

Vinod Kumar Jain Vs. the Chief Executive National Co-operative Union of India (Uoi) and ors.

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Court : Rajasthan

Decided On : Oct-31-2003

Reported in : [2004(101)FLR1187]; RLW2004(2)Raj1087; 2004(1)WLC648

Judge : H.R. Panwar, J.

Acts : Multi State Co-operative Societies Act, 1984 - Sections 74 and 92;
[Constitution of India](#) - Article 21

Appeal No. : S.B. Civil Writ Petition No. 441 of 2003

Appellant : Vinod Kumar Jain

Respondent : The Chief Executive National Co-operative Union of India (Uoi) and ors.

Advocate for Def. : Govind Mathur, Adv.

Advocate for Pet/Ap. : Pushpendra Singh, Adv.

Judgement :

Panwar, J.

1. The instant writ petition has been filed seeking the relief to quash the impugned order dated 24.1.2003 (Annex. 4) and direct the respondents to allow the petitioner to continue, or absorb him in accordance with his qualification, merits and experience.

2. The fact and circumstances giving rise to this case are that petitioner has to his credit the qualification of M.Com. (Business Administration). After going through the selection process, vide order Annex.1 dated 12.8.1991, the petitioner was temporarily appointed on the post of Co-operative Education Instructor (Handlooms). Vide order dated 2.2.2000 (Annex.2), the petitioner was promoted/appointed on the post of Project Officer-cum-Senior Instructor in temporary capacity with the assurance that he need not worry about the temporary status of the job because in the past also, all the employees of the projects had been absorbed some where. The respondent runs many projects/single units in Handloom sector, handicraft sector, industrial project and agriculture projects and the posts are inter-transferable amongst different projects and in past also, various projects. The project of Member Education for Handloom Co-operative was started in the year 1978 and since appointment, petitioner is associated with the same, Meanwhile, petitioner was advised on 2.1.2002 the respondents to try for the post of Project Officer of NCUI pertaining to Co-operative Education Field Project, Dausa (Rajasthan) and the petitioner applied therefore but the appointment remained pending. Fresh appointments are being continuously made by the NCUI in various projects and persons like Sandeep Singh and D.P. Singh working in industrial and handicraft projects were adjusted in Agricultural Project at Abohar and Aligarh who are much junior to the petitioner and working on the post of Co-operative Education Instructor. After serving for nearly 12 years, vide impugned order Annex.4 dated 24.1.2003, petitioner's services have been terminated w.e.f. 5.2.2003 on the ground that the aid for Education-cum-Development Programme for Handloom Project Scheme has been discontinued by the Ministry of Handlooms and Textiles, Government of India. Hence this writ petition.

3. A reply has been filed by the respondents justifying their action in terminating the services of the petitioner and raising certain preliminary objections regarding non-impleadment on National Co-operative Union of India (NCUI) as a party-

respondent; even NCUI is neither a 'State' nor an instrumentality or agency of Government of India but it is a co-operative society governed by its own bye-laws, however, it receives the funds from the Government of India as other autonomous or voluntarily organization or non-governmental organization receives; and alternative remedy under Section 74 and Section 92 of the Multi-State Co-operative Societies Act, 1984 is available to the petitioner; and the petitioner has misrepresented the facts as he was working with the society on contract basis for a specific term. In parawise reply to the submissions made in the writ petition, the respondents have refuted the same and stressed that petitioner's appointment was specifically for the post being offered to him and in case of winding of the project, his services shall stand terminated automatically and the appointment does not confer any right to posting in NCUI cadre; petitioner's appointment was on contract basis as is clear from the order Annex. 1 and the subsequent orders extending the term of such contractual appointments; NCUI has been running the Handloom Project sponsored by the Ministry of Textile, Government of India whereas the other projects undertaken by the NCUI are sponsored by the Ministry of Agriculture and as such these different projects are not at all inter-connected nor the same are inter-transferable; petitioner was appointed in the Handloom Project which is no more in existence; therefore, he has no right to continue with the NCUI; Shri Sandeep Singh and Shri D.P. Singh were not adjusted but they were employed in availability of the vacancies at the relevant time when all the projects, including Handloom Projects were in existence, and lastly it has been contended that the petitioner was never advised to try for the post of Project Officer in the NCUI.

4. I have heard learned counsel for the parties and perused the record.

5. A perusal of the order Annex.1 dated 12.8.1991 issued by the NCUI makes it clear that the petitioner had been selected for the post of Co-operative Education Instructor (Handloom) on purely temporary and year to year basis as per the continuance of the schedule of Education-cum-Development Programme for Handloom Cooperatives and it has been specifically mentioned therein that in case the petitioner is willing to accept the offer, he should submit his joining report to the General Manager, District Industries Centre, Udyog Bhawan, Jaipur, who

will be his controlling officer. The terms of petitioner's appointment were extended in the light of the aforesaid order Annex. 1. Thus, it is clear that the petitioner was appointed on contract basis and his continuity in the said project for more than a decade will not render any help to him for regularisation, particularly when the project itself came to an end. The right to regularisation can be claimed only against a permanent post in a project and when the project itself came to an end, no right accrues to the petitioner to continue in employment.

6. A perusal of the order annex.1 dated 12.8.1991 makes it clear that the petitioner was given appointment on contract basis with the abovesaid stipulations by the NCUI but it has not been made a party-respondent in the writ petition. Further, even the NCUI is not a 'State' or its instrumentality or agency as defined under Article 12 of the [Constitution of India](#) and as such it is not amenable to writ jurisdiction of this Court. It is, not doubt, true that NCUI receives funds from the Government of India as other autonomous or voluntary organization or non-governmental organization may receive, however, it has nonetheless to be determined whether NCUI falls within the domain of Article 12 of the Constitution to mean 'State' or its instrumentality. In *Ajay Hasia and Ors. v. Khalid Mujib Sehravardi and Ors.* (1), a Constitution Bench of the Hon'ble Supreme Court observed that the test for determining if an authority falls within the definition of 'State' in Article 12 is whether it is an instrumentality or agency of the Government. The Apex Court further held as under:-

'The inquiry has to be not as to how the justice is born but why it has been brought into existence. It is, therefore, immaterial whether the corporation is created by a statute or under a statute. The concept of instrumentality or agency of the Government is not limited to a corporation created by a statute but is equally applicable to a company or society and in a given case it would have to be decided, on a consideration of the relevant factors, whether the company or society is an instrumentality or agency of the Government so as to come within the meaning of the expression 'authority' in Article 12. The tests for determining as to when a corporation can be said to be an instrumentality or agency of Government, given in *International Airport Authority* case, are not conclusive or clinching, but they are merely indicative indicia which have to be used with care and caution,

because while stressing the necessity of a wide meaning to be placed on the expression 'other authorities', it must be realised that it should not be stretched so far as to bring in every autonomous body which has some nexus with the government within the sweep of the expression.'

7. In *Sabhajit Tewary v. Union of India and Ors.* (2), yet another Constitution Bench of the Supreme Court held that 'other authorities' does not include institutions such as the Council of Scientific and Industrial Research which are sponsored and controlled by the Central Government and registered under the Societies Registration Act and the employees of such institutions have no standing to impeach circulars of the institution relating to service matters on ground of infraction of their rights under Articles 16 and 14 of the [Constitution of India](#).

8. The instant writ petition is also not maintainable on the ground of availability of alternative remedy under Sections 74 and 92 of the Multi-State Cooperative Societies Act, 1984. In *U.P. State Cooperative Land Development Bank Ltd. v. Chandra Bhan Dubey and Ors.* (3), the Apex Court held that when any citizen or person is wronged, the High Court will step in to protect him, be that wrong done by the State, an instrumentality of the State, a company or a cooperative society or 'association or body of individuals, whether incorporated or not, or even an individual. Right that is infringed may be under Part III of the Constitution or any other right which the law, validly made, might confer upon him. But then the power conferred upon the High Courts under Article 226 of the Constitution is so vast, the Supreme Court has laid down certain guidelines and self-imposed limitations have been put there subject to which the High Court would exercise jurisdiction, but those guidelines cannot be mandatory in all circumstances. The High Court does not interfere when an equally efficacious alternative remedy is available or when there is an established procedure to remedy a wrong or enforce a right. Had the petitioner first exhausted the remedy available under the statute, this Court might have been sufficiently able to determine the tests as laid down in *Ajay Hasia's* case (*supra*) inasmuch that in that even this court would have had occasion to delve into the validity of an adjudication of a controversy under certain provisions of a statute by an authority created under, or established by the statute and that would have been amenable to the jurisdiction of this Court under Article 226 of

the Constitution.

9. In this view of the matter, the petitioner would be better advised to seek remedy available to him under the Statute, as aforesaid. In case, the petitioner approaches Concerned authorities by available himself of the remedy provided under the statute, the concerned authorities are directed to decide the issue on merits without regard to any observations made hereinabove. With this direction/observation, the instant writ petition is dismissed. There shall be no order as to costs. The interim stay stands vacated and the stay petition is dismissed.

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