

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.623 of 2017

-
-
1. Ram Lakhan Sharma and Anr Son of Late Biso Sharma, resident of village - Baisar, Police Station Muffasil, District Gaya
 2. Sri Chand Yadav, Son of Late Gajo Yadav, Resident of village - Bisar, Police Station Muffasil, District - Gaya

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Department of Co-operative, Government of Bihar, New Secretariat, Patna
2. The Registrar, Department of Co - Operative, Govt. of Bihar, New Secretariat, Patna
3. The Joint Registrar, Co - Operative Societies, Magadh Division, Gaya
4. The Managing Director - Cum - Member Secretary Magadh Central Co - Operative Bank Ltd. Gaya
5. The Managing Director, Bihar State Co - Operative Bank Ltd. Ashok Raj Path, Patna

... .. Respondent/s

Appearance :

For the Petitioners	: Mr. Adit Narayan Singh, Advocate. Mr. Kundan Kumar Sinha, Advocate.
For the State of Bihar	: Mr. M.K. Ambastha- Sc26
For the Respondent No. 5	: Mr. Nishi Nath Ojha, Advocate. Mr. Abhay Kumar, Advocate.

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 31-01-2019

Heard the learned counsel for the petitioners and the State.

2. The petitioners have approached this Court for a direction to the Managing Director-cum-Member Secretary, Magadh Central Cooperative Bank Ltd. Gaya (respondent no. 4) for payment of arrears of salary from 01.01.1997 to 31.03.2003 with respect to petitioner no. 1 and from 01.01.1997 to 01.09.2002 with respect to petitioner no. 2.

3. Learned counsel for the petitioner has drawn the attention of this Court to an order passed by a bench of this Court passed in a batch of cases, the lead case



being C.W.J.C. No. 4784 of 2005 whereby the petitioners therein including the petitioners in the present petition were directed to appeal before the Joint Registrar, Cooperative Societies of their respective district for redressal of their grievances. The Joint Registrar, Cooperative Societies was, in turn, directed to dispose of such appeals by a speaking order within six months from the date of filing of such appeals.

4. Pursuant to the aforesaid order, the Joint Registrar, Cooperative Societies disposed of the appeals vide his order dated 27.05.2015/28.09.2015, directing the the Managing Director-cum-Member Secretary, Magadh Central Cooperative Bank Ltd. Gaya to make payment to the petitioners for the period that they had worked.

5. The aforesaid order was challenged by the respondent no. 5 before the the Registrar, Cooperative Societies.

6. Learned counsel for the petitioners has submitted that it has been conclusively held by this Court that no appeal is maintainable before the Registrar, Cooperative Societies (refer to 1975 PLJR 290). In any view of the matter, the Joint Registrar of the Cooperative Societies stayed the order of the Joint Registrar and directed the parties to furnish details of



the claims and the reasons why such claims should not be accepted.

7. This Court has been informed today that the appeal has been dismissed for non-prosecution. If that be the case then the order of the the Joint Director revives with an obligation to the respondent no. 4, the Managing Director-cum-Member Secretary, Magadh Central Cooperative Bank Ltd. Gaya to pay to the petitioners the salary for the period that they have not been paid.

8. It may be noted that the stand of the State is that the component of the salary of the managers of PACS are under different heads. 1.25% of the salary has to be paid by way of collection of short term agriculture loan whereas some part of the salary is contributed by the Central Cooperative Bank, which contribution is to the extent of 0.75% from the advancement of loans. The last component of the salary is to be contributed by the Bihar State Cooperative Bank upto .30% from the advancements in three installments out of which first installment is to be paid immediately and after the utilization certificate of the first installment, the second installment is to be paid. On receipt of such utilization certificate for the second, the third installment has to be paid. On a calculation on that basis, the cooperative



department is of the view that since the entire contribution of the Bihar State Cooperative Bank to the tune of 2.17 lakhs has been paid and which has been received by the petitioners, nothing is due as against the cooperative bank. The audit report which has been referred to in the counter affidavit further indicates that an amount of 80,123/- is due against petitioner no. 1 and therefore the claim of the petitioner for being paid is untenable.

9. Learned counsel appearing for the petitioners however has objected to the aforesaid calculation on the ground that the salary could not have been made dependent on the collection/recovery of the loan amount. There is practically no recovery of loans which is more often than not in the nature of agriculture loans as the successive Governments in their wisdom and considering the necessity for the same, have been waiving such agricultural loan.

10. In that view of the matter, it has been argued, the component of the salary of such PACS Managers would be dependent on their performance, which could be assessed with reference to disbursement of loans to various beneficiaries. Unless it is read and understood in such manner, the salary of a PACS



Manager would never be paid as waived loans cannot be recovered.

11. In any view of the matter, this Court has also taken note of the fact that the petitioners like other PACS Managers have been absorbed in Government service on Class-3 posts. Thus there being no emergent necessity of payment of the aforesaid amount which may have accrued in their favour sometimes in the past when they were Managers of the PACS. However, a claim which is based on factual score can only be rejected/refused by relevant facts and nothing else.

12. With the dismissal of the appeal, before the Registrar Cooperative Societies even on the ground of non-prosecution, the order of the the Joint Registrar, Cooperative Societies revives and is rendered operative.

13. The respondent no. 4 is therefore directed to take a decision in that regard at the earliest within a period of six weeks from the date of production of a copy of this order.

14. To facilitate the Managing Director-cum-Member Secretary, Magadh Central Cooperative Bank Ltd. Gaya to do the needful, the petitioners are directed to make a representation to him enclosing a copy of this order within a period of four weeks from today. On receipt of such representation, the respondent no. 4 shall



take into account all the necessary facts and pass necessary orders in accordance with law within a period of twelve weeks thereafter.

15. With the aforesaid directions/observations, the writ petition is disposed off.

krishna/-

(Ashutosh Kumar, J)

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.02.2019
Transmission Date	

