

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 18560 of 2016

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1. Bastha Primary Agriculture Credit Cooperative Society Ltd. through its Chairman Smt. Indu Devi wife of Sri Yogendra Prasad, resident of Village and PO- Bastha, P.S.- Mainatarh, District- West Champaran, Bettiah.
 2. Smt. Indu Devi, wife of Sri Yogendra Prasad, resident of Village and PO- Bastha, P.S.- Mainatarh, District- West Champaran, Bettiah.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Cooperative Department, Bihar, Patna.
2. The Registrar Co-operative Societies, Bihar, Patna.
3. The District Co-operative Officer, West Champaran, Bettiah.
4. The Assistant Registrar Co-operative Societies, West Champaran, Bettiah.
5. Sanjeet Kumar Son of Hari Shankar Prasad, resident of Village and P.O.- Bastha, P.S.- Mainatarh, District- West Champaran, Bettiah, Manager Bastha Primary Agriculture Credit Co-operative Society Ltd.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Ms. Mahasweta Chatterjee, Ms. Sharmistha Chatterjee and Mr. Ram Nibash Prasad, Advocates
For the State	:	Mr. Manoj Kumar Ambastha, S.C. 26 : Mr. Subodh Kumar, A.C. to S.C. 26
For the Respondent No. 5	:	Mr. Rakesh Kumar Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 25-04-2017

Heard learned counsel for the petitioners, State and the
respondent no. 5.

2. The petitioners have approached the Court for quashing of order contained in Letter No. 573 dated 07.10.2016, by which the respondent no. 3 has directed to get the works done of the Bastha Primary Agriculture Credit Co-operative Society Ltd. (hereinafter referred to as the 'PACS'), in the district of West Champaran to be made through the respondent no. 5, holding him to



be the Manager of the concerned PACS.

3. Learned counsel for the petitioners submitted that the order impugned was at the very first instance totally unnecessary for the reason that if any person is holding the post of Manager, as per the law, he is entitled to discharge such function. However, she submitted that the impugned order, which starts on the premise that the respondent no. 5 is the Manager, itself is erroneous. Learned counsel submitted that the respondent no. 5 was the Manager till 18.02.2015, when in the General Body Meeting of the PACS held on 18.02.2015, under Resolution No. 17, the respondent no. 5 was removed on various grounds. Learned counsel submitted that pursuant to that another person under Resolution No. 19, in the same meeting, was appointed Manager and thus, the order impugned holding the respondent no. 5 to be the Manager and then directing that the respondent no. 5 shall conduct all works/business of the PACS, including signing of cheque, is illegal. Learned counsel submitted that the same being purportedly in terms of the Departmental Letter No. 7119 dated 22.08.2016, is incorrect for the reason that the said Departmental Letter has been issued after more than one year six months from the date of the decision removing the respondent no. 5 from the post of Manager, which was done on 18.02.2015.

4. Learned counsel for the State submitted that in view



of there being reports from the field that in the management of such type of PACS and other Co-operative Societies rules and regulations were not being followed, a general direction was given by the Department under the aforesaid letter no. 7119 dated 22.08.2016, for the purposes of not only clarifying the legal position but also to the authorities at the District Level to ensure compliance. Learned counsel submitted that in view thereof, the authorities have gone into the issue and appropriate directions have been given.

5. Learned counsel for the respondent no. 5 submitted that the Resolution No. 17 dated 18.02.2015, was never communicated to him and thus, he was not aware of his removal and only on account of him not being allowed to be involved in the working of the PACS, he had first given representation to the respondent no. 3 on 03.09.2016, which culminated in the passing of the impugned order. He, thus, submitted that such resolution besides being infirm in law, not having been communicated, his removal cannot be accepted in the eyes of law.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, though many materials have been brought on record either in favour of or against the removal of the respondent no. 5 as Manager of the PACS, under Resolution No. 17 of the meeting held on 18.02.2015, and also for and against the appointment of another person under Resolution No.



19 in the same meeting, but in view of the order proposed to be passed, the Court does not deem it necessary to go into such aspects, either on facts or in law. Having said that, limiting the consideration in the present writ petition to the order impugned, the Court does not find that the same can be sustained. The order impugned, starting on the premise that the respondent no. 5 was the Manager, is the reason, for such direction of involving him in all affairs of the PACS, including signing of cheque. The same does not appear to be proper, the reason being that once, rightly or wrongly, any decision has been taken removing the respondent no. 5 from the post of Manager, the same neither being challenged nor interfered with by the Competent Authority, the respondent no. 3 could not have given the finding that the respondent no. 5 continued to be the Manager of the PACS. The arguments advanced on behalf of the respondent no. 5 that the Resolution No. 17 itself was illegal, is not required to be gone into by this Court, in the present proceeding, since it is not the writ petition filed by the respondent no. 5, challenging such resolution. Moreover, on the specific query of the Court to learned counsel representing respondent no. 5, as to whether, after 18.02.2015, he was allowed to work on the post of Manager and sign cheques the reply was that in fact he was not allowed to work from November, 2014 itself, when the new Managing Committee took charge. Thus, the respondent no. 5 having a cause of action right from November, 2014, but not



moving before the appropriate forum, irrespective of his removal and doing the same only on 03.09.2016 and that too, in terms of the Departmental Letter No. 7116 dated 22.08.2016, which is also quoted in his representation, in the considered opinion of the Court, cannot create any equity or right in the respondent no. 5 or entitle him to challenge his removal/non allowing to work on the post of Manager of the PACS. Moreover, the respondent no. 5 had made compliant to the respondent no. 4 on 02.09.2016 and to the respondent no. 3 on 03.09.2016 only with regard to his grievance of no work being taken from him and that all works should be directed to be conducted through him. There is not even a whisper with regard to any grievance either relating to the General Body Meeting held on 18.02.2015 and Resolution No. 17, under which he was removed, or even the Resolution No. 19 by which another person was appointed as Manager. The Court would clarify here that it is not commenting upon or going into the merits of such removal, but because in service matters, time being a major factor and the respondent no. 5 not challenging either the Resolution No. 17 dated 18.02.2015 or him not being allowed to perform his duty, including signing of cheques, right from November, 2014, has given the issue finality, as far as such issues are concerned, on the principle of acquiescence. A person not challenging any order relating to his service, which may be adverse to him or which may be illegal, within a reasonable period



of time, and before the appropriate forum, there is presumption in law that the person has accepted the position and as a consequence not chosen to contest or agitate the same. The respondent no. 5 had not even moved before the Competent Authorities under the Bihar Co-operative Societies Act, 1935 or even before this Court for any such grievance and suddenly becoming wiser in terms of the Departmental Letter dated 22.08.2016, cannot be permitted to do so after such inordinate delay. In service jurisprudence, even matters which may not be strictly legal, attain finality, if not challenged by the person aggrieved. In the present case, the matter is personal only to the respondent no. 5 as it is his service which has been taken away and thus, there is no other/ wider ramification, which may persuade the Court to go into all such aspects. The person not agitating his removal, the presumption is that he is either satisfied or not interested to pursue the matter. The manner in which the respondent no. 5 has chosen to move the Authority is an indirect approach, which the Court would not like to comment upon. Suffice to say that such was never a challenge to his removal and thus, such issue stands concluded and is not required to be gone into at this highly belated stage and still worse, where, till date respondent no. 5 has not independently and himself moved any Forum/Authority under the statute or the Court, challenging or assailing Resolution No. 17 dated 18.02.2015 removing him. At the cost of repetition, the Court again



clarifies that such a situation has resulted only due to the inaction on the part of the respondent no. 5 and is not a comment on the merit of such resolution. Further, as far as the matter relating to Resolution No. 19 appointing another person as Manager is concerned, the same was neither before the Authority concerned nor is required to be gone into by this Court in the present proceeding as it is not germane to the *lis* involved, since challenge is only to the order dated 07.10.2016, passed by the respondent no. 3, which does not deal either with removal of respondent no. 5 or any fresh appointment.

7. For the reasons aforesaid, the writ petition succeeds. The impugned order dated 07.10.2016 passed by the District Co-operative Officer, West Champaran, Bettiah, is set aside. However, the authorities under the statute are free to exercise their power/jurisdiction, in accordance with law, as and when the same may be required.

(Ahsanuddin Amanullah, J.)

P. Kumar

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