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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 5237 of 2022

Joteghanashyam Samabay Krishi
Unnayan Samity Limited & Anr.

-vs.-

State of West Bengal & Ors.

With

W.P.A. No. 12217 of 2019

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IA No. C.A.N. 1 of 2022

Manas Kumar Guchhait

Vs.

The State of West Bengal & Ors.

Mr. Ashit Kumar Chakraborty,
Mr. Sunanda Mohan Ghosh

...for the petitioners in
W.P.A. No. W.P.A. No. 5237 of 2022
and for respondent nos. 3 to 5 in
W.P.A. No. 12217 of 2019

Mr. Subhajit Panja

...for the respondent no. 3 in
W.P.A. No. 5237 of 2022 and
for the petitioner in
W.P.A. No. 12217 of 2019

Mr. P.K. Roy,
Mr. Biplob Das,
Mr. Joydeep Roy

...for the respondent no. 2
in W.P.A. No. 5237 of 2022

Mr. P.K. Roy,
Mr. Biplob Das,

...for the respondent no. 2
in W.P.A. No. 12217 of 2019.

Mr. Srijan Nayak,
Mr. Ankit Sureka

...for the State
in W.P.A. No. 5237 of 2022

In Re.: **IA No. C.A.N. 1 of 2022**
in
W.P.A. 12217 of 2019

Pursuant to the liberty granted by the Division Bench of this Court vide order dated March 04, 2022 in M.A.T. No. 1976 of 2019, the present recall application has been filed for having the order dated November 04, 2019 passed by the learned Single Judge in W.P. No. 12217(W) of 2019 recalled and for restoration of the said writ petition to its original file and number.

Since it has been pleaded in the recall application that the father of learned counsel appearing for the applicants, being the respondent nos. 3 to 5 in W.P.A. No. 12217 of 2019, had fallen ill on the relevant date, for which learned counsel could not represent the respondent nos. 3 to 5 before the learned Single Judge on the date of disposal, sufficient ground has been made out in the opinion of this Court for recalling the said order.

Accordingly, C.A.N. 1 of 2022 is allowed, thereby recalling the order dated November 04, 2019 passed in W.P. No. 12217(W) of 2019 and restoring the said writ petition to its original file and number.

Since the outcome of W.P.A. No. 12217 of 2019 is obviously dependent on the outcome of W.P.A. No. 5237 of 2022, the latter is being taken up for hearing first.

In Re.:W.P.A. No. 5237 of 2022

Learned counsel appearing for the petitioner-society submits that on a previous occasion, funds were defalcated, for which, upon the society obtaining an audit report on holding an enquiry, the respondent no. 3, who was the manager of the society at that point of time, had admitted responsibility for such defalcation of funds and had returned the money.

Subsequently, on the ground of the credibility of the respondent no. 3, it is submitted, the respondent no. 3 was given a show cause notice and subsequently, upon the respondent no. 3 having not filed any reply thereto, the petitioner-society suspended the respondent no. 3 initially and, thereafter, dismissed the respondent no. 3 from service.

Challenging the said dismissal, the respondent no. 3 had approached the Assistant Registrar of Co-operative Societies, upon which the Assistant Registrar had set aside the decision of dismissal, which was again challenged before this Court. A coordinate Bench of this Court had affirmed the order of the Assistant Registrar and directed reinstatement of the respondent no. 3.

Upon an appeal having been preferred by the petitioner-society against such order of the learned Single Judge, the Division Bench disposed of the appeal, inter alia granting the appellants (the petitioners herein)

liberty to prefer a challenge against the order of the Assistant Registrar before appropriate forum, but otherwise upheld the order of the learned Single Judge.

Subsequently, pursuant to the said liberty given by the Division Bench, the present writ petition has been preferred against the order of the Assistant Registrar, setting aside the decision of the co-operative society to dismiss the respondent no. 3.

Learned counsel appearing for the petitioners contends that, in view of the admission of the respondent no. 3 of his guilt as well as in view of the conduct of the respondent no. 3 in not giving any reply to the show cause notice, the Society was well within its authority and law to dismiss the respondent no. 3, after initially suspending him.

However, learned counsel appearing for the respondent no. 3 disputes such contention and argues that the show cause notice did not disclose any specific allegation against the respondent no. 3, which prevented the respondent no. 3 from giving an appropriate reply thereto.

It is further contended that, pursuant to such show cause notice, the respondent no. 3 ought not to have been dismissed.

Upon hearing learned counsel appearing for the parties, it appears from the show cause notice dated April 06, 2015, annexed at page 33 (Annexure P-2) of

the writ petition that by virtue of the said communication the respondent no. 3 had merely been intimated that the latter had information that on a previous date an update of the accounts of the society was asked from the respondent no. 3 and even after the lapse of one month thereafter the respondent no. 3 did not give such update.

It was further intimated by the communication that subsequently on April 02, 2015, a Board meeting was held wherein the respondent no. 3 was verbally directed to show cause, despite which no steps were taken by the respondent no. 3. Admittedly on such basis, the respondent no. 3 was again directed to show cause and was intimated that in the event within thirty days the account updates were not done correctly, the respondent no. 3 would be suspended.

Thus, a mere perusal of the said communication dated April 06, 2015 clearly indicates that no specific allegation or complaint against the respondent no. 3 was disclosed therein, since mere failure to update the accounts could not entail dismissal from service without giving an appropriate opportunity to give reply to the respondent no. 3, since such punishment would be grossly disproportionate with the alleged offence.

Moreover, the petitioner-society had actually acted without jurisdiction in dismissing the respondent

no. 3 without giving adequate opportunity to the respondent no. 3 to give a proper reply, by making specific and clear allegations against the respondent no. 3.

In such view of the matter, W.P.A. 5237 of 2022 is disposed of by affirming the impugned order of the Assistant Registrar, Co-operative Societies and directing the petitioner-society to clear all due salaries and other admissible dues to the respondent no. 3, for the period of suspension, in accordance with law and the bye-laws of the society, as expeditiously as possible, preferably within two months from date.

Liberty is granted to the petitioner-society to initiate a fresh proceeding against the respondent no. 3 upon giving adequate opportunity to the respondent no. 3 to show cause by formulating specific charges/allegations against the respondent no. 3, which the society might level, and upon giving adequate opportunity of hearing to the respondent no. 3.

It is made clear that the merits of such allegations against the respondent no. 3 made by the petitioner-society have not been entered into on merits by this Court and it will be open to the Society as well as the respondent no. 3 to contest such action, if taken against the respondent no. 3, without being prejudiced in any manner by any of the observations made herein.

There will be no order as to costs.

In view of the above order, W.P.A. No. 12217 of 2019 is also disposed of.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)