

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2153 of 2020

Manjay Kumar Singh Son of Kameshwar Prasad Singh, resident of Mohalla-
Rajputana Kali Asthan, Dehri, Police Station- Town, District- Rohtas
(Sasaram).

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Co-operative, Govt. of Bihar, Patna.
2. The Registrar, Co-operative Societies, Department of Co-operative, Govt. of Bihar, Patna.
3. The Deputy Registrar (Cane), Department of Co-operative Societies, Bihar, Patna.
4. The Joint Registrar, Co-operative Societies, Patna Division, Patna.
5. The District Audit Officer Co-operative Societies,, Sasaram.
6. The Board of Director's through the Chairman, the Sasaram Bhabua Central Co-operative Bank Ltd. Sasaram.
7. The Mangaing Director, the Sasaram Bhabua Central Co-operative Bank Ltd. Sasaram.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Aditya Narain Singh, Advocate Mr. Kundan Kumar Sinha, Advocate
For the Respondent/s	:	Mr. Shushil Kumar (Gp22)
For the Bank	:	Mr. Bindhyachal Rai, Advocate

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT
Date : 08-02-2024

Heard learned counsel for the petitioner, learned
counsel for the Sasaram Bhabua Central Co-operative Bank Ltd.
Sasaram and learned counsel for the State.

2. Learned counsel for the petitioner submits that
the present writ petition has been filed for setting aside the order
contained in Memo No.11958 dated 11.12.2019, by which the



District Audit Officer, Co-operative Societies, Sasaram, was directed to recover the amount from the petitioner which has been given to him as his monthly salary in accordance with Section 40 of the Bihar Co-operative Societies Act, 1935, in result of illegal regularization of petitioner's service.

3. Learned counsel for the petitioner submits that the said order has been passed by the Deputy Registrar (Cane), Department of Co-operative Societies, Government of Bihar, Patna, from the office of Registrar, Cooperative Societies, Bihar and copy of the same has been communicated to the Managing Director, District Central Co-operative Societies Limited, Sasaram. Counsel for the petitioner submits that the said order under which direction has been made under Section 40 is absolutely illegal due to two reasons. Firstly, that the said order has to be passed by the Registrar according to the Statute and secondly, the person who has been directly aggrieved by the said letter. No opportunity was granted to him to defend himself. More particularly, counsel for the petitioner submits that under Section 44AV of the Bihar Co-operative Societies (Amendment) Act, 2008, which has been inserted in the main act by virtue of Bihar Act 18 of 2008 that a cooperative society shall have autonomy in all financial and internal administrative matters



including the following area, namely, personal policy, staffing, recruitment, posting and compensation to staff.

4. Learned counsel for the State submits that letter has been issued from the office of Registrar, Co-operative Societies, Bihar, Patna, and under Section 40 of the Act Registrar is competent to pass such order.

5. Learned counsel for the Sasaram Bhabhua Central Co-operative Bank Ltd. submits that regularization of the petitioner has been made completely in accordance with law and stand of the Bank is consistently in favour of the petitioner.

6. In the light of the submissions made by the parties, it transpires to this Court that only two issues involved in the present case.

The first is whether a Deputy Registrar (Cane), Department of Co-operative Societies, Bihar, Patna, is competent to pass order under Section 40 of the Bihar Cooperative Societies Act or not and,

Secondly, that the person who is aggrieved by the said order has provided any opportunity to defend himself or not.

7. With a view to decide, it is necessary to quote Section 40 of the Act which states as follows:-



“40. Surcharge.-(1) Where as the result of an audit under Section 33 [and Special Audit under Section 33A] or an inquiry under Section 35, or an inspection under Section 34, Section 36, or Section 37, or the winding up of a society, it appears to the Registrar that any person who has taken part in the organization or management of the society or any past or present officer of the society has-

(a) made any payment which is contrary to law or to the rules or bye laws of the society, ¹[or against the directions or instructions of the financing bank for which the society is acting as agent under sub-section (3) of Section 16], or

(b) by reason of his culpable negligence or misconduct, involved the society, [or the financing bank for which it is acting as agent under sub-section (3) of Section 16] in any loss or deficiency, or

(c) failed to bring into account any sum which ought to have been brought into account, or

(d) misappropriated or fraudulently retained any property of the society [or of the financing bank which it



is acting as agent under sub-section (3) of Section 16]

the Registrar may inquire into the conduct of such person, or officer and after giving such person or officer an opportunity of being heard make an order requiring him to contribute such sum to the assets of the society [or of the financing bank, as the case may be, by way of compensation in respect of such payment or loss of sum, or to restore such property as the Registrar thinks fit, together with such sum as the Registrar may fix to meet the cost of the proceedings under this section:

Provided that, before any order requiring such person or officer to contribute is passed in respect of a payment referred to in clause (a) reasonable time shall be given to such person or officer to recover the amount of such payment from the payee and credit it to the funds of the society, [or, as the case may be, of the financing bank.]

Provided further that no order shall be passed under this sub-section in respect of any of omission mentioned in clauses (a), (b), (c) or (d) except within [six years of the date on which such act or omission occurred.



(2) This section shall apply notwithstanding that such person or officer may have incurred criminal liability under this Act or under any other law.

(3) An appeal shall lie from an order of the Registrar under sub-section (1) to the State Government on application made by the person or officer against whom such order was passed within three months from the date of the communication to him of such order. The order of the State Government on appeal, and subject to the result of such appeal, if any, the order of the Registrar, shall be final.”

8. It is crystal clear after going through the statute that the word ‘Registrar’ is there and, therefore, the Deputy Registrar (Cane) cannot substitute the Registrar. Hence, on this ground alone, the letter issued by Deputy Registrar is not fit to sustain and said to be an illegal order. So far as the second issue is concerned, from the content of letter itself it transpires to this Court that opportunity has not been given even copy of the said letter has not been communicated to the petitioner. There is no pleading of the respondent that they have provided opportunity to the petitioner, whereas counsel for the petitioner submits that



at no level he has been granted any opportunity to defend himself. Hence, this issue is also decided in favour of the petitioner.

9. In the result, this writ petition is allowed. The order impugned contained in Memo No.11958 dated 11.05.2019 is hereby set aside. The Registrar, Co-operative Societies, Department of Co-operative, Government of Bihar, Patna, may be permitted to pass order afresh but only after granting opportunity to the petitioner in this matter to defend. Entire action shall be done within 90 days from the date of precept/production of a copy of this order.

(Dr. Anshuman, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.02.2024
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