

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5090 of 2011

=====

Bihar State Cooperative Land Development Bank Limited, Bihar and Jharkhand, Budhmarg, P.S. Kotwali, District Patna through its Managing Director.

.... Petitioner

Versus

1. The State of Bihar.
2. The Registrar, Cooperative Societies Bihar, New Secretariat, Patna.
3. Sri Muni Krishna Hare S/O Late Ram Pariksha Singh Resident Of Mohalla Tapeshwar Nagar, P.O. B.V. College, P.S. Danapur, District Patna.

.... Respondents

=====

Appearance :

For the Petitioner/s : Mr. Rajesh Prasad Choudhary, Advocate

For the Respondent No.3: Mr. Dinu Kumar, Advocate

Miss. Ritika Rani, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date: 24-01-2018

Heard learned counsel for the petitioner as well
as learned counsel representing respondent no. 3.

2. The petitioner is a Bank registered under the Multi-State Co-operative societies under the provisions of Multi-State Co-operative Societies Act, 2002, which has replaced Multi-State Co-operative Societies Act, 1984. Respondent no. 3 happened to be an employee of the Bank. A departmental proceeding was initiated against him after placing him under suspension. His suspension was revoked later on but on being found guilty for the charges alleged against him, he was dismissed from service w.e.f. 17.09.1998.



The respondent no. 3 challenged the order of dismissal before this court in CWJC No. 5184/1999. Vide order dated 08.03.2001, a Bench of this Court directed the Registrar, Co-operative Societies, Bihar, Patna to hear the appeal and dispose of the same after hearing respondent no. 3. The Registrar, Co-operative Societies, Bihar vide his order dated 09.07.2002 set aside the order of dismissal of the respondent no. 3.

3. The order of Registrar, Co-operative Societies was challenged in revision by the Bank vide Revision Case No. 162/2002. The Revisional Authority found that the punishment imposed upon the respondent no. 3 was not proportionate to the gravity of the allegations or the status of guilt. The Bank was given liberty to initiate a fresh departmental proceeding and to take a decision on the basis of the materials available on the record. In the light of the observations of the Revisional Authority, the Bank initiated a fresh enquiry vide order No. 884 dated 26.04.2003. In the said enquiry, it was found that only a sum of Rs. 2.50 was the loss caused to the Bank, but the respondent no. 3 was found guilty of insubordination. The departmental proceeding was closed vide order no. 494 dated 15.09.2005.



4. It appears from the office order as contained in Annexure-9 dated 21.11.2005 that in the departmental proceeding the only punishment was to deduct the said amount of Rs. 2.50 from the amount payable to the respondent no. 3.

5. After closure of the departmental proceeding the respondent no. 3 initiated a fresh round of litigation by filing a writ application being CWJC No. 6468/2003 in which he claimed his full salary for the period 16.03.1996 till his suspension was revoked and he submitted his joining till 23.07.2002.

6. This Court vide its order dated 18.07.2003 dismissed the CWJC No. 6468/2003. In concluding part of the order dated 18.07.2003 the learned co-ordinate Bench had to say:

“Mr. Arya appearing on behalf of the petitioner submits that the order of dismissal from service having been set aside by the Registrar, petitioner is entitled for all emoluments. I do not find any substance in the submission of the learned counsel. The Registrar while setting aside the order of dismissal from service, had found the same to be disproportionate to the gravity of allegation. In such a situation, whether back wages is to be paid or not, is primarily for the authority who decided the issue. The order of



dismissal of the petitioner has not been set aside on the ground that the misconduct alleged against him, has not been proved but on the ground that the punishment is disproportionate to the gravity of the allegation. In such circumstances, denial of back wages cannot be said to be arbitrary.”

7. The order dated 18.07.2003 passed in CWJC No. 6468/2003 was challenged by respondent no. 3 in L.P.A. No. 758/2003 which was finally disposed of vide order dated 30.07.2004 (Annexure-8 to the writ application). The Hon’ble Division Bench was of the view that because the order of dismissal has been set aside, the authority, who set aside the order of dismissal, should have taken a decision but the said authority had not said anything about the payment of salary etc. for the period the order of dismissal was effective.

8. Without setting aside the impugned order dated 18.07.2003 passed by the learned Single Judge, the Hon’ble Division Bench held that the proper course for the appellant (present respondent no. 3) is to move before the Registrar, Co-operative Societies, Bihar, Patna for the said purpose who will look into the matter on the basis of materials and decide the same in accordance with law within two months from the date of production/receipt of a copy of



the order.

9. It appears that after the order of the Hon'ble Division Bench the Managing Director of the Bank took a decision vide Memo No. 4877 dated 21.11.2005, wherein he decided that the respondent no. 3 would be entitled only for the subsistence allowance for the period he remained under suspension from 15.03.1996 to 17.09.1998. As regards the period during which he remained under order of dismissal. The Managing Director decided that considering the financial conditions of the Bank and also on the principle of no work no pay, the said claim of respondent no. 3 is not acceptable.

10. It further appears that in the light of the order of Hon'ble Division Bench in L.P.A. No. 758/2003, the Registrar, Co-operative Societies, Bihar, Patna passed an order dated 25.04.2007, as contained in Annexure-10 to the writ application, by which he directed the authorities of the Bank to make all due amount of arrear of salary and post retiral dues to respondent no. 3 in compliance of the order of the Hon'ble court within a period of two months.

11. Since the payment was not made the respondent no. 3 initiated an execution case giving rise to Execution Case No. 3/2009 in the court of learned Sub-Judge,



Patna in which order dated 25.07.2009 was passed holding that the case is maintainable in the eye of law.

12. The said order was challenged separately by filing a Civil Revision Application being Civil Revision No. 619 of 2010 (Annexure-14 to the supplementary affidavit).

13. Learned counsel representing the Bank has assailed the order, as contained in Annexure-10, passed by the Registrar, Co-operative Societies on two grounds. Firstly, that after coming into force of the Bihar Reorganization Act, 2000, in view of the provision contained in Section 103 of the Multi-State Co-operative Societies Act, 2002, which replaced the earlier Multi-State Co-operative Societies Act, 1984, where the same provision was there as Section 95, the Registrar, Co-operative Societies, Bihar, Patna had no jurisdiction at all to pass an order in respect of the dispute which arose between the present petitioner and the respondent no. 3.

14. Learned counsel submits that the Hon'ble Division Bench of this court while disposing of the Letters Patent Appeal vide Annexure-8 could not be informed about the change in the status of the Bank as one from a Co-



operative Bank registered under the Bihar Co-operative Societies Act, 1935 to the one under Multi-State Co-operative Societies Act after the Re-organization of the State. He further submits that it is well settled in law that no court can create jurisdiction for the parties if that jurisdiction is not conferred upon the Court by the statute.

15. It is further submitted that the respondent no. 3 cannot be allowed to contend that by virtue of a mandamus a statutory provision contained in Multi-State Co-operative Societies Act will be given a go bye more so when apparently this was not informed to the Court.

16. The another ground to assail the impugned order is that in any case, the Registrar, Co-operative Societies, Bihar has not interfered with the order passed by the Managing Director of the Bank as contained in Annexure-9. There is no adjudication of the dispute as also no direction in specific terms directing the Bank to pay the due amount being claimed by respondent no. 3 for the period he remained under the order of dismissal. The direction to pay the dues in the light of order of the court is totally vague because there is no order of the court to pay.

17. On the other hand, learned counsel



representing the respondent no. 3 contends that it is a case where respondent no. 3 was placed under suspension without there being any serious charge and then he was dismissed from service.

18. Learned counsel submits that the order of dismissal was set aside by the appellate authority and the same was upheld by the Revisional Authority. In the fresh round of departmental proceeding a mere sum of Rs. 2.50 could be found as shortage amount for which the petitioner was made liable to pay by way of deducting the amount from the legally payable dues of the respondent no. 3.

19. Learned counsel submits that in these circumstances the Registrar, Co-operative Societies has rightly passed the order, as contained in Annexure-10 to the writ application, directing the Bank to pay all the due amount on account of salary and post retiral dues.

20. Having heard learned counsel for the parties and on perusal of the records, I am of the considered opinion that with effect from midnight of 14th November, 2000, when the Bihar Re-organization Act, 2000 came into force, the petitioner Bank became a Bank registered under the Multi-State Co-operative Societies Act, 2002. Section 95 of the



1984 Act was in *pari materia* with Section 103 of 2002 Act. Section 103 has been interpreted by a Division Bench of the Hon'ble Jharkhand High Court in the case of ***The Bihar State Co-operative Milk Producers Federation Limited Vs. The State of Jharkhand and others*** reported in (2003) 2 BLJR 1467 and the same has also been upheld by the Hon'ble Supreme Court in SLP (C) No. 4145/2007 vide order dated 13.11.2013.

21. The petitioner has also brought on record Annexure-13, i.e., the judgment of the Hon'ble Division Bench of this Court in LPA No. 33/2011 and other analogous matters to show that the status of the petitioner Bank stood changed by deeming fiction as contained in Section 103 of the Multi-State Co-operative Societies Act, 2002. The Division Bench held that after coming into force of the provision of Multi State Co-operative Societies Act, in relation to this Bank all inconsistent provision conferring jurisdiction upon the Registrar, Co-operative Society shall cease to have effect. I would accept the submission of learned counsel representing the Bank that while passing the order dated 30.07.2004 in L.P.A. No. 758/2003 the Hon'ble Division Bench of this Court was not informed about the effect of the provision as



contained in Section 103 of the Multi-State Co-operative Societies Act, 2002, which replaced Multi-State Co-operative Societies Act, 1984.

22. Since it was not brought to the notice of the Hon'ble Division Bench that now Central Registrar, New Delhi will be the competent authority in place of Registrar, Co-operative Societies, Bihar, the Hon'ble Division Bench thought it just and proper to issue a direction to the Registrar, Co-operative Societies, Bihar, Patna to look into the matter on the basis of materials and decide the same in accordance with law within two months from the date of production/receipt of a copy of the order.

23. In the present case, the Central Registrar was the competent authority to decide the dispute because of the interplay of Section 103 of the Multi-State Co-operative Societies Act, 2002 (Section 95 of the Multi-State Co-operative Societies Act, 1984) and the Bihar Re-organization Act, 2000 which came into effect from the midnight of 14th November, 2000.

24. This being the position. I am of the considered opinion that on 04.04.2007, when the Registrar, Co-operative Societies, Bihar, Patna passed the order as



contained in Annexure-10 to the writ application, he had no jurisdiction but by virtue of the order of the Hon'ble Division Bench, he entertained the dispute in question.

25. A further contention of learned counsel representing the respondent no. 3 is that it has complied with the part of the order passed by the Registrar, Co-operative Societies, Bihar and, therefore, cannot be allowed to take a plea of jurisdiction, the court is of the opinion that in view of the judgment of the Hon'ble Division Bench of this court in L.P.A. No. 33/2011 (Annexure-13) the issue of jurisdiction would go to the route of the dispute which may be raised at any stage.

26. In the present case, considering the legal position emerging from the judgment of Hon'ble Division Bench in L.P.A. No. 33/2011 (Annexure-13), it appears that the Registrar, Co-operative Societies, Bihar, Patna suffered from inherent lack of jurisdiction and had no authority in law to entertain the dispute in question. Since the Hon'ble Division Bench at the relevant time while hearing L.P.A. No. 758/2003 was not informed about this position and the direction was issued, it was incumbent upon both the parties to bring this changed legal position to the knowledge of the



Hon'ble Division Bench which was not done. Therefore, none of the parties may take shelter under or assail the impugned order only by way of an objection to the exercise of power by the Registrar, Co-operative Society in the facts of this case.

27. An another plea raised on behalf of the Bank that the order as contained in Annexure-10 does not consider any challenge to the order passed by Managing Director of the Bank, as contained in Annexure-9, seems to be correct and convincing because a bare perusal of Annexure-10 would show that there is no consideration at all of the dispute, no adjudication has been done and no direction has been issued in any specific term to pay the amount for the period respondent no. 3 was under order of dismissal. The order Annexure-10 is totally vague and leads nowhere.

28. In the facts and circumstances of the case, the impugned order as contained in Annexure-10 is hereby set aside. The respondent no. 3, if so advised, will have liberty to assail the order as contained in Memo No. 4877 dated 21.11.2005 passed by the Managing Director of the Bank before the Central Registrar, New Delhi. If such an application is filed before the Central Registrar, New Delhi, it is expected that he will consider the same and shall decide the



matter on its own merit keeping in mind that the respondent no. 3 was pursuing his remedy before this Court under bona fide belief.

29. This writ application stands disposed off, accordingly.

(Rajeev Ranjan Prasad, J.)

Rajeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.01.2018
Transmission Date	NA

