

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NO.997 OF 2002

DEPUTY REGISTRAR CO-OP. SOCIETIES & ORS.

Appellant (s)

VERSUS

BUNNI LAL CHAURASIA

Respondent(s)

(With office report)

Date: 05/04/2005 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE H.K. SEMA

HON'BLE MR. JUSTICE TARUN CHATTERJEE

For Appellant(s)

Mr. S. Borthakur,Adv.

Mr. Sunil Kumar Jain,Adv.

For Respondent(s)

Mr. A.P. Dhamija,Adv.

Mr. Sarad Singhania,Adv.

Mr. H.D. Thanvi,Adv.

Ms. Pratibha Jain,Adv.

UPON hearing counsel the Court made the following

O R D E R

Heard the learned counsel for the parties for a while.

The civil appeal is allowed.

No costs.

[ T.I. Rajput ]

[ Shelly Sengupta ]

Court Master

Assistant Registrar

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.997 OF 2002

Dy. Registrar, Co-op. Societies & Ors. ...Appellant(s)

Versus

Bunni Lal Chaurasia ...Respondent(s)

O R D E R

This appeal is directed against the order of the High Court dated 5th September, 2001, whereby the order passed by the learned Single Judge has been upset.

Briefly stated, the facts of the case are as follows:

The respondent was appointed as a Co-operative Supervisor in the Uttar Pradesh Co-operative Federal Authority. He was placed under suspension in

contemplation of departmental proceedings initiated against him under Section 68 of

the Uttar Pradesh Co-operative Societies Act [hereinafter referred to as "the Act"].

After the Inquiry Officer submitted his report, a resolution was passed on 21st

December, 1993, to dispense with the services of the respondent and to recover the

amount from him under Section 68 of the Act. Thereafter, by impugned order dated

20th January, 1994, his services were terminated, preceded by a notice on the

proposed punishment. Aggrieved thereby, the respondent filed a writ petition in the

High Court of Judicature at Allahabad. The learned Single Judge, after

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threadbare consideration of the submissions made by the respondent, dismissed the

writ petition. We may mention here that the only contention raised in the writ

petition was the violation of principles of natural justice inasmuch as no notice was

purported to have been given to him affording an opportunity to explain his case.

This contention was repelled by the learned Single Judge that sufficient notices were

sent to him by registered post by the appellant but he failed to appear before the

disciplinary authority. The learned Single Judge also noticed that on 10th July, 1993,

the respondent did not appear. Notices were also published in the "Dainik Jagran"

newspaper on 2nd October, 1993, 9th October, 1993 and 28th November, 1993. The

respondent also moved as many as three applications on 13th July, 1993, 2nd October,

1993 and 28th November, 1993. From the finding recorded by the learned Sin

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Judge, it appears that sufficient opportunity has been afforded to the respondent.

Having failed to avail the opportunity, the respondent now is not permitted to turn back to say that no opportunity has been afforded to him.

The Division Bench of the High Court upset the order passed by the

learned Single Judge mainly on two grounds. Firstly, no notice of proposed

punishment has been given to the respondent. This finding is demolished by notice

dated 13th July, 1993. From the aforesaid notice, it is clear that the respondent was

put to notice as to why he should not be dismissed from service. It appears that the

respondent did not give a reply to the aforesaid notice. Therefore, the first ground

on which the Division Bench upset the order of the learned Single Judge is erroneous.

The second ground on which the Division Bench upset the order of the learned Single

Judge is that, under Section 68 of the Act, there is no provision to order dismissal or

removal of the respondent. While it is true that under Section 68 of the

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Act, there is no such provision but the learned counsel appearing for the appellant

contended that, in fact, the order of dismissal was passed under Regulation 68 and

not under Section 68 of the Act. The learned Counsel has also taken us to the

provisions of Regulation 68 of the Cooperative Federal Authority (Business)

Regulation, 1976. A reading of Regulation 68, which is annexed in the additional

affidavit filed by the appellant, would clearly show that it empowers the authority to impose major punishment like, dismissal, removal or reduction in rank. It appears from the facts and circumstances of this case that the authority was confused between Section 68 of the Act and Regulation 68. Be that as it may, a reading of the notice on proposed punishment dated 13th July, 1993 clearly shows that the proposed punishment on the respondent appears to have been passed under Regulation 68 and not under Section 68 of the Act, although the impugned order mentions Section 68 of the Act.

Regarding affording an opportunity to the respondent, the finding recorded by the learned Single Judge has been affirmed by the Division Bench in the impugned order.

In the facts and circumstances of the case, we are of the view that the Division Bench was clearly in error in upsetting the well-merited order passed by the learned Single Judge. The order impugned passed by the Division Bench is, accordingly, quashed and the order passed by the learned Single Judge is restored.

The civil appeal is, accordingly, allowed.

No costs.

.....J.

[H.K. SEMA]

.....J.

[TARUN CHATTERJEE]

New Delhi,

April 05, 2005.