
(2004) 09 PAT CK 0114
In the Patna High Court
Case No : CWJC No. 12598 of 2003

Yogendra Prasad Singh and Another

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 06-09-2004

Acts Referred:

Citation : (2004) 3 BLJR 1823 : (2004) 4 PLJR 448

Hon'ble Judges : S.N. Hussain, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.N. Hussain, J.—Heard learned counsel for the parties.

2. The petitioners are aggrieved by the order dated 29.5.2002 (annexure-1), passed by the Managing Director, Magadh Central Co-operative Bank Limited, Gaya (respondent No. 3) by which the payment of salaries of the employees of the Bank have been stopped on the direction of the Registrar, Co-operative Societies, Bihar, Patna Vide its Letter No. 2078 dated 2,5.2002 (annexure-2) on the ground that the collection of the Bank has become very low.

3. The contention of the learned counsel for the petitioner is that the petitioners are the permanent employees of the Bank and respondents have no right to stop the payment of their salaries and they also cannot be held to be responsible for poor recovery of loan amount and further more no proceeding has ever been initiated against them levelling any such frivolous charges, Hence, in the aforesaid circumstances, petitioners have left with no option but to move this Court, specially when their livelihood is at stake by the acts of respondents which are also violative of the provisions of Constitution of India.

4. This matter had come up earlier on 13.1.2004 when respondents were directed to file separate counter-affidavits showing as to under what authority of law a circular order contained in annexure-2 can be issued, as the same interferes with the working and working conditions of the management of the

Bank as also to inform this Court that under what authority of law it can stop making payment of salary to the employees when admittedly the employees are still working. In response to the said order, counter-affidavits have been filed on behalf of respondent nos. 2 and 3.

5. Learned counsel for respondent No. 2 submits that as per Rule 33(1) of the Bihar Co-operative Societies Rules, 1959 the appointment of paid employees of any registered society shall be subject to such condition as may from time to time be determined by the Registrar, Co-operative Societies by general or special order. He further contended that Rule 33(2) of the said Rules provides that the registered society aggrieved by any order of the Registrar passed under Sub-rule (1) may within 60 days of receipt of such order prefer an appeal against the order to the State Government and the decision of the State Government thereon shall be final but here the petitioners have not filed any such appeal. Learned counsel further submits that as per provisions of Rule 22(iv)(1) of the Service Rules for the Staff of the Central Co-operative Bank it is the duty of all employees of the Bank to serve the Bank faithfully and devote their whole time and attention to promote the Bank's interests. He also submitted that the same has not been done due to which recovery of loan amount has dropped to such a low.

6. Similarly, learned counsel for respondent No. 3 (the Managing Director, Central Co-operative Bank, Gaya) submits that due to low collection of Bank loan, income of the Bank has become very meagre and that the Magadh Central Cooperative Bank, Gaya is bound by the directions of the Registrar of the Cooperative Societies and hence he has merely complied the order of the Registrar, Co-operative Societies, Bihar, Patna as contained in annexure-2 to the writ petition, Learned counsel further claims that under the provisions of law, the petitioners should have preferred an appeal before the State Government, but without availing the appellate remedy, they have rushed to this Court which should not be entertained in the present circumstances. Learned counsel further avers that provision of Section G6-B of the Bihar Co-operative Societies Act, 1935 provides that the State Government, may from time to time, by special or general order, determine the service conditions etc. of the employees, He relied on a decision in the case of Bihar Rajya Sahakarita Prabandhak Sangh, Sitamarhi v. The State of Bihar and Ors., reported in 2000(3) PLJR 322.

7. After considering the arguments raised on behalf of the parties and after perusing the materials on record and provisions of law, it is quite apparent that the ruling relied upon by the learned counsel for respondent No. 3 in case of Bihar Rajya Sahkarita Sangh (supra) it was clearly held that in case where the pay scale as well as the cadre remained unchanged and the payment of salary to the Managers was not made for certain period awaiting the amounts to be sanctioned by the State Government and in that case the authorities were directed to ensure that the dues of salary be paid to the petitioners within a period of three months and to pay the salary regularly. It is thus clear that this

ruling is supporting petitioners" case instead of respondents. So far as provision of Section 66-B of the aforesaid Act is concerned, the State Government is empowered to only determine the nature and number of posts created and the method for payment of salary to the Manager of the PACS by opening of specified account in every Central Co-operative Branch. It does not at all provide that duly appointed and validly working employees can be legally ordered to remain unpaid for such a long period. Furthermore, from statistical report (annexure-c), it is also apparent that from 1993-94 to 2000-01 the percentage of collections of the Magadh Central Co-operative Bank, Ltd, Gaya were very low, i.e. 5%, 7%, 9% etc. whereas collections in the years 2001-02 and 2002-03 were above 15% and 13% respectively. It is quite strange that when the percentage of loan collection was very low, no action was taken but when it improved, such steps have been taken against the petitioners by the authorities concerned. So far provision of appeal is concerned, since this matter involves violation of specific provision of the Constitution of India and also the question of livelihood of several persons, this Court cannot refrain itself from passing an appropriate order.

8. In the aforesaid circumstances, I hereby quash the impugned order dated 2.5.2002 (annexure-2), passed by respondent No. 2 as also the order dated 29.5.2002 (annexure-1), passed by respondent No. 3 and direct that they (respondent Nos. 2 and 3) ensure that the dues of the petitioners" salary are paid to them within a period of three months from the date of receipt or production of a copy of this order before respondent No. 2, the Registrar, Department of Cooperatives, Government of Bihar, Patna, Respondents shall also ensure that the salary of petitioners be not dislocated and paid regularly and for this purpose, if further policy decisions are required to be taken, the same should be taken expeditiously.

9. The writ petition is thus allowed with the aforesaid observations and directions but there would be no order as to cost.