
(2018) 05 CAL CK 0116
In the Calcutta High Court
Case No : W. P. 22021(W) of 2017

Manash Ghsoh

APPELLANT

Vs

State Of West Bengal And Ors.

RESPONDENT

Date of Decision : 03-05-2018

Acts Referred:

West Bengal Cooperative Societies Act, 2006 — Section 17, 34(c), 36, 134(B)
Constitution Of India, 1950 — Article 226

Citation : (2018) 05 CAL CK 0116

Hon'ble Judges : RAJASEKHAR MANTHA, J

Bench : Single Bench

Advocate : P. S. Bhattacharayya, Kumaresh Dalal, Tarun Kumar Roy, Arnab Roy, Arjun Roy Mukherjee, Joydeep Acharya

Final Decision : Disposed Of

Judgement

The writ petitioner was a general manager of the West Bengal Co-operative Bank. Disciplinary proceedings were initiated against him which resulted

in an order of dismissal from service passed on February 25, 2014. The writ petitioner has superannuated from service. The appeal dated 12th

March, 2014 preferred by the writ petitioner against the order of dismissal is pending disposal with the respondents for over 3 years.

The learned counsel for the petitioner says that his appeal ought to be disposed of to determine the fate of his retirement benefits. Per contra, the

learned counsel appearing for the respondent nos.4, 5, 6 and 8 being the special officer and other officials of the West Bengal State Co-operative

Bank submits as follows :-

1. The writ petition is not maintainable as the bank itself is not impleaded as a party respondent. The bank is a body corporate under Section 17 of the

West Bengal Co-operative Societies Act, 2006.

2. Since the special officer has been appointed over the Board of Directors of the bank, the Board is nonfunctional and presently there is no Chairman

in the bank. No other person can be appointed as an appellate authority.

3. The Bank is a Co-operative Credit Entity in terms of Section 134(B) of the said Act of 2006 and as such is autonomous. No outsider can be

appointed as an appellate authority.

I find the bank's arguments to be obstructive and aimed at denying natural justice. I have considered the arguments of the parties. Under Article

226 of the Constitution of India and Rules specified therefor by this Hon'ble Court, the Civil Procedure Code does not apply. It is only the

principles thereunder that apply.

Since the Chief Executive Officer being the Managing Director as also the special officer appointed under Section 36 of the said Act are parties, they

represent the body corporate. The non-joinder of the bank itself in my view is not fatal to the writ petition. On the argument of the learned counsel for

the respondents that the bank here has autonomy under Section 34A clause 2 of the Act of 2006, I observe as follows:-

The Chairman of the bank would have been the appellate authority in the normal and usual course had the bank not been under a Special Officer or

had a functional and lawful Board of Directors. A special officer appointed under Section 36 of the Act of 2006 automatically assumes all the powers

of the Board of Directors and Chairman. In the instant case very curiously, the order of dismissal came to be affirmed by the special officer. As a

consequence whereof he has rendered himself incapable of acting as an appellate authority.

The Special Officer is in the rank of Principal Secretary to the State. For the reasons above, the Chief Secretary of State of West Bengal is hereby

appointed as Appellate Authority to decide the appeal filed by the writ petitioner against the order dismissing him from service. The writ petitioner

shall within a period of ten days of the receipt of a copy of this order file such appeal along with this order before the Chief Secretary.

Upon receipt of the appeal from the writ petitioner, the Chief Secretary as above shall give a personal hearing to the writ petitioner and/or his legal

representative. An officer of the bank and/or its legal representative shall also be

heard before the Chief Secretary in that regard. The Chief Secretary shall dispose of the appeal within a period of three months from date of the receipt of a copy of the appeal from the writ petitioner.

The appeal shall be disposed of by a reasoned order after giving fair opportunity to both the writ petitioner as well as the bank to represent their respective case. The order that may be passed by the Chief Secretary shall be communicated to both the writ petitioner and the Managing Director of the West Bengal State Cooperative Bank positively within a period of ten days of passing of such order. No unreasonable adjournment shall be granted to either of the parties.

Since the bank has not used any affidavit, the allegations made in the writ petition shall not be deemed to be admitted. WP No.22021 (W) of 2017 is disposed of. There will be no order as to costs. Urgent certified website copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.