

PETITIONER:
INDRA KUMAR CHOPRA ETC.

Vs.

RESPONDENT:
PRADESHIK CO. OPERATIVE DAIRY FEDERATION LTD. ANDORS.

DATE OF JUDGMENT 06/08/1992

BENCH:
YOGESHWAR DAYAL (J)
BENCH:
YOGESHWAR DAYAL (J)
SHARMA, L.M. (J)
PUNCHHI, M.M.

CITATION:
1992 AIR 2093 1992 SCR (3) 755
1992 SCC (4) 17 JT 1992 (4) 459
1992 SCALE (2) 125

ACT:

Uttar Pradesh Cooperative Societies Act, 1965- Sections 122-A and 122-U.P. Cooperative Dairy Federation and Milk Union Centralised Service Rules 1984-Rule 17(1) and (3)-U.P. Cooperative Societies Employees Service Regulations 1975-Para 17, 18, 19-Termination of provisionally absorbed employee appointed to a temporary post upon creation of a new service-Held, the post not being regular under Regulation 17(1), and his status before he became such absorbed employee not being relevant, termination valid.

HEADNOTE:

On 29 August, 1984, the U.P. Cooperative Dairy Federation and Milk Union Centralised Service Rules 1984 were promulgated which created a new service known as U.P. Cooperative and Dairy Federation and Milk Unions Centralised Service which was to consist of all the managerial posts of the Pradeshik Cooperative Dairy Federation Ltd., Lucknow and the Cooperative Milk Unions and Cooperative Milk Boards within the Operation Flood II Project registered under the 1965 Act, with some exceptions. By Resolution dated 28 September, 1984, the 1975 Regulations were made applicable, and the rules relating to probation, confirmation and termination were extended to the employees in the new service.

The appellant was appointed as Assistant Manager (Quality Control) in the Cattle Feed Plant, Varanasi on 24 July, 1981 and placed on probation for a period of one year.

On 30 May, 1987 and 25 May, 1987, the appellant received orders, by the first of which he was relieved by the Dugadh Utpadak Sahkari Sangh Ltd., Agra, where he was then posted, and was to report at the Pradeshik Cooperative Dairy Federation Ltd., Head Office at the earliest. By the second order, his services were terminated under Paras 17 (1) and 19 (A) of the 1975 Regulations by giving one month's salary. The appellant

756

challenged the orders mainly on the ground that he was a permanent employee having been finally absorbed in service holding a regular post since 1981, in a clear vacancy after

due selection.

The High Court, on consideration of the 1975 Regulations, the 1984 Rules, the appointment orders and the facts of the case, held that the appellant continued in service as a temporary employee, and that the services of the appellant with the Federation had no relevance.

Dismissing the appeal, this Court,

HELD: 1. By Explanation to Regulation 17(1) no post shall be deemed to be regular unless it is in existence continuously for the last five years. The post of Manager Grade III had been sanctioned only with effect from the coming into force of the 1984 Rules. [766G]

Till the date of termination of the appellant's service even three years had not expired. Therefore the post which he was holding could not be deemed to be a regular post. [766H]

2. The status of an employee before he became an employee of the Centralised Service created by the 1984 Rules, his terms and conditions were to be governed by the 1975 Regulations and he had to become a regular employee once again. Having become an employee of the new service, and since the post was not in existence continuously for five years, it could not be treated as a regular post. Consequently the services of the appellant is that of a temporary employee. [767A-C]

Om Prakash Maurya v. Cooperative Sugar Factories Federation, Lucknow, [1986] Supp SCC 95, referred to.

3. In view of Section 122-A of the 1965 Act and the creation of the new Service under different Authority by the 1984 Rules and the provisions of Regulation 17 of the 1975 Regulations, the appellant had no choice but to take his chance with the new authority. [767D]

4. Though the impugned order of termination does not cast any stigma on the appellant which can be called by way of punishment, in the counter-affidavit it was stated that his work was unsatisfactory. [767E]

National Textile Workers Union & Ors. v. P.R. Ramakrishnan & Ors.,

757

[1983] 1 SCC 228. The Govt. Branch Press & Ors. v.D.B. Beliappa, [1979] 2 S.C.R. 458 = A.I.R. 1979 S.C. 429; Ajit Singh & Ors. v. State of Punjab & Anr., [1983] 2 S.C.R. 517 Anoop Jaiswal v. Government of India & Anr., [1984] 2 S.C.C. 369, distinguished.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 3321 and 3320 of 1990.

From the Judgment and Order dated 21.7.1989 of the Allahabad High Court in W.P. No. 3845 and 4371 of 1987.

M.S. Ganesh and S. Murlidhar for the Appellants.

K.T.S. Tulsi, Addl. Solicitor General, Pradeep Misra and Arun Sharma for the Respondents

The Judgment of the Court was delivered by

YOGESHWAR DAYAL, J. Civil Appeal 3321 of 1990 and Civil Appeal 3320 of 1990 arise out of a common judgment of the Allahabad High Court dated 21st July, 1989 passed in Writ Petition No. 3845 of 1987: Indra Kumar Chopra v. State of U.P. and others and Writ Petition No. 4371 of 1987: Ashwani Kumar Jha v. Pradeshik Cooperative Dairy Federation Ltd., and another.

As the common questions of facts and law arise in both the appeals, the same are being disposed of by a common

judgment. For facility of reference we may deal with the facts of the appeal of Indra Kumar Chopra.

The appellant, claiming himself to be a permanent employee-Manager Grade-III (Quality Control) posted at Dugadh Utpadak Sahkari Sangh Limited Agra, had challenged the orders dated 30th May, 1985 and 25th May, 1987, passed by the General Manager, Dugadh Utpadak Sahkari Sangh, Agra and Chairman Administrative Committee of the said Sangh. By the first order the appellant was relieved by the said Sangh in the afternoon of 30th May, 1985 and to report at Pradeshik Cooperative Dairy Federation Ltd., Head Office, at the earliest and by the second order his services were terminated under Paras 17(1) and 19(A) of the Uttar Pradesh Cooperative Societies Employees Service Regulations, 1975 (hereinafter called 'the 1975 Regulations') by giving one month's salary in lieu of notice period.

758

The orders were impugned mainly on the ground that the appellant was a permanent employee having been finally absorbed in service holding a regular post since 1981, in a clear vacancy after due selection, hence his services could not be terminated without following the due process of law. It was submitted before the High Court that the Regulations under which the services of the appellant were terminated would not apply in the case of the appellant as the same apply to the employee on probation. On July 24, 1981, the appellant was appointed as Assistant Manager (Quality Control) in the Cattle Feed Plant, Varanasi and was placed on probation for a period of one year after his joining. It was pleaded that it was mentioned in the order that on the expiry of the probation he will be confirmed provided the period of probation is not extended by the Federation, at its discretion without assigning any reason thereof. It was alleged that he was appointed on one year's probation which was not extended and was satisfactorily concluded.

On 29th August, 1984 the Governor of Uttar Pradesh issued a Notification promulgating the Uttar Pradesh Cooperative Dairy Federation and Milk Union Centralised Service Rules, 1984 (hereinafter called 'the 1984 Rules'). Rule 17(1) of the 1984 Rules provides as follows:-

"The employees of the Federation or Unions working on the managerial posts on the date of enforcement of these rules shall provisionally be deemed to be members of the service."

Rule 17(3) of the 1984 Rules reads thus:

"The Committee shall screen such provisionally absorbed employees.....in accordance with the qualifications and norms laid down by the Registrar. If, as a result of such screening, a provisionally absorbed employee is not found suitable for final absorption in the service by the Committee, his service in the Federation or Union concerned, as the case may be, shall be determined with effect from the date of communication of such decision of the Committee."

The appellant contended that as a result of the screening, the appellant was finally absorbed in the service.

Rule 19 of the 1984 Rules makes provision for the training of the

759

members of the service. The appellant alleged that after absorption he was sent for training at Government expenses which he completed successfully. The appellant also contended that his work, conduct and performance was always

appreciated by superiors, as a result of which he was sent as Manager Grade-III to Dugadh Utpadak Sahkari Sangh Ltd., Agra. While he was posted at Agra, he received the impugned orders.

To the writ petition a detailed counter affidavit was filed on behalf of respondent Nos. 2 and 3, by one Sh. Sharad Tondan, who was Manager Grade-III in the office of the Pradeshik Cooperative Dairy Federation Ltd., 29 - Park Road, Lucknow. In this counter- affidavit the background of the Service has been given. It was stated thus:

"A. That the Pradeshik Cooperative Dairy Federation Ltd., (hereinafter referred to as Federation) is an apex level Cooperative Society under the U.P. Cooperative Societies Act, 1965.

B. That the Federation has been entrusted with the implementation of the Operation Flood Scheme by the State Government. The Scheme is sponsored by National Dairy Corporation, the purpose of the scheme is to procure milk from rural areas of the State and market the milk and milk products in urban areas. In all, 28 districts have been covered under Operation Flood II scheme in three phased the various milk unions have been established in these districts will have separate identity but worked under the guidance of the Federation which is an agency for implementing the scheme.

C. That in the initial stage of member of persons working in the Federation and several milk unions were engaged in implementing the scheme. But later on the centralised services were created under the Centralised Services Rules and the persons working on the Managerial post under the Federation and the milk unions were given option for becoming member of the service by way of appointing through absorption.

E. That Uttar Pradesh Cooperative Dairy Federation and Milk Unions Centralised Service Rules, 1984 (hereinafter referred to as 'Rules') inter alia provide for the creation of Cadre

760

Authority and Administrative Committee and created Uttar Pradesh Cooperative Dairy Federation and Milk Union Centralised Service (hereinafter referred to as 'Service')

F. That the Centralised Services as created by the Rules 1984 consists of the following posts, their category and their scales in the ascending order.

1. Manager Grade IV
2. Manager Grade III
3. Manager Grade II
4. Manager Grade I
5. General Manager

G. That after creation of the centralised service under the rules for implementation of the Operation Flood Scheme, the managerial posts under the Federation were abolished and the persons working on the managerial posts in the service of the Federation were given option or their absorption in the centralised service which is a new and different services with that of services under the Federation.

H. That under Rule 17 of the Rules the persons were given option to give notice in writing to the Secretary of the Committee for their non-absorption into the services under the centralised services

and the provisions were also made for determination of the services of the employees who has given option for not becoming a member of the services and the persons who had given option for becoming a member of the service were absorbed after found suitable by the Screening Committee and in case they are not found suitable, there services were liable to termination. The provision for training of the members of the service were also made in the Rules.

1. Thus after framing of the centralised service Rules in the year 1984, for implementation of the Operation Flood-II Scheme which in itself a temporary scheme, a number of

761

temporary posts of Manager Grade III were created and the persons who were previously working in the Federation or in the unions on the managerial posts were appointed by way of absorption on those posts under the appointing authority of Chairman of the Administrative Committee. It is further stated the service under the Cadre Authority are different with that of service under the federation or the Unions. It is a new services under the different appointing authority under different terms of service conditions. It is further stated that either there was no post of Manager Grade-III in the Federation and in the Union. It is specifically stated that the service under the Federation has no like whatsoever with that of the services under the Cadre Authority.

J. That the Centralised Service Rules also provide for framing or regulation enumerating service conditions of the member of the service by the Cadre Authority which are still under process of framing. That in the meantime, the Committee by means of Resolution decided to govern the services condition of the members in accordance with the U.P. Cooperative Employees Service Regulation under the power derived from Rule 25."

It was further stated that by Resolution dated 20th September, 1984 the Cadre Authority resolved that during the implementation of Regulations being framed under the 1984 Rules the service conditions of the members of the Centralised Service shall be governed by the 1975 Regulations. It was also stated specifically that the post of Manager Grade-III upon which the appellant was working was not a regular post and hence the question of confirmation did not arise and the appellant was only a temporary employee. It was further pleaded that the work of the appellant was not found upto the mark and the same was found unsatisfactory by the appointing authority. It was further alleged that on account of unsatisfactory work of the answering respondents was put to financial loss and loss of reputation.

The Division Bench of the High Court on consideration of the 1975 Regulations, the 1984 Rules and looking at the various appointment orders as well as facts of the case took the view that the appellant continued to remain in service as a temporary employee and negatived the contentions

762

of the appellant that as the appellant continued to remain in service even after the completion of probationary period, he would be deemed to be confirmed on the post which he was holding. The Division Bench also took the view that the

service of the appellant with the Federation had no relevance and all that was concerned was the appellant's service under the Cadre Authority as per the 1984 Rules. With these observations the High Court dismissed both the writ petitions.

The service conditions of the appellant, who was initially appointed by letter dated 24th July, 1981 as Assistant Manager (Quality Control) With Pradeshik Cooperative Dairy Federation Limited, 29 Park Road, Lucknow, were governed by the 1975 Regulations. The 1975 Regulations have been framed under Section 122 of the Uttar Pradesh Cooperative Societies Act, 1965. The appellant was placed on probation for a period of one year from the date of his joining and would be confirmed provided the period of probation had not been extended by the Federation at its discretion as per the averments in the writ petition. The 1984 Rules were promulgated by the Governor of Uttar Pradesh through the Notification dated 29th August, 1984. These Rules were again framed in exercise of powers conferred by section 122 A of the Uttar Pradesh Cooperative Societies Act, 1965, as amended (hereinafter referred to as 'the 1965 Act'). Section 122 A of the 1965 Act provides as under:-

122 A. CENTRALISATION OF CERTAIN SERVICE-

(1) Notwithstanding anything contained in this Act, the State Government may by rules provide for the creation of one more services of such employees of such cooperative societies or class of cooperative societies as the State Government may think fit, common to such cooperative societies and prescribed the method of recruitment, appointment, removal and other conditions of service of persons appointed to any such service.

(2) When any such service is created, all employees of such societies existing on the date of creation of such service on the posts included in such service, shall be deemed to have been provisionally absorbed in the service with effect from the date of creation of such service:

Provided that any such employee may, by notice in writing to

763

the prescribed authority within the prescribed period, intimate his option of not becoming a member of such service, and in that event his service in the society shall stand determined with effect from the date of such notice and he shall be entitled to compensation from the society which shall be-

(a) in the case of a permanent employee, a sum equivalent to his salary (including all allowances) for a period of three months or for the remaining period of his service, whichever is less;

(b) in the case of a temporary employee, a sum equivalent to his salary (including all allowances) for a period of one month or for the remaining period of his service, whichever is less.

(3) An employee provisionally absorbed under sub-section (2) may be absorbed finally in the service if found suitable after screening in accordance with the instructions issued by the Registrar; and the services of any such employee as is not found suitable for absorption in the service shall stand determined with effect from the date of issue of orders in that behalf by the prescribed authority and until such authority prescribed by the officer

specified by the Registrar in that behalf in such instructions and he shall be entitled to compensation as laid down in clause (a) or clause (b) of sub-section (2) according as he was a permanent or a temporary employee."

As stated earlier, in exercise of the powers conferred by Section 122 A of the 1965 Act the Governor of Uttar Pradesh was pleased to make the 1984 Rules. These Rules were notified by Notification dated 29th August, 1984 and came into force from the same date. By virtue of these Rules a new Service, known as Uttar Pradesh Cooperative Dairy Federation and Milk Unions Centralised Service, was created which was to consist of all the managerial posts of the Pradeshik Cooperative Dairy Federation Ltd., Lucknow, (including all its Units) and the Cooperative Milk Unions and Cooperative Milk Boards falling within the area of Operation Flood II project, registered under the 1965 Act, except the posts of Managing Director, Chief Commercial Manager and Chief General Manager of the Federation. Rule 2(k) of the 1984 Rules defines -"Service" means the Uttar Pradesh Co-operative Dairy Federation and Milk Unions Centralised Service created under rule 3 of these Rules. Apart from the provisions of

764

Section 122 A of the 1965 Act quoted earlier Section 17(1) of the 1984 Rules also provided that the employees of the Federation or Unions working on the managerial posts on the date of enforcement of these Rules shall provisionally be deemed to be members of the Service created by the 1984 Rules. Sub-rule (2) thereof gave an option to the employees who have been included in the Service provisionally to intimate for not becoming the member of the Service and in that case his service shall be determined with effect from the date of such notice and on such determination, in case he was a permanent employee, he would be entitled to the salary for a period of three months or for the remaining period of service, whichever is less and in the case of a temporary employee he would be entitled to only one month's salary or remaining period of service, whichever is less. Sub-rule (3) of Rule 17 of the 1984 Rules provides for screening of provisionally absorbed employee for final absorption in the Service by the Committee. Rule 9 of the 1984 Rules contemplated the Authority under the Rules to frame regulations relating to recruitment, training, employments etc. and other conditions of service of the members. Rule 25 of the 1984 Rules provides as follows:-

"25 (1) So long as the regulations referred to in sub-rule (1) of rule 9 are not framed, all or any matters referred to therein for which there is no other specific provision in the rules, shall be governed by such orders or directions as may be issued by the Authority with the approval of the Registrar.

(2) Any matter not covered by these rules shall be governed by such directions as may be issued by the Authority with the approval of the Government."

As mentioned earlier the Cadre Authority by means of a Resolution dated 28th September, 1984 had resolved that the service conditions of the members of the Service to be governed by the 1975 Regulations till the new Regulations are framed under the 1984 Rules.

It is clear from the counter-affidavit filed by the respondents that the post of Manager Grade-III had been sanctioned only with effect from the coming into force of the 1984 Rules. Regulations 17, 18 and 19 of the 1975

Regulations which became applicable by virtue of the Resolution dated 28th September, 1984 provide as follow:-

765

"17 PROBATION

(i) All persons on appointment against regular vacancies shall be placed on probation for a period of one year:

Provided that the appointing authority may, in individual cases, extend the period of probation in writing by such further period not exceeding one year, as it may deem fit.

Explanation: No post shall be deemed as regular unless it has been in existence continuously for the last five years.

(ii) If, at any time during or at the end of the period of probation or the extended period of probation, it appears to the appointing authority that a person placed on probation, has not made sufficient use of the opportunity offered to him, or has otherwise failed to give satisfaction, he may be discharged from service, or reverted to the post held by him substantively, if any immediately before such appointment

(iii) A person discharged from service during or at the end of the period of probation or the extended period of probation under clause (ii) shall not be given any compensation unless, under mandatory provisions of any law applicable to his case, he is entitled to the same.

18. CONFIRMATION

(i) Confirmation of an employee shall, on the satisfactory conclusion of the probationary period, be made by the appointing authority if the post is regular one in terms of the preceding regulation.

(ii) Where a person holding a post not being a regular one, has not been treated as on probation in terms of Regulation No. 17(i), the question of confirmation shall not arise.

Explanation: If doubt arises whether a particular post in a particular cooperative society is 'regular' or not and the matter is not sub-judice, it shall be referred to the Board, whose decision shall be final.

766

(iii) Where the number of posts on which confirmation has to be made are less than the persons eligible for the same, confirmation shall be made on the basis of seniority subject to rejection of the unfit.

19. TERMINATION-Services of an employees shall be terminable:-

(a) In case of a temporary employee, on one month's notice in writing on either side, or in lieu thereof by payment of one month's salary by the party which gives notice:

Provided that in case of direct appointments made for a specific period, it shall not be necessary to give any notice or any pay in lieu thereof.

Explanation : 'Specific period' means stated period of less than six months.

(b) by three months' notice in writing on either side in case of a confirmed employee.

Explanation :- (1) A notice given by an employee under Regulation No. 19 shall be deemed to be proper only if he remains on duty during the period

of the notice:

Provided that the employee may be allowed on request to avail such portion of earned leave as may be due to him which shall however not exceed the notice period.

(2) The expression 'month' used in this regulation shall be a period of thirty days commencing on the date immediately following the date on which the notice is received by the employee or the appointing authority, as the case may be."

It is clear from the Explanation to Regulation 17(1) that no post shall be deemed to be regular unless it is in existence continuously for the last five years. Till the date of termination of the appellant's service even three years had not expired. Therefore the post which the appellant was holding could not be deemed to be the regular post. Once the post is not regular, Regulation 17 would not be applicable. We are, therefore, concerned only

767

with Regulation 19(a) of the 1975 Regulations.

It is clear to us that whatever may be the status of an employee before he became a provisionally absorbed employee of the service, namely - the Centralised Service created by the 1984 Rules, his terms and conditions were to be governed by the 1975 Regulations and he had to become a regular employee once again and if he was not willing, he could stay on with the Federation and Section 122 A of the 1965 Act provided the consequences for terminating the services of both regular as well as temporary employees. Having become the employee of the new service and since the post was not in existence continuously for the last five years of its creation, it could not be treated as a regular post. Consequently the services of the appellant is that of a temporary employee. In this view of the matter we do not find it necessary to go into the question of the status of the appellant while he was working with the Federation and, therefore, we have not gone into the applicability of the decision of this Court in the case of Om Prakash Maurya v. U.P. Cooperative Sugar Factories Federation, Lucknow and others, [1986] Supp SCC 95 which directly deals with the interpretation of Regulation 17 of the 1975 Regulations. In fact in view of Section 122 A of the 1965 Act and the creation of the new Service under different Authority by the 1984 Rules and the provisions of Regulation 17 of the 1975 Regulations, the appellant had no option but to take his chance with the new Authority. Though the impugned order of termination does not cast any stigma on the appellant which can be called by way of punishment, in the counter-affidavit, it was stated that the appellant's work was unsatisfactory. Before us the averments made in the counter-affidavit were not challenged on behalf of the appellants.

The impugned order of termination of service as a temporary employee was challenged on the ground that it was passed by way of punishment in the written note of arguments and following cases were referred to:

National Textile Workers Union and others v. P.R. Ramakrishnan and other, [1983] 1 SCC 228; The Govt. Branch Press and another v. D.B. Belliappa, [1979] 2 SCR 458 = AIR 1979 SC 429; Ajit Singh and others v. State of Punjab and another, [1983] 2 SCR 517 and Anoop Jaiswal v. Government of India and another, [1984] 2 SCC 369.

None of these cases are applicable to the facts of the present case.

768

The first case relates to the right of the workman in the

winding up petition. The second case was found to be the case of discrimination in the method of termination. The third case was peculiar to its own facts inasmuch as the permanent posts in Improvement Trusts were abolished and the termination of the employees were on the basis of the abolition of these posts but same posts were created thereafter. The decision of the last case was on facts found by this Court as punitive in nature against a member of an Indian Police Service.

We are in complete agreement with the reasoning and conclusion of the Division Bench of the High Court. The appeals consequently fail and are dismissed without any order as to costs.

U.R.

Appeal dismissed.
769

JUDIS