

CASE NO.:  
Appeal (civil) 7318 of 2003

PETITIONER:  
State of U.P. & Ors

RESPONDENT:  
Ruk Mangal Singh Rathaur

DATE OF JUDGMENT: 28/11/2006

BENCH:  
H.K. SEMA & P.K.BALASUBRAMANYAN

JUDGMENT:  
J U D G M E N T  
WITH

CIVIL APPEAL NOS. 7350, 7320, 7321, 7322, 7323, 7324, 7325, 7326, 7327, 7328, 7329, 7330, 7331, 7332, 7333, 7334, 7335, 7336, 7337, 7338-7339, 7342, 7343-7349, 7351, 7352 of 2003, C.A.No. 5243 of 2006 (arising out of SLP (Civil) No.21480 of 2002 and C.A.No. 5242 of 2006 (arising out of SLP (civil) No.22787 of 2002 and W.P.(Civil) No.647 of 2002.

H.K.SEMA, J.

Delay condoned in S.L.P. (Civil) No. 22787 of 2002.

Leave granted in both the Special Leave Petitions.

This bunch of appeals involve common questions of fact and law and as such they are being disposed of by this common judgment.

We have heard Dr.R.G. Padia, learned senior counsel, Mrs. Shobha Dikshit, learned senior counsel Mr.Naresh Kaushik, Mr.Shakil Ahmed Syed, Mr.Ramesh Chandra Mishra, Mr.Girdhar G. Upadhyay, Mr.Rameshwar Prasad Goyal and Mr.Sunil Kumar Singh, learned counsel appearing for different appellants/respondents.

We may briefly notice the facts of each case.

Respondent in C.A.No.7318 of 2003 was appointed as Co-operative Supervisor, which is a non-government post on 1.02.1959. He was confirmed in the post on 30.04.1972. He was promoted to the post of Co-operative Inspector Grade II vide order dated 15.5.1985. Under Rule 5 of the Subordinate Co-operative Service Rules, 1979 the promotion to the post of Co-operative Inspector Grade II is either by direct recruitment or by promotion through the State Public Service Commission. He retired from service on 31.07.1989 as Co-operative Inspector Grade II. In 1993, he filed a claim petition before the Tribunal inter alia claiming that the period of his service rendered as Co-operative Supervisor be reckoned for the purpose of gratuity, leave encashment, family pension and other retiral benefits. The Tribunal by an order dated 17.8.1994 allowed the claim and directed that the period from 1.2.1959 to 31.7.1989 be reckoned towards the respondent's total length of service for the purpose of determining family pension and gratuity. The Tribunal further directed that the respondent would also be entitled to arrears of pension and gratuity. Aggrieved thereby, the appellant filed a Writ Petition before the High Court, which was dismissed by the impugned order of the High Court. Hence the present appeal.

Respondent in C.A.No.7320 was appointed as Co-

operative Supervisor on 8.10.1959. He was promoted to Inspector Grade II on 1.3.1979 and retired on 31.8.1993. Respondent in C.A.No. 7326 of 2003 was appointed as Co-operative Supervisor on 22.6.1959. He was promoted to Inspector Grade II on 5.8.1978 and retired on 31.7.1994.

Respondent in C.A.No.7334 of 2003 was holding the post of Co-operative Supervisor. He was promoted to the post of Co-operative Inspector Grade II on 7.11.1978 and retired on 31.1.1989.

Respondent in C.A.No.7350 of 2003 was appointed as Co-operative Supervisor on 5.4.1956. He was promoted to the post of Co-operative Inspector Grade II on 7.10.1977. He retired on 30.6.1986.

Respondent in C.A.No.7321 of 2003 was appointed as Co-operative Supervisor on 1.12.1954. He was promoted to the post of Co-operative Inspector Grade II on 15.1.1971. He retired on 31-3-1989.

Respondent in C.A.No.7322 of 2003 was appointed as Co-operative Supervisor on 1.2.1956. He was promoted to the post of Co-operative Inspector Grade II on 1.2.1964. He retired on 30-6-1989.

Respondent in C.A.No.7323 of 2003 was appointed as Co-operative Supervisor on 15.12.1947. He was promoted to the post of Co-operative Inspector Grade II on 29.4.1962. He retired on 31-7-1983.

Respondent in C.A.No.7325 of 2003 was appointed as Co-operative Supervisor on 22.3.1958. He was promoted to the post of Co-operative Inspector Grade II on 20.2.1977. He retired on 30.6.1994.

Respondent in C.A.No.7327 of 2003 was appointed as Co-operative Supervisor on 17.2.1958. He was promoted to the post of Co-operative Inspector Grade II on 25.5.1985. He retired on 31.1.1991.

Respondent in C.A.No.7328 of 2003 was appointed as Co-operative Supervisor on 15.7.1952. He was promoted to the post of Co-operative Inspector Grade II on 7.5.1963. He retired on 31.7.1983.

Respondent in C.A.No.7329 of 2003 was appointed as Co-operative Supervisor on 24.6.1959. He was promoted to the post of Co-operative Inspector Grade II on 25.11.1988. He retired on 31.1.1994.

Respondent in C.A.No.7331 of 2003 was appointed as Co-operative Supervisor on 2.1.1958. He was promoted to the post of Co-operative Inspector Grade II on 29.5.1976. He retired on 31.7.1993.

Respondent in C.A.No.7335 of 2003 was appointed as Co-operative Supervisor on 16.2.1961. He was promoted to the post of Co-operative Inspector Grade II on 31.5.1994. He retired on 31.7.1997.

Respondent in C.A.No.7336 of 2003 was appointed as Co-operative Supervisor on 14.4.1958. He was promoted to the post of Co-operative Inspector Grade II on 24.5.1985. He retired on 31.12.1994.

Respondent in C.A.No.7337 of 2003 was appointed as Co-operative Supervisor on 12.8.1957. He was promoted to the post of Co-operative Inspector Grade II on 16.7.1979. He retired on 31.7.1986.

Respondent in C.A.No.7338 of 2003 was appointed as Co-operative Supervisor on 22.3.1958. He was promoted to the post of Co-operative Inspector Grade II on 25.5.1985. He retired on 31.12.1994.

Respondent in C.A.No.7344 of 2003 was appointed

as Co-operative Supervisor on 1.1.1951. He was promoted to the post of Co-operative Inspector Grade II on 8.9.1965. He retired on 31.7.1985.

Respondent in C.A.No.7352 of 2003 was appointed as Co-operative Supervisor on 19.1.1953. He was promoted to the post of Co-operative Inspector Grade II on 16.10.1971. He retired on 30.11.1989.

Respondent in C.A.No.7333 of 2003 was appointed as Co-operative Supervisor w.e.f 31.3.1958. He was promoted to the post of Co-operative Inspector Grade II on 9.5.1985. He retired on 31.1.1995.

Respondent in C.A.No.7332 of 2003 was appointed as Co-operative Supervisor on 2.5.1958. He was promoted to the post of Co-operative Inspector Grade II on 25.5.1985 and retired on 31.7.1991.

All the respondents claimed that the period they have worked as Co-operative Supervisor (which is a non-governmental post) be reckoned towards the period for computing the pensionary benefits as government servants.

In fact, in a similar case involving similar facts, the question of law has been decided by this Court on 31.1.2006 in Civil Appeal Nos.7340-7341 of 2003 with Civil Appeal Nos.7315-7316 of 2003, 7317/2003 and 7319 of 2003 titled State of U.P. & Ors. versus Roshan Singh & Ors. This Court, by the aforesaid judgment allowed the appeals of the appellants in C.A.Nos.7340-7341 and 7315-16 of 2003. Civil Appeal Nos.7317 and 7319 of 2003 filed by the respondents were dismissed. By the aforesaid judgment this Court held that according to the relevant Rules the post of Co-operative Supervisor is a non-governmental post.

Legally speaking, therefore, the aforesaid decision squarely covers the facts of the present case. However, since the counsel representing respective respondents desired to urge the facts of each case, we have heard them, albeit without any further aspect to be considered.

At this stage, we may dispose of the preliminary objections raised by Mrs.Shobha Dikshit, learned senior counsel for the respondents, that the judgment of the High Court has attained finality in some other cases and this Court should not unsettle the settled issue. This contention has no substance. The legality and validity of the orders passed by the Tribunal and the High Court have been assailed in this bunch of appeals. More so, this Court has granted stay while issuing notice on 6.5.2002. Moreover, the appeals are on principle and this Court is not precluded from deciding the question of law. This Court is not controlled by any decision that might have been taken by the High Court in some other cases.

The next preliminary objection is that the appeals stand abated as the respondents in Civil Appeal Nos.7345, 7330 and 7348 have expired and no legal heirs have been brought on record. From the record it appears that I.A.Nos.17, 4, 5, 18 and 19 have already been filed to bring on record the legal heirs with applications for condonation of delay. Therefore, it cannot be said that legal heirs were not brought on record.

The basic question that arises in all the appeals is as to whether the period of service rendered by the respondents as Co-operative Supervisor (which is a non-governmental post) can be reckoned in the case of Co-operative Inspectors Grade II (government post) for the purpose of computing pensionary benefits as government servants.

Respondents would contend that the Co-operative Supervisor being the feeder post for promotion to the post of

Co-operative Inspector Grade II, it cannot be said that the post of Co-operative Supervisor is not a government post. The further contention is that the supernumerary posts of Co-operative Supervisor were created in the name of Governor and, therefore, such posts shall be deemed to be the government posts. We are unable to countenance with this contention.

To answer the aforesaid question, it will be necessary to have the benefit of relevant sets of Acts and Rules governing the subject. In this connection, the Co-operative Federation Authority (Business) Regulations 1976 (in short the Regulations) would be relevant. In the said Regulations, the post of Co-operative Supervisor has been brought under the Authority of Co-operative Federation. Regulation 17 defines the "Members of the employees" mean such persons who are working as the Co-operative Supervisor or worker working under the control of the Authority, irrespective of the fact that he draws wages from the Authority or any other source\005\005\005whose appointing authority will be the Administrative Committee will be deemed to be the employees of the authority.

Regulation 72 in Chapter 5 of the Regulations deals with the Provident Fund. Clauses 1, 2 and 3 of the Regulation 72 reads:-

(1) The authority in respect of the members of the employees will establish a Contributory Provident Fund Account in which all the necessary provisions of the Uttar Pradesh Co-operative Federation Contributory Provident Fund Regulation with necessary changes will be applicable in accordance with the provisions of rule 201 to 204 of the Regulations in which in place of direction of any Co-operative Committee the cross-reference of the Authority will be kept.

(2) The member of the employees will make his contribution in accordance with the provisions of rule 202 of the Regulations in the above fund.

(3) The Authority will invest the amount of the said fund in accordance with rule 204 of the regulations and will get the interest accrued thereon under the provision of rule 302 of the regulations.

Regulation 73 deals with Gratuity. Regulation 74 deals with Surety and Regulation 75 deals with Honorarium, Commission and Reward. There is no provision in the Regulations providing pension or pensionary benefits to its employees.

Subordinate Co-operative Service Rules, 1979 (in short the Rules) regulating recruitment and conditions of service of persons appointed to Co-operative service were framed in exercise of powers conferred by the proviso to Article 309 of the Constitution of India.

Rule 4(d) of the Rules defines "Co-operative Supervisor" means the Supervisor under the employment of Co-operative Institutions.

Rule 4(p) defines "Village Level Workers" means the Group III Workers under the employment of the community development department in the State of Uttar Pradesh.

The respondents would contend that since the

Subordinate Co-operative Service Rules, 1979 have been framed by the Governor in exercise of the power proviso to Article 309 of the Constitution, the Co-operative Supervisor shall be deemed to be a government servant. This contention has no substance. A fascicule reading of the definitions of Rules 4(d) and 4(p) clearly indicates the intendment of the legislature. Definition in Rule 4(d) is the clear intendment of the legislature that the Co-operative Supervisor shall be under the employment of the Co-operative Institutions; whereas in Rule 4(p) village level workers have been brought under the employment of the community development department in the State of Uttar Pradesh. Therefore, wherever the legislature intended to do so, they have done it expressly. In the case of Co-operative Supervisor the legislature intended that the Supervisor is under the employment of the Co-operative Institutions and the intendment of the legislature is clearly expressed in Rule 4(d) of the Rules. There is no doubt in our mind, therefore, that the post of Co-operative Supervisor was completely kept out of the purview of the government department.

This apart, Part III of the Rules deals with the recruitment. Recruitment to the post of Group II is from two sources; by direct recruitment through the Commission and by promotion through the Commission. It reads:-

Inspector Group II

(a) by direct recruitment through the Commission;

(b) by promotion through the Commission from amongst permanent Inspectors. Group III and such permanent Cooperative Supervisors and Village Level Workers who have passed Intermediate Examination of the Board of High School and Intermediate Education or an examination declared by the Governor as equivalent thereto or who are covered by G.O.No.3084/XXXV-A-129-NES-58, dated June 14/15, 1961.

The above provisions also clarified the intendment of the legislature that they can come to the government service only through the procedure established by the Rules and Regulations, as government servants. In other words, they are being treated as government servants when they are recruited according to the procedure provided in (a) and (b) of Part III of the Rules. We have already noticed that in the Co-operative regulations there is no provision for pensionary benefits. We have also noticed that Co-operative Supervisors were under the control of the Co-operative Federation Authority. Therefore, the Tribunal and the High Court clearly erred in law and in facts in directing the period they served as Co-operative Supervisors to be added for reckoning the pensionary benefits of retired Co-operative Inspectors Grade II.

We may also notice the Office Circular dated 1.7.1989 issued by the Government of U.P. on the admissibility of pensionary benefits on superannuation of temporary government employees. The aforesaid circular was brought out aimed at to provide some sort of succor to the government employees (like the respondents' case) who are not confirmed within the stipulated time and who are not entitled for pensionary benefits for non-confirmation during which period the employee attained the age of superannuation without being confirmed debarring them from getting the pensionary benefits after the superannuation. Clause Nos. 2 and 3 of the Circular read:-

"2.As aforesaid the question for removal of difficulties of the government employees who retires as the temporary employees has been under consideration of the Government for a long period, and after thorough consideration His Excellency has passed the orders that such Government employees who have completed their regular services for a minimum period of 10 years superannuate after attaining the age of retirement or for doing further service on furnishing the certificate from the competent Medical Authority, will be entitled for pensionary benefits like gratuity and family pension in the same manner as are available to the confirmed employees in the same circumstances admissible in accordance with the rules.

3. This system will also be applicable in those cases where despite being temporary employee permission has been granted for taking voluntary retirement after completing the services of 20 years or attaining the age of 45 years."

The aforesaid Circular was made operative with effect from 1.6.1989. Even on the basis of this Circular none of the respondents served for a period of 10 years as Inspector Grade II with effect from 1.6.1989 so as to avail the benefit of the Government Circular dated 1.7.1989.

The impugned orders of the High Court as well as the orders of the Tribunal are set aside. O.As and Writ Petitions filed by the respondents are dismissed. I.A.Nos.17, 4, 5, 18 and 19 are allowed.

The net result is that all civil appeals are allowed. Writ Petition (civil) No.647 of 2002 is dismissed. No costs.