

D/L
Item No. 1
04.03.2022
KOLE

MAT 1976 of 2019

**Joteghanashyam Samabay Krishi Unnayan
Samiti Ltd. & Ors.**

-Vs.-

Manas Kumar Guchhait & Ors.

*Mr. Asit Kr. Chakraborty,
Mr. S. M. Ghosh*

...for the appellants.

Mr. Pabitra Charan Bhattacharjee,

...for the respondent no. 1.

*Mr. S. Nayek,
Mr. A. Sureka,
Mr. P. S. Pal,*

...for the State.

The stay application, being No. CAN 579 of 2020, is treated as on day's list.

By consent of the parties the appeal and the application are taken up for hearing together.

This is an appeal preferred against an order dated November 4, 2019, whereby WP 12217 (W) of 2019 was disposed of.

The writ petitioner was engaged as a Group-D staff of the appellant Cooperative Society in the year 2012. Thereafter, in the same year he was promoted to the post of Accountant. In the year 2013, he was promoted to the post of Manager.

On the basis of the allegation that while working as Manager, he defalcated funds of the Society, on November 19, 2015, he was placed under suspension. A show cause

notice was issued. On December 27, 2015, he was dismissed from service.

He challenged the dismissal order by filing WP 2016 (W) of 2016. By an order dated September 19, 2018, the Learned Single Judge granted him liberty to file a comprehensive representation before the Assistant Registrar of Cooperative Societies, Paschim Medinipur and the Assistant Registrar was directed to pass necessary order on the writ petitioner's representation.

Pursuant to such liberty, the writ petitioner filed his representation before the Assistant Registrar. On November 28, 2018, the Assistant Registrar passed an order holding that the order dismissing the writ petitioner was illegal, *inter alia*, for breach of the principles of natural justice. He directed the Society to reinstate the writ petitioner in service.

With the grievance that in spite of the order of the Assistant Registrar, the Society was not reinstating him, the writ petitioner approached the learned Single Judge by way of the present writ petition. By the impugned order dated November 4, 2019, the Learned Single Judge directed the Chairman of the Board of Directors of the Society as well as the Secretary of the Society to take steps to reinstate the writ petitioner on the basis of the order/award passed by the Assistant Registrar of Cooperative Societies, Paschim Medinipur, on November 28, 2018, immediately and positively within a period of two weeks from the date of communication of the order.

The Society has come up in appeal. We find from the impugned order that the Society was not represented before the learned Single Judge. Learned Advocate for the Society says, drawing our attention to sub-paragraph (p) at page 10 of the stay petition, that on the day when the matter was taken up and disposed of by the Learned Single Judge, without calling for affidavits, learned Advocate of the Society could not attend Court because of the illness of his father. It is submitted that the order under appeal should be set aside and the matter should be remanded back to the learned Single Judge so that the Society can make submissions before the learned Single Judge.

We are not inclined to interfere with the order. It appears from the impugned order that affidavit of service was filed before the learned Single Judge which showed service on the Society. However, the Society was not represented. We cannot fault the learned Single Judge for proceeding with the matter and passing an order which was merely for implementation of the order of the Assistant Registrar of Cooperative Societies, when admittedly till date, such order of the Assistant Registrar has not been assailed by the Society before any competent forum.

However, we grant liberty to the appellants to approach the learned Single Judge praying for recalling of the order impugned in this appeal. If the learned Judge is satisfied that there was sufficient reason for the Society not to be represented on the day the impugned order was passed, the learned Judge may pass appropriate orders. The

Society shall also be at liberty, if so advised, to challenge the order of the Assistant Registrar of Cooperative Societies before the appropriate forum in accordance with law.

With the aforesaid observation, the appeal and the connected application are disposed of.

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

(Arijit Banerjee, J.)

(Kausik Chanda, J.)