IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) Nos.8203 of 2022 and 10806 & 18381 of 2020

In the matter of an application under Articles 226 & 227 of the Constitution of India.

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Suresh Chandra Das	....	**Petitioner**

-versus-

State of Odisha & Ors.	....	**Opposite Parties**

For Petitioners :	M/s. Pami Rath(Advocate) B.K. Sharma (Advocate)
For Opp. Parties :	Mr. R.N. Mishra Addl. Govt. Advocate Mr. S. Palit, Sr. Counsel (Appearing for SDCCB) Mr. K.P. Nanda, Advocate (Appearing for OSCB)

PRESENT:

THE HON'BLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing: 09.09.2022 and Date of Order: 19.09.2022

Biraja Prasanna Satapathy, J.

1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.

2. Heard learned counsel for the Petitioners appearing in the aforesaid three (3) writ Petitions along with Mr. R.N. Mishra, learned AGA, Mr. Subir Palit, learned Sr. Counsel appearing for the Sundargarh District Central Cooperative Bank Ltd. and Mr. K.P. Nanda, learned counsel appearing for Odisha State Co-operative Bank Ltd. (in short 'OSCB Ltd.').

3. All the aforesaid writ Petitions have been filed by the Petitioner Suresh Chandra Dash in his position as CEO, Sundargarh District Cooperative Bank Ltd. (in short 'Bank') challenging various orders passed by the Management on different dates as well as the orders passed by the Registrar of Cooperative Societies-O.P. No. 2 and OSCB Ltd.

4. From the pleadings available in the writ Petitions, it is found that the Petitioner vide letter of appointment issued by the Bank on 01.02.2019 was appointed as the Chief Executive Officer (CEO) of the Bank with the condition that the initial period of three (3) months from the date of joining shall be treated as probation period and on completion of the probation period the Petitioner shall be considered for a minimum period of three (3) years.

5. It is also indicated in the said letter of appointment date, the Bank may go for extension of the service period basing upon the performance and profitability of the Bank even before the completion of the minimum period of three (3) years. It is found from the pleadings that initially when the appointment of the Petitioner as CEO of the Bank was not approved by the Registrar Cooperative Societies-O.P. No. 2 vide his order dtd.23.02.2019 communicated on 25.02.2019 by OSCB Ltd., the Management of the Bank approached this Court in W.P.(C) No. 5641 of 2019.

6. The Petitioner challenging the order dtd.23.02.2019 as well as the communication dtd.25.02.2019 also approached this Court in W.P.(C) No.8131 of 2019. W.P.(C) No. 5641 of 2019 along with W.P.(C) No. 8131 of

2019 were disposed of by this Court vide order dtd.20.12.2019. This Court while quashing the order passed by the O.P. No. 2 on 23.02.2019 and the communication issued by the OSCB Ltd. on 25.02.2019, directed the O.P. No. 2 to relook the matter and pass appropriate order within three (3) weeks from the date of communication of the order.

7. This Court while disposing both the writ Petitions also held that status-quo with regard to appointment of the CEO of the Bank shall be maintained. It is further pleaded in the writ Petitions that subsequent to disposal of the aforesaid writ Petitions vide order dtd.20.12.2019 when the O.P. No. 2 passed a fresh order on 10.01.2020 by refusing to approve the appointment of the Petitioner as CEO of the Bank, the Bank challenging the said order approached this Court in W.P.(C) No.1846 of 2020. In the said writ Petition though vide order dtd.06.02.2020 an interim order was passed with a direction to maintain status-quo in respect of the functioning of the CEO of the Bank, but the said writ Petition was ultimately permitted to be withdrawn vide order dtd.18.11.2020.

8. But it is found from the pleadings that during pendency of W.P.(C) No.1846 of 2020, the Petitioner challenging the order dtd.10.01.2020 approached this Court in W.P.(C) No.10806 of 2020. This Court while issuing notice of the matter vide order dtd.03.06.2020 passed an interim order to the following effect:

> *"As an interim measure, it is directed that status-quo as on date in respect of functioning of the CEO of the District Central Co-operative Bank Ltd. Shall be maintained by the Parties till the next date."*

9. It is submitted that in between in terms of the decision taken by the Bank in its proceeding dtd.29.09.2019 the minimum period of service of the CEO was raised from 3 years to 5 years and the said fact was also communicated to the

Petitioner vide letter dtd.09.10.2019 under Annexure-3 in W.P.(C) No.8203 of 2022.

10. During pendency of the matter in W.P.(C) No.10806 of 2020, when some fresh guidelines were issued with regard to filling up the post of CEO in Central Co-operative Banks by the OSCB Ltd. Vide order dtd.03.07.2020, basing on the minutes of the meeting held on 16.02.2019, the Petitioner challenging the said minutes of the meeting as well as order dtd.03.07.2020 also approached this Court in W.P.(C) No.18381 of 2020. This Court while issuing notice of the matter vide order dtd.03.09.2020 passed an interim order by staying operation of the said minutes of the meeting dtd.16.07.2019 and the consequential order issued on 03.07.2020 by OSCB Ltd.

11. It is submitted that during pendency of the matter in W.P.(C) No.10806 of 2020 and 18381 of 2020 when the Bank issued the impugned order dtd.29.01.2022 under Annexure-1 series, the Petitioner challenging the same filed W.P.(C) No.8203 of 2022. It is submitted that vide the said order dtd.29.01.2022 the Petitioner was shown relieved from his service w.e.f.31.01.2022 on the ground that the Petitioner has completed his terms of three (3) years commencing from 01.02.2019.

12. Ms. Pami Rath, learned counsel for the Petitioner in W.P.(C) No.8203 of 2022 vehemently submitted that since in terms of the decision taken by the management of the Bank in its resolution dtd.29.09.2019 the minimum period of service of the CEO of the Bank was raised from 3 years to 5 years, in view of the interim order passed on 03.06.2020 in W.P.(C) No.10806 of 2020, the Petitioner should not have relieved vide the impugned order dtd.29.01.2022. It is also submitted that once the Bank has taken the decision to treat the minimum period of service of the CEO as 5 (five) years as reflected in the communication dtd.09.10.2019 under Annexure-3, the Petitioner could not have been relieved from his service without issuance of show-cause as the said communication dtd.09.10.2019 under Annexure-3 was duly communicated to the Petitioner and the Petitioner remained under the bonafide impression that he will complete his term of 5 years starting from 01.02.2019.

13. Ms. Rath further submitted that this Court while taking up the matter, passed a detailed order on 22.04.2022 in W.P.(C) No.8203 of 2022 by directing for maintenance of status-quo with regard to the service of the Petitioner as on 29.01.2022. Ms. Rath accordingly submitted that in view of the subsistence of the interim order passed by this Court on 03.06.2022 in W.P.(C) No.10806 of 2020, Opp. Party-Bank should not have issued the impugned order on 29.01.2022 by relieving the Petitioner from his service w.e.f.31.01.2022 under Annexure-1 series and accordingly order was passed on 22.04.2022 directing maintenance of status-quo ante.

14. It is submitted that prior to issuance of the impugned order on 29.01.2022 since the Petitioner was never issued with a show-cause, the action of the O.P. No. 1 in issuing such order is illegal and accordingly the same is to be interfered with by this Court.

15. Mr. S. Palit, learned Sr. Counsel on the other hand submitted that pursuant to the interview held on 30.02.2019 the Petitioner was appointed as CEO of the Bank with a condition that the initial period of three (3) months shall be treated as probation period and on completion of the probation period the Petitioner shall be considered for his continuance as CEO for a minimum period of three (3) years.

16. Mr. Palit, learned Sr. Counsel submitted that the decision to extend the minimum period of service of CEO from 3 years to 5 years though was communicated to the Petitioner vide letter dtd.09.101.2019 under Annexure-3, but Bank is competent to relieve the Petitioner on completion of the period of

3 years as indicated in the letter of appointment issued under Annexure-2. Mr. Palit also submitted that after expiry of the terms of the earlier Committee of Management of the Bank, O.P. No. 2 vide his order dtd.01.05.2020 appointed the Collector and District Magistrate, Sundargarh as Administrator of the Bank and DRCS, Sundargarh Division has been kept as Management in-charge of the Bank w.e.f.07.01.2022 in terms of the letter dtd.06.01.2022 issued by the O.P. No. 2.

17. Though Mr. Palit, learned Sr. Counsel supported the impugned order dtd.29.02.2022, but he could not satisfy this Court as to whether prior to issuance of such order, any show-cause was issued to the Petitioner in relieving him on completion of his 3 years of service though such period was extended to 5 years vide communication dtd.09.10.2019 under Annexure-3. Since the period of service of the CEO was suo moto extended by the Bank from 3 years to 5 years, it is the considered view of this Court that the Bank is competent to relieve the Petitioner on completion of the 3 (three) year period.

18. However taking into account the main ground of challenge that no opportunity was given to the Petitioner prior to issuance of the impugned order, this Court finds that in fact prior to issuance of such order on 29.01.2022 under Annexure-1 series the Petitioner was never issued with a show-cause nor any opportunity of hearing was given, and the Petitioner should not have relieved w.e.f.31.01.2022 by virtue of the said order. Not only that in view of the order passed by this Court on 03.06.2020 in W.P.(C) No.10806 of 2020, the Petitioner should not have been relieved w.e.f.31.01.2022 vide order dtd.29.01.2022 under Annexure-1 series.

19. However, since it is the main submission of Ms. Rath that prior to issuance of the impugned order dtd.29.01.2022 under Annexure-1 series the Petitioner was never issued with any show-cause nor any opportunity of hearing was given and the said fact is apparent on the face of the record, this

Court is inclined to quash the said order passed on 29.01.2022 passed by the Management in-charge of the Bank.

20. While quashing the same, this Court permits the Management in-charge of the Bank to issue a show-cause to the Petitioner proposing such action as deem fit and proper within a period of seven (7) days from the date of receipt of this order. The Petitioner will be allowed two (2) weeks time to file his reply to such show-cause and the Management in-charge of the Bank on receipt of such reply from the Petitioner shall take a final decision in the matter, in which case this Court has expressed no opinion. Till a fresh decision is taken by the Management in-charge of the Bank, the interim order passed by this Court on 22.04.2022 in I.A. No.4298 of 2022 arising out of W.P.(C) No.8203 of 2022 shall continue.

21. In view of the disposal of the W.P.(C) No.8203 of 2022, with the aforesaid observation and directions, no further order is required to be passed in W.P.(C) Nos.10806 of 2020 and 18381 of 2020. All three (3) writ Petitions are accordingly disposed of with the aforesaid observation and directions.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 19th of September, 2022/Sneha