

(2024) 08 JH CK 0033

In the Jharkhand High Court

Case No : Writ Petition (S) No. 1670 Of 2021

Subhash Chandra Singh

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 06-08-2024

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2024) 08 JH CK 0033

Hon'ble Judges : Dr. S.N. Pathak, J

Bench : Single Bench

Advocate : Indrajit Sinha, Deepak kr. Dubey, Ruhi Dubey, Sreenu Garapati, Divya

Final Decision : Allowed

Judgement

Dr. S.N. Pathak, J

1. Heard the parties.

PRAYER OF THE PETITIONER

2. The instant writ petitioner has been filed with multiple prayers:

(i) For quashing of the Memo of Charge / Charge-sheet dated 19.03.2005 issued by the Registrar, Co-operative Societies, Jharkhand, Ranchi as contained in memo no. 473 dated 23.03.2005 (Annexure-3) which has not been served upon him by the competent authority in light of resolution as contained in Memo No. 1038 dated 07.10.2003 and for quashing of the Departmental Proceeding initiated vide letter no. 184 dated 28.03.2005 (Annexure-4) based on the abovementioned charge-sheet.

(ii) For quashing the order as contained in memo no. 615 dated 27.05.2006 (Annexure- 13) passed by the Registrar, Co-operative Societies, Jharkhand Ranchi (Respondent No.4) whereby punishment of Stoppage of three increments with cumulative effect and recovery of Rs. 1,90,000/- which were paid illegally to daily wages employee of the society has been imposed with further punishment

that the petitioner be not posted on any post involving financial responsibility and that the punishment be incorporated in the service book of the petitioner. Further prayer has been made to quash the letter no. 958 dated 09.06.2006 (Annexure-15) by which the then Secretary, Co-operative Department, Government of Jharkhand, Ranchi has directed the Assistant Registrar to comply the order passed by the Registrar, Co-operative Societies imposing punishment upon the petitioner.

(iii) For quashing the Appellate order dated 05.12.2012 passed by respondent no. 2 and served vide letter no. 3384 dated 08.12.2012 (Annexure-18) whereby and whereunder the appellate authority rejected the appeal arbitrary, mechanically, without proper appreciation of the ground raised by the petitioner in the memo of appeal which is after more than five years of filing of the appeal and also without considering that the Registrar, Co-operative society has no unbridled and unanalyzed power and jurisdiction to surpass the resolution of the Government contained in Memo no. 1038 dated 07.10.2003.

(iv) For quashing the Review order as contained in memo no. 1806 dated 24.12.2020 (Annexure-19/1) passed by Respondent No. 2 whereby and where under review preferred by the petitioner against the appellate order dated 05.12.2012 has been rejected after more than 5 years of filing the review, on the ground of limitation, without considering that in Quasi Judicial proceeding the law of limitation Act is not applicable if otherwise specially mentioned in the Act. And also in a very arbitrary, mechanical manner, without proper appreciation of the opinion of the Registrar, Co-operative Societies given on 11.01.2018 obtained by the petitioner through Right to Information, Act.

(v) For direction upon the respondents to withdraw the punishment order passed vide memo no. 615 dated 27.05.2006 and pay all consequential benefits to the petitioner arises due to this illegal order of punishment.

FACTS OF THE CASE

3. The factual exposition as has been delineated in the writ petition is that while posted as Co-operative Extension Officer in the office of the Assistant Registrar, Co-operative Societies, Ranchi Circle, Ranchi, the petitioner was appointed as Administrator of Foundry and Forged Credit Co-operative Society Limited, Dhurwa, Ranchi by the order of Secretary, Co-operative Department, Government of Jharkhand, Ranchi dated 21.11.2003. The Government of Jharkhand, vide its resolution as contained in Memo No. 1038, dated 07.10.2003, Co-operative Department, decided that the Government of Jharkhand would be competent authority and all the works related to establishment in respect of Supervisory Officer (which includes Co-operative Extension Officer) shall be conducted at the level of Government and the power of Registrar, Co-operative Societies, Jharkhand, Ranchi were withdrawn by the Government. However, ignoring the said resolution of the Government dated 07.10.2003, the Registrar, Co-operative Societies, by order as contained in Memo

No. 473, dated 23.03.2005, initiated a Departmental Proceeding against the petitioner by framing memo of charge (Prapatra-K) against him and six charges were leveled against him which includes (i) to withdraw cash from the bank and to pay it to the members of the society which ought to have been paid through cheque: (ii) withdrawal of a sum of Rs. 1,90,000/- and to enter into the cash book afterwards with a view to mislead; (iii) not to Co-operate in course of enquiry: (iv) not to take help from three employees of the society: (v) to print thousand copies of the bye-laws of the society and to distribute it and (vi) the payments were made with respect to a subjudiced matter to some members and not to pay arrears to other members.

4. It is further case of the petitioner that the District Co-operative Officer was appointed as Conducting Officer and by letter dated 28.03.2005, as contained in letter no. 184, directed the petitioner to submit the written statement of defense and in light of the said direction, he submitted his reply on 09.04.2005 to the Enquiry Officer denying the charges giving reasons there for. Thereafter, the Enquiry Officer submitted his enquiry report on 24.05.2005 to the disciplinary authority. From perusal of the said enquiry report dated 24.05.2005, it would be evident that the charge nos. 1, 3, 4, 5 and 6 have not been proved.

5. The Enquiry Officer, while dealing with charge no.2 which relates to withdrawal of Rs. 1,90,000/-, has specifically stated that all the 14 daily wagers except one, who died, gave in writing and making personal contact to the Enquiry Officer that the payments were received by them and, therefore, the payments, which were made, cannot be doubted and hence the allegation to the effect that pressure was made on the 14 daily wager employees to obtain signature, was not proved in view of the fact that the 13 daily wager employees gave in writing that they have received the payment. The charge no. 6 is said to be partially proved, however, for that the petitioner has not been punished, as is evident from the order impugned.

6. The second show-cause notice was served to the petitioner while differing with the enquiry report but no reason was assigned for the same. The petitioner was simply asked to reply as to why he should not be punished in the Departmental Proceeding by issuance of memo no. 1037, dated 13.07.2005. The petitioner submitted his reply to second show cause to the Disciplinary Authority on 03.08.2005. The Registrar, Co-operative Societies is not the disciplinary authority of a Co-operative Extension Officer, like the petitioner, which would be evident from the order No. 790 dated 13.06.2005, issued by the Secretary, Co-operative Department, Government of Jharkhand, Ranchi whereby and whereunder a number of Co-operative Extension Officers were transferred from one place to another being the competent authority. This matter of transfer also relates to establishment like initiating any Departmental Proceeding and passing any order therein.

7. Any decision with respect to Co-operative Extension Officer is now taken by the Government through the Secretary, Co-operative Department, which would

be evident from order contained in Memo No. 853 dated 24.06.2005 issued under the pen and signature of the Secretary, Co-operative Department, Government of Jharkhand, Ranchi. Another example, which would go to establish that it is only the Government of Jharkhand through the Secretary, Co-operative Department, which can initiate a Departmental Proceeding, is evident from order contained in Memo No. 1721 dated 26.11.2005. In view of order dated 26.11.2005, one Mr. Suresh Prasad Bharti holding the substantive post of Co-operative Extension Officer was proceeded departmentally by framing charge under the pen and signature of the Secretary, Co-operative Department, Government of Jharkhand, Ranchi. One Mr. Ashok Kumar, Co-operative Extension Officer was also proceeded Departmentally and memo of charge was also framed by the Government through the Secretary, Co-operative Department, Government of Jharkhand, Ranchi which is evident from order contained in Memo No. 572 dated 08.04.2006. Exceeding its jurisdiction, the Registrar, Co-operative Societies, Jharkhand, Ranchi passed the impugned order of punishment in respect of the petitioner by imposing a punishment of stoppage of three increments with cumulative effect; recovery of Rs. 1,90,000/-, which were paid illegally to the daily wage employees of the Society with further direction that the petitioner be not posted on any post involving financial responsibility and that the punishment be incorporated in the service book of the petitioner.

8. Pursuant thereto, the Assistant Registrar, Co-operative societies, Ranchi Circle, Ranchi by his letter no. 413 dated 08.06.2006 requested the Registrar, Co-operative Societies, Jharkhand, Ranchi to give appropriate direction inasmuch as the recovery cannot be made from the petitioner as the impugned order does not involve pecuniary loss caused to the Government. The then Secretary, Co-operative Department, Government of Jharkhand, Ranchi, by letter no. 958 dated 09.06.2006 directed the Assistant Registrar to comply the order passed by the Registrar, Co-operative Societies imposing punishment upon the appellant and report the same to her disentitling the appellant even to prefer an appeal. Again the Assistant Registrar, Co-operative Societies, Ranchi Circle, Ranchi requested the Registrar, Co-operative Societies, Jharkhand, Ranchi to give guidelines inasmuch as he was facing difficulty in making recovery from the petitioner as the amount involved was not a pecuniary loss caused to the Government as would be evident from letter no. 570 dated 22.08.2006.

9. Vide resolution no.1393 dated 01.08.2007, the power of the Registrar Co-operative Societies has been restored to have jurisdiction to act as disciplinary authority of Co-operative Extension Officer, however, on the date impugned orders were passed, the Registrar had no jurisdiction at all.

10. The petitioner preferred an appeal on 05.11.2007 against the punishment order as contained in memo no. 615 dated 27.05.2006 and vide order dated 05.12.2012, served vide letter no. 3384 dated 08.12.2012 to the petitioner in which the appellate authority has rejected the appeal arbitrary, mechanically, without proper appreciation of the ground raised by the petitioner in the memo

of appeal, that too after five years from the date of filing the appeal and also without considering that the Registrar, Co-operative society has no unbridled and unanalyzed power and jurisdiction to surpass the resolution of the Government contained in Memo no. 1038 dated 07.10.2003.

11. Thereafter, petitioner preferred review petition against the appellate order dated 05.12.2012 on 19.06.2015 and vide order as contained in memo no. 1806 dated 24.12.2020, the review preferred by the petitioner against the appellate order has been rejected after more than 5 years on the ground of limitation, without considering that in Quasi-Judicial proceeding, the Limitation Act is not applicable if otherwise specially mentioned in the Act. However, in a very arbitrary and mechanical manner, without proper appreciation of opinion of the Registrar, Co-operative Societies given on 11.01.2018, obtained by the petitioner through Right to Information Act, in which he has clearly stated that the Registrar has no power to pass any order relating to initiation of departmental proceeding or to pass any punishment order as per Circular no. 1038 dated 07.10.2003.

ARGUMENTS ON BEHALF OF THE PETITIONER

12. Mr. Indrajit Sinha, learned counsel appearing on behalf of the petitioner assisted by Mr. Deepak Kumar Dubey and Mrs. Ruhi Dubey, argues that pursuant to memo no. 473 dated 23.03.2005, memo of charge dated 19.03.2005 was issued to the petitioner. Thereafter, vide letter no. 184 dated 28.03.2005, 1st show cause has been served to the petitioner to submit his reply. On 09.04.2005, the petitioner duly submitted his reply to the Enquiry Officer in which he denied each and every charges giving reasons. Thereafter, the Enquiry Officer submitted his enquiry report on 24.05.2005 to the disciplinary authority. The second show-cause notice was given to the petitioner vide letter as contained in Memo No. 1037 dated 13.07.2005. The petitioner submitted his reply to second show cause to the Disciplinary Authority on 03.08.2005.

13. Learned counsel further argues that the Registrar, Co-operative Societies is not the disciplinary authority of a Co-operative Extension Officer, like the petitioner, which would be evident from the order no. 790 dated 13.06.2005 issued by the Secretary, Co-operative Department, Government of Jharkhand, Ranchi whereby and whereunder a number of Co-operative Extension Officers were transferred from one place to another being the competent authority. This matter of transfer also relates to establishment like initiating any Departmental Proceeding and passing any order therein.

14. Learned counsel further argues that vide Memo No. 615, dated 27.05.2006, the Registrar, Co-operative Societies, Jharkhand, Ranchi has passed the impugned order of punishment in respect of the petitioner by imposing a punishment of stoppage of three increments with cumulative effect; recovery of Rs. 1,90,000/-, which were paid illegally to the daily wages employees of the Society with further direction that the petitioner be not posted on any post

involving financial responsibility and that the punishment be incorporated in the service book of the petitioner. Against the punishment order (Memo No. 615 dated 27.05.2006), the petitioner had preferred writ petition bearing W.P.(S) No. 1653 of 2007 and vide order dated 23.10.2007 withdrew the writ in order to avail alternative remedy of departmental appeal against the impugned order before appellate authority and liberty was granted to him by the Hon'ble Court to file departmental appeal within two weeks from the date of the order, and the appellate authority was directed to consider and dispose of the appeal by a reasoned order in accordance with law as expeditiously as possible, preferably within a period of one year from the date of filing of such appeal.

15. Learned counsel further argues that availing the liberty, the petitioner preferred an appeal on 05.11.2007 against the punishment order as contained in memo no. 615 dated 27.05.2006. However, the appeal preferred by the petitioner was decided after five years i.e. vide order dated 05.12.2012 and a copy thereof was served vide memo no. 3384 dated 08.12.2012, which itself is completely contemptuous on part of the respondent authority as because Hon'ble Court had directed to decide the said appeal within one year whereas, the respondent authority had decided the same after five years and no reason has been assigned for such inordinate delay in deciding the appeal. The appeal was disposed of and in the order of appeal, out of four punishments, the punishment no. 2 has been recalled by appellate authority saying that there is no any financial misappropriation hence there is no recovery of Rs. 1,90,000/- from the petitioner. The appellate authority has decided the appeal arbitrary, mechanically, without proper appreciation of the ground raised by the petitioner in the memo of appeal which is after more than five years of filing the appeal and also without considering that the Registrar, Co-operative society had unbridled and unanalyzed power and jurisdiction to surpass the resolution of the Government contained in Memo no. 1038 dated 07.10.2003. Learned counsel further argues that this aspect has not been decided by the appellate authority and as such the same may be considered by this Court.

16. Learned counsel further argues that against the order passed in appeal, the then Honorary Secretary of Foundry Forged Co-operative Credit Society Limited, Dhurwa Ranchi had sent letter vide Ref. No. 01/2013 on 05.03.2013 to the advisor of the Hon'ble Governor of Jharkhand for quashing of the appellate order. After passing the order in appeal, the Under Secretary to the Government has sent a letter vide no. 561 dated 08.03.2013 to the Secretary, Foundry Forged Co-operative Credit Society Limited, Dhurwa, Ranchi for recovery from the persons who had received the money in advance as per the relevant provision of Public Demand Recovery Act, 1914. After passing of the order in appeal and also after sending letter vide no. 561 dated 08.03.2013 to the Secretary, Foundry Forged Co-operative Credit Society Limited, Dhurwa, Ranchi for recovery from the persons who have received the money in advance as per relevant provision of Public Demand Recovery Act, 1914, the Secretary, Foundry Forged Co-operative Credit Society Limited, Dhurwa, Ranchi has neither complied the order passed in

appeal nor acted as per letter vide no. 561 dated 08.03.2013 and in spite of following the said orders, the Secretary, Foundry Forged Co-operative Credit Society Limited has requested to the Under Secretary to the Government vide letter no. M.F.C.-16 dated 24.05.2013 to review the order passed in appeal. After the request made by the Secretary, Foundry Forged Co-operative Credit Society Limited to the Under Secretary to the Government vide letter no. M.F.C.-16 dated 24.05.2013 to review the order passed in appeal, the Under Secretary to the Government has sent a letter vide no. 2763 dated 08.08.2014, letter vide no. 3795 dated 18.11.2014 and letter vide no. 1381 dated 28.05.2015 to the petitioner and directed to file reply within one week before the department, and the Under Secretary to the Government has also sent letter vide no. 2764 dated 08.08.2014, letter vide no. 3794 dated 18.11.2014, letter vide no. 1380 dated 28.05.2015, letter vide no. 1956 dated 21.07.2015, letter vide no. 2931 dated 06.11.15 and letter vide no. 878 dated 20.04.2016 to the Registrar, Co-operative Society, Jharkhand, Ranchi and requested to give opinion with regard to order passed in appeal. The Under Secretary to the Government had requested for opinion from the Registrar, Co-operative Society, Jharkhand, Ranchi who had passed the punishment order dated 27.05.2006 which is not permissible in eye of law.

17. Mr. Indrajit Sinha, learned counsel further argues that after receiving letter no. 2763 dated 08.08.2014, letter no. 3795 dated 18.11.2014 and letter no. 1381 dated 28.05.2015 from the Under Secretary to the Government, which was issued by the Under Secretary to the Government after receiving request from the Secretary, Foundry Forged Co-operative Credit Society Limited vide letter no. M.F.C.-16 dated 24.05.2013 to review the order passed in appeal, the petitioner has filed his reply to all the letters on 19.06.2015 before the Secretary, Co-operative Society Department, Government of Jharkhand-cum-Appellate authority. After receiving several letters from the Under Secretary to the Government, the Registrar, Co-operative Society, Jharkhand, Ranchi has sent a letter vide no. 2975 dated 01.12.2015 to the District Co-operative Officer, Ranchi asking for opinion in the light of letter no. 2764 dated 08.08.2014 and also submit report/result regarding action taken as per Public Demand Recovery Act, 1914 with respect to recovery of advance. The District Co-operative Officer, Ranchi has submitted his detailed opinion vide letter no. 10 dated 07.01.2016 before the Registrar, Co-operative Society, Jharkhand, Ranchi and the Registrar, Co-operative Society, Jharkhand, Ranchi has sent this opinion to the Under Secretary to the Government vide letter no. 1325 dated 03.06.2016. The petitioner, after filing his reply to all the letters served by the Under Secretary on 19.06.15 with regard to review filed by the Secretary, Foundry Forged Co-operative Credit Society Limited, also filed his reminder application on 02.03.2016 before the Secretary, co-operative society Department Govt. of Jharkhand-cum-appellate authority. Again vide letter no. 1534 dated 29.06.2016, the Under Secretary to the Government had asked to the Registrar, Co-operative Society, Jharkhand, Ranchi regarding what action has been taken as per clause 1

and 2 of the opinion and also sent consent with regard to clause 3 of the said opinion which has been served vide letter no. 10 dated 07.01.2016, thereafter reminder has also been sent to the Registrar, Co-operative Society, Jharkhand, Ranchi vide letter no. 305 dated 08.02.2017. After receiving reminder, the Joint Registrar, Co-operative Society, Jharkhand, Ranchi has given reply regarding clauses 1 & 2 and also given consent with regard to clause 3 of the said opinion vide letter no. 1241(2) dated 02.05.2017. After receiving the opinion/ reply from the Registrar, Co-operative Society, Ranchi, the Joint Secretary to the Government vide letter no. 1672 dated 02.08.2017 requested the Registrar, Co-operative Society to comply the order passed by appellate authority vide dated 05.12.2012, but no any finding has been given with regard to application/reply dated 19.06.15 which has been submitted by the petitioner in reply to review before the Secretary, co-operative society Department Govt. of Jharkhand-cum-Appellate authority. The letter no. 1672 dated 02.08.2017 has not ever been served to the petitioner rather this letter has been received by the petitioner through RTI.

18. Mr. Indrajit Sinha, learned counsel argues that in the circumstances, it is crystal clear that delay and latches is apparent on part of the respondent authorities who have lingered the matter with ulterior motives and taken decision on an appeal on 05.12.2012 i.e after five years of the punishment order dated 27.05.2006 and thereafter again after four and half years of filing review i.e. vide letter no. M.F.C.-16 dated 24.05.2013 by the Secretary, Foundry Forged Co-operative Credit Society Limited. When the petitioner found that the respondent authority had taken decision with regard to only punishment no. 2 in review petition preferred by the Secretary, Foundry Forged Co-operative Credit Society Limited then he preferred reconsideration application on 06.07.2020. During pendency of the reconsideration application dated 06.07.2020, the petitioner also filed an application on 01.12.2020 along with death certificate of his son stating therein that due to death of his son in the year of 2012, he was mentally and physically disturbed and not in a position to concentrate in his case pending before the department, but this ground was not considered by the respondent authority at the time of deciding the review application. Learned counsel further argues that in para 15 of the counter affidavit, the respondent authority have stated that 'petitioner did not furnish any ground for the inordinate delay and he did not request for condonation of delay in his review petition', though the petitioner had already filed his application on 01.12.2020 and as such, it is wrong to say that petitioner had not filed any application regarding the condonation of delay by the respondents.

19. Mr. Sinha further argues that at the time of awarding punishment i.e. on 27.05.2006 and also at the time of passing order in appeal on 05.12.2012, two Rules were in existence i.e. the Civil Services (Classification, Control and Appeal) Rules, 1930 and the Bihar and Orrisa Subordinate Services (Discipline and Appeal) Rules, 1935, but in the punishment order as well as the appellate order, there is no any Act/Rules mentioned meaning thereby under which provision and

under which Act or Rules they have given punishment and decided appeal is not cleared, the same ought have at least mentioned in the punishment order. Vague punishment order has been passed by the Registrar, co-operative Society Ranchi even without having power to pass such punishment order as because his power has been seized by the Secretary from the period of 07.10.2003 to 01.08.2007 and in spite thereof, the Registrar, co-operative Society Ranchi has passed the punishment order.

20. Learned counsel further brings into notice of this Court that when petitioner sought information regarding his power and procedure of passing this order, then respondent authority has served copy of file noting of the department in which it is clearly mentioned that the Registrar himself stated that punishment order which was issued against the petitioner is wrong and without jurisdiction/power he has passed the punishment order against the petitioner. Learned counsel further submits that under the Civil Services (Classification, Control and Appeal) Rules, 1930 and in the Bihar and Orrisa Subordinate Services (Discipline and Appeal) Rules, 1935 there is no any provision specified in this rule with regard to review of the order after appeal. Under the Civil Services (Classification, Control and Appeal) Rules, 1930, the provision of Appeal has been given in Part XIII Rule 56 to 69 and in the Bihar and Orrisa Subordinate Services (Discipline and Appeal) Rules, 1935, the provision of Appeal has been given in rule 6 to 13. After creation of the state of Jharkhand, the Department of Personnel, Administrative Reforms and Rajbhasha vide its Notification dated 3rd February 2016 has enacted/ made rules i.e. "Jharkhand Government Servants (Classification, Control & Appeal) Rules, 2016" and this Rule came into force from the date of its publication in the official Gazette i.e. w.e.f. 3rd February 2016.

21. Mr. Sinha further argues that the punishment order is of 27.05.2006 passed vide memo no. 615 and appellate order is of 05.12.2012 served vide memo no. 3384 dated 08.12.2012, thereafter respondent authority started review of the appellate order vide letter no. M.F.C.-16 dated 24.05.2013 of the Secretary, Foundry Forged Co-operative Credit Society Limited. Then from letter no. 2763 dated 08.08.2014, letter no. 3795 dated 18.11.2014, letter no. 1381 dated 28.05.2015 petitioner has been asked to file reply of review application after receiving all these letters petitioner filed his reply on 19.06.2015 before the Secretary, Co-operative Society Department, Government of Jharkhand-cum-Appellate Authority, thereafter the Joint Secretary to the Government vide letter no. 1672 dated 02.08.2017 has requested to the Registrar, Co-operative Society to comply the order passed by Appellate Authority dated 05.12.2012, but no any finding has been given with regard to application/reply dated 19.06.2015 which has been submitted by the petitioner in reply to review, nor letter no. 1672 dated 02.08.2017 by which punishment no. 2 was quashed but has not ever been served to the petitioner and after receiving this letter through RTI, petitioner has preferred reconsideration application on 06.07.2020 and after filing of the reconsideration application the respondent authority sought opinion from the law department and the Law department has sought opinion from Learned Advocate

General regarding limitation for filing Review under Rule 25(2) of the Jharkhand Government Servants (Classification, Control and Appeal) Rules, 2016. The Learned Advocate General has given opinion that "if no limitation is prescribed for filing review under Rule 25(2) of the Jharkhand Government Servants (Classification, Control and Appeal) Rules, 2016, the general law of limitation will apply, which provides for limitation of 30 days for filing review petition. On the point of prolonged delay and latches on the part of the petitioner also the review is not fit to be entertained.". As per the opinion of the Learned Advocate General the reconsideration application filed by the petitioner on 06.07.2020 has been rejected on 24.12.2020 vide memo no. 1806.

22. Mr. Sinha further argues that any opinion given by any person is not a law, secondly the opinion of Learned Advocate General is not binding upon the respondent authority to take any final decision if there is no any provision of review in the existing rule, thirdly Jharkhand Government Servants (Classification, Control and Appeal) Rules, 2016, came into force w.e.f. 3rd February 2016. This Rule is not applicable retrospectively in the case of the petitioner and as such, the opinion of the Learned Advocate General is also not applicable in the case of the petitioner as because he has given opinion on Rule 25(2) of the Jharkhand Government Servants (Classification, Control and Appeal) Rules, 2016 which is not at all applicable in the case of the petitioner as because punishment has not been given to the petitioner under Jharkhand Government Servants (Classification, Control and Appeal) Rules, 2016. Learned counsel further argues that at the time of awarding punishment this rule was not in existence. Moreover, from bare perusal of the Rule 25(2) of the Jharkhand Government Servants (Classification, Control and Appeal) Rules, 2016, it clearly reads that "...There shall be no appeal against the orders of the Government; however, review petitions may be filed in the form of Memorials". It is manifestly apparent that there is no specific period prescribed within which review is to be filed by the aggrieved party, as such preferring statutory review under the aforesaid rules since does not mandates to be filed within a specific time period. Even if the said review has been filed at a belated stage, the same may not be a ground of dismissal of same on the ground of limitation. The ground taken by the respondent in para 6 of the counter affidavit that the writ petition is hit by principle of delay and latches and devoid of merit, is hereby not applicable in the case of the petitioner.

23. Mr. Sinha further argues that from the resolution as contained in Memo No. 1038, dated 07.10.2003, as per the order of Hon'ble Governor, Jharkhand it was decided that the Government of Jharkhand would be competent authority and all the works related to establishment in respect of Supervisory Officer (which includes Co-operative Extension Officer) shall be conducted at the level of Government and the power of Registrar, Co-operative Societies, Jharkhand, Ranchi were withdrawn by the Government. The entire power/work relating to establishment which was seized vide Memo No. 1038 dated 07.10.2003, has been again given to the Registrar, Co-operative Society, Ranchi vide memo no.

1393 dated 01.08.2007. The punishment order has been passed on 27.05.2006 by the Registrar, Co-operative Society, Ranchi when he had no power/jurisdiction to pass such order which has also been accepted by the Registrar in his file noting and the same has been obtained by the petitioner through RTI vide letter no. 2263(4) dated 09.08.2017. Serving of second show cause on the illegal charge sheet and also imposing punishment by the incompetent authority are not permitted in eye of law.

ARGUMENTS ON BEHALF OF THE RESPONDENTS

24. Mr. Sreenu Garapati, learned SC-III opposes the contention of learned counsel for the petitioner and submits that the writ petition does not deserve any consideration as the petitioner has belatedly and without assigning any satisfactory reason challenged the order after unreasonable delay. The petitioner challenged the order issued vide memo no. 615 dated 27.05.2006 passed by the Respondent No. 4 on nonest ground. The petitioner challenged the appeal order issued vide memo no. 3384 dated 08.12.2012 which was dismissed vide memo no. 1806 dated 24.12.2020. Thus, the writ petition is hit by the principle of delay and laches and is devoid of merits and therefore, does not deserve any consideration under Article 226 of the Constitution of India as there are concurrent finding against him.

25. Learned counsel representing State further argues that the petitioner has incorrectly interpreted Annexure-1 i.e. the resolution as contained in memo no. 1038 dated 07.10.2003 wherein it was decided that the power regarding transfer, appointment, promotion, pension etc. was taken back and there was no specific bar/ restriction on the Registrar, Co-operative Society to exercise the power of punishment and, therefore, the issuance of memo of charge followed by inquiry proceeding is in accordance to law and are legally sustainable.

26. Learned counsel representing State further argues that the petitioner was issued memo no. 473 dated 23.03.05 wherein departmental proceeding was initiated against him. It was alleged that the petitioner withdrew cash from the Bank and did not make payment to the members of the society through cheque. It was alleged that an amount of Rs. 1,90,000/- was withdrawn by the petitioner and with the intention to misguide, he did not cooperate in the investigation of cash book. The petitioner further did not cooperate with three members of the society and distributed 1000 copies of the bye law of the society. It was also alleged that the petitioner made payment to those members whose payment dispute were pending before the Court and the payment of pending arrear was not made by the petitioner. Hence, the memo of charge was issued against the petitioner Subordinate under Jharkhand Services Discipline and Appeal Rules.

27. Learned counsel representing State further argues that in light of the memo of charge issued to the petitioner vide memo no. 473 dated 23.03.05, the District Co-operative officer, Ranchi vide memo no. 184 dated 28.03.05 directed the petitioner to submit his explanation to the charges levelled against him. The

petitioner submitted his reply on 09.04.05 and thus, it is an admitted position that memo of charge was received by him and duly replied by him. The enquiry was conveyed and the enquiry report dated 24.05.05 was submitted by the Enquiry Officer to the Disciplinary authority. The Registrar, Co-operative Societies vide memo no. 1037 dated 13.07.05 issued second show cause notice to the petitioner which was duly received by him. As a matter of record, the petitioner has admitted receiving of memo no. 1037 dated 13.07.05 in paragraph 13 of the writ petition. After receipt of second show cause, the petitioner submitted his reply to the second show cause on 03.08.05 before the Registrar Co-operative Societies, Jharkhand, Ranchi (respondent no.4). After due consideration to the explanation submitted by the petitioner to the second show cause and in view of the serious allegation levelled against him, the disciplinary authority/respondent no. 4 issued the order of punishment vide memo no. 615 dated 27.05.06 imposing punishment of stoppage of three increments with cumulative effect, recovery of Rs. 1,90,000/- and direction of not posting the petitioner to any position involving responsibility. It was further directed that the punishment inflicted upon the petitioner be entered in his service book. The appeal against the order of punishment was preferred before the Appellant authority and vide letter no. 3384 dated 08.12.12, the same was disposed of by reasoned order. The review petition preferred by the petitioner also stood rejected vide order contained in memo no. 1806 dated 24.12.20. Further, the review was preferred which was also found not sustainable in the eye of law. The petitioner did not furnish any ground for the inordinate delay and he did not request for condonation of delay in his Review petition. No legal authority or statute was relied upon the petitioner to condone the delay and consider his review petition.

28. Learned counsel representing State further argues that the Ld. Advocate General, Jharkhand has also given his legal opinion that the general Law of Limitation will apply if no limitation is prescribed for filing review petition under rule 25 (2) of Jharkhand Government servants (Classification, Control and Appeal) 2016. The general Law of Limitation will apply, which provides for limitation of 30 days for filing review petition. On the point of prolonged delay and laches on the part of the petitioner also the review petition is not fit to be entertained.

29. Learned counsel places reliance upon the Judgment passed by the Hon'ble Apex Court in the case of S.R. Bommai Vs. Union of India reported in (1994) 3 SCC 1 wherein it has been held that in judicial review, the Court is not concerned with merit of decision but the manner in which decision is taken. The grounds which can be considered in judicial review are (a) Illegality, (b) Irrationality and (c) Impropriety. In the present case from perusal of the record it appears that all the procedure are compiled and followed by the disciplinary authority before imposing punishment Appeal Petition as well as and the Review Petition is decided on merits through reasoned and speaking order. Learned counsel submits that the writ petition lacks merit and the petitioner deserves no relief from the Hon'ble Court and therefore, the writ petition may be dismissed.

FINDINGS OF THE COURT

30. Having heard counsel for the parties and considering facts and circumstances of the case, this Court is of the considered opinion that case of the petitioner needs consideration in view of following grounds:

(i) Ignoring the resolution issued vide memo no. 1038 of the Government dated 07.10.2003, the Registrar, Co-operative Societies by order contained in Memo No. 473 dated 23.03.2005 initiated a Departmental Proceeding against the petitioner by framing memo of charge against him which is without jurisdiction as the same has been seized vide memo no. 1038 dated 07.10.2003 order of the secretary. After the memo issued vide no. 1038 dated 07.10.2003, any act related to the establishment done by the Registrar, Co-operative society is illegal and without jurisdiction and power.

(ii) The case of S.R. Bommai vs. Union of India reported in (1994)3 SCC 1 is not applicable in the case of the petitioner as because in this case the person who had no power and jurisdiction to issue show cause and charge sheet, has issued the same and thereafter passed the order of punishment without having jurisdiction.

(iii) The Registrar, Co-operative Societies is not the disciplinary authority of a Co-operative Extension Officer, like the petitioner, which would be evident from the order No. 790 dated 13.06.2005 issued by the Secretary, Co-operative Department, Government of Jharkhand, Ranchi whereby and whereunder a number of Co-operative Extension Officers were transferred from one place to another being the competent authority. This matter of transfer also relates to establishment like initiating any Departmental Proceeding and passing any order therein.

(iv) Any decision with respect to Co-operative Extension Officer is being taken by the Government through the Secretary, Co-operative Department, which would be evident from order contained in Memo No. 853 dated 24.06.2005 issued under the pen and signature of the Secretary, Co-operative Department, Government of Jharkhand, Ranchi.

(v) It is only the Government of Jharkhand through the Secretary, Co-operative Department, which can initiate a Departmental Proceeding which is evident from order contained in Memo No. 1721 dated 26.11.2005. By this order dated 26.11.2005 one Suresh Prasad Bharti holding the substantive post of Co-operative Extension Officer proceeded departmentally by framing charge by and under the pen and signature of the Secretary, Co-operative Department, Government of Jharkhand, Ranchi.

(vi) One Ashok Kumar, Co-operative Extension Officer was also proceeded Departmentally and memo of charge was also framed by the Government through the Secretary, Co-operative Department, Government of Jharkhand, Ranchi which is evident from order contained in Memo No. 572 dated 08.04.2006.

(vii) The Registrar, Co-operative Society has no unbridled and unanalyzed power and jurisdiction to surpass the resolution of the Government contained in Memo No. 1038 dated 07.10.2003 particularly in view of the fact that the said resolution/ decision of the Government was acted upon and in fact applied in a number of cases which is apparent from the facts stated hereinabove inasmuch as Mukesh Jaipuriar, Suresh Prasad Bharti and Ashok Kumar, who were holding the substantive post of Co-operative Extension Officers, were proceeded departmentally by the order of the Government of Jharkhand through the Secretary, Co-operative Department, Government of Jharkhand, Ranchi whereas in the case of the petitioner, the Registrar, Co-operative Society initiated the Departmental Proceeding and imposed even the punishment thereon, which cannot be sustained in the eyes of law. The plea of the respondents that there is no specific bar/ restriction on the Registrar, Co-operative Society to exercise the power of punishment, is wrong and misleading and as such the same is not acceptable to this Court.

(viii) In a quasi-judicial proceeding, the Law of Limitation Act is not applicable if otherwise specially mentioned in the Act which has been decided by the Hon'ble Apex Court in several judgments.

(ix) From perusal of the enquiry report, it is clear that the charges from charge no. 1 to 5, were not proved against the petitioner. Therefore, punishment, as has been imposed by the disciplinary authority on the petitioner, is vitiated in absence of any finding of deferring with the enquiry report and giving reasons there for and without affording any opportunity to the petitioner for deferring with the enquiry report and recording reasons there for.

(x) The Registrar, Co-operative Societies has no jurisdiction to impose punishment and even issue show-cause without deferring with the enquiry report and recording reasons for deferring. The impugned orders of imposing punishment on the petitioner is totally dehors the Rules under which the service condition of the petitioner is governed.

(xi) The memo of charge, as was issued to the petitioner, has been issued by a totally incompetent authority and hence entire departmental proceeding is not sustainable in the eyes of law against the petitioner, which is also against the verdict of the Hon'ble Apex court as well as judgment passed by the Division Bench of this Hon'ble Court reported in (2014)1 SCC 351 in the case of Union of India & Ors Vs. B.V. Gopinath and further the Judgment passed in L.P.A. No. 627 of 2015 in the case of Abhay Kumar Vs. The State of Jharkhand & ors.

(xii) In the case of TRF Limited Vs. Energo Engineering Projects Limited reported in (2017) 8 SCC 377, it has been held at para-54 as under:

"54. In such a context, the fulcrum of the controversy would be, can an ineligible arbitrator, like the Managing Director, nominate an arbitrator, who may be otherwise eligible and a respectable person. As stated earlier, we are neither concerned with the objectivity nor the individual respectability. We are only

concerned with the authority or the power of the Managing Director. By our analysis, we are obligated to arrive at the conclusion that once the arbitrator has become ineligible by operation of law, he cannot nominate another as an arbitrator. The arbitrator becomes ineligible as per prescription contained in Section 12(5) of the Act. It is inconceivable in law that person who is statutorily ineligible can nominate a person. Needless to say, once the infrastructure collapses, the superstructure is bound to collapse. One cannot have a building without the plinth. Or to put it differently, once the identity of the Managing Director as the sole arbitrator is lost, the power to nominate someone else as an arbitrator is obliterated. Therefore, the view expressed by the High Court is not sustainable and we say so."

(xiii) The Hon'ble Apex Court in the case of Chairman-cum-Managing Director, Coal India Limited and others Vs. Ananta Saha and others reported in (2011) 5 SCC 142, has held in para-32 and 33 as under:

"32. It is a settled legal proposition that if initial action is not in consonance with law, subsequent proceeding would not sanctify the same. In such a fact situation, the legal maxim *sublato fundamento cadit opus* is applicable, meaning thereby, in case a foundation is removed, the superstructure falls.

33. In *Badrinath v. Govt. of T.N.* reported in (2000) 8 SCC 395, this Court observed that once the basis of a proceeding is gone, all consequential acts, actions, orders would fall to the ground automatically and this principle of consequential order which is applicable to judicial and quasi-judicial proceedings is equally applicable to administrative orders."

31. As a sequel to the aforesaid facts and circumstances, legal proposition and settled law, the impugned orders i.e.

(i) Memo of Charge / Charge-sheet dated 19.03.2005 issued by the Registrar, Co-operative Societies, Jharkhand, Ranchi as contained in memo no. 473 dated 23.03.2005 (Annexure-3) as also Departmental Proceeding initiated vide letter no. 184 dated 28.03.2005 (Annexure-4).

(ii) Memo no. 615 dated 27.05.2006 (Annexure- 13) passed by the Registrar, Co-operative Societies, Jharkhand Ranchi (Respondent No.4) and the letter no. 958 dated 09.06.2006 (Annexure-15) by which the then Secretary, Co-operative Department, Government of Jharkhand, Ranchi.

(iii) The Appellate order dated 05.12.2012 passed by respondent no. and served vide letter no. 3384 dated 08.12.2012 (Annexure-18).

(iv) The Review order as contained in memo no. 1806 dated 24.12.2020 (Annexure-19/1) passed by Respondent No. 2. are hereby quashed and set aside. The respondents are further directed to withdraw the punishment order passed vide memo no. 615 dated 27.05.2006 and further to pay all consequential benefits to the petitioner.

32. The writ petition stands allowed.