
(2004) 03 CAL CK 0074
In the Calcutta High Court
Case No : Writ Petition No. 2311 (W) of 2001

Sri Amalesh Maity

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 08-03-2004

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21, 226

Citation : (2004) 2 CALLT 490

Hon'ble Judges : Pranab Kumar Chattopadhyay, J

Bench : Single Bench

Advocate : K.D. Mukherjee, for the Appellant; Keshab Bhattacharjee and Banani Mukherjee, S.B. Bhunia and P.B. Mitra for the Respondent Society, for the Respondent

Final Decision : Allowed

Judgement

P.K. Chattopadhyay, J.—The petitioner herein has filed this writ petition challenging the validity and/or legality of the order of dismissal issued by the respondent No. 4 pursuant to the decision of the Board of Directors of the Dakshin Paikbarh Samabay Krishi Unnayan Samity Limited.

2. The petitioner was appointed as a Cashier at Baguranjalpai Branch of Dakshin Paikbarh Samabay Krishi Unnayan Samity Limited. Subsequently, the said petitioner was selected for the post of Branch Cashier and was also appointed as Ledger Keeper (In-charge), Deposit Section, in the Head Office.

3. The Chairman of the Dakshin Paikbarh Samabay Krishi Unnayan Samity Limited served a notice upon the petitioner on 11th September 2000 asking him to show cause explaining his conduct in respect of the various allegations and/or misconducts mentioned in the said show cause notice. The petitioner replied to the said show cause notice denying all the allegations mentioned therein.

4. Subsequently, the Board of Directors of the Society engaged a Private Detective Agency to investigate the instance of theft and dishonesty in

connection with the business of the society. As a matter of fact, the petitioner also agreed to the aforesaid proposal regarding appointment of the Private Detective Agency to investigate the aforesaid allegations of theft and dishonesty in connection with the business of the society.

5. The said Private Detective Agency conducted the investigation and submitted the investigation report before the Board of Directors of the Society. The Board of Directors of the said Society considered the said investigation report of the Private Detective Agency wherein it has been alleged that the petitioner is one of the authors and conspirators of theft of pledged gold ornaments and dishonest work in connection with the business of the society. The Board of Directors accordingly passed a unanimous resolution holding the petitioner guilty of theft and dishonesty in connection with the business of the society and decided unanimously to inflict punishment of dismissal from service upon the said petitioner in terms of Clause 14(b)/(vii) of chapter VI of Appendix to Rule 108 of W.B.C.S. Rules. 1987.

6. The aforesaid decision of the Board of Directors was communicated to the petitioner by the Secretary of Dakshin Paikbarh Samabay Krishi Unnayan Samity Limited by Memo No. 34/F-33 (2000-01) dated 8th December 2000. The relevant portion from the said letter dated 8th December 2000 is quoted hereunder:

"Whereas the Board of Directors of the Society engaged Detective Bureau to investigate the instance of theft and dishonesty in connection with business of the society and you are being of the members of the staff posted at Head Office admitted in writing to acceded to the report of the investigating agency and thereafter decision to the adopted by the Board of Directors of the society on the basis of investigation report.

Whereas, from the investigation report it is established that you are one of the authors and conspirators of the theft of pledge gold ornaments and dishonest work in connection within and as in the business of the society the Board on the basis of the enquiry report unanimously resolved on 2.12.2000 to earmark you as one of the guilties of theft and dishonesty in connection with Business of the Society vide Appendix to chapter VI, Clause No. 14(111) under Rule 108 of W.B.C.S. Rules, 87.

Whereas having been satisfied about gross misconduct of theft and dishonesty. The Board of Directors unanimously resolved on 2.12.2000 to inflict upon you punishment of dismissal from the service of the society in term of Clause No. 14(b)/(vii) of chapter VI of Appendix to Rule 108 of W.B.C.S. Rules, 87 for the interest of the society after giving you a last opportunity of being heard with seven days notice."

7. The petitioner herein replied to the said show cause notice dated 8th December 2000 and denied his guilt as mentioned in the said notice dated 8th December, 2000.

8. Considering the various objections raised by the petitioner in his aforesaid reply, the Secretary of the Dakshin Paikbarh Samabay Krishi Unnayan Samity Limited supplied a copy of the report of investigation of the Private Detective Agency and granted another opportunity to the petitioner to furnish his comments.

9. Ultimately, the petitioner made his representation to the Secretary of the Samity and finally the Board of Directors and Disciplinary authority unanimously decided to impose the penalty of dismissal from service upon the petitioner. The Secretary issued the notice of dismissal from service to the petitioner by Memo No, 43/F-33 (2000-01) dated 25th January, 2001. The relevant extract from the said notice of dismissal dated 25th January 2001 is quoted hereunder:

"Whereas a show cause notice was issued to you in terms of the Office Memo No. 18/F-33 (2000-2001), dated 11/09/2000 for misconduct under paragraph 14(a) (iii) for theft and dishonesty under Rule 108 of the West Bengal Co-operative Societies Rules, 1987.

And

Whereas your reply dated 14.12.2000 to the above show cause notice was considered in the meeting of the Board of Directors of the Paikbarh S.K.U.S. Ltd., which is the appointing authority as well as the disciplinary authority under Rule 15 of Rule 108, West Bengal Co-op. Societies Rule, 1987 held on 16.12.2000 and the disciplinary authority was not satisfied with your reply dated 14.12.2000 and decided to give you a second opportunity by furnishing all documents containing your own statements in writing and statements made by the others and the report of the Private Investigating Agency, which was appointed with the consent of all the members of the staff including yourself for the sake of impartial and independent enquiry.

And

Whereas as per resolution dated 16.12.2000 a Memo No. 40/F-33 (2000-2001) dated 29.12.2000 was issued to you to give you a second opportunity.

And

Whereas in response to the Memo dated 29.12.2000 you after the expiry of seven days as per fixed by the letter dated 29.12.2000 you gave a reply which was received on 6.1.2001.

And

Whereas your reply received on 6.1.2001 was placed before the Board/ Disciplinary authority and the Disciplinary authority after considering all the documents supplied to you along with the report of the Investigating Agency and after careful consideration has unanimously found that you are guilty of misconduct under Rule 14(a)(iii) for theft and dishonesty and Board has unanimously decided to impose the penalty of dismissal from service under

paragraph 14(b)(vii) of the West Bengal Co-operative Society Rule, 108.

Now, therefore, pursuant to the Board Meeting- dated 24.01.2001 and as per authorisation of the Board I do hereby issue this notice of dismissal from service from society with effect from 27.01.2001."

10. The learned counsel of the respondent Dakshin Paikbarh Samabay Krishi Unnayan Samity Limited raised preliminary objection regarding maintainability of the writ petition on the ground that the Co-operative Society is not a State or an authority within the meaning of Article 12 of the Constitution of India.

11. Conditions of service of the petitioner as the employee of the Co-operative Society is governed under Rule 108 of the West Bengal Co-operative Societies Rules, 1987. The petitioner has specifically alleged herein that the Board of Directors of the Co-operative Society has acted in clear violation of the said statutory rules. The aforesaid allegation regarding violation of the statutory rules by the Board of Directors of the Co-operative Society can be challenged before the writ Court for necessary adjudication.

12. The pronouncement of the Supreme Court in the case of U.P. State Co-operative Land Development Bank Ltd. v. Chandra Bhan Dubey and Ors. reported in is very much applicable in this regard. The relevant portion of the aforesaid judgment of the Supreme Court is quoted hereunder:

"26.....When any citizen or person is wronged, the High Court will step in to protect him, be that wrong be done by the State, an instrumentality of the State, a company or a co-operative . society or association or body of individuals whether incorporated or not, or even an individual. Right that is infringed may be under Part III of the Constitution or any other right which the law validly made might confer upon him....."

13. The writ petitioner herein has also specifically alleged violation of the mandatory provisions of the statutory rules by the respondent authorities.

14. Accordingly, I am of the view that this writ petition is very much maintainable before this Court in its Constitutional Writ Jurisdiction.

15. The petitioner has challenged the validity and/or legality of the order of dismissal passed by the Board of Directors of the Dakshin Paikbarh Samabay Krishi Unnayan Samity Limited on various grounds.

16. On behalf of the petitioner it has been specifically urged that the Board of Directors of the Society inflicted the punishment on the petitioner without following the provisions of the West Bengal Cooperative Societies Rules particularly Clause (f) of the Rule 48. The said Clause (f) of Rule 48 is quoted hereunder:

"Rule. 48, Clause (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."

17. It has been alleged by the petitioner that no formal charge sheet was even issued by the respondent authorities to the petitioner herein and furthermore no enquiry officer was ever appointed for conducting any inquiry in respect of any allegation levelled against the petitioner herein.

18. It has been specifically submitted on behalf of the petitioner that no inquiry was held by or at the instance of the Board of Directors of the respondent society against the petitioner by appointing an Enquiry Officer and by recording the evidence of the witnesses in presence of the petitioner. It has also been submitted on behalf of the petitioner that no opportunity was given to the petitioner to cross-examine any witness and/or adduce any evidence. It has been further submitted on behalf of the petitioner that the dismissal of the petitioner from service is absolutely illegal without jurisdiction and also in violation of the mandatory provisions of law as are applicable in this regard. The learned counsel of the petitioner referred to and relied upon the following decisions in support of his aforesaid contentions:

(1) 1999(1) CLT 102 (HC) (The Kishan Co-operative Milk Producers' Union Ltd. and Anr. v. Sri Paramananda Patra)

(2) 2001(3) C LT 47 (HC) (Ajit Kumar Chanda v. State of West Bengal and Ors.)

19. The learned counsel of the petitioner further submits that the Private Detective Agency engaged by the Society never granted any opportunity of hearing to the petitioner and furthermore neither any inquiry was made nor any evidence was taken by the said Detective Agency in presence of the petitioner herein. The learned counsel of the petitioner referred to the letter of the said Private Detective Agency dated 17th February 2001 being annexure R-6 to the supplementary affidavit filed on behalf of the respondent Nos. 3 and 4 in this regard.

20. From the report of the said Private Detective Agency it does not appear that the petitioner was ever heard by any authorised person of the Private Detective Agency nor it has been claimed in the said report that any evidence was taken by the authorised person of the said Private Detective Agency in presence of the petitioner. Furthermore in the said report of the Private Detective Agency it has been clearly mentioned as hereunder:

"Later the management had compelled Mr. Binoy Kr. Maity and Mr. Debabrata Jana to compensate the loss of the Samity by paying cash for their negligent performance as in-charge of loan section during the time of the theft."

"If a theft occurs today and the detection process starts after an interval of time, it becomes impossible to pinpoint the guilty with hundred percent case. A number of proofs are to be missed, observations may go haywire, enquires may reveal incorrect avenues etc. Here also the investigating team started observing the whole thing with very many odds."

"Few Assumptions

1.....

2. Since Mr. Amalesh Maity was looking after the cash section temporarily between 24.8.2000-26.8.2000 and on 28.8.2000. he may have performed the theft during this time and we feel it may be 26.8.2000, the Saturday. This day was favourable to perform such an act as most of the staffs were outside the office for lunch between 2 and 2.30 p.m. and the General Manager and the Manager remained busy with the newly opened Gopinathpur Branch."

21. From the said report it appears that the respondent society had already realised the compensation amount by fixing responsibility on two other employees and not the petitioner herein.

22. It is also clear from the said report that the Private Detective Agency did not find anything specifically and proceeded on the basis of "Few Assumptions" as specifically admitted in the said report.

23. Undisputedly, no formal charge sheet was issued to the petitioner disclosing all the particulars of charges and the evidences on which the disciplinary authority and/or enquiry authority sought to rely upon. The show cause notice issued to the petitioner on 11th September 2000 contains absolutely vague allegations but the biased attitude of the authorities of the society has been specifically reflected in the said show cause notice issued to the petitioner by the Chairman of the society.

24. Scrutinising the said notice I am constrained to hold that the Chairman of the society made up his mind and prejudged the issue as in the said show cause notice the Chairman specifically held the petitioner guilty of misconduct even before conducting any inquiry.

25. From the notice issued to the petitioner on 8th December 2000 being annexure "P-7" to the writ petition it appears that the members of the Board of Directors of the society proceeded in the matter on the basis of the Enquiry Report only and -unanimously held the petitioner guilty. A unanimous resolutions was also passed on 2nd December 2000 for inflicting punishment upon the petitioner for dismissal from the service of the society. By the said notice although the petitioner was informed about the punishment of dismissal from service but at the same time the Board of Directors also decided to grant last opportunity of hearing to the petitioner regarding the aforesaid punishment. Most surprisingly no date of hearing was fixed by the authorities and it was also not mentioned in the said show cause notice.

26. Mr, S.B. Bhunia, learned senior counsel representing the opposite parties, namely, the authorities of the society raised various objections to oppose the claims of the petitioner on merits in addition to the objections regarding maintainability of this writ petition. According to Mr. Bhunia, disciplinary proceeding cannot be equated with the regular Court proceedings and as such granting opportunities for adducing oral evidence and/or formal cross-examination of the witnesses are not essentially required in every occasion. Mr. Bhunia referred to and relied upon the following decisions in support of his aforesaid contentions:

- (1) Kishanlal Agarwalla Vs. Collector of Land Customs,
- (2) Sovachand Mulchand Vs. The Collector of Central Excise and Land Customs and Others,
- (3) Hira Nath Mishra and Others Vs. The Principal, Rajendra Medical College, Ranchi and Another,

27. According to Mr. Bhunia, the only requirement in a disciplinary proceeding is fair play in action which according to the learned counsel of the opposite parties has been duly complied with in the present case. Mr. Bhunia referred to and relied upon the following decisions in support of his aforesaid contention:

- (1) Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another,
- (2) K.L. Tripathi Vs. State Bank of India and Others,
- (3) State Bank of Patiala and others Vs. S.K. Sharma,
- (4) Ravi S. Naik and Sanjay Bandekar Vs. Union of India and others,
- (5) (2001)2 SCC 41 (Tata Iron and Steel Co. Ltd. v. Union of India and Ors.)
- (6) (2001)2 SCC 330 (State of Punjab v. V.K Khanna and Ors.)
- (7) Union of India and Others Vs. Anand Kumar Pandey and Others,
- (8) 1999(1) CHN 417 (Anwar Hossain v. State of West Bengal and Ors.)

28. Although various decisions of this Hon"ble Court as well as of the Supreme Court have been referred to and relied upon by the learned counsel of the opposite parties but I fail to understand how those decisions are applicable in the facts of the present case. It was never held by the Apex Court in the aforesaid decisions that the disciplinary proceedings can be conducted and/or concluded without complying with the principles of natural justice and the procedural justice.

29. Principles of natural justice are obviously not inflexible and may differ in different circumstances but the same cannot mean that disciplinary proceeding can be initiated without intimating the formal charges and other documents in support of those charges to the charged employee concerned. The disciplinary authority also cannot avoid the responsibility of conducting an enquiry into the

charges levelled against the charged employee by appointing an Enquiry Officer and by granting adequate opportunity to the charged employee to defend himself in the enquiry proceeding.

30. As already discussed hereinbefore, the opposite parties herein never specifically communicated any charge alleged to have been levelled against the petitioner together with the supporting documents and no Enquiry Officer was never appointed by the disciplinary authority to enquire into any charge/charges levelled against the petitioner herein. Although Private Detective Agency never conducted the enquiry and/or took any evidence in presence of the petitioner. The petitioner was never granted any opportunity by the said Private Detective Agency to adduce any evidence and/or cross-examine any witness who were examined by the said Detective Agency. The Detective Agency also did not disclose anything about the investigation and refused to divulge the methodology in respect of the investigation conducted by the said agency.

31. The investigator, however, by a written communication dated 17th February 2001 not only refused to supply the copies of evidence of witnesses recorded by the said agency during investigation but also specifically observed that it will be unwise on their part to pinpoint on somebody or some persons as guilty. The relevant extract from the said written communication of the investigator dated 17th February 2001 being annexure "R-6" to the supplementary affidavit is quoted hereunder:

"We understand from your letter that you want us to supply the copies of evidence of the witnesses recorded by us in course of a private investigation done by us on the theft of Gold Bonds from your Samity. You need such things for your Court proceedings.

We have told you clearly before taking over the assignment that private investigation agencies like us can perform discreetly and develop certain observations which you may take as one of your guidelines for your future plans. Agencies like us follow different methods, use different gadgets, meet and discuss with very many people for the sake of the investigation but all these things are our own private and confidential steps. We shall not divulge our methodology or part with our in-home exercise as these clients are supposed to see the reports where we write on our observations only. It will be unwise on our part to pinpoint on somebody or some persons as guilty as this can only be done by a proper Court of law.

Please try to understand our limits, our profession, our involvement. We would request you take your own decisions independently and not to drag us in the picture as our duty is finished long back."

32. From the aforesaid written communication of the investigator it is clear that the said Investigating Agency did not specifically find anybody guilty as according to the said agency it will be unwise on their part to pinpoint on somebody or some persons as guilty. The authorities of the society although heavily relied

upon the enquiry report of the Detective Agency but undisputedly, the said Detective Agency did not supply the copies of the evidence of witnesses recorded during investigation even to the authorities of the society and obviously the authorities of the society had no knowledge in respect of evidence recorded by the investigator during investigation.

33. The said Detective Agency also recorded the evidence from various witnesses behind the back of the petitioner and the petitioner was never granted any opportunity to cross-examine those witnesses. In the aforesaid circumstances, the authorities of the society cannot take any step against the petitioner or any other person on the basis Of the said report of the Detective Agency. In my opinion, no reliance can be placed on the said report of the Private Detective Agency as the same has been prepared secretly and without complying with the basic principles of natural justice and procedural justice.

34. Learned counsel of the opposite parties, however, specifically admitted that the resolution of the Board of Directors dated 2nd December, 2000 was only provisional though erroneously communicated as final. According to Mr. Bhunia, the resolution of the Board of Directors dated 16th December 2000 should be considered as final decision of the authorities in respect of the petitioner herein as the said resolution was passed after considering the reply of the petitioner dated 14th December, 2000.

35. I am unable to accept the aforesaid contention of the learned counsel of the opposite parties as the members of the Board of Directors specifically held the petitioner guilty by the aforesaid resolution dated 2nd December 2000 even before granting adequate opportunity to the petitioner to defend himself.

36. It may also be mentioned in this regard that the reply of the petitioner dated 14th December 2000 in answer to the show cause notice dated 8th December 2000 was considered by the Secretary of the said society as has been specifically mentioned in the letter of the said Secretary dated 29th December 2000 being annexure "P-9" to the writ petition. The relevant portion from the said letter of the Secretary is quoted hereunder:

"Memo No. 40/F 33 (2000-2001) Dated: 29.12.2000

To

Sri Amalesh Malty,

Ledger Keeper (in-charge), Deposit Section, H.O.

S/o. Sri Bishnupada Malty,

Vill. Baguran Jalpai,

P.O. Deshduttabarh,

Dist: Midnapore.

Sir,

I have received the reply to the notice dated 8.12.2000 on 14.12.2000 and I have noted the contents thereof and I state as follows:....."

37. From the aforesaid fact it is clear that even the reply of the petitioner to the purported show cause notice dated 8th December 2000 was virtually considered by the Secretary of the society and not by the Board of Directors although the said Secretary subsequently mentioned in the notice of dismissal dated 25th January 2001 that the reply of the petitioner dated 14th December 2000 was considered in the meeting of the Board of Directors of the society. The aforesaid contradictions and irregularities are serious in nature and cannot be over-looked under any circumstances.

38. Realising the aforesaid illegalities and/or irregularities Mr. Bhunia argued before this Court that minor deviation from complying with the principles of natural justice does not necessarily invalidate the order of dismissal passed by the Board of Directors in view of the consequences of such invalidation. Mr. Bhunia referred to and relied upon a decision of the Supreme Court reported in Union Carbide Corporation, etc., etc. Vs. Union of India, etc. etc.,

39. I am unable to accept the aforesaid contention of the learned advocate of the opposite parties, as the same is contrary to law as established by the Supreme Court of India. Even in the aforesaid decision cited by Mr. Bhunia, Supreme Court has held as hereunder:

"79..... Omission to comply with the requirements of the rule of Audi Alteram Partem, as a general rule, vitiates a decision. Where there is violation of natural justice no resultant or independent prejudice need be shown, as the denial of natural justice is, in itself, sufficient, prejudice and it is no answer to say that even with observance of natural justice the same conclusion would have been reached. The citizen "is entitled to be under the Rule of Law and not the Rule of Discretion" and "to remit the maintenance of constitutional right to judicial discretion is to shift the foundations of freedom from the rock to the sand....."

40. Mr. Bhunia also seriously urged before this Court that the employer lost confidence in the employee and further argued that economic offences should not be treated, lightly. In support of the aforesaid contention, Mr. Bhunia cited the following decisions:

(1) Assam Oil Company Vs. Its Workmen,

(2) Ram Narain Poply, Pramod Kumar Manocha, Vinayak Narayan Deosthali and Harshad S. Mehta Vs. Central Bureau of Investigation and Others,

41. Mr. Bhunia also submitted that Court should not interfere in financial matters and cited another decision reported in U.P. Financial Corporation and Others Vs. Naini Oxygen and Acetylene Gas Ltd. and Another,

42. It has been alleged by the learned counsel of the respondents that the employer has lost its confidence in the employee. In my view, the employer allegedly lost the confidence in the employee concerned even though the charges against the said employee have not been established in a properly conducted disciplinary proceeding. The loss of confidence in the employee must be based on cogent grounds and proper materials.

43. In the present case, neither specific charges have been levelled against the petitioner by the competent authority nor any enquiry was conducted after observance of the principles of natural justice and procedural justice.

44. Accordingly, I do not find any valid reason for losing the confidence in the employee concerned particularly in respect of the petitioner herein.

45. It is true that the economic offences should not be treated lightly provided such offences are established in accordance with law. No penal measure can be taken by an employer against any employee on the basis of allegations only and before establishment of the charges in accordance with law. The petitioner herein should be presumed to be innocent till the alleged offences are established in accordance with law. In my opinion, the aforesaid decision cited by Mr. Bhunia has no manner of application in the facts of the present case.

46. The opposite parties herein particularly, the members of the Board of Directors of the society acted in an unlawful and illegal manner while proceeding against the petitioner and flagrantly violated the principles of natural justice and procedural justice at every stage. The conduct of the respondent authorities herein is highly objectionable as the said authorities acted in an high-handed manner in clear violation of the principles of natural justice and procedural justice while proceeding against the petitioner.

47. For the aforementioned reasons. I have no hesitation to hold that the respondent authorities herein have wrongfully and illegally held the petitioner guilty of misconduct and dismissed him from service of the society in an illegal and unlawful manner.

48. Mr. Bhunia, learned senior counsel of the respondents also raised an objection regarding maintainability of the writ petition on the ground of alternative remedy. According to Mr. Bhunia, petitioner herein has filed this writ petition without exhausting the alternative remedy available under the statute. Mr. Bhunia referred to and relied upon the following decision in support of the aforesaid contention: Union of India (UOI) and Others Vs. Bholanath Karmakar, ,

49. High Court normally does not interfere when the equally efficacious alternative remedy is available to undo any wrong or to enforce the right of a citizen. But in the instant case, I do not consider any equally efficacious alternative remedy was available to the petitioner particularly when the Board of Directors unanimously decided to inflict punishment of dismissal upon the petitioner without even observing the principles of natural justice and also

following the rules and procedures. As I have already discussed hereinbefore, the Board of Directors all along proceeded in the matter in clear violation of the principles of natural justice and procedural justice and also acted in clear violation of the statutory rules prescribed in this regard, the High Court has every discretion to entertain this petition and grant necessary relief notwithstanding the existence of alternative remedy. The decision of the Supreme Court in the case of A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani and Another, is very much applicable in this regard.

50. It is clear from what has been discussed above that there is patent violation of the basis principles of natural justice at every stage of the proceeding. A person who has lost his means of livelihood as a result of such a proceeding can come to a Writ Court without exhausting the statutory remedy in as much as a proceeding conducted in violation of natural justice, is a nullity. The decision of the Supreme Court in the case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, is very much applicable in this regard. The Supreme Court categorised the situations in which the writ Court can be approached without exhausting the statutory remedy and violation of the principles of natural justice is one of them.

51. The members of the General Body of the Society are not legally trained to construe the questions of law involved in the Co-operative Societies Act and Rules framed thereunder. Accordingly, they are not competent to adjudicate the steps taken by the Board of Directors of the Society in this matter.

52. In the facts and circumstances of the present case, I am also of the opinion that equally efficacious alternative remedy was not at all available to the petitioner herein and as such this writ petition cannot be dismissed at this stage only on the ground of non-exhausting alternative remedy as I have already held that no equally efficacious alternative remedy was available to the petitioner herein.

53. It may also be noted that the respondents herein did not raise any objection regarding maintainability of the writ petition at the initial stage of moving the said petition although this petition was moved on 22nd May 2001 in presence of the learned counsel of the respondents and thereafter on various occasions this writ petition appeared before this Court and various orders were also passed time to time by this Court although the learned counsel of the respondents did not raise any objection regarding maintainability of this writ petition on the aforesaid ground of alternative remedy.

54. The objections regarding maintainability of this writ petition on the ground of alternative remedy should not be taken at a belated stage and particularly at the time of final hearing of this writ petition after a lapse of couple of years.

55. Accordingly, the objection raised on behalf of the respondent society regarding maintainability of the petition for non-exhausting the alternative

remedy cannot be sustained in law and the same is therefore, rejected.

56. The serious illegalities and/or irregularities committed by the members of the Board of Directors of the Dakshin Paikbarh Samabay Krishi Unnayan Samity Limited as mentioned hereinbefore, have vitiated the order of punishment issued to the petitioner and thus, the impugned order dated 25th January, 2001 being annexure "P-11" to the writ petition cannot be sustained and the same is therefore, quashed.

57. The respondent Nos. 3, 4 and 5 are directed to reinstate the petitioner in service with full back wages without any further delay but positively within a week from the date of communication of this order. The petitioner is entitled to full back wages as it was never contended by the respondents that the said petitioner was gainfully employed in the meanwhile.

58. The respondent authorities will calculate the back wages of the petitioner within 4 weeks from the date of communication of this order and will make necessary payment to the petitioner within 4 weeks thereafter.

59. This writ petition is thus allowed with costs assessed at 500 G.Ms to be paid by the respondent No. 3 within 2 weeks from the date of communication of this order.

Let urgent xerox certified copy of this judgment, if applied for, be made available to the learned counsel of the respective parties.

Later

After pronouncement of the Judgment, the learned counsel of the respondent-Society prays for stay of the operation of the judgment. I find no reason to grant such stay. Accordingly, the prayer for stay is refused.