

Allahabad High Court

Vijai Shanker Mishra vs State Of U.P. & Others on 5 January, 2010

Court No. - 38

Case :- WRIT - A No. - 70982 of 2009

Petitioner :- Vijai Shanker Mishra

Respondent :- State Of U.P. & Others

Petitioner Counsel :- Siddharth Khare, Ashok Khare

Respondent Counsel :- C. S. C., S. K. Singh

Hon'ble Amreshwar Pratap Sahi, J.

Heard Sri Ashok Khare, learned Senior Counsel for the petitioner, learned Standing Counsel for Respondent Nos. 1 and 2 and Sri S.K. Singh for Respondent No.3.

The order under challenge are dated 23.9.2009 directing the petitioner to pursue his appeal and the order of dismissal dated 11.2.2009. The petitioner was a Secretary of Sahkari Upbhokta Bhandar at Maharajganj under the Uttar Pradesh Sahkari Upbhokta Bhandar Kendriyat Sewa. The petitioner was dismissed from service on 11.2.2009. Against the said order, the petitioner preferred his claim before the Registrar under Section 128 of the Cooperative Societies Act, 1965. The order dated 23.9.2009 redirects the petitioner to file an appeal under the provisions of Rule 29 (4) of the Uttar Pradesh Sahkari Upbhokta Bhandar Centralized Service Rules 1986 and the said representation has been directed to be treated as an appeal within time.

Sri Khare contends that as a matter of fact the impugned order of dismissal itself is liable to be set aside as it proceeds on erroneous assumptions of fact and law and further there was no occasion for the Registrar to have converted the representation into an appeal and send it to the appropriate authority. For this, Sri Khare contends that exercise of power under Section 128 is an independent power and it is not necessary that the petitioner should file an appeal against the order of dismissal. He further submits that the appeal has to be decided by the State cadre authority where the Chairman and the Member Secretary are the same persons who are the Chairman and Member Secretary of the Administrative Committee. In view of this, the contention is that this exercise of entertaining an appeal would be illusory as these 2 persons would be hearing an appeal against their own orders.

I have considered the aforesaid aspect of the matter and the rules which are applicable defining the constitution of the State Cadre Authority and the Administrative Committee are contained in Rule 5 of the Uttar Pradesh Sahkari Upbhokta Bhandar Centralized Service Rules 1986. Rule 5 prescribes the constitution of the State Cadre Authority and it is evident that apart from the Chairman and the Member Secretary, there are 4 other Members who are distinct from the Members of the Administrative Committee. The aforesaid provision, therefore, makes it amply clear that the entire constitution of the Committee is different from that of the Administrative Committee. The aforesaid constitution, therefore, being different, it cannot be said that the same decision would be taken by the appellate authority merely because the Chairman and the Secretary are the same. Further there is a doctrine known as the Doctrine of Necessity. The appellate authority is constituted under the

Rules. There is no challenge to the validity of the Rules. In this view of the matter, this being a rule of necessity, it cannot be said that the exercise would be illusory. It is well settled that if the Statute provides for a forum of appeal then the said forum of appeal cannot be either altered or changed merely because there is a possibility of affirmance of the order under challenge. In this view of the matter, I am not inclined to interfere with the impugned order dated 11.2.2009 and the order dated 23.9.2009.

This writ petition is, accordingly, dismissed with the liberty to the petitioner to pursue his appeal as directed under the order dated 23.9.2009.

Order Date :- 5.1.2010 Irshad