

Item Nos.
21 wt 22
30.03.2022
KOLE

**MAT 377 of 2022
With
IA No. CAN 1 of 2022**

**Arjun Paul @ Arjun Kumar Paul
-Vs.-
The State of West Bengal & Ors.**

**With
MAT 366 of 2022
With
IA No. CAN 1 of 2022**

**Boinchi C.A.D.C. Berala Sech 'O'
S.K.U.S. Ltd. & Ors.
-Vs.-
Arjun Pal @ Arjun Kumar Pal & Ors.**

*Mr. K. K. Pathak,
Mr. S. Panja,*

*...for the appellants in MAT 377 of 2022 and
for the private respondent in MAT 366 of 2022.*

*Mr. Rana Mukherjee,
Mr. P. Mukherjee,
Mr. S. Chakraborty,
Mr. P. Dutta,*

*...for the respondent no. in MAT 377 of 2022 and
for the appellants in MAT 366 of 2022.*

*Mr. Pradip Kr. Roy,
Mr. J. Roy,*

...for the State in MAT 377 of 2022.

*Mr. L. M. Mahata,
Mr. R. De,*

...for the State in MAT 366 of 2022.

By consent of the parties the appeals and the connected applications are taken up for hearing together.

These two appeals arise out of the same judgment and order dated February 22, 2022, whereby the learned Single Judge disposed of WPA 19898 of 2021. The order was

subsequently corrected by an order dated February 25, 2022 without any material alteration.

The writ petitioner was working as an Assistant Manager in Boinchi C.A.D.C. Berala Sech 'O' S.K.U.S. Limited (in short the 'Society'). He was served with a show cause notice dated April 24, 2020. The writ petitioner answered the show cause notice by a written statement dated April 25, 2020. By an order dated April 26, 2020, the Society placed the writ petitioner under suspension with effect from April 27, 2020. By an order dated May 18, 2020, the Secretary of the Society communicated to the writ petitioner that the Board had decided to terminate the writ petitioner's service with retrospective effect from April 27, 2020 i.e., from the date of suspension. Being aggrieved, the writ petitioner challenged the termination order before the learned Single Judge.

The learned Single Judge set aside the order of termination primarily on the ground of breach of the principles of natural justice. The learned Judge held that Sub-rules 13 to 17 of Rule 106 of the West Bengal Cooperative Societies Rules, 2011, lay down a procedure for holding a disciplinary proceeding against a delinquent employee. These Rules were not followed. The writ petitioner was not given adequate opportunity of explaining the charges against him. The learned Judge while setting aside the termination order, directed that the writ petitioner will be treated to be "under suspension" with immediate effect. He shall be paid his subsistence allowance along with

arrears in ten equal monthly installments. The employer will be at liberty to conduct the disciplinary proceedings against him in terms of the applicable rules.

The writ petitioner has preferred MAT 377 of 2022 against the aforesaid order, being aggrieved by the portion whereby the learned Judge directed him to be treated under suspension. According to him, the suspension order having merged with the termination order, while setting aside the termination order, the learned Judge should have also set aside the suspension order.

We are unable to accept the contention of the appellant/writ petitioner. The approach of the learned Judge is quite reasonable. The learned Judge has granted liberty to the Employer-Society to conduct the disciplinary proceedings. In contemplation thereof, it was appropriate to direct that the writ petitioner would be treated to be under suspension. We do not see that the writ petitioner can have any legitimate grievance in that regard.

MAT 377 of 2022 is, accordingly, dismissed.

MAT 366 of 2022 is an appeal of the Employer-Society from the same order. The Society says that the writ petitioner has defalcated funds to the tune of Rs. 12 lacs by forging the signature of the Secretary of the Society. There is also apparently a written admission of the writ petitioner that he has indulged in such irregularity. Mr. Mukherjee, learned Advocate, representing the Society says that in view of such admission, no disciplinary proceeding was initiated. Further, he says that since the writ petitioner has admitted

committing the offence, he should not be paid subsistence allowance. Mr. Mukherjee also submits that the learned Judge should not have directed that the appeal filed by the writ petitioner before the Appellate Authority against the order of termination would be treated as disposed of, as by doing so the learned Judge has acted as an Appellate Authority.

We are unable to agree with the contentions advanced by Mr. Mukherjee. The learned Judge noted that the writ petitioner's appeal had been left pending for two years without the same being considered by the Appellate Authority. Since the learned Judge found that the termination order was passed in violation of the principles of natural justice and the learned Judge was setting aside the order, it was entirely appropriate on her part to direct that the appeal of the writ petitioner shall be treated as disposed of.

In so far as the subsistence allowance is concerned, if the applicable Rules provide for payment of such allowance, the appellant-Society must do so.

We are in agreement with the entirety of the order impugned before us. The termination of the writ petitioner's service was in blatant breach of the cardinal principles of natural justice. Such order cannot be permitted to remain.

We find no reason to interfere with the order impugned before us which we hereby affirm. We reiterate that the appellant-Society would be at liberty to initiate disciplinary proceedings against the writ petitioner in

accordance with the applicable Rules and will be at liberty to take the same to its logical conclusion after observing the principles of natural justice. The disciplinary proceedings, if any, should be completed as expeditiously as possible and preferably within a period of six months from date.

Mr. Mukherjee says that a substantial sum of money is due from the writ petitioner to the Society on account of loan. The writ petitioner should be directed to refund the same to the Society. Learned Advocate for the writ petitioner disputes such contention. In any event, in this proceeding, we are not minded to pass any such direction. If any loan is outstanding from the writ petitioner to the Society, the Society would obviously be at liberty to take steps for recovery of the same in accordance with law.

The appeals and the connected applications are disposed of accordingly.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Kausik Chanda, J.)

(Arijit Banerjee, J.)