

CASE NO.:
Appeal (civil) 5279 of 2006

PETITIONER:
U.P. Co-op Spg. Mills Federation Limited and another

RESPONDENT:
RAM PRATAP YADAV & ORS

DATE OF JUDGMENT: 05/10/2007

BENCH:
H.K. Sema & Altamas Kabir

JUDGMENT:
J U D G M E N T

Altamas Kabir, J.

This appeal by way of special leave is directed against the judgment and order dated 18th January, 2005 passed by the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No. 51699 of 2000, whereby the order challenged in the writ petition was quashed and the writ petition was allowed.

As will appear from the materials on record, the respondent No. 1 herein, Shri Ram Pratap Yadav, was appointed as Secretary/General Manager of the Mau-Aima Sarkari Katai Mills Limited at Mau-Aima in Allahabad on 24th January, 1990 by the U.P. Co-operative Spinning Mills Federation Limited (hereinafter referred to as 'Federation'), which is the apex body of various Co-operative Spinning Mills in the State of Uttar Pradesh. During his tenure as such General Manager of the Mau-Aima Spinning Mill various complaints were received against him in regard to serious financial irregularities alleged to have been committed by him. A charge-sheet containing 15 charges was served on him, of which the Enquiry Officer found charges 1, 4, 11 and 14 to have been fully proved, while charges 3, 8, 9, 12 and 13 were held to have been partly proved. The other 6 remaining charges, were held not to have been proved. The enquiry report was thereafter placed before the Disciplinary Authority, which, while confirming the report of the Enquiry Officer, omitted charge No. 8 holding that the same had not been proved either fully or partly.

On the basis of his findings the Disciplinary Authority removed the respondent No. 1 from the service of the U.P. Co-operative Spinning Mill Federation Limited by his order dated 9th May, 1996. The order of his removal was challenged by the respondent No. 1 before the Appellate Authority after three years on 7th July, 1999. The said appeal filed by the respondent No.1 was ultimately dismissed on 11th July, 2000.

It may, however, be stated that the respondent No. 1 had challenged his removal by way of a writ petition in 1996 and the same was disposed of with leave to make

a representation before the concerned authority of the Federation. Subsequently, he filed Civil Misc. Writ Petition No. 51699 of 2000 challenging the order dated 9th May, 1996 by which he was removed from the service of the Federation.

The main contention of the respondent No.1/Writ Petitioner was set out in paragraphs 14, 15, 16 and 17 of the writ petition which have been extracted in the judgment of the Allahabad High Court impugned in the instant proceedings and are also re-produced hereinbelow for the sake of reference :-

\02314. That before dispensing with the services of the petitioner no approval of the U.P. Co-operative Institutional Service Board as envisaged by Regulation 87 read with Section 84 of U.P. Co-operative Societies Employees Service Regulation, 1975 has been obtained.

15. That the U.P. Co-operative Institutional Service Board has been established by means of a notification dated 4.3.1972 under Section 122(1) of the U.P. Co-operative Societies Act, 1965 conferring power upon the U.P. Co-operative Industrial Service Board with regard to employees of the categories of co-operative societies specified in the said notification.

16. That the aforesaid notification covers \023apex level societies\024. The apex level society are defined under Section 2(1-4) of the 1965 Act as including co-operative societies whose membership includes at least one other Central Co-operative Society, whose area of operation covers the whole of U.P. and whose primary object is to facilitate the operation of co-operative society affiliated to it. For convenience Section 2(a-4) of the 1965 Act is extracted below:

2(a-4) \023Apex society\024, \023Apex level society\024 or \023State level co-operative society\024 means \026

(1) U.P. State Co-operative Land Development Bank Ltd. Lucknow;

(2) U.P. Co-operative Bank Ltd., Lucknow;

(3) U.P. Co-operative Federation Ltd., Lucknow;

(4) Pradeshik Co-operative Dairy Federation Ltd., Lucknow;

(5) U.P. Co-operative Union Ltd.,

Lucknow;

(6) U.P. Upbokta Sahkari Sangh Ltd.,
Lucknow;

(7) U.P. Co-operative Sugar Federation
Ltd.

(8) U.P. Cane Unions Federation Ltd.,
Lucknow;

(9) U.P. Industrial Co-operative
Association Ltd., Kanpur; or

(10) Any other central co-operative
society fulfilling the following
conditions:-

(i) it includes in its membership at
least one other central co-operative
society in the same time of business or
trade; and

(ii) its area of operation covers the
whole of Uttar Pradesh; and

(iii) its primary object is to
facilitate the operation of the co-
operative societies affiliated to it as
ordinary members;

17. That the termination of service of
the petitioner in the absence of approval
from the Co-operative Institutional
Service Board is totally without
authority and illegal.\024

As will appear from a reading of the aforesaid
paragraphs, his service conditions were said to be
governed and regulated by the U.P. Co-operative
Societies Employees Service Regulations, 1975, which
came into effect in the State of U.P. upon publication
in the U.P. Gazette Extraordinary dated 6th January,
1976. It was the petitioner's case that Regulation 87 of
the said Regulations made it incumbent for the concerned
co-operative societies to impose major penalty only with
prior concurrence of the U.P. Co-operative Institutions
Service Board. For the sake of reference Regulation 87
is reproduced hereinbelow:-

\02387. Order imposing penalty under sub-
clause (e) to (g) of clause (1) of
Regulation No. 84 shall not be passed
except with the prior concurrence of the
Board\024.

It was the contention of the Respondent No. 1 that
since the Federation had not obtained the prior
concurrence of the aforesaid Board the major punishment
of dismissal imposed on the respondent was void and was
liable to be quashed.

The Allahabad High Court confined itself mainly to
the question regarding non-compliance of the provision

of Regulation 87 by the Federation, which did not contest the contention of the Respondent No. 1 in that regard. The High Court also held that although it was pleaded in the writ petition that no proper enquiry had been held, the same had not been specifically denied, and consequently such an allegation must be deemed to have been admitted.

The High Court also recorded that from the orders of the Disciplinary Authority as well as the Appellate Authority, it was clear that they did not consider the defence set out by the respondent No. 1 and merely concurred with the report of the Enquiry Officer. On the aforesaid findings, the Allahabad High Court allowed the Writ Petition and quashed the order of removal from service impugned in the Writ Petition. On the strength of the judgment and order of the High Court the respondent No. 1 was reinstated in service on 3rd December, 2005 and he is continuing to work with the Federation since his reinstatement.

The Federation is in appeal before us against the said judgment and order of the Allahabad High Court.

On behalf of the appellant it has been submitted that the High Court had wrongly proceeded on the basis that the services of the Respondent No. 1 were governed by the U.P. Co-operative Societies Employees Service Regulations 1975 which contains Regulation 87 referred to hereinabove.

It was submitted that at the first meeting of Committee of the Management of the Federation held on 4th March, 1983 Agenda No. 10 was included to consider the adoption of Service Rules, Medical and other allowances as well as advances to the staff of the Federation. In the minutes of the said meeting the Resolution adopted in respect of the said Agenda was recorded as follows :

\023It is \023Resolved that till the Federation is able to frame its own Service Rules, T.A., Medical, other allowances and advances rules for the Staff of the Federation, the rules prevailing in this direction in U.P. State Textile Corporation Ltd. may be adopted as they are.\024

Accordingly, the service Rules of the employees of the Federation were taken out of the purview of the 1975 Regulations and were brought under the Rules of the U.P. State Textile Corporation Ltd. from 4th March, 1983.

Under the said Rules of the U.P. State Textile Corporation provision has been made in Rule 4 for imposition of penalties. Clause B thereof indicates the major penalties, which could be imposed on an employee, which include removal from service, which would not ordinarily be a disqualification for future employment. The said rules also provide for dismissal, which would be a bar against future employment.

Rule 14 sets out the procedure for imposing major penalties and Rule 21 provides for appeal that an employee may file against an order imposing upon him any of the prescribed penalties, within one month from the date of the communication of the order appealed against.

It was submitted that a glance at the enquiry report would indicate that the enquiry had been held fairly and upon offering sufficient opportunity to the respondent to meet the charges brought against him and on consideration of the materials on record the Enquiry Officer held that some of the charges had been fully proved against the respondent and that some of the charges had been partly proved against him. The Enquiry Officer also recorded that the remaining charges had not been proved. The enquiry report was placed before the Disciplinary Authority, which disagreed with the finding of the Enquiry Officer as far as charge No. 8 was concerned, and, accordingly, the said charge was also held not to have been proved against the respondent. It was submitted that the High Court, without discussing the enquiry report or the order passed by the Disciplinary Authority, simply made an observation that there was no specific denial of the averments made in the writ petition in that regard. On the other hand, it was pointed out that such an allegation had been specifically denied in paragraph 8 of the counter affidavit filed on behalf of the respondent Nos. 3 to 6 before the Allahabad High Court and it was categorically stated that the termination order had been passed after due examination of relevant materials and after offering full opportunity to the respondent herein. It was submitted further that the same averments had been reiterated in paragraph 9 of the counter affidavit, which the High Court appears to have overlooked.

It was, therefore, urged that since the order of the High Court was on the understanding that the 1975 Regulations applied in the petitioner's case, the same was passed on mis-application of the law governing the service conditions of the respondent and the same was, therefore, liable to be set aside.

Mr. Shekhar, learned senior counsel appearing for the respondent, based his submissions on the understanding that it was the 1975 Regulations which were applicable to the respondent and that the High Court did not commit any error in holding that in the absence of prior concurrence from the Board, in terms of Regulation 87, the order of removal from service was erroneous and was liable to be quashed.

Mr. Shekhar submitted that the notification dated 16th October, 1981, by which textile mills had been excluded from the purview of the 1975 Regulations, had not been brought to the notice of the High Court, and, in any event, the same did not refer to spinning mills, such as Mau-Aima Spinning Mill, where the respondent had been posted as Secretary/General Manager after his appointment by the Federation.

Mr. Shekhar sought to make a distinction between spinning mills and textile mills and submitted that notwithstanding the aforesaid notification dated 16th October, 1981, spinning mills continued to remain within the purview of the 1975 Regulations and the High Court had, therefore, rightly held, that in the absence of prior concurrence of the Board, the order removing the petitioner from service had been passed without jurisdiction.

On a careful consideration of the submissions advanced on behalf of the parties and the materials on record, it appears to us that had the notification dated 16th October, 1981, and Minutes of the first meeting of the Committee of the Management of the Federation held on 4th March, 1983, been placed before the High Court, the High Court may not have proceeded on the understanding that the 1975 Regulations applied to the respondent and that the order of removal from service passed without prior concurrence of the Board, was in violation of the said Regulations and could not, therefore, be sustained.

The Notification dated 16th October, 1981, issued by the State Government makes it quite clear that co-operative textile mills were to be excluded from the purview of 1975 Regulations. The subsequent resolution adopted by the Federation on 4th March, 1983 made the position even more clear by resolving that till the Federation was able to frame its own service Rules, the Rules prevailing in the U.P. State Textile Corporation were to be adopted as they were.

In other words, the Regulations of 1975 were not to apply to the employees of the Federation from 4th March, 1983. However, Mr. Shekhar had taken the stand that notwithstanding the notification of 16th October, 1981, the 1975 Regulations continued to apply to spinning mills since only co-operative textile mills had been excluded from the operation of the 1975 Regulations. Mr. Shekhar invited us to make a distinction between spinning mills and textile mills, which we are unable to appreciate, since basically spinning mills and textile mills are complementary to each other. In our view, spinning mills would also come under the description of textile mills.

We have no hesitation, therefore, in agreeing with the submissions made on behalf of the appellant that the service of the respondent was governed not by the 1975 Regulations but by the Rules of the U.P. State Textile Limited. The question of compliance with the provisions of the Regulations which provide for obtaining prior concurrence of the Board, would not arise in the instant case. It is unfortunate that neither the Notification of 16th October, 1981 nor the Minutes of the Meeting of Federation held on 4th March, 1983 had been brought to the notice of the High Court by the appellant, but since the same has been brought to our notice, we cannot allow the erroneous application of the 1975 Regulations to continue.

We, therefore, allow the appeal and set aside the order of the High Court impugned in the appeal. We, however, make it clear that no recovery shall be made from the respondent on account of his services after reinstatement.

Having regard to the peculiar facts of this case, the respective parties will bear their own costs.