

(2013) 04 CAL CK 0074
In the Calcutta High Court
Case No : Writ Petition No. 19507 (W) of 2011

Becharam Sahu

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 17-04-2013

Acts Referred:

Citation : (2013) 4 WBLR 585

Hon'ble Judges : Biswanath Somadder, J

Bench : Single Bench

Advocate : Asis Sanyal and Rajendra Banerjee, for the Appellant; S.N. Bhattacharjya, Mirza Kamaruddin for the State and Prosenjit Mukherjee for the Respondent No. 4, for the Respondent

Final Decision : Allowed

Judgement

Biswanath Somadder, J.—The writ petitioner has approached this Court praying, inter alia, for issuance of a writ in the nature of mandamus commanding the respondent authorities, particularly the respondent No. 4, being the Administrator, Chatmadangal Samaboy Krishi Unnayan Samity Limited, to reinstate him in service as Manager of the concerned cooperative society. It appears from record that the writ petitioner was working as a Manager of the concerned cooperative society till he was suspended from service on the basis of an enquiry report dated 6th August, 2009. Such enquiry was conducted by the Assistant Registrar of Cooperative Society, Birbhum, following which the suspension order was issued by the Secretary of the concerned cooperative society on 22nd September, 2009, for reasons stated therein.

2. It is the contention of the learned Advocate for the petitioner that his client had earlier approached this Court by filing a writ petition, being W.P. 15850 (W) of 2009. That writ petition was disposed of by a judgment and order dated 17th November, 2009, whereby the writ petitioner was directed to pay the entire outstanding amount of Rs. 4,70,000/- within 31st January, 2010. It was further observed in the said judgment and order dated 17th November, 2009, that till

31st January, 2010, the concerned cooperative society would take no steps for prosecution of the writ petitioner or for recovery of the amount in a civil forum. If any part of the outstanding amount would remain unpaid on 31st January, 2010, the concerned cooperative society was at liberty to take all steps against the writ petitioner, as available in law. If full payment was received by the concerned cooperative society within 31st January, 2010, they would withdraw any FIR or criminal complaint.

3. According to the learned Advocate for the petitioner, consequent upon the passing of the judgment and order dated 17th November, 2009, his client had paid the entire outstanding amount within the time-frame as fixed by the Court, following which the FIR that was earlier lodged against the petitioner was withdrawn. He further submits that, till date, no enquiry has been initiated by the concerned cooperative society against the writ petitioner, but the effect of the order of suspension continues to operate against the writ petitioner, although such order was only for a limited duration. In this context, he has referred to the initial suspension order dated 22nd September, 2009, issued by the Secretary of the concerned cooperative society and the subsequent suspension order dated 30th September, 2010, issued by the Administrator of the concerned cooperative society. He also submits that even though it has been observed by the Administrator in his order dated 30th September, 2010, that an enquiry has already been started against the writ petitioner, the fact remains that there is no record of such enquiry. It is also the specific contention of the learned Advocate for the petitioner that-as of date-there is no order of suspension in force and yet the writ petitioner has not only been not reinstated in service, he is being made to accept subsistence allowance paid by the concerned cooperative society.

4. On the other hand, the learned Advocate representing the concerned cooperative society submits that the writ petition is not maintainable, since the concerned cooperative society is not a "State" within the meaning of Article 12 of the Constitution of India. He also submits that the writ petitioner has been accepting subsisting allowance till this date and has also been withdrawing such allowance from his Bank account and as such the writ petitioner's conduct would prove that there is an order of suspension subsisting against him. He submits that there is no merit in the instant writ petition, which is liable to be dismissed.

5. After considering the submissions made on behalf of the respective parties, this Court is of the view that since a point of maintainability of the writ petition has been raised by the concerned cooperative society, the same is required to be decided before any decision is taken on the merits of the matter.

6. It is noticed from the facts of the instant case that the writ petitioner had earlier approached this Court by filing a writ petition, being W.P. 15850 (W) of 2009. A mandatory order was passed by this Court on 17th November, 2009, with certain directions upon the concerned cooperative society. There was no appeal preferred by the concerned cooperative society against the said order dated 17th November, 2009. On the contrary, the concerned cooperative society

took benefit of the said order dated 17th November, 2009, and accepted the entire outstanding amount from the writ petitioner and only thereafter withdrew the F.I.R that had been lodged against the writ petitioner. The point of maintainability, not having been urged by the concerned cooperative society in the earlier writ petition, it is not open now for the said cooperative society to raise the same issue in the instant writ proceeding. Although not in express terms, this point is deemed to have been necessarily decided in the earlier writ petition. Therefore, the principles of *res judicata* estoppel squarely applies [See *Gregory v. Molesworth*, reported in (1747)3 Atk 626]. That apart and in any event, whether or not a writ in the nature of mandamus can be issued against a cooperative society not being a "State", as defined under Article 12 of the Constitution of India-is no more *res Integra* in view of the several decisions of this Court, which includes, inter alia *Bhabani Adhikari Vs. West Bengal State Co-operative Bank Limited and Others* and *Bashirhat Sardarati Tantubay Samabay Samity Limited Vs. State of West Bengal*, Therefore, this Court is unable to accept the contention of the learned Advocate representing the concerned cooperative society that the instant writ petition is not maintainable.

7. Now coming to the merits of the matter, it appears that the initial order of suspension was issued by the Secretary of the concerned cooperative society on 22nd September, "2009, which was to remain valid till August, 2010. Subsequent thereto, the Administrator of the concerned cooperative society issued another order dated 30th September, 2010, whereby the initial order of suspension was extended till 31st August, 2011, or till completion of enquiry, whichever was earlier,

8. There is nothing on record to show that the concerned cooperative society has started any enquiry against the writ petitioner. On the contrary, it is palpably clear from the records that as of date, there is no order of suspension subsisting against the writ petitioner. It is inconceivable that the concerned cooperative society could take a stand before this Court that since the writ petitioner is withdrawing subsistence allowance, he shall be deemed to be under suspension even till date, since there is nothing on record-as observed hereinabove-to show that the order of suspension still remains in force or continues, even as of date. As such, there is no question of the writ petitioner remaining suspended. The question of completion of enquiry against the writ petitioner could have arisen only when there would have been commencement of such enquiry. If there was no commencement of enquiry, the question of completion of enquiry does not even arise. No record has been produced before this Court by the concerned cooperative society, which would demonstrate effective commencement of disciplinary proceeding-such as issuance of charge sheet against the writ petitioner. Thus, the situation that prevails as of date is that not only there is no order of suspension subsisting against the writ petitioner, there is not even the remotest sign of commencement of any disciplinary proceeding against him. In such circumstances, the writ petition is entitled to get relief from this Court. The writ petition is, therefore, disposed of with a direction upon the respondent No.

4, being the Administrator, Chatmadangal Samaboy Krishi Unnayan Samity Limited, to take immediate steps to reinstate the writ petitioner in his service as Manager of the Chatmadangal Samaboy Krishi Unnayan Samity Limited.