharges any public or statutory duty.

13. In such circumstances, 1 am of the view that this writ petitionis not amenable to writ jurisdiction as it has not been shown that the services of the petitioner is governed by 1975 Regulation or by any other statutory rules nor it has not been shown as to how the Co-operative Society is discharging public or statutory duty in respect of the employees or as to how this society satisfy the test laid down in the case of Roman Daya Ram Shetty (supra).

14. The writ petition thus falls and is accordingly dismissed. However, this order will not prevent the respondents from considering the representation of the petitioner, if made by petitioner, with regard to the study of the petitioner's daughter and her appearance in the High School examination and considering the same afresh sympathetically, if a fresh representation is filed.

15. However, there will be no order as to cost.

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