

PETITIONER:
THE U.P. COOPERATIVE FEDERATION LTD.

Vs.

RESPONDENT:
SHRI RAM SINGH YADAV & ORS.

DATE OF JUDGMENT: 01/12/1997

BENCH:
SUJATA V. MANOHAR, D.P. WADHWA

ACT:

HEADNOTE:

JUDGMENT:
THE 1ST DAY OF THE DECEMBER, 1997

Present:

Hon'ble Mrs. Justice Sujata V. Manohar

Hon'ble Mr. Justice D.P. Wadhwa

Mrs. M. Qamaruddin, J.A. Warsi, Shahid Hussain, Advs. for the Respondents.

J U D G M E N T

The following Judgment of the Court was delivered:

D.P. Wadhwa, J.

This appeal is directed against the judgment dated July 3, 1989 of the Division Bench of the High Court of Judicature at Allahabad (Lucknow Bench) allowing the writ petition of the respondent. The respondent who was an employee with the appellant challenged the order dated May 25, 1978 of the Joint services on the ground that he abandoned his services from July 21, 1977 and that the respondent would not be entitled to any pay and allowances. The order terminating the services of the respondent, however, says that "as such he is absent since 21 July, 1977, and his services are terminated for the reason of being absconded in this way". By the impugned judgment, the High Court set aside the order dated May 25, 1978 on the ground that no disciplinary proceedings were initiated against the respondent and his services could not have been terminated without there being an enquiry officer appointed and no enquiry ever having been conducted against the appellant on the alleged ground of his abandoning his job.

The appellant is a co-operative society registered under the U.P. Co-operative Societies Act, 1965 (for short 'the act'). It is, therefore, governed by the provisions of that Act and the Rules framed thereunder. Section 122 of the Act prescribes constitution of an Authority to control employees of co-operative societies. This Section we may reproduce as under:

"122. Authority to control employees of co-operative societies:- (1) The State Government may constitute an authority or authorities, in such manner as may be prescribed, for

the recruitment, training and disciplinary control of the employees of co-operative societies, or a class of co-operative societies, and may require such authority or authorities to frame Regulations regarding recruitment, emoluments, terms and conditions of service including disciplinary control of such employees and, subject to the provisions contained in Section 70, settlement of disputes between an employee of a co-operative society and the society.

(2) The Regulations framed under sub-section (1) shall be subject to the approval of the State Government and shall, after such approval, be published in the Gazette, and take effect from the date of such publication and shall supersede any Regulations made under Section 121."

The State Government framed the U.P. Co-operative Societies Employees' Service Regulations, 1975 which were published in the U.P. Gazette dated 6th January, 1976. The Regulations were applicable with effect from the date of their publication in the U.P. Gazette. Clause (xi) of Regulation 2 defines 'employee' which means a person in whole-time service of a co-operative society, but does not include a casual worker employed of a society. Under Regulation 5 recruitment for all appointments in a co-operative society shall be made through the Board which means the U.P. Co-operative Institutional Service Board. The constitution and the functions of this Board may, however, be not relevant at this stage as the stage as the respondent was appointed on January 22, 1973 as a Helper, a Class IV employee, temporarily by the Secretary of the appellant, viz., prior to the coming into force of the Regulations. Under Regulation 102 a co-operative society is empowered to frame service rules for its employees which, however, are to be subject to the provisions of the Regulations. The Regulations, however, apply to the existing employees of a co-operative society which were on its roll on the date the Regulations took effect. Under Regulation 103, the Regulations shall be deemed inoperative to the extent they are inconsistent with any of the provisions of the Industrial Disputes Act, 1947, U.P. Dookan Aur Vanijya Adhithan Adhiniyam, 1962, Workmen's Compensation Act, 1923 and any other labour laws for the time being in force, Regulations 102 and 103 may be set out as under:

"102. (i) Subject to the provisions of these regulations, a co-operative society shall within three months from the date of coming into force of these regulations (unless an extension of time is allowed by the Board in writing) frame service rules for its employees.

(ii) The service rules framed under sub-section (i) shall be submitted to the Board for approval and shall

be operative only after the approval.

(iii) Notwithstanding, anything contained in these Regulations the existing employees shall have an option to continue to be governed by the existing service rules, if any, in the society only in respect of the new service rules on these matters.

Explanations.- (1) Provisions relating to pay, increments and allowances (other than travelling allowance), probation, confirmation, retirement, provident fund, and gratuity, shall be deemed as included in the term "emoluments and benefits".

(2) In case of any doubt or dispute in interpretation in respect of the matter mentioned in (1) above, reference shall be made to the Board whose decision shall be final.

(c) Existing service rules means authentic service rules framed by and with the approval of the competent authority.

103. The provisions of these regulations to the extent of their inconsistency, with any of the provisions of the Industrial Disputes Act, 1947, U.P. Dookan Aur Vanijya Adhishthan Adhiniyam, 1962, Workmen's Compensation Act, 1923 and any other labour laws for the time being in force, if applicable to any co-operative society or class of co-operative societies, shall be deemed to be inoperative."

Regulation 19 provides for termination of services of an employee. This Regulation, in relevant part, is as under:

"19. Termination.- Services of an employee 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 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."

Under Regulation 33, the salary accruing to an employee ceases when the employee ceases to be in the service of the co-operative society. In case of an employee who is dismissed or removed from service or dies while in the service of the co-operative society the salary shall cease from the date of his dismissal, removal or death, as the case may be. Chapter VII of the Regulations contains provisions for penalties, disciplinary proceedings and appeals. Under Regulation 84, an employee can be removed from service and he is to be provided with the copy of the order of punishment. The penalty of removal from service cannot be imposed without recourse to disciplinary proceedings. An authority other than by which he was appointed unless the appointing authority has made prior delegation of such authority to such other person or authority in writing. Regulation 85 provides in detail as to how disciplinary proceedings are to be conducted. Any order of removal or dismissal from the service or reduction in rank or grade held substantively by the employee cannot be passed except with the prior concurrence of the Board (Regulation 87). The order imposing penalty is also appealable under the Regulations.

Our attention has been drawn to the Service Rules of the appellant which are stated to be in force from July 1, 1956 and particularly to Rules 17 and 19 thereof which are reproduced as under:

"17. If any employee behaves carelessly and commits irregularities or his actions are prejudicial to the interests of the Federation an enquiry may be instituted. The employee will be called upon to explain the charges that may be to submit his explanation to the enquiring officer to be deputed by the Secretary. Such an employee will also be given opportunity to be heard in person if he is so desires. If no explanation is received or the explanation submitted is unsatisfactory, the punishment that is proposed to be given to him will be communicated to cause why the proposed punishment may not be given to him. If no further explanation is received or the explanation is unsatisfactory, the Executive Committee or the Secretary as the case may be, will award the punishment to him of the Executive Committee or the Secretary is satisfied that the punishment is deserved.

18. Notwithstanding anything contained in Rule 17, if any employee is guilty of any

misconduct as defined herein he shall be liable to be dismissed without notice or any compensation in lieu of notice. The following acts and omissions shall be treated as misconduct:

(a) Wilful insubordination or disobedience, whether alone or in combination with others, to any lawful and reasonable order issued or authorised by the authorities.

(b) Theft, fraud, or dishonesty in connection with the business or property of P.C.F.

(c) Wilful damage to or loss of goods or property of P.C.F.

(d) Taking bribes or any illegal gratification.

(e) Habitual absence without leave, or absence without leave, for more than 15 days in one stretch.

(f) While absent from duty with or without leave, failure without sufficient cause to rejoin duties within a reasonable time when specifically called upon to do so by a competent authority.

(g) Habitual breach of any law or rule applicable to P.C.F.

(h) Riotous or disorderly behaviour during working hours, or any behaviour subversive of discipline. In awarding punishment under this Rule the gravity of the misconduct, the previous record of the employees, and any other extenuating or aggravating circumstances that may exist shall be taken into account."

It will be thus seen that under Rule 18, an employee is guilty of misconduct if he is absent from duty with or without leave or he failed, without sufficient cause, to rejoin duties within a reasonable time when specifically called upon to do so by a competent authority. In such a case the employee is liable to be dismissed without notice or any compensation in lieu of notice. Indeed, in awarding punishment under Rule 18, the gravity of misconduct, the previous record of the employee or any other extenuating or aggravating circumstances that may exist shall be taken into account. If we rely on this submission of the appellant that in the present case action has been taken under Rule 18, it would appear to us that the respondent has not been removed from service or his services have not been terminated but he has been dismissed. In that case it will be clearly in violation of Regulations 84. It is not necessary for us to examine all the Service Rules of the appellant but Rules 17 and 18 cannot stand in face of Regulations 84 and 85 and in view of Regulation 102. That, therefore, does not appear to be a correct submission in the circumstances of the case.

As noticed above, the respondent was employed as Helper, a class-IV post, by the Secretary of the appellant on a consolidated salary of Rs. 125/- per month on temporary basis and his services were terminated on May 25, 1978. During the period of his employment was transferred to Unnao, Gorakhpur and then finally to Lucknow as and when the

need arose on completion of any particular project which was being handled by the appellant. On November 1, 1975, an order was issued by the Secretary of the appellant to absorb services of Mates including that of the respondent who were working under A.R.C. in the cloth scheme which had been competed. It was mentioned in the order that if any Mate was found unsuitable, the secretary should be informed and further that if in any district some people had been appointed on daily wages then those appointments should be cancelled and the services of Mates should be used. It was also mentioned that the appointment should, however, be totally temporary and could be terminated any time without any notice. From November 1, 1976, the respondent was given a regular scale of pay in the pay-scale of Rs. 165-215/-. It appears from the record, however, that there were persistent complaints against the respondent about his working. He was accused of inefficiency, indiscipline and even insubordination. So much so even a memo was issued to him but no action was taken against the respondent. He was, however, transferred from one office to another of the appellant but all at Lucknow. Lastly the respondent was transferred from PCF Lucknow to PCF Press. This was by order dated July 14, 1977. By this order three employees were transferred and the order reads as under:

"The following assistants/Chaukidar are transferred at places written relieved from their place of work may assume their work at New Place with immediate effect.

Name of the employee M/s	Present place of work	New place of work
1. Sh Ram Singh Yadav	PCF Lucknow	PCF Press
2. Rahim Bun	PCF Lucknow	PCF Press
3. Vishun Kumar	PCF Lucknow	Head office

Sd/-N.P. Aggarwal

Secretary

Office U.P. Co-operative Federation Limited

6, Campar Road,

Lucknow.

Sd/-PCF/1/674/85 dated July 14, 1977

Copy to the following for information and necessary action.

1. Concerned Employee
2. Dist. Superintendent PCF Lucknow
3. Superintendent Coal Dump, Lucknow
4. Regional Officer, Lucknow
5. Deputy Managing Director/Account/Press
6. The Accounts Officer (General)
7. Pay Bill Assistant
8. Superintendent (Nazarat)"

Respondent admits that he was so transferred and also the fact that he did not join new posting. While the appellant complains that the respondent abandoned his work and did not report for duty when transferred on May 30, 1977 to Regional Office at Lucknow and then ultimately to PCF Press on July 14, 1977, the respondent says that no order was served upon him when he was transferred to Regional Office on May 30, 1977. He nevertheless admits his transfer to PCF Press and his non joining there. But his case is that when he was transferred on May 30, 1977 he was reverted from the post of assistant, on which he was officiating, to that of Chaukidar. His grievance is that though he qualified Intermediate Science Examination and was entitled to be considered for appointment to the post of assistant in the appellant as and when vacancies for such posts arose out he was not so considered in violation of Regulation 27. Under this Regulation out of the total vacancies to be

provided for 50, per cent shall, as far as possible, be filled up by promotion from amongst the eligible be made on the basis of seniority-cum-merit. Respondent has also based his claim on two communications where he was described as assistant. One such communication is dated March 23, 1976 by the District Superintendent PCF where he has been addressed as "Sri Ram Singh Yadav (Assistant) PCF Lucknow" and ordering him to keep entire record pertaining to wheat purchases for planning year 1976-77 and conducting necessary proceedings in respect thereof. The other such communication also the Distt. Superintendent, PCF, Lucknow is dated April 6, 1976. This communication is addressed to as many as five employees and the respondent is described as Assistant and detail of his work is "to help Ram in wheat delivery". The communication dated April 6, 1976 is an order which starts as under:

"Under planning for purchasing of wheat in Rabi, year 1976, the employees in District Office are posted in duty accordingly. This work will be additional to their regular job and job of purchasing the wheat will be done in priority."

There is, however, no order by the competent authority by which it could be said the respondent was promoted as Assistant. As a matter of fact it is the case of the respondent himself that he was wrongly reverted and he also complains that he was wrongly ignored for promotion to the post of Assistant which promotion was denied to him. For not joining the duty the respondent appears to take shelter on his plea that he could not have been reverted to the post of Assistant and he would not join the new posting as Chaukidar. Letter terminating the services describes the respondent as Chaukidar. It is difficult to understand the plea raised by the respondent that he was entitled to the post of Assistant, or he was justified in not joining his new posting unless he was given posting as Assistant. His not joining the posting as Assistant. His not joining the posting on that account does not appear to be based on any of his legal rights under the Regulations.

When leave was granted on special leave petition filed by the appellant in his case, on the interim application it was ordered that there would be stay of payment of back wages to the respondent until further orders. Record of this appeal shows that there has been controversy again if after the impugned judgment of the High Court the respondent ever joined his service. On the other hand, it was stated by the appellant that the respondent had moved the High Court for taking contempt proceedings against the officer of the appellant for not allowing him to join the duty. This Court recorded that the respondent it seemed was not reporting for duty whereas on the other hand he took out contempt proceedings in the High Court. The Court noted that the registered letters dated 2.3.90 and 25.9.90 were sent to the respondent to join duty out he did not appear to have responded to the same and instead to put pressure he had taken out contempt proceedings in the High Court. This Court expressed unhappiness about the manner in which the respondent was proceeding with the matter. It was directed that in order to give a last chance to the respondent he should report for duty latest by 15th January, 1994, failing which, the Court would be constrained to infer that he was not interested in the job. The matter did not end there. The appellant again approached this Court complaining that

though in pursuance of earlier order the respondent did join the duty but he again absented. Be that as it may, we are not concerned with the conduct of the respondent or any action which the appellant could take against him for his alleged misconduct during the pendency of this appeal. It would, however, appear that because of the pendency of this appeal the appellant chose not to take any action against the respondent. It is always open to the appellant to initiate disciplinary proceedings against the respondent for his remaining absent unauthorisedly or not joining duty during the pendency of this appeal if circumstances so warrant.

It could not be denied that the respondent is an employee within the meaning of clause (xi) of Regulation 2 of the Regulations. He is in the whole-time service of the appellant. He is not a casual worker employed on daily wages or a person in part-time service of the appellant. It is not material for us to examine therefore if the respondent is temporary or has been substantively appointed to the post he is holding. The impugned order is in fact an order of removal of the respondent from service. It is not a termination in the strict sense within the meaning of Regulation 19 as the requirements of that Regulation have not been met and that is also not the case of the appellant that the action was under Regulation 19. That being so the impugned order of termination is in fact removal of the respondent from the service and procedure as prescribed in Regulations 84 and 85 had therefore to be met. That has admittedly not been done. There is no chargesheet, no enquiry officer and no enquiry proceeding. Regulations prescribe detail procedure for conduct of the disciplinary proceedings. Provisions of Regulations 84 and 85 have certainly been violated to the prejudice of the respondent. We therefore uphold the order of the High Court setting aside the termination of service of the respondent by order dated May 25, 1978 to the extent that the respondent has to be reinstated in the service though it does not preclude the appellant from holding an enquiry or passing proper order in accordance with law. However, since on the admission of the respondent himself that he has not worked from July 3, 1977 till the impugned judgment dated July 3, 1989 of the High Court the respondent would not be entitled to any pay and allowances for that period. This is so as respondent is at fault in not joining his new posting without any valid reason. Though ultimately if there is no enquiry or the respondent is exonerated this period shall be counted towards his pensionary and other benefits.

The appeal is thus partly allowed to the extent mentioned above. There will however, be no order as to costs.