

(1993) 12 PAT CK 0011
In the Patna High Court
Case No : C.W.J.C. No. 3236 of 1992

Anjani Kumar Singh and Others

APPELLANT

Vs

Manager, Jamui Central Co-operative Bank Ltd. and Others

RESPONDENT

Date of Decision : 07-12-1993

Acts Referred:

Citation : (1993) 12 PAT CK 0011

Final Decision : Dismissed

Judgement

S.B. Sinha, J.—This application is directed against an order dated 23rd March, 1992 passed by the Respondent No. 3 as contained in Annexure-1 series, whereby and whereunder the services of the Petitioners have been terminated. The Petitioners have also prayed for issuance of a writ of or in the nature of mandamus directing the Respondents to appoint them against regular Class III posts.

2. Allegedly in the year, 1987, the Respondent Bank decided to open two new branches at Lakshampur and Khaira Blocks of the then district Munger, now within the district of Jamui. The Managing Committee of the said Bank appeared to have taken a decision to fill up Class-III and IV posts. Allegedly local advertisement had been issued in the notice Board and the applications were called for and the Petitioners were appointed by the Vice Chairman of the Bank by two different orders dated 21st of January, 1988 as contained in Annexures 2 and 3 of the writ application.

3. The Petitioner No. 2 was also appointed by an order of the Vice-Chairman of the Bank dated 21st of January, 1988.

4. The Petitioners in paragraph 13 of the writ application have stated as follows:

That the cases of the Petitioners and other persons were subsequently placed before the Appointment Committee of the Respondent-State. The Appointment Committee gave approval of appointment of the Bank against the respective class III and IV posts aforesaid but such approval was given for daily wage

appointment. The matter was thereafter placed before the Board of Directors of the Bank, which also approved in the similar fashion.

5. The Management of the said Bank has since been taken over by the State of Bihar. After taking over of the Bank the impugned orders have been issued allegedly on the ground that the appointments had been made against the directions of the Cooperative Department of the State of Bihar.

6. Admittedly prior to issuance of the impugned orders, the Petitioners were asked to file their respective documents which they did.

7. A supplementary affidavit has been filed, wherein it has been stated that one Shri Prakash Yadav was also appointed along with the Petitioners and whose service have also been terminated, has been directed to be reinstated in service by the order passed by the Joint Secretary, Cooperative Department.

8. In this case a counter affidavit has been filed, wherein it has been contended that the Petitioners were appointed by the then Managing Committee of the Bank without following the procedures for appointment laid down by the Co-operative Department of the State of Bihar. Prior to making the appointment neither any advertisement was issued nor names of the candidates were called for from the Employment Exchange.

9. It was further submitted that in terms of the procedures laid down by the State of Bihar, the appointments could be made only by the Selection Committee constituted in the manner prescribed.

10. It has further been submitted that the Vice-Chairman was also not competent to appoint the Petitioners. It has also been contended that there has been a violation of Articles 14 & 16 of the Constitution of India as also the Circulars issued by the State of Bihar in terms of Section 66B of the Bihar and Orissa Co-operative Societies Act, as a complete ban on appointment of any class of employees has been made as far back as in the year 1984, which is contained in Annexure-A to the counter affidavit.

11. A copy of the circular letter dated 16.1.1986 issued by the Registrar, Co-operative Department in terms of Rule 33 of Bihar Co-operative Societies Rules has also been annexed to the counter affidavit which is contained in Annexure-B thereto.

12. Mr. S.J. Mukhopadhyay, learned Counsel appearing on behalf of the Petitioner submitted that the Petitioners had been appointed upon following the procedures laid down by the Managing Committee. It has been submitted that as Shri Prakash Yadav had been directed to be reinstated by the Co-operative Department there is no reason as to why the Petitioners should be discriminated against.

13. Section 66B and Rule 33 of the said Act and the Rules framed thereunder reads thus:

66B. (1) Notwithstanding anything contained in this Act or the rule and byelaws made thereunder, the State Government may, from time to time, by special or general order, determine the nature and number of posts to be created and the mode of recruitment of personnel by Co-operative Societies and prescribed among other things--

(1) the qualifications, age and experience.

(2) the pay scale and other emoluments.

(3) the method of recruitment.

(4) the conditions of service, and

(5) the disciplinary procedure to be followed.

(2) Any appointment made in contravention of the order of the State Government under Sub-section (1) shall be void as if no such appointment even existed and salary and other allowances paid if any, shall be recoverable u/s 40.

33. Appointment of paid employees--(1) The appointment of a paid employee in any registered society shall be subject to such conditions as to qualifications, designation, scale of pay and travelling allowances, furnishing of security, compulsory contribution to provident fund grant of leave, salary, increment, transfer, punishment, suspension, removal or dismissal as may from time to time be determined by the Registrar by general or special order.

(2) A registered society aggrieved by any order of the Registrar under Sub-rule (i) may within sixty days of the receipt of such order, prefer an appeal against the order to the State Government and the decision of the State Government thereon shall be final.

(3) Any appointment, made hereinafter in contravention of the conditions determined by the Registrar under Sub-rule (1) shall be void as if no such appointment ever existed and salary and other allowances paid, if any, to such persons shall be recoverable u/s 40 of the Act.

14. In view of the fact that the Respondent Co-operative Society was registered under the Bihar and Orissa Co-operative Societies Act it was bound by the circulars issued by the State of Bihar as also by the Registrar, Co-operative Societies in terms of the aforementioned provisions.

15. From a perusal of the letter dated 18.4.1984 as contained in Annexure-A to the counter affidavit, it appears that a complete ban was imposed on appointment of any person in the Co-operative society unless the State of Bihar issued an order u/s 66B of the Act. The said ban included even those who are to be appointed on ad hoc basis or on daily wages.

In further appears that the Registrar Co-operative Society had issued an order dated 16th January, 1988 as contained in Annexure-B to the counter affidavit, whereby and whereunder the manner as to how the posts are to be sanctioned,

the rules of appointment, the scales of pay etc. had been fixed.

16. From a perusal of Annexures 2, 3 and 4 which are the appointment letters of Petitioners, it appears that they were appointed only on the basis of informal talks held by the members of the Board of Director sent on 10.1.1988 with regard to opening up of two branches. The said appointments were made on wholly temporary basis subject to the approval of the Board.

17. The said appointment letters were issued under the signature of one Shri Panchanand Singh. It may be noticed that although the Petitioners have made an averment that an advertisement had been issued in the notice Board and/or they were called for interview by the Vice-Chairman and/or their appointments were approved by the Board, the said statements made in the writ application have not been properly verified.

In any event, from Annexure-B to the counter affidavit, it appears that 40% of the posts were only to be filled up by direct recruitments and 60% of the posts were to be filled up by promotion. For the purpose of filling up vacancy by direct recruits, a written examination and interviews were to be held. For the purpose of selection of candidates and other matters requisite actions were to be taken by a Committee consisting of the Chairman of the Bank. Additional or Joint Registrar of the Cooperative Society of the concerned division, two Directors of the Bank and in case a Honourary Secretary has been appointed, the said authority had to be included in the Committee by way of a compulsory measure, the Managing Director and/or Executive office of the Bank, a representative of the Bihar State Co-operative Society and a representative of NABARD.

18. It has not been disputed before us that the appointment of the Petitioners had not been done by such a Committee.

We have thus no other option but to hold that the appointment of the Petitioners were absolutely illegal.

19. This aspect of the matter has been considered in depth by a Division Bench of this Court in Teja Prasad and Others Vs. The State of Bihar and Others , wherein it has been held that any appointment made in contravention of Section 66B of the Act would be illegal and in such cases even the principles of natural justice have not been required to be followed.

The Division bench observed:

Section 66B has been quoted above. It would appear from a bare perusal that the power had been conferred upon the State Government to determine the nature and number of posts, qualifications, mode of recruitment, conditions of service etc., of the personnel in the various co-operative Societies. At the very outset I have briefly mentioned the background and the underlying object with which the provisions were incorporated in the statute book in 1982 and 1989. If in view of large scale illegal appointments made without following the established norms causing financial and administrative vagaries on account of inefficiency

and overstating, provision was made to regulate the process of recruitment, condition of service etc. it cannot be said to be arbitrary. Conferring power upon the State Government to frame rules laying down and determining the mode of appointment etc. is not uncommon to service jurisprudence. The submission as to absence of any mechanism for determination of the contravention has no substance. A grievance of that nature could be made only if any adjudication was necessary with some element of discretion in the authority. But if the legislature itself provides and declares certain category of appointment void, nothing requires to be adjudicated. Rules of natural justice are not statutory rules, the application of which cannot be excepted. It is true that violation of rules of natural justice is itself a prejudice but if its exclusion is permissible even by necessary implication, I fail to understand how, for that reason, the provision can be said to be arbitrary and, therefore, violative of Article 14. In certain cases bonafide appointees may also be deprived of their jobs, but their interest can be protected by issuing appropriate directions as, indeed. I propose to give in these cases.

The last part of Sub-section (2) provides for recovery of salary and other allowances paid to the persons whose appointments are said to be void u/s 40. Section 40 of the Act, inter alia, empowers the Registrar to direct any person who has taken part in the organisation or management of the society or any past or present officer of the Society, to continue to the assets of the society by way of compensation in respect of any payment which is contrary to the rules and bye-laws of society and loss of money by reason of his culpable negligence or misconduct, or his failure to include in the accounts or on account of misappropriation or fraudulent retention of any property by him. Section 66B(2), in terms does not provide for recovery of money from the employees. The words "shall be recoverable u/s 40" may be interpreted to mean that the liability created by the provisions is of similar nature and of the same very persons as mentioned therein i.e. the person who has taken part in the organisation or management of the society of any past or present Officer of the Society.

20. This aspect of the matter has also been considered by the other Division Benches of this Court in the cases reported in Vijay Kumar Vs. The State of Bihar and Others, ; 1993(1) PLJR 449 (Smt. Madhuri Kumari v. The State of Bihar); Sitaram Thakur Vs. The State of Bihar and Others ; Dr. Nityanand Prasad Gupta Vs. The State of Bihar and others, ; Mannu Kumar Vs. State of Bihar and Others ; Manoj Prasad and Others Vs. Ranchi University and Others, ; Gopi Krishna Pathak and Others and Dhirendra Prasad Singh and Others Vs. Ranchi University and Others .

21. In this view of the matter, no relief can be granted to the Petitioners in this writ application.

However, it goes without saying that if the Respondents take any decision to fill up the vacant posts and in the event, they apply therefor, the case of the Petitioners should be considered alongwith the cases of all eligible candidates. In

view of the fact that the Petitioners have put in service for a number of years, we hope and trust that the Respondents shall sympathetically consider the cases of the Petitioners for the purpose of relaxation of age bar.

22. The application is, therefore, dismissed with the aforementioned observations, but in the facts and circumstances of the case, there will be no order as to costs.

Gurusharan Sharma, J.

23. I agree.