

W.P.A. 15267 of 2016

**Md. Jamaluddin
Vs.
The State of West Bengal & Ors.**

Mr. Shamil ul Bari
Md. Hadiur Rahaman
...for the petitioner

Mr. Ankit Sureka
Mr. Biplob Das
Mr. Partha Sarathi Pal
...for the respondent no. 2

Mr. Arnab Roy
...for the respondent no. 3

Mr. Molay Kumar Singh
Ms. Neelam Singh
....for the State

The writ petition is taken up for consideration in terms of the order dated 28th June, 2023 when learned advocates representing the parties including respondent no. 3 is represented. Affidavits in opposition to the writ petition and supplementary affidavit have been filed today on behalf of respondent no. 3 which are taken on record.

Subject matter of challenge in the writ petition is the resolution of Uttar Chandipur Gram Samabay Krishi Unnayan Samity Limited (for short "GSKUS") dated 30th April, 2016 whereby petitioner has been demoted from the post of manager of the said samity to the post of ordinary employee. Petitioner by filing supplementary affidavit has brought on record the decision taken by the Assistant Registrar of Co-operative Societies, Co-

operation Directorate, Malda Range dated 3rd November, 2021 and 14th December, 2021 wherefrom it appears that the petitioner could not be reinstated in the post of manager in view of pendency of this writ petition. However, in the order dated 3rd November, 2021 it has been decided by the authority to reinstate the petitioner in the post of manager and to provide due benefits which he is entitled to and if necessary fresh legal action may be taken if the society finds any substantial ground.

It has been contended on behalf of the petitioner that he has been demoted from the post of manager to ordinary employee of the GSKUS without due process of law. According to the petitioner there is gross violation of principle of natural justice thereby petitioner was not permitted to present his case before the disciplinary authority before imposition of punishment of demotions the impugned resolution of the Board of Directors of GSKUS dated 30th April, 2016 cannot survive.

State-respondents as well as Assistant Registrar of Co-operative Societies, Malda being the respondent no. 2 are represented by learned advocates and submission has been made that since decision has been taken by the respondent no. 2 to reinstate the petitioner in the post of manager there is no impediment in reinstatement of the petitioner in the post of manager of the said GSKUS provided necessary direction is given by this Court.

However, the learned advocate representing the said GSKUS has opposed the prayer of the petitioner and has submitted that there are several allegations against the petitioner which prompted the GSKUS to take punitive steps against the petitioner after issuance of three show cause notices. It has also been submitted that erstwhile cashier of the said GSKUS has been inducted as manager of the said society and by virtue of order dated 29th October, 2021 issued by Assistant Registrar, Co-operative Societies, Malda Range he has been entrusted with the responsibility to carry out day to day activity primarily for a period of six months that is upto 28th April, 2022 and subsequently the term of the manager being highest designated employee of the society has been extended. It has also been submitted that in view of periodical extension of the authority given in favour of the manager as well as cashier of the society to run day to day activity the society is facing difficulties in administering activities and functioning of the said GSKUS is being hampered.

However, it has been candidly admitted on behalf of present manager of the said GSKUS that formal disciplinary proceeding by issuance of charge sheet could not be initiated contemporaneously against the petitioner.

Having heard the learned advocates representing the petitioner and respondents and on perusal of

relevant documents available on record this Court is tasked to consider the validity of order of demotion as issued by the GSKUS on adopting resolution dated 30th April, 2016. On perusal of the said resolution dated 30th April, 2016 it transpires that barring show cause notices and consideration of reply to the show cause notices no other steps were taken by the said GSKUS against the petitioner prior to imposition of punishment of demotion. The principle of natural justice warrants issuance of charge sheet thereby an opportunity needs to be provided to the employee concerned for responding to the said charge sheet. If it is found by the disciplinary authority that the reply to the charge sheet is not satisfactory the disciplinary authority is required to hold an enquiry by appointing an independent enquiry officer thereby providing opportunity to the petitioner to present his case in order to prove his innocence before the enquiry officer.

On hearing the learned advocates representing the parties and on perusal of records it appears that without following the aforesaid procedure straightway the said GSKUS issued order of demotion therefore it is found to be untenable.

Accordingly the resolution dated 30th April, 2016 whereby decision was taken to demote the petitioner from the post of manager to ordinary employee of the said GSKUS is set aside.

Concerned respondent authorities are directed to reinstate the petitioner in the post of manager of the said GSKUS within a period of 2 (two) weeks from the date of communication of this order and release his current salaries and emoluments regularly on resumption of duty by the petitioner.

However, petitioner has ventilated his grievance before this Court that after the order of demotion was passed against the petitioner he was not allowed to perform his duty even as ordinary employee of the said GSKUS and he was not paid salary for some time.

In view of such submissions made on behalf of the petitioner leave is granted to the petitioner to make a representation to the Assistant Registrar of Co-operative Societies, Malda being respondent no. 2 within a period of 4 (four) weeks from date claiming payment of back wages during the period when he had to work as ordinary employee of the said GSKUS. If such representation is made by the petitioner within the aforesaid time the respondent no. 2 shall take decision after granting an opportunity of hearing to the petitioner and the representative of the GSKUS within a period of 8 (eight) weeks thereafter by passing a reasoned order.

However it is made clear that if the said GSKUS authority finds that there is necessity to initiate de novo proceeding against the petitioner it shall be at liberty to take steps accordingly.

With the aforesaid directions, the writ petition stands disposed of.

There shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)