

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6785 of 2006

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Lalan Prasad Choudhary son of Shri Krishna Choudhary, resident of Village-
Chak Mahdin, P.O. Jandaha, P.S. Jandaha, District- Vaishali.

.... Petitioner

Versus

1. The Vaishali District Central Co-operative Bank Ltd. through its Managing Director, Vaishali at Hajipur.
2. The Managing Director, the Vaishali District Central Co-operative Bank Ltd., Vaishali at Hajipur.
3. The Chairman of the Board, the Vaishali District Central Co-operative Bank Ltd., Vaishali at Hajipur.
4. The Administrator, The Vaishali District Central Co-operative Bank Ltd., Vaishali at Hajipur.

.... Respondents

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Appearance :

For the Petitioner : Mr. Yogendra Mishra
Mr. Arvind Kumar Jha, Advocates.

For the Respondents : Mr. Sanjay Kumar, Advocate.

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 03-11-2017

Heard learned counsel for the petitioner and learned
counsel for the respondents.

2. The present writ petition has been filed for quashing
the order dated 29.07.2000 bearing order no. 257 whereby petitioner
has been dismissed from service and quashing of entire departmental
proceeding as well as order dated 11.02.2006 whereby petitioner's
appeal has been rejected by the Board of Directors and further praying
for issuance of appropriate writ, order or direction for commanding
the respondents to reinstate the petitioner in service with payment of
back-wages and other consequential benefits for which petitioner is
legally entitled.



3. At the very outset, learned counsel for the respondents raises a preliminary objection, submitting that the writ petition is not maintainable against the respondents Vaishali District Central Co-operative Bank Ltd., Vaishali at Hajipur. Reliance is placed on the Special Bench decision of this Court reported in the case of *The Organizer, Dehri C.D. & C.M. Union Limited vs. The State of Bihar & Ors.*, 2014 (1) PLJR 695 as well as the subsequent decisions of the Division Bench in *LPA No. 20 of 2016 (Rajballabh Singh vs. The Sasaram Bhabhua Central Cooperative Bank Ltd. and others)*, as well as another decision of the Division Bench reported in the case of *Birendra Singh vs. The State of Bihar & Ors.*, 2017 (3) PLJR 179. It is submitted that the plea sought to be raised on behalf of the petitioner to the effect that the respondent Bank is governed by the Banking Regulation Act, 1949, Reserve Bank of India Act, 1934 as well as the National Bank for Agricultural Rural Development Act, 1981, discharging public function, have been considered and rejected by the Division Bench of this Court.

4. Learned counsel for the petitioner submits that the respondent Bank is guided by the aforesaid enactments and discharges public function at par with Nationalized Banks. It is further stated that the status of the respondent Bank has been held to be a Bank in terms of various judgments of the Apex Court such as *U.P. State Co-operative Land Development Bank Ltd. vs. Chandra Bhan Dubey and others*, AIR 1999 SC 753; *Shri Anadi Mukta Sadguru Shree Muktajee Vandasjswani Suvarna Jayanti Mahotsav Smarak Trust and others vs. V.R. Rudani and others*, AIR 1989 SC 1607; *Pradeep Kumar Biswas vs. Indian Institute of Chemical Biology and Others*, (2002) 5 SCC 111; *A. Umarani vs. Registrar, Co-operative Societies and Others*, AIR 2004 SC 4504; *The Organizer, Dehri C.D. & C.M. Union Limited vs.*



The State of Bihar & Ors., 2014 (1) PLJR 695.

5. It is further submitted that if the order impugned is completely void, maintainability of the writ petition would not constitute a bar to grant relief in such cases. Reliance is placed on *U.P. State Co-operative Land Development Bank Ltd. vs. Chandra Bhan Dubey and others*, AIR 1999 SC 753; *Shri Anadi Mukta Sadguru Shree Muktajee Vandasjiswani Suvarna Jayanti Mahotsav Smarak Trust and others vs. V.R. Rudani and others*, AIR 1989 SC 1607; *Ajay Hasia vs. Khalid Mujib*, AIR 1981 SC 487; *Pradeep Kumar Biswas vs. Indian Institute of Chemical Biology and Others*, (2002) 5 SCC 111; *A. Umarani vs. Registrar, Co-operative Societies and Others*, AIR 2004 SC 4504; *The Organizer, Dehri C.D. & C.M. Union Limited vs. The State of Bihar & Ors., 2014 (1) PLJR 695* and *Akalakunnam Village Service Co-operative Ltd. and another vs. Binu N. and others*, AIR 2015 SC 1115.

6. It is further submitted that the impugned order of dismissal has been passed wholly without jurisdiction and the appellate order has been passed without due application of mind and is a non-speaking order.

7. Having heard the parties, this Court is of the view that the writ petition is not maintainable against the respondents. The judgment of the Special Bench has been passed after considering the law on the subject and having regard to numerous judicial pronouncement of the Apex Court. Most of the judgments relied upon by the petitioner have already been considered by the Special Bench before coming into conclusion that in such matters writ petition would not be maintainable. The judgment of the Division Bench in LPA No. 20 of 2016 (*Rajballabh Singh*) (*supra*) as well as the recent decision of the Division Bench in *Birendra Singh's case* (*supra*) have also expressed the similar view. The petitioner has not been able to



draw any distinction between the respondent Bank and the Banks which were the respondents in the two Division Bench judgments.

8. In Birendra Singh's case (*supra*), the Division Bench has clearly held as follows:

"6. Learned counsel for the petitioner submits that the judgment of Special Bench is not applicable to the present case as the petitioner is an employee of a Bank, governed by the Banking Regulation Act and akin to Scheduled Bank. The Special Bench was dealing with Cane Development Society or the BISCOMAUN, which is again a Society meant for members whereas a Bank discharges public function inasmuch as it is an agency to give effect to the policies of the Government so as to grant agriculture loan to the farmers for their agricultural activities. Since such functions are public functions, therefore, such Cooperative Society is a "State" within the meaning of Article 12 of the Constitution of India and, thus, the writ application would be maintainable. Since such questions were not raised before the Special Bench, therefore, the judgment of the Special Bench would not be applicable to the facts of the present case. Reliance is placed upon a Supreme Court order reported in (2006) 11 SCC 634 (S. S. Rana vs. Registrar, Co-operative Societies) and a Division Bench judgment of this Court in L.P.A. No. 921 of 2016 (Chandra Kishore Kumar vs. The State of Bihar & Ors.), decided on 15.11.2016.

*7. We do not find any merit in the argument raised by the learned counsel for the petitioner. The Special Bench in The Organizer, Dehri C.D. & C.M.'s case (*supra*) has discussed the judgment in S.S. Rana's case (*supra*) as well as scores of other cases, including that of Pradeep Kumar Biswas and Ors. vs. Indian Institute of Chemical Biology and Ors., reported in (2002) 5 SCC 111 [2002(4) PLJR (SC) 81], and held that writ application is not maintainable against a Co-operative society.*

8. The argument that the Cooperative Societies which were subject-matter of discussion in Special Bench were the private



Cooperative Societies and not a public Cooperative Society, such as the respondent Bank, is not a distinction which will lead us to take a view that the respondent Bank is a “State”. Since the specific issue considered by the Special Bench was that since a Cooperative Society registered under the Bihar Cooperative Societies Act, 1951 (sic-1935?) is “State” or not, and the said question having been answered in negative, another argument which could be available would not be a ground to doubt the correctness of the Larger Bench judgment.”

9. In the above view of the matter, the petitioner cannot be permitted to urge the same grounds afresh in the instant writ petition which already stand concluded and the matter is no longer *res integra*. This Court is therefore of the view that the present writ petition is not maintainable and is accordingly dismissed.

(Vikash Jain, J)

Md. Ibrarul/Chandran

AFR/NAFR	NAFR
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