
(2012) 04 CAL CK 0072

In the Calcutta High Court

Case No : C.W.J.A.S.W.P. No. 4181 (W) of 2009

Palash Banerjee and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 27-04-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 306, 498A

West Bengal Co-operative Societies Act, 1983 — Section 2(31)

Citation : (2012) 134 FLR 745

Hon'ble Judges : J.K. Biswas, J

Bench : Single Bench

Advocate : Milan Chandra Bhattacharjee and Humayun Kabir, for the Appellant; Sanjay Ghosh for the State, for the Respondent

Judgement

Jayanta K. Biswas, J.—The petitioner in this writ petition under Art. 226 dated February 26, 2009 is questioning a decision of the Secretary of Chandanbati Samabay Krishi Unnayan Samity Ltd., a co-operative society registered under the West Bengal Co-operative Societies Act, 1983, dated November 10, 2008 dismissing him from service with immediate effect.

On November 1, 2001 the Board of the co-operative society took a resolution to appoint the petitioner as a casual staff of the co-operative society from December 1, 2001. Accordingly, the co-operative society issued a letter offering the appointment and accepting the offer the petitioner reported for duty and started working. On August 26, 2002 the Board took a resolution to appoint him as the Cashier of the co-operative society on a permanent basis and he was appointed as such.

A case being Sagardihi P.S. Case No. 140/06 dated October 18, 2006 was registered u/s 498-A/306 IPC concerning death of the petitioner's wife. The petitioner was named as an accused. He was arrested on October 18, 2006 and released on bail by an order dated February 19, 2007. He gave a lawyer's notice dated March 23, 2007 that the Secretary of the co-operative society was not

allowing him to attend office and work.

2. Under cover of a letter dated March 23, 2007 the Secretary gave him a copy of a resolution of the Board dated November 30, 2006 suspending him for his detention in jail custody. By a letter dated April 5, 2007 the Secretary informed him that by a resolution dated March 28, 2007 the Board dismissed him from service.

3. Feeling aggrieved the petitioner moved a writ petition No. 8431(W) of 2007 before this Court under Art. 226. By a decision dated June 26, 2007 the writ petition was disposed of. The decision to dismiss the petitioner was set aside. The co-operative society was given liberty to initiate disciplinary proceedings by issuing charge-sheet. The petitioner's appeal against the Single Bench decision was partly allowed by a decision dated February 25, 2008. The Division Bench modified the Single Bench decision as to the time limit for completion of the disciplinary proceedings.

4. Under the circumstances, the Secretary of the co-operative society issued a charge-sheet dated July 9, 2008 (WP p.63). The allegations were these. The petitioner "obtained permanent appointment letter dated 26.8.2002 by introducing a hidden-Lidden Policy and by Managing the Previous Board of Directors." He misbehaved with customers. He was arrested in connection with death of his wife and was detained in custody. No intimation was given for unauthorized absence. Even after receiving order of suspension he remained absent from duty.

5. The petitioner submitted a detailed reply denying each and every allegation. The Chairman of the co-operative society was appointed as the officer to conduct the inquiry. The Chairman examined the petitioner (WP pp. 84-91) and four witnesses jointly (WP p.92) in proof of the allegations and submitted a report dated October 3, 2008 that all the charges were proved.

6. The Secretary of the co-operative society issued a letter dated October 12, 2008 (WP p.93) asking the petitioner to submit representation, if any, against the findings recorded in the inquiry report, a copy whereof was enclosed with the letter. The petitioner submitted a detailed representation. He contended, inter alia, that he was not given opportunity to cross-examine the witnesses. The Secretary of the co-operative society considered the representation and inflicted the punishment of dismissal with immediate effect.

7. By an order dated April 16, 2009 the writ petition was admitted in presence of advocate for the co-operative society. The respondents were directed to file opposition within two weeks. No opposition has been filed. On March 29, 2012 the following order was passed:

Since none appears for the society, hearing is adjourned ordering service of a fresh notice. To next monthly list for hearing. Certified xerox.

8. Mr. Bhattacharjee appearing for the petitioner has produced documents to

show that the order dated March 29, 2012 was served on the co-operative society. However, none appears for the co-operative society. Mr. Ghosh appears for the State.

9. Mr. Bhattacharjee has submitted as follows. The Secretary of the cooperative society had no authority to issue the charge-sheet and initiate the disciplinary proceedings. The proceedings were initiated mala fide. The petitioner was not granted reasonable opportunity to defend himself. The order inflicting punishment was passed in contravention of the provisions of Rule 48 of the West Bengal Co-operative Societies Rules, 1987.

10. Mr. Ghosh has submitted as follows. Documents produced with the writ petition will reveal that the petitioner was given opportunity to cross-examine the witnesses. The petitioner had a statutory remedy of appeal under Para 15 of the Appendix to Chapter VI of the West Bengal Co-operative Societies Rules, 1987.

11. The word "officer" has been defined in section 2(31) of the Act. In view of the definition the Chairman and the Secretary of the co-operative society both were officers of the co-operative society, a body corporate, whose final authority vested in the general body of its members in general meeting.

12. No provision of the Act or the rules empowered the Secretary of the cooperative society to initiate disciplinary proceedings against an employee of the co-operative society or to pass final order in the disciplinary proceedings or to do both the things. The power to appoint, discharge or to dismiss or to remove employees of the co-operative society was conferred by Rule 48 of the Rules on the Board of the co-operative society.

13. The conditions of service of the employees of co-operative societies were enunciated in the Appendix to Chapter VI of the rules. Sub-paragraph (1) of para. 15 of the Appendix to Chapter VI is quoted below:

(1) For the purpose of imposing any penalty under paragraph 14, the Board, which is the appointing authority, shall be the "disciplinary authority", and the general body of members in the general meeting shall be the appellate authority.

14. The penalty of dismissal from service is one of the penalties specified in para, 14 of the Appendix to Chapter VI to the rules; and the penalty could be inflicted on the petitioner for a misconduct only by his disciplinary authority. It is evident from the above-noted facts and the provisions of Para 15(1) of the Appendix to Chapter VI of the rules that the petitioner's disciplinary authority was the Board of the co-operative society.

15. The charge-sheet reveals that it was issued by the Secretary of the cooperative society. He did not have any authority to issue the charge-sheet and thus to initiate the disciplinary proceedings. In the decision dated June 26, 2007 this Court gave liberty to the co-operative society to initiate disciplinary proceedings. Hence there can be no doubt that the disciplinary proceedings were

initiated by an unauthorized person. The charge-sheet was no charge-sheet in the eye of law.

16. The Chairman of the co-operative society was appointed as the officer to conduct the inquiry. The Chairman examined the witnesses in proof of the allegations. On the basis of the inquiry report the Secretary asked the petitioner to submit a representation. The Secretary considered the representation and decided to agree with the findings of the Chairman and inflict the penalty of dismissal from service with immediate effect.

17. Only the Board of the co-operative society", the disciplinary authority, could inflict the punishment, if at all. The punishment was inflicted by an unauthorized person. The order of the Secretary is clearly without jurisdiction.

18. There is no merit in the argument that avoiding the statutory remedy of appeal the petitioner moved the Writ Court straight. The question was not raised on April 16, 2009 when the writ petition was admitted in presence of advocates for the State and the co-operative society. The respondents cannot be permitted to raise the question now. Even otherwise there is no merit in the contention. The petitioner could appeal only against an order of the Board of the co-operative society. The order was passed by the Secretary who had no authority to pass it. For these reasons, I set aside the impugned order of punishment, the inquiry report and the charge-sheet, allow the writ petition and direct the cooperative society to reinstate the petitioner with full back wages and all other service benefits including continuity of service. Compliance within a fortnight from the date of service of this order. Failure to pay salary arrears and other financial benefits will make the co-operative society liable to pay them with interest at the rate of 8% p.a. No costs. Certified xerox.