

(1992) 09 PAT CK 0047
In the Patna High Court
Case No : C.W.J.C. No. 3622 of 1991

Kapileshwar Sharma and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 15-09-1992

Acts Referred:

Bihar Co-operative Societies Act, 1935 — Section 66B
Constitution of India, 1950 — Article 226

Citation : (1993) 2 PLJR 552

Hon'ble Judges : R.N. Sahay, J;Aftab Alam, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Aftab Alam, J.—The petitioners (72 in number) working as Paid Managers in the different branches of the Primary Agriculture Co-operative Societies (in short "P.A.C.S.") have come to this Court in an application under Articles 226 and 227 of the Constitution of India challenging the termination of their services by letter No. 571 dated 16.2.1991 issued by the Administrator, Munger-Jamui Central Co-operative Bank, Munger; a photo stat copy of the impugned letter has been enclosed as Annexure-1 to the writ petition. The letter, addressed to all the Branch Managers of Munger-Jamui Central Co-operative Bank Limited, enclosed a list of 72 paid Managers of the different Co-operative Societies whose services were being terminated thereunder. The reason assigned in the impugned letter for the termination of the services is that the recovery of loans by them had been less than 20% during the year 1988-89. At this stage, it may be noted that the pay scale and other service conditions of the Paid Managers are governed by an order contained in letter No. 503/AK, dated May 31, 1989 issued u/s 66B of the Bihar Co-operative Societies Act, 1935; Clause 10 of this order stipulated that the services of a paid Manager whose recovery was less than 40% of the share capital of his Co-operative Society shall be terminated. It is, however, an admitted position that for the year 1988-89 the target of recovery had been reduced to 20% vide Clause 1 (ka) of letter No. 10552, dated 19.9.1990 issued

by the Co-operative Department. It is also required to be noted that In terms of Clause IV of the order as contained in the letter dated May 31, 1989 the salary of the Paid Managers is to be paid out of the recovery made by them; Clause 8 of this order further stipulated that the Managing Director of the Central Co-operative Bank shall be the controlling authority of the Paid Managers and he will be authorised to initiate a disciplinary proceeding against them and to punish them.

2. In the present case as has been noted above, the order of termination of services was issued by the Administrator at a time when the Board of Directors of the Bank had been superseded and the Bank was functioning under an Administrator in place of the Board of Directors.

3. Learned Counsel appearing on behalf of the petitioners has advanced several submissions in support of the application. It would be however, unnecessary to go into each of them as we are of the opinion that this application is fit to be allowed on a short point.

4. The admitted position in this case is that all the petitioners were served with notices requiring them to show cause as to why action may not be taken against them for having failed to achieve the minimum target of 20% regarding the recovery of loans. From the counter-affidavit filed in this case on behalf of the respondent-Bank, it appears that out of the 72 petitioners, 50 filed their show cause but the remaining 22 did not submit any explanation. It is further the case of respondent authorities that the show cause submitted by the different petitioners were taken into consideration but are not found to be satisfactory. The cases of those 22 petitioners, who had not filed any show cause were also considered and finally in each case it was decided to terminate their services in terms of Clause 10 of the order dated May 31, 1989 governing the service conditions of the Paid Managers.

5. In this connection, it is to be noted that the petitioners raised various pleas in their defence. One was that the achievement of the recovery of target had become next to impossible in view of the Government policies and the public announcements made from time to time by political leaders and persons in the Government regarding the waving of small loans to the farmers. According to the petitioners this had greatly hampered in the recovery of loans. The petitioners further contended that in any event it was unreasonable to allege that the recovery by the petitioners had been less than 20% inasmuch as in calculating the recovery figures the Bank had taken into consideration such loans also in respect of which certificate cases were pending and in some cases even distress warrants had been issued against the loanee. It was contended that loans in respect of which certificate cases were pending and in some such cases even distress warrants had been issued against the loanee, for all practical purposes went out of control of the Paid Managers. It was submitted that it would be highly unrealistic to expect that even in respect of such loans the Paid Managers could make any recovery on his own. It was further submitted that in judging the

recovery figures it would, be, therefore, quite unreasonable and unfair to take into reckoning such loans also for the recovery of which certificate cases were pending and in some cases even distress warrants had been issued. It was strongly urged at the Bar that in calculating the percentage of recovery all such loans in respect of which certificate cases were pending and even distress warrants had been issued should not have been taken into consideration.

6. It was also shown from the charts brought on the record that there were several other Paid Managers whose recoveries had been less than 20% of the share capital of their respective Co-operative Societies and yet no action had been taken against them and the petitioners alone were singled out for the termination of their services.

7. I have taken note of these pleas advanced on behalf of the petitioners only in view of the fact that the admitted position in this case is that notices had been given to the petitioners and the explanations submitted by them are said to have been considered; no departmental proceeding was held in which the petitioners could get an opportunity of personal hearing or an occasion to lead any evidence in support of their pleas.

8. In the facts and circumstances of this case and in view of the nature of the defence, I am of the considered opinion that a departmental proceeding was an essential requirement in which by leading evidence the petitioners could establish their defence and a mere service of the show cause notice did not fully comply with the principles of natural justice.

9. In course of hearing the records of the cases were also produced before us. From the record of Ganesh Prasad Singh (petitioner No. 50) it appears that there is a note dated 27.10.1989 stating that in response to the office letter No. 274, dated 2.10.1984. the explanation of the concerned employee had been received which may be perused. There is another note of the same date stating that the explanation was not satisfactory and in can be rejected. Finally there is a note a the Administrator made on 15.1.1990 stating that the recovery of loans in the year 1988-89 by Ganesh Prasad Singh had been less than 20% his explanation did not appear to be satisfactory and his services could be terminated in view of the departmental orders. I am not satisfied that the above was on adequate consideration of the case specially in the light of the pleas noted above. The notings in the file of the other petitioners are quite similar.

10. For the reasons stated above, I am constrained to interfere in favour of the petitioners. The impugned order of termination of their services as contained in Annexure-1 is quashed and the petitioners are directed to be re-instated. The direction of reinstatement shall protect the petitioners' continuity of service and their retiral benefits, if any. In the facts and circumstances of this case, however, they shall not be entitled to any wages for the period between 16.2.1991 till the date of their re-instatement. It will be also open to the authorities to initiate a proceeding against them in accordance with law as indicated in this order

hereinabove. With these observations and directions, this application is allowed; there shall be no order as to costs.

R.N. Sahay, J.

I concur.