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Arjun Singh Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : May-19-2003

Reported in : RLW2003(4)Raj2241; 2003(3)WLC665

Judge : Sunil Kumar Garg, J.

Acts : Cooperative Societies Manager Service Rules, 1991 - Rule 10

Appeal No. : S.B. Civil Writ Petition No. 1185 of 2003

Appellant : Arjun Singh

Respondent : State of Rajasthan and ors.

Advocate for Def. : R.K. Kapoor, Adv.

Advocate for Pet/Ap. : Sunil Beniwal, Adv.

Disposition : Writ petition dismissed

Judgement :

Garg, J.

1. This writ petition under Article 226 of the Constitution of India has been filed by the petitioner on 22.3.2003 against the respondents with the prayer that by an appropriate writ, order or direction, the order dated 27.1.2003 (Annex. 5) passed by the respondent No. 3 Executive Officer, Pali Central Cooperative Bank Limited,

Pali by which the order dated 4.12.2002 (Annex. 1) was ordered to be maintained and further, it was ordered that one Chattar Singh, Manager, Korwa Gram Sewa Sahakari Samiti Limited would also look after the work of Mandal Samiti in addition to his own duties and the order dated 19.2.2003 (Annex. 7) passed by the respondent No. 3 Executive Officer, Pali Central Cooperative Bank Ltd., Pali by which it was ordered that the signatures of the petitioner would not be valid for the purpose of transactions of Mandal Gram Sewa Sahakari Samiti Limited, be quashed and set aside.

2. The case of the petitioner as put forward by him in this writ petition is as follows :-

The petitioner was appointed as Sales-man in Gram Sewa Sahakari Samiti, Mandal (for short 'Mandal Samiti') in the year 1982 and he continued on the said post till he was appointed as Manager in the year 1992.

The further case of the petitioner is that prior to his appointment as Manager, he had undergone the training of Manager from 4.7.1990 to 15.12.1990 and his services were regularised on the post of Manager in the year 1992 after obtaining necessary approval from the Sub Registrar, Cooperative Societies.

The further case of the petitioner is that he continued to hold the post of Manager from 1.4.1992 till today, but to his utter surprise, one Chattarsingh, who was posted as Manager of Korwa Gram Sewa Sahakari Samiti Limited (for short 'Korwa Samiti') was asked to take additional charge of Mandal Samiti in addition to his own duties by the respondent No. 3 Executive Officer on 4.12.2002 through Annex. 1.

The further case of the petitioner is that the Executive Committee of Mandal Samiti passed a resolution on 5.12.2002 and in the meeting, it was resolved that representation should be made to the respondent No. 2 Managing Director for cancelling the order Annex. 1 dated 4.12.2002 and further to permit the petitioner to continue on the post of Manager, Mandal Samiti. A copy of the said resolution dated 5.12.2002 is marked as Annex. 2.

The further case of the petitioner is that the Chairman of the Mandal Samiti wrote a letter Annex. 3 dated 9.12.2002 to the respondent No. 2 Managing Director and made a request that the petitioner may be permitted to continue on the post of Manager as there was no complaint from the members of the Society.

The further case of the petitioner is that the request of the Chairman of the Mandal Samiti was duly considered by the respondents-authorities and the order dated 4.12.2002 (Annex. 1) was withdrawn by the respondent No. 3 Executive Officer through order Annex. 4 dated 10.1.2003 and the petitioner was further directed to work as Manager of Mandal Samiti.

But, since the respondents-authorities were adamant to oust the petitioner from the post of Manager, therefore, through order Annex. 5 dated 27.1.2003 passed by the respondent No. 3 Executive Officer, the order Annex. 1 dated 4.12.2002 was restored and one Chattarsingh, Manager, Korwa Samiti was again ordered to take additional charge of Mandal Samiti in addition to his own duties and this order Annex. 5 dated 27.1.2003 has been challenged in this writ petition on various grounds and main grounds are as follows :-

(i) That the action of the respondents in asking one Chattar Singh to take additional charge of Mandal Samiti is illegal for the reasons that a Manager of a Society cannot be transferred and it could be transferred only in a rare case. As per Rule 10 of the Cooperative Societies Manager Service Rules, 1991 (hereinafter referred to as 'the Rules of 1991'), an Executive Officer is required to obtain approval from the Chairman prior to passing the transfer orders and in the instant case, no such approval was obtained from the chairperson.

(ii) That the impugned transfer order Annex. 5 dated 27.1.2003 was passed without any notice to the petitioner.

The further case of the petitioner is that through order Annex. 7 dated 19.2.2003 passed by the respondent No. 3 Executive Officer, the petitioner was restrained from signing any document in relation to the Society. This order Anex. 7 has also been challenged in this writ petition.

Hence, this writ petition with the prayers as stated above.

A reply to the writ petition was filed by the respondents and their case is that the petitioner was given the grade of Manager on the recommendations of the Mandal Samiti made through resolution dated 11.4.1992 (Annex. 8/1) by the Dy. Registrar, Cooperative Societies, Pali vide letter dated 23.9.1993 (Annex. R/2), but he was not appointed as Manager. A perusal of Resolution Annex. R/1 reveals that it was recommended that the petitioner be given selection grade for the post of Manager and through Annex. R/2, the petitioner was given the grade of Manager.

The further case of the respondents is that the petitioner was working as salesman with salary of Manager.

The further case of the respondents is that the petitioner was not transferred from the Society at Mandal, but a confirmed duly selected Manager, namely, Chattarsingh was asked to take additional charge of the Manager of Mandal Samiti and the petitioner was working as salesman with enhanced emoluments. Hence, no case for interference by this Court is made outfind the writ petition filed by the petitioner be dismissed.

A rejoinder by way of written argument was also filed by the petitioner and it has been submitted by the petitioner that since no opportunity of hearing was granted to the petitioner before passing the impugned orders Annex. 5 and Annex. 7, therefore, they should be quashed and set aside and furthermore, since 42 persons are working in Pali District as Manager and none of them has been reverted, but the petitioner has been picked up and, therefore, it amounts to discrimination and violative of Articles 14 and 16 of the Constitution of India and not only this, though some posts of Manager in Pali District are lying vacant, but the respondents instead of filling up these posts, have chosen to revert the petitioner and further asked one Chattarsingh to take additional charge of the Manager of Mandal Samiti in addition to his own duties and this action on the part of the respondents shows arbitrariness and unreasonableness and from this point of view also, the impugned orders Annex. 5 and Annex. 7 should be quashed and set aside.

3. I have heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents and gone through the materials available on record.

4. Before proceeding further, it may be stated here that since Chattarsingh, who has been given the additional charge of Mandal Samiti through order Annex. 5, has not been made party to this writ petition by the petitioner, therefore, no adverse order can be passed against him in his absence. This is one of the aspects of the matter.

5. There is no dispute on the point that the petitioner has been given the selection grade on the post of Manager, which is evident from Annex. R/1 and Annex. R/2.

6. There is also no dispute on the point that through order Annex. 1 dated 4.12.2002, one Chattarsingh, Manager of Korwa Samiti was asked to take additional charge of Mandal Samiti in addition to his own duties and that order Annex. 1 was recalled through order Annex. 4 dated 10.1.2003 and the petitioner was ordered to work as Manager of Mandal Samiti.

7. There is also no dispute on the point that through order Annex. 5 dated 27.1.2003, the order Annex. 4 10.1.2003 was set aside and order Annex. 1 dated 4.12.2002 was restored and one Chattarsingh, Manager of Korwa Samiti was again ordered to take additional charge of Mandal Samiti in addition to his own duties.

8. The question for consideration in the above facts and circumstances is whether the order Annex. 5 dated 27.1.2003 amounts to transfer or whether by passing order Annex. 5, any legal right has accrued in favour of the petitioner or not.

9. In my considered opinion, through order Annex. 1 dated 4.12.2002, for administrative reasons, first one Chattarsingh, Manager of Korwa Samiti was ordered to take additional charge of the Mandal Samiti in addition to his own duties and that order Annex. 1 was recalled through order Annex. 4 dated 10.1.2003 and the petitioner was ordered to look after the work of Manager of Mandal Samiti and thereafter, again through order Annex. 5 dated 27.1.2003, the order Annex. 4

dated 10.1.2003 was set aside and the order Annex. 1 dated 4.12.2002 was restored and one Chattarsingh, Manager of Korwa Samiti was again asked to take additional charge of Mandal Samiti in additional to his own duties and, therefore, in these circumstances, when additional charge is given to a person and, therefore, if it is withdrawn, it does not amount to transfer.

10. Thus, the submission of the learned counsel for the petitioner that through impugned order Annex. 5, the petitioner was transferred from the post is wrong one.

11. Apart from this, when additional charge is put on a person and if it is withdrawn, in such circumstances, the question of giving opportunity of hearing does not arise as in such cases, principle of natural justice does not apply and if order of additional charge is withdrawn without taking consent of person concerned, no legal right has accrued in favour of that person. From this point of view also, the impugned order Annex. 5 cannot be challenged.

12. So far as the impugned order Annex. 7 dated 19.2.2003 by which the petitioner was restrained from signing any document in relation to the Society and it was ordered that his signatures would be invalid for the purpose of transactions of Mandal Samiti, is concerned, since the petitioner was not given the charge of Manager of Mandal Samiti and it was given to one Chattarsingh, Manager of Korwa Samiti in addition to his own duties through order Annex. 5, therefore, in such circumstances, he was not authorised to sign papers of Mandal Samiti and order Annex. 7 is a natural consequence of order Annex. 5 and since the order Annex. 5 is not going to be quashed, therefore, the question of setting aside the order Annex. 7 does not arise.

13. Apart from this, so far as the submission that though so many vacancies of Manager are lying vacant in Pali District, but the petitioner was not posted on the post of Manager is concerned, it is for the authorities concerned to consider the case of the petitioner sympathetically, but no mandamus can be issued against the respondents in this writ petition as in this writ petition only orders Annex. 5 and Annex. 7 have been challenged.

14. For the reasons stated above, the petitioner is not entitled to any relief under Article 226 of the Constitution of India as no legal right has accrued in favour of the petitioner and therefore, this writ petition deserves to be dismissed.

Accordingly, this writ petition filed by the petitioner is dismissed. No order as to costs.

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