
(2014) 05 RAJ CK 0157

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 612/2014

Nihala Ram

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 05-05-2014

Acts Referred:

Citation : (2014) 05 RAJ CK 0157

Hon'ble Judges : Amitava Roy, C.J;Vijay Bishnoi, J

Bench : Division Bench

Advocate : S.D. Goswami, Advocate for the Appellant

Final Decision : Dismissed

Judgement

1. The judgment and order dated 10.3.2014 passed in S.B. Civil Writ Petition No. 8710/2013 is under assailment in the instant appeal. Thereby, the appellant-writ-petitioner's impugment of the decision of the Managing Director of the Hanumangarh Central Cooperative Bank Ltd. (for short, hereinafter referred to as "the Bank") to lodge an FIR against him has been dismissed.

2. We have heard Mr. S.D. Goswami, learned counsel for the appellant-writ-petitioner.

3. The facts in short are that the appellant-writ-petitioner was appointed as Assistant Manager in 10 KSD Gram Seva Sahkari Samiti (for short, hereinafter referred to as "the Samiti"), a branch of the Ganganagar Central Cooperative Bank Ltd. vide a proposal taken on the basis of a meeting held on 5.8.2004 of the Board of Directors of the Bank. He was inducted in the post of Manager of the Samiti where he discharged his duties till 2009. According to the appellant-petitioner, though thereafter on 19.5.2010, the Board of Directors of the Bank vide its proposal sought to provide permanent appointment to him in the post of Manager, the same did not materialize for which he filed a suit before the Sub Registrar, Cooperative Societies, Hanumangarh u/s 58 of the Rajasthan Cooperative Societies Act, 2001. The said forum, after hearing necessary parties,

declared him to be fit for the post of Manager and an award was passed on 14.7.2011.

4. While the matter rested at that, an enquiry was conducted by the enquiry officer-cum-Branch Manager, Hanumangarh Central Cooperative Bank Branch Pilibanga pursuant to the order dated 18.3.2013 of the Collector, Hanumangarh against the appellant-writ-petitioner on the charge of having prepared forged documents to secure his appointment to the post of Manager. According to the appellant-writ-petitioner, no opportunity was granted to him and eventually, a report was submitted on 25.4.2013 recording adverse findings against him. Though the appellant-writ-petitioner having come to know of the report contended against the acceptance thereof on the ground that he had been denied hearing in the enquiry, it was not heeded to and instead by the letter dated 4.6.2013 of the Managing Director of the Bank, Shri Rameshwar Solanki, Loan Supervisor was instructed to take over the charge of the office of the Manager of the Samiti from him and to lodge an FIR against him for forging the documents to facilitate his appointment to the post of Manager. The letter referred to as well to the direction to this effect by the District Collector. Being aggrieved, he turned to this Court for redress.

5. The respondents No. 1 and 2 in their reply reiterated that in the enquiry conducted by the department against the appellant-writ-petitioner it had been proved that he had submitted forged documents before the screening committee for appointment to the post of Manager. They stated that a complaint had been received on this charge and in the enquiry that was conducted, the allegation was found to be proved and thus, direction to lodge FIR against him was warranted.

6. The respondents No. 3, 4 and 6 while affirming that the enquiry was conducted by the enquiry officer-cum-Branch Manager Hanumangarh Central Cooperative Bank Branch Pilibanga pursuant to the order dated 18.3.2013 of the District Collector, Hanumangarh and that the enquiry report did unmistakably establish the charge that the appellant-writ-petitioner had forged documents to secure his appointment to the post of Manager, assailed as well the maintainability of the writ petition on the grounds of non-exhaustion of alternative remedy and involvement of disputed questions of facts. That the appellant-writ-petitioner while annexing the enquiry report to the writ petition did change page thereof was also alleged as well. According to the answering respondents, the appellant-writ-petitioner had been removed from the service of the Samiti as far back as on 10.4.2007 and the resolution to that effect had been confirmed in the general meeting thereof on 20.9.2007. They denied that there was any malafide in the initiative for filing an FIR against the appellant-writ-petitioner in the attendant facts and circumstances of the case.

7. Mr. Goswami has argued that the impugned decision of lodging FIR against the appellant-writ-petitioner being based wholly on enquiry report drawn up in a proceeding held ex-parte against him, is visibly illegal being violative of the

principles of natural justice and that thus, the learned Single Judge has erred in refusing to interfere therewith.

8. We have considered the pleadings available on record and also the arguments advanced.

9. The learned Single Judge, as the impugned judgment and order would reveal, has dismissed the challenge being pre-matured in absence of any order of suspension of the appellant-writ-petitioner and/or termination of his services. According to the learned Single Judge, the letter dated 4.6.2013 per se did not furnish any cause of action justifying institution of a writ proceeding.

10. Noticeably, there is no rejoinder on the part of the appellant-writ-petitioner refuting the assertions of the respondents that he in fact had been removed from service of the Samiti vide its resolution dated 10.4.2007. This fact finds mention in the enquiry report (Annex. R/3/4/6/1). That his removal from service had been made for his disagreeable conduct resulting in loss of confidence of the Samiti has been recorded therein. The enquiry report further demonstrates that this resolution of 10.4.2007 of the Samiti was approved in its general meeting on 20.9.2007 and that he was ousted from the service of the Samiti. The enquiry report further contains a finding to the effect that the appellant-writ-petitioner had altered the audit report for the year 2007-08 and even after the termination of his service had withdrawn his salary illegally which was recoverable from him. The enquiry report further reveals that in the audit report of the Samiti, it was mentioned that the appellant-writ-petitioner is continuing in the post of Manager from 1.5.2003 to 30.7.2009 though on 10.4.2007 he had been removed and in his place Shri Tej Singh had been functioning in the said capacity. These findings are based on contemporaneous records maintained in the course of day to day functioning of the Samiti.

11. In this view of the matter, the decision to lodge FIR against the appellant-writ-petitioner ipso facto ought not to be invalidated on the imputation that he had not been afforded an opportunity of participating in the enquiry. For all intents and purposes, the probe conducted, in the process whereof amongst others the audit reports referred to hereinabove had been examined, is in the nature of a preliminary enquiry. Neither the letter dated 4.6.2013 nor the reply of the respondents do indicate any punitive action against him on the basis thereof. The decision to file FIR logically is to initiate an investigation into the facts as revealed in the preliminary enquiry and for appropriate legal action on the basis thereof. In the singular facts and circumstances of the case, we neither consider it expedient in the interest of institutional discipline and probity nor warranted in the exercise of this Court's extra-ordinary jurisdiction to interfere with the decision conveyed by the letter dated 4.6.2013. We are thus of the firm opinion that no interference with the impugned judgment and order as well as the decision to lodge FIR against the appellant-writ-petitioner as communicated by the letter dated 4.6.2013 is called for as they do not suffer from any vitiating illegality.

12. The appeal fails and is dismissed.