

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6314 of 2014

=====

Bharat Jee Singh Son Of Late Nandjee Singh Resident Of Village - Chhotka
Rajpur, P.S. - Simari, District - Buxar

.... Petitioner/s

Versus

1. The Multi State Sahkari (Co-Operative) Land Development Bank Ltd.
Budh Marg Patna Through Its Chairman
2. The Chairman, Multi State Co-Operative (Sahkari Land Development
Bank Ltd.), Budh Marg Patna
3. Managing Director, Multi State Co-Operative (Sahkari), Land
Development Bank Ltd., Budh Marg, Patna
4. Chief Vigilance Officer, Multi State Co-Operative (Sahkari) Land
Development Bank Ltd., Budh Marg, Patna
5. Enquiry Officer Cum Area Manager, Multi State Co-Operative
(Sahkari) Land Development Bank Ltd., Budh Marg Patna

.... Respondent/s

=====

with

Civil Writ Jurisdiction Case No.7871 of 2008

=====

Md.Jalaluddin, son of late Md. Moinul Haque, resident of Village Koilwar,
P.S. Koilwar, Dist. Bhojpur (Arrah).

.... Petitioner/s

Versus

1. The State of Bihar through the Registrar, Bihar State Co-operative
Societies, Bihar, Patna.
2. The Registrar, Bihar State Co-operative Societies, Bihar, Patna.
3. The Bihar State Cooperative Land Development Bank Ltd., Budh
Marg, Patna through its Chairman.
4. The Chairman, Bihar State Co-operative Land Development Bank Ltd.
Budh Marg Patna.
5. The Managing Director, Bihar State Co-operative Land Development
Bank Ltd., Budh Marg, Patna.
6. Director, Personnel cum Enquiry Officer, Bihar State Co-operative
Land Development Bank Ltd., Budh Marg, Patna.

.... Respondent/s

=====

with

Civil Writ Jurisdiction Case No.8707 of 2014

=====

Kamla Kant Mishra son of Late Satyanarayan Mishra resident of Samta
Colony Hazipur, P.S. Hazipur Town, District - Vaishali.

.... Petitioner/s

Versus

1. The Chairman Land Development Bank, Patna.
2. The Managing Director Land Development Bank, Patna.
3. The Chief Vigilance Officer, Land Development Bank, Patna.

.... Respondent/s

with

Civil Writ Jurisdiction Case No.8186 of 2011

Arun Kumar Singh S/O Late Chandrabali Singh R/O Vill Chainpatti, P.S. Gopalganj, Distt-Gopalganj At Present Posted As Assistant Land Development Bank, Lalganj, Distt-Vaishali

.... Petitioner/s

Versus

1. The Chairman, B.S.Co-Opt.Land Development Bank Bihar, Patna
2. The Managing Director, Bihar State Co-Operative Land Development Bank Bihar, Patna
3. The Area Manager, Bihar State Land Development Bank Hajipur, Vaishali
4. The Branch Manager Bihar State Land Development Bank Lalganj, Vaishali

.... Respondent/s

with

Civil Writ Jurisdiction Case No.5241 of 2014

Krishna Kumar S/O Lakshman Singh Resident Of Village Bichhara, P.S. Arwal, District Arwal.

.... Petitioner/s

Versus

1. The Multi State Sahkari (Co-Operative) Land Development Bank Ltd. (Bihar And Jharkhand) Budh Marg, Patna Through Its Chairman.
2. The Chairman, Multi State Sahkari (Co-Operative) Land Development Bank Ltd. (Bihar And Jharkhand) Budh Marg, Patna.
3. The Managing Director, Multi State Sahkari (Co-Operative) Land Development Bank Ltd., (Bihar And Jharkhand) Budh Marg, Patna.
4. Chief Vigilance Officer, Multi State Sahkari (Co-Operative) Land Development Bank Ltd., (Bihar And Jharkhand) Budh Marg, Patna.
5. Enquiry Officer Cum Regional Manager, Regional Office, Multi State Sahkari (Co-Operative) Land Development Bank Ltd., Motihari.

.... Respondent/s

with

Civil Writ Jurisdiction Case No.13569 of 2007

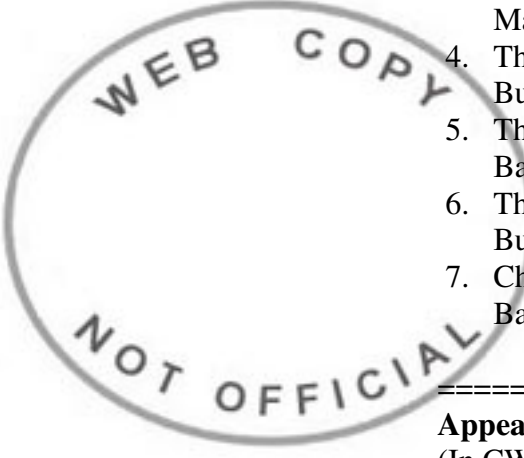
Mangal Pandey, son of late Harihar Pandey, resident of Village Basana, P.O. Basana, P.S. Bisrampur, Dist. Palamu.

.... Petitioner/s

Versus

1. The State of Bihar through the Registrar, Co-operative Societies, Bihar, Patna.



- 
2. The Registrar, Co-operative Societies, Bihar, Patna, New Secretariat, Patna.
 3. The Bihar State Co-operative Land Development Bank Ltd., Budh Marg, Patna through the Chairman.
 4. The Chairman, Bihar State Co-operative Land Development Bank Ltd., Budh Marg, Patna.
 5. The Managing Director, Bihar State Co-operative Land Development Bank Ltd., Budh Marg, Patna.
 6. The Secretary, Bihar State Co-operative Land Development Bank Ltd., Budh Marg, Patna.
 7. Chief Vigilance Officer, Bihar State Co-operative Land Development Bank Ltd., Budh Marg, Patna.

.... Respondent/s

=====

Appearance :

(In CWJC No.6314 of 2014)

For the Petitioner/s : Mr. Birendra Prasad

For the Respondent/s : Mr. Rajesh Prasad Choudhary

(In CWJC No.7871 of 2008)

For the Petitioner/s : Mr. Birendra Prasad

For the Respondent/s : Mr. Rajiv Kumar, AC to GA-5

(In CWJC No.8707 of 2014)

For the Petitioner/s : Mr. Ajay Kumar Thakur, Adv.

Mr. Imteyaz Ahmad, Adv.

Mr. Amit Kumar, Adv.

For the Respondent/s : Mr. Anurag Saurav

(In CWJC No.8186 of 2011)

For the Petitioner/s : Mr. Dilip Kumar Tondon

For the Respondent/s : Mr. Rajesh Pd.Choudhary

(In CWJC No.5241 of 2014)

For the Petitioner/s : Mr. Birendra Prasad

For the Respondent/s : Mr. Rajesh Prasad Choudhary

(In CWJC No.13569 of 2007)

For the Petitioner/s : Mr. Birendra Prasad

For the Respondent/s : Mr. R. P.Choudhary

=====

CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

ORAL ORDER

16 14-09-2015

All these cases, having an identical issue, relating to order of punishment in departmental proceeding against the employees of Multi State Sahkari (Co-operative) Land Development Bank Limited and others, have been heard together and are being disposed of by this common order.



2. Let it be noted that all the petitioners were employees of the erstwhile Bihar State Cooperative Land Development Bank which now has become Multi State Sahkari (Co-operative) Land Development Bank Limited. When the order of punishment passed by the Land Development Bank in all these writ applications assailed, Mr. Rajesh Prasad Chaudhary, learned counsel for the Land Development Bank, had raised an issue of maintainability of these writ applications on the ground that at the end of the day, the Land Development Bank is only a Cooperative Society and thus being not a State within the meaning of Article 12 of the Constitution of India, the writ applications will not be maintainable in view of the judgment of the Special Bench in the case of *The Organizer, Dehri C.D. & C.M. Union Limited Vs. The State of Bihar & Ors.* reported in *2014(1)PLJR 695*.

3. According to him, the petitioners will have the statutory alternative remedy as well because if they are workmen and are aggrieved by the order of dismissal in a departmental proceeding, they can raise industrial dispute and, in that case, on reference, being made by the competent authority of the government, the validity and correctness of the order of punishment of dismissal or any other order can be gone into by the concerned labour court. Mr. Chaudhary also adds that even any of



the petitioners does not come within the fold of the workmen and in fact officer as per the service regulation of the Land Development Bank, he can take recourse to the ordinary remedy by filing a civil suit before the appropriate civil court for declaration of such order of punishment to be void as also consequential relief.

4. Mr. Ajay Kumar Thakur, learned counsel for the petitioners, had tried to rely on a number of authorities both of the Apex Court and this Court to distinguish the view taken by the Special Bench in the case of **The Organizer, Dehri C.D. & C.M. Union Limited** (supra) but, then, ultimately he had to accept that a Five Judges Special Bench of this Court has laid down the law that a writ application against the Cooperative Society shall not be maintainable unless such Society is under supersession and a special officer has been appointed by the competent government to run the affairs of the Society. He also does not dispute this position that the petitioners, by virtue of their rank and work allotted to them in the Land Development Bank, would come within the fold of workmen, as defined under the Industrial Dispute Act.

5. The rest of the learned counsel for the petitioners also are not in a position to distinguish the judgment of the Special



Bench in the case of **The Organizer, Dehri C.D. & C.M. Union Limited** (supra) but they too also have highlighted that since the Land Development Bank is a Multi State Cooperative Society and the Registrar under Section 84 of the Multi State Cooperative Society Act has been specifically debarred from deciding the dispute relating to punishment arising out of departmental proceeding, this Court may decide the writ applications instead of non-suiting them on account of alternative remedy.

6. Having given some anxious consideration to the aforesaid submissions, this Court will find it difficult to take any different view other than what has been taken by the Five Judges Special Bench in the case of **The Organizer, Dehri C.D. & C.M. Union Limited** (supra) wherein law has been laid down in the following terms:-

“47. Thus, from the plethora of case laws on the subject as to when an authority or person would become a “State” within the meaning of Article 12 of the Constitution, briefly, though not exhaustively, the following principles and rationale are deducible:

- (i) The authority created by a Statute under control of Government, hence a statutory corporate entity; and/or*
- (ii) Even a body corporate as distinct from statutory Corporation could be “State”, if there was a deep and pervasive control of the Government; and/or*
- (iii) Independent body corporate formed by the*

Government to perform Governmental duties or duties of public nature for Government; and/or

- (iv) Authority functioning as an instrumentality or agency of Government, the functionality test; and/or*
- (v) Unusual degree of control of Government and rendering public service; and/or*
- (vi) Authority works as an adjunct of and for the purpose of Government and Governmental purposes and/or public function; and/or*
- (vii) Authority performing monopolistic functions reserved by State; and/or*
- (viii) Cumulative effect of various relevant facets have to be seen and not one stray facet; and/or*
- (ix) The authority may itself not be State, but a person therein is controlled by and supervised by the State/Government, then he becomes a "State" because of the control."*

7. Admittedly, the Land Development Bank was earlier registered under Section 11 of the Bihar State Cooperative Society Act, 1935 and after it became the Multi State Cooperative Society, it again got registered under Section 103 of the Multi State Cooperative Society Act, 2002. In that view of the mater, when the order of punishment also has been passed by the competent authority of the Managing Committee of the Land Development Bank and not by the Special Officer appointed by the State

Government or the Central Government, there would be no escape from the irresistible conclusion that the writ application in view of the lay laid down by the Special Bench in the case of **The Organizer, Dehri C.D. & C.M. Union Limited** (supra) would not lie.

8. Having thus held the writ application to be not maintainable, this Court would not require to say anything more but then keeping in view the submissions made by the learned counsel for the petitioners that as Section 84 of the Multi State Cooperative Society Act debars the Registrar from deciding any dispute arising out of the order of punishment in a departmental proceeding and therefore, the petitioners will have no remedy in law, this Court must clarify that depending on the status of the petitioners whether workmen or the officer, they will have the remedy under Industrial Dispute Act, 1948.

9. The definition of termination of workmen being wide enough, if the petitioners would raise their grievance before the competent government, which now will be only before the Central Government in relation to all the Land Development Bank, being the Multi State Cooperative Society, an appropriate decision has to be taken by the Central Government by way of a reference under Section 10 of the Industrial Dispute Act and consequently, the labour court, having all the expertise at its hand,

can go into the issue of the validity of the order of punishment in a more elaborate and graphic manner than the Registrar of the Cooperative Society.

10. Those of the employees of the Bank who do not fall within the meaning of workmen if aggrieved by their order of punishment by way of dismissal or any other punishment can of-course move to the Court of competent civil court of the competent jurisdiction where the validity of the order of punishment in the departmental proceeding can be adjudicated allowing the parties to lead their evidence in support of their respective claim.

11. Thus, it cannot be said simply because the writ application of the petitioners will not be maintainable before this Court, they will have no remedy in law against the order of punishment.

12. With the aforementioned observation, all these writ applications are disposed of.

(Mihir Kumar Jha, J)

Rishi/-

U			
---	--	--	--