
(2013) 06 CAL CK 0006
In the Calcutta High Court
Case No : F.M.A. No. 362 of 2012

Nagarukhra Farmers Service Co-operative Society Ltd. and
Another

APPELLANT

Vs

Sri Asit Das and Others

RESPONDENT

Date of Decision : 21-06-2013

Acts Referred:

Citation : (2013) 5 CHN 60 : (2013) 4 WBLR 610

Hon'ble Judges : Pranab Kumar Chattopadhyay, J; Murari Prasad Shrivastava, J

Bench : Division Bench

Advocate : Manik Chandra Das and Manas Das, for the Appellant; Kamallesh Bhattacharyya and Md. Monju Sk. for the Respondent No. 1, Tapan Kumar Mukherjee and Nilotpal Chatterjee for the State, for the Respondent

Judgement

Murari Prasad Shrivastava, J.—The present appeal has been preferred assailing the judgment and order dated 5th May, 2011 passed in W.P. No. 6560 (W) of 2011 by a learned Judge of this Court whereby and whereunder the said learned Judge disposed of the writ petition, setting aside the letter dated 24th March, 2011 of the respondent therein with a direction to reinstate the petitioner within a specified time. Going through the records, we find that the respondent/writ petitioner, a Group-D employee of the appellant society, was served with show cause notice in pursuance of the resolution adopted at the Board of Directors Meeting of the society that he had taken fertilizer loan as also loan upon deposit of potato bonds and not paid the due amount. After receipt of the reply, the same was not found satisfactory and the respondent/writ petitioner was placed under suspension vide memo No. 87/09-10 dated 23.06.2009. Upon the respondent/writ petitioner submitting his representation against the order of suspension, a second show cause notice was issued dated 8th July, 2009 as to why he should not be discharged from the service. The said order of suspension dated 23rd June, 2009 and second show cause notice dated 8th July, 2009 were challenged by the respondent/writ petitioner in W.P. No. 22710 (W) of 2010 and a learned single Judge of this Court upon hearing the parties set aside the order

of suspension and the show cause notice and disposed of the writ application on 14.02.2011 with the following observation set out hereunder:--

Having considered the submissions of the parties, the sum of Rs. 14895/- which was taken on account of fertilizer loan was partly paid on 16th June, 2009. The balance has been paid in July 2009 though kept in a suspense account. Upon adjustment of such sums no payment will be due and payable on account of fertilizer loan amount. The next loan which remains outstanding is on account of potato. It is true that the petitioner ought not to have removed the potato without making full payment as sums are due and payable. Let such sums be paid by the petitioner to the Co-operative Society within 10 days. The Co-operative Society will give the petitioner credit for payments made. Upon receipt of such payment, the Co-operative Society will take a lenient view as regards the petitioner in respect of the proceedings initiated as the petitioner has made certain payments pursuant to the notice of suspension and also expressed his readiness and willingness to make such payments.

2. Admittedly, the due sums, as directed, were paid by the respondent/writ petitioner though somewhat belatedly, but the appellants issued the letter dated 24th March, 2011 stating therein that he had already been dismissed on 18.07.2009 and he could prefer an appeal against the said order of dismissal. However, such factum of alleged dismissal was not disclosed in the proceedings before learned single Judge in W.P. No. 22710 (W) of 2010 wherein the order of suspension and the show cause notice had been challenged by the writ petitioner.

3. The provisions of Rule 48(f) of the West Bengal Co-operative Societies Rules, 1987 clearly provide that no employee of a Co-operative Society shall be dismissed or removed from service except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges, and where it is proposed, after such inquiry to dismiss or remove him, until he has been given a reasonable opportunity of making representation on the penalty proposed. In the present case neither any charge has been framed by the competent authority and communicated to the respondent/writ petitioner by issuing charge sheet, nor any inquiry has been held against the said respondent/writ petitioner. Furthermore, the respondent/writ petitioner has not been given any opportunity of making representation on the penalty proposed. In fact, said letter dated 24th March, 2011 of the present appellant was challenged in W.P. No. 6560 (W) of 2011 and learned Single Judge disposed of the writ application in the following manner:--

By order dated 14th February, 2011, the petitioner was directed to make payment of the outstanding sums within a certain period of time. Such sums have been paid though beyond the specified period. The same has also been accepted by the authorities concerned. In view of the payments made and received by the Co-operative Society, the Co-operative Society should not have any grievance against the petitioner. Therefore, issuance of the letter dated 24th March, 2011 whereby the petitioner has been asked to file an Appeal cannot be

sustained in the eye of law as the only reason for his dismissal was non-payment of the sums taken as loan. After receipt of such sums to ask the petitioner to file an appeal would be grave injustice to him as it is pursuant to Court orders that sums have been paid. Accordingly, the letter dated 24th March, 2011 is set aside, so also the order dated 18th July, 2009 as his dismissal was based on non-payment of the borrowed sums. In view of the order-passed this day, steps be taken by the Co-operative Society to reinstate the petitioner within three weeks from the date of receipt of this order. The letter dated 24th March, 2011 has been set aside as the same smacks of vindictiveness. With the aforesaid direction, this application is disposed of.

4. Aforesaid order has been challenged by the appellants in the present appeal.

5. Mr. Das, learned Counsel appearing for the appellants submitted that the order dated 18th July, 2009 dismissing the respondent/writ petitioner from service was never challenged and thus no order for reinstatement of the petitioner can be passed.

6. Mr. Bhattacharyya, learned Counsel for the respondent/writ petitioner on the other hand submits that the alleged order of dismissal dated 18th July, 2009 was never served upon the writ petitioner nor the same was disclosed in the earlier writ petition wherein the order of suspension and the show cause notice were challenged. Mr. Bhattacharyya further submits that the provision of Rule 48(f) of the Co-operative Societies Rules, 1987 have clearly not been complied with while allegedly dismissing the respondent/writ petitioner from service.

7. The learned Advocate of the respondent/writ petitioner also submitted that the alleged order of dismissal was never in existence and the same has been manufactured afterwards in order to victimise the respondent/writ petitioner. The learned Advocate of the appellant society submitted that the proceeding was initiated against the respondent/writ petitioner for non-payment of the loan amount. Therefore, it is very difficult to believe the existence of the order of dismissal dated 18th July, 2009 specially when the appellant society did not disclose the said order of dismissal even before the learned Single Judge of this Court on 14th February, 2011 when the said learned Single Judge finally decided the earlier writ petition being W.P. No. 22710 (W) of 2010.

8. The records clearly reveal that in the earlier proceedings before the learned single Judge in W.P. No. 22710 (W) of 2010 wherein the order of suspension and the show cause notice had been challenged by the respondent/writ petitioner, the present appellants who were the respondents therein, did not mention about any order of dismissal being passed on 18.07.2009 and, in fact, the order passed by the learned single Judge on 14.02.2011 setting aside the order of suspension and the show cause notice was never challenged by the present appellants.

9. Furthermore, the provisions of Rule 48(f) of the West Bengal Co-operative Societies Rules, 1987 have not been complied with while allegedly dismissing the said respondent/writ petitioner. The aforesaid Rule 48(f) is set out hereunder:

48. Powers of the board.--the board of a co-operative society shall have full control over the administration and the business of the society and shall exercise all or any of the following powers as may be provided in the by-laws:--

....

....

(f) to appoint, discharge or to dismiss or to remove employees of the society:

Provided that no employee of a co-operative society shall be dismissed or removed from service except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges, and where it is proposed, after such inquiry, to dismiss or remove him, until he has been given a reasonable opportunity of making representation on the penalty proposed.

10. In the present case neither any charge was framed against the respondent/writ petitioner and communicated by issuing charge sheet nor any inquiry was held. There was no occasion for giving a reasonable opportunity of being heard to the respondent/writ petitioner in respect of any charge or giving a reasonable opportunity of making representation on any proposal for inflicting penalty of dismissal.

11. The appellant cannot dismiss an employee without complying with the prescribed Rules namely, 48(f) of the West Bengal Co-operative Societies Rules, 1987. The appellant society in an unusual, illegal and reckless manner sought to dismiss the respondent/writ petitioner from service without initiating any disciplinary proceeding by issuing charge sheet and conducting any enquiry. The action of the appellant society is highly deplorable and cannot be approved under any circumstances. The learned Single Judge has decided the writ petition and passed the impugned order under appeal strictly according to law.

12. Thus, we find no error or infirmity in the decision of learned single Judge and we accordingly dismiss the appeal as we do not find any merit therein.

13. The interim order passed earlier is therefore, made absolute. There will be however, no order as to costs.

Pranab Kumar Chattopadhyay

I agree.