

(1986) 04 PAT CK 0045
In the Patna High Court
Case No : A.F.A.D. No. 124 of 1980 (R)

Special Officer, Hazaribagh Central Co-operative Bank Ltd. and Others APPELLANT

Vs

Madan Mohan Prasad and Others RESPONDENT

Date of Decision : 04-04-1986

Acts Referred:

Constitution of India, 1950 — Article 12
Specific Relief Act, 1963 — Section 14

Citation : (1987) 35 BLJR 439

Hon'ble Judges : Satyeshwar Roy, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Satyeshwar Roy, J.—The defendants are the appellants. The respondent No. 1 (the plaintiff) filed the suit for declaration that the order of termination of his service on 10-10-1975 was void as having been passed in violation of the principles of natural justice and for permanent injunction restraining the appellants defendants from giving effect to the said order. The trial Court decreed the suit in favour of the respondent which was confirmed by the Lower Appellate Court.

2. Admittedly while the respondent was working as Branch Manager of Appellant No. 3 (the Co-operative Bank) he was charge-sheeted and he was directed to file show cause. This was issued while the Co-operative Bank was being managed by the Managing Committee duly constituted under the provisions of Bihar and Orissa Co-operative Societies Act, 1935 (the Act) the respondent was suspended from service. The respondent thereafter filed his show-cause denying the charges. An enquiry committee was constituted to enquire into the charges against the respondent. Thereafter the enquiry committee exonerated the respondent from the charges. Mean-while the Managing Committee of Appellant No. 3 was superseded by the order of the Registrar u/s 41 of the Act and he

appointed Special Officer for discharging the functions of the Managing Committee. The Special Officer was the Deputy Development Commissioner, Hazaribagh (Appellant No. 1), The Appellant No. 1 sent the report to other officers for scrutiny who submitted report that they did not agree with the report of the enquiry committee. This was accepted by appellant No. 1 and on 10-10-1975 he passed an order against the respondent discharging him from service as the charges had been proved against him. This was to come into effect from 11-10-1975.

3. According to plaintiff there had been violation of the principles of natural justice in conducting the domestic enquiry against the respondent. This was denied by the appellant in the written statement.

4. All that could be gathered from the judgment of the trial Court was that, it was of the opinion that the appellant No. 1 ought to have given notice to the respondent when he differed from the finding of the enquiry committee and as it was not given, there was violation of the principles of natural justice. On the basis of this finding alone the suit was decreed in favour of the respondent. The Lower Appellate Court held that when the Special Officer disagreed with the finding of the enquiry officer, the former ought to have given notice to the respondent to explain the points which were against him. It further held that as appellant No. 3 was statutory body, the suit was maintainable. The appeal filed by the appellants was dismissed by the lower appellate Court.

5. On 26-8-1982 at the time of admission of this appeal, the following substantial question of law were formulated:

(a) Whether the plaintiff respondent had a relationship of master and servant with the defendant appellant, who is a society registered under the Bihar and Orissa Co-operative societies Act, 1935, and if so, whether the suit as framed was barred under the provisions of Section 14(1) of the Specific Relief Act, 1963?

(b) Whether by virtue of getting itself registered under the Bihar and Orissa Co-operative Societies Act, 1935 the body had acquired status of a statutory body?

6. At the time of hearing other substantial questions of law formulated were:

(c) Whether the finding of the Court below that the Special Officer was required to give a notice to the respondent when the former disagreed with the finding of the enquiry committee can be sustained in law ?

(d) Whether the Special Officer (appellant No. 1) was required to give reason when he differed with the finding recorded by the enquiry committee and whether it can be held in this case that in view of the fact that he was influenced by the comments of other officers with regard to the enquiry report it can be said that he recorded his independent finding with regard to the guilt of the respondent on the basis of the evidence on record.

7. So far question Nos. (c) and (d) are concerned it is the admitted case of the

parties that the Special Officer, the officer who was appointed by the Registrar u/s 41 of the Act to discharge the duty and function of the managing committee of the co-operative bank, did not agree with the finding of the enquiry committee, it appears that he thereafter referred the matter to other officers to scrutinise the report of the enquiry committee and suggested to the Special officer that the respondent must be held guilty. The special officer thereafter held the respondent guilty of the charge, inspite of this fact, I am of the opinion that the reasonings given by the Lower Appellate Court on notice in question No. "C" can not be sustained in law. The disciplinary authority was within his right not to accept the report of the enquiry committee and for differing with the report and before recording his own finding in law the special officer was not required to give any notice to the respondent But the special officer when he differed with the findings of the enquiry committee was required to record the reasons on the basis of the evidence for holding the respondent guilty of the charge. No material was brought on record by the appellants to show that appellant No. 1 had recorded his finding giving reasons for differing with the report of the enquiry committee. From perusal of annexure 6 of the plaint, which is order of discharge of the respondent, it appears that he was influenced by the notes given by different offices who had disagreed with the findings of the enquiry officer and thereafter he held that he had gone through all papers and found the respondent guilty of the charge. It my openion, the Special Officer was required to record his reasons with regard to the charges and ultimate finding it also appears, that he even did not record a finding the respondent was guilty, but simply stated that the charges were grave. I am, therefore, of the opinion that question No. "C" must be answered against the respondent, but question No. "(d)" must be answered in his favour.

8. Although for different reasons, but it must be held that there had been violation of the principles of natural justice in this case.

9. Question No. (a) and (b) can be disposed of together. No evidence was brought to my notice to show that the Co-operative Bank, as the appellant No 3 is, was a estate within the meaning of Article 12 of the constitution. None of the tests, enumerated, in Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, has either been asserted in the plaint or has been proved. Admittedly, the co-operative bank was registered as society under the Act and in view of Section 13 of the Act. It shall be a body corporate. Merely because it was a corporate body, it that of a master and servant and Section 14 of the Specific Relief Act would be a bar of the Court for granting relief of reinstatement or permanent injunction as prayed for by the respondent. It was however urged on behalf of the respondent that even assuming that the relief of injunction or reinstatement is not available against appellant No. 3, in this case the order of discharge of the respondent for his misconduct was passed by an officer who was appointed by the Registrar u/s 41(2) of the Act and, therefore, Section 14 of the Specific Relief Act would be no bar for giving the relief prayed for.

10. Admittedly before the enquiry committee submitted its report, the managing committee of the appellant No. 3 was superseded and the Deputy Development Commissioner, Hazaribagh was appointed special officer of the bank by the Registrar of co-operative societies a statutory functionary under the Act. The order of discharge was passed by the special officer. It was submitted by the respondent that in view of this fact that the special officer was appointed by the Registrar in exercise of its statutory power and in view of the fact that the special officer was required to discharge the function of the managing committee of the bank subject to such directions as the Registrar may from time to time give, the relief of reinstatement could not be refused as the relationship between the parties was not purely that of a master and servant. Following the principles laid down by the Supreme Court in *The Nayagarh Co-operative Central Bank Ltd. and Another Vs. Narayan Rath and Another*, in this case it must be held that as the order impugned had been passed by a functionary appointed by the Registrar, a statutory authority under the Act, in pursuance of his power u/s 41(2) of the Act, the relief of re-instatement or permanent injunction could not be refused to the respondent on the ground of Section 14 of the Specific Relief Act, This answers question Nos. (a) and (b).

11. In the result, this appeal is dismissed, but with the modification in the judgment and decree of the courts below that the disciplinary authority of the respondent shall be entitled to pass a fresh order against the respondent in accordance with law and till such order is passed, the respondent shall be deemed to be in service of the bank and shall be deemed to be under suspension. There shall be no order as to costs.