

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4601 of 2019

Sitaram Sah, Son of Late Bhaglu Sah Resident of Village and P.O. Chichri
Kanungo, P.S. Rajnagar, District Madhubani Pin 847235

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Schedule Caste and Schedule Tribe Welfare Bihar, Patna
2. The Principal Secretary, Department of Schedule Caste and Schedule Tribe Welfare, Govt. of Bihar, Patna
3. The Bihar State Schedule Caste Cooperative Development Corporation Ltd. Bihar Patna, through its Managing Director, Officers Hostel Block A Bailey Road Patna
4. The Managing Director Bihar State Schedule Caste Cooperative Development Corporation Ltd. Bihar Patna
5. The Secretary, Bihar State Schedule Caste Cooperative Development Corporation Ltd. Bihar Patna
6. The Joint Secretary, Schedule Caste Schedule Tribe Welfare Department, Govt. of Bihar, Patna

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Amarendra Narayan, Adv.
For the State	:	Mr. S.K. Mandal (SC-3)
		Mr. Bipin Kumar, (AC to SC-3)
For the Bihar State Schedule Caste Cooperative Development Corporation	:	Mr. Ranjeet Kumar Pandey. Adv.

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

Date : 29-04-2024

Heard learned counsel for the petitioner, learned counsel for the State and learned counsel for the Bihar State Schedule Caste Cooperative Development Corporation.

2. The present writ petition has been filed with following reliefs:-

I. For quashing the Memo No. 1068 dated 28.06.2016 (annexed as Annexure-3) issued under the signature of Managing Director, Bihar State Schedule Caste Cooperative



Development Corporation Ltd. Bihar Patna (respondent no.4) dismissing the petitioner from service on the allegation of marrying another lady during lifetime of his living spouse.

II. For quashing the Memo No. 2467 dated 05.10.2018 (annexed as Annexure-9).

III. For quashing the entire departmental proceeding initiated against the petitioner through office order dated 25.05.2015 contained in Memo No.766 (annexed as Annexure-1)

3. Learned counsel for the petitioner submits that the petitioner was in service of the Bihar State Schedule Caste Cooperative Development Corporation Ltd. Bihar, Patna and promoted to the post of Field Organizer, Gaya in August, 1984 and thereafter, he was next promoted to the post of Inspector in the pay scale of Rs.5200-20200 *vide* office order dated 19.07.2011 Darbhanga. Counsel submits that the petitioner was posted as Executive Officer, Samastipur in 2012, but the respondent department used to keep discriminate attitude towards the petitioner and he has never given the actual benefits attached to the post of Inspector-cum-Recovery Officer despite orders passed by this Hon'ble Court in Civil Writ Jurisdiction Case No. 16110/2009 and Civil Writ Jurisdiction Case No.



16790/2009. Counsel further submits that in the year 2014-15, a departmental enquiry has been initiated against the petitioner by the M.D. Ajabini and appointed Enquiry Officer for conducting enquiry of two charges in the memo of charge. First is marrying another lady during lifetime of his living spouse and second is furnishing wrong address of residence to the H.Q. Counsel further submits that in the said departmental proceeding, the petitioner was punished in-spite of his defence provided to the authorities concerned. Counsel also submits that being aggrieved and dissatisfied with the order passed by the Managing Director, the petitioner has preferred appeal before the Principal Secretary, Department of Schedule Caste and Schedule Tribe Welfare, Govt. of Bihar, Patna and the Principal Secretary has pleased to entertain the appeal and remanded the matter before the Enquiry Officer *vide* order dated 11.05.2017 formulating three issues for further enquiry.

4. Learned counsel for the petitioner submits that the matter was remanded without setting aside the order of dismissal or re-instating the petitioner in service which is bad in law. Counsel submits that when the matter was remanded back, then dismissal order ought to be set aside. Counsel further submits that order of *denovo* enquiry was made without re-



instating the petitioner and in the light of order passed by the Appellate Authority on 11.05.2017, the Managing Director has appointed the new Enquiry Officer for conducting the fresh enquiry and directed the petitioner to appear before him. Counsel also submits that the petitioner in compliance with the order passed by the Managing Director has appeared before the second Enquiry Officer. Counsel further submits that Enquiry Officer submitted the enquiry report which is improper and without any legal basis and takes a different term at all. Counsel submits that till date, neither copy of the enquiry report nor any show cause has been provided. Counsel further submits that despite repeated representation, the petitioner's appeal was not disposed off. Instead of disposing off the appeal, the Managing Director has stated that as per the General Administration Department Letter No.1025 dated 28.03.2007, the Appellate Authority would be the Board of Directors of AJABINI and the respondent Principal Secretary of the department would be the Revisional Authority.

5. Learned counsel for the petitioner further submits that order contained in Memo No.2467 dated 05.10.2018 is bad and improper in law and letter No.1025 dated 28.03.2007 has been issued by General Administration



Department is not applicable in case of the present petitioner, as this letter has been issued in respect of different context. Counsel also submits that Principal Secretary of the Department was next senior member of the Disciplinary Authority, who definitely be the Appellate Authority and therefore, a direction may be made to the Appellate Authority to pass an order. Counsel further submits that the petitioner reached superannuation age on 31.09.2017 and if, the impugned orders shall not be set aside, then it will have immense loss of salary as well as loss of retiral benefits to the petitioner.

6. Learned counsel for the Bihar State Schedule Caste Cooperative Development Corporation on the other hand opposes the prayer of the petitioner and submits that *vide* order dated 17.03.2023, this Hon'ble Court has pleased to make observation and acknowledged the order passed by the Hon'ble Division Bench in case of ***Raj Bansh Singh Vs. The Bihar State Scheduled Caste Cooperative Development Corporation Ltd. & Ors.*** passed in ***Letters Patent Appeal No.703 of 2018*** dated ***10.11.2022***, according to which he submits that the remedy lies to the petitioner to file appeal before the appropriate authority. Counsel further submits that in the said judgment, this Hon'ble Court has pleased to hold that the Bihar State



Scheduled Caste Cooperative Development Corporation Ltd. is State as defined under Article 12 of the Constitution of India and as such, this writ petition is maintainable against the State. Counsel also submits that in the said judgment itself, it has been held that against the order passed by the Original Authority, the appeal shall be preferred before the Appellate Authority. Counsel also relied on other judgment of this Hon'ble Court in case of ***Ranjan Singh Vs. The State of Bihar through the Principal Secretary, Schedule Caste/Schedule Tribe Welfare Department, Government of Bihar, Patna & Ors.*** decided on ***29.02.2024*** passed in ***C.W.J.C. No.2086 of 2024*** in which the order passed by the Managing Director has been challenged before this Hon'ble Court and this Hon'ble Court has disposed off the writ application directing the petitioner to challenge the order of Managing Director before the Appellate Authority i.e. Board of Directors. Counsel further submits that Bihar State Schedule Caste Cooperative Development Corporation Ltd. has its own bye-laws. He put emphasis on two provisions of bye-laws of the Corporation as mentioned in clause 35(xiii) as well as in clause 42(v) and submits that the power and duties of Managing Director as well as the Board of Directors are mentioned. He submits that the Managing Director has power to



suspend, remove, dismiss, fine or otherwise punish all salaried servants of the Corporation and since the Board of Directors is the immediate superior under which the Managing Director has to function shall be the Appellate Authority and the Board of Directors has every such power as mentioned in the said clause.

7. Learned counsel for the Bihar State Schedule Caste Cooperative Development Corporation further submits that since the Managing Director is also the member of the Board of Directors, therefore, at the time of deciding the appeal, the Board shall be headed by the Chairman and not by the Managing Director and it has been mentioned in Rule 33 also that Chairman shall preside all the meetings of the Board and in his absence, Chairman shall be elected from amongst the Director present.

8. In response of the arguments made by the respondent, counsel for the petitioner submits that in the Board of Directors, the Managing Director is one of the Director, and if he shall be the member then, he has apprehension that injustice may cause to him as the original order has been passed by the Managing Director. The Managing Director being the member of the Board shall prejudice the case of the present petitioner.



9. In the light of the submissions made as well as the decision made by this Hon'ble Court in the case of ***Raj Bansh Singh Vs. The Bihar State Scheduled Caste Cooperative Development Corporation Ltd. & Ors. (supra)*** whose operative part is as follows:-

“14. In the light of aforesaid statutory provision, the appellant without exhausting remedy of appeal has approached this Court.

*Apex Court in the case of **Jammu and Kashmir Vs. R.K. Zalpuri** reported in AIR 2016 SC 3006 at para 20 held as under:*

“20. Having stated thus, it is useful to refer to a passage from City and Industrial Development Corporation V. Dosu Aardeshir Bhiwandiwalla and Others, wherein this Court while dwelling upon jurisdiction under Article 226 of the Constitution, has expressed thus:-

“The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:

- (a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;*
- (b) the petition reveals all material facts;*
- (c) the petitioner has any alternative or effective remedy for the resolution of the*



dispute;

(d) person invoking the jurisdiction is guilty of unexplained delay and laches;

(e) ex facie barred by any laws of limitation;

(f) grant of relief is against public policy or barred by any valid law; and host of other factors.”

One of the principle laid down in the aforesaid decision is that before entertaining writ petition whether petitioner has exhausted remedy of appeal or not is to be ascertained. In the present L.P.A. appellant has not exhausted remedy under Section 48 of the Registrar Cooperative Societies Act.

15. Accordingly, writ petition stands dismissed on the sole ground that the appellant has not exhausted the remedy of appeal in terms of the aforesaid provision.

16. Dismissal of writ petition and L.P.A. would not come in the way of filing appeal before the appellate authority under Section 48 of Cooperative Societies Act within a period of two months from the date of receipt of this order. Appellate authority is hereby directed to take note of Section 14 of the Limitation Act, 1963 in order to overcome the delay, if any, in filing appeal. Appellate authority is also hereby directed to make necessary endeavour to decide the



appellant's appeal within a reasonable period of time.”

As well as in the light of the decision in the case of ***Ranjan Singh Vs. The State of Bihar through the Principal Secretary, Schedule Caste/Schedule Tribe Welfare Department, Government of Bihar, Patna & Ors. (supra)*** whose operative part is as follows:-

“3. Having regard to the limited prayer made on behalf of the petitioner, I deem it fit and proper to direct the Board of Directors, Bihar State Schedule Caste Co-operative Development Corporation, Patna, to dispose off the aforesaid appeal, filed by the petitioner in the year, 2016 and referred to the Board of Directors in the year, 2019, in case the same has yet not been disposed off, by passing a reasoned and a speaking order, in accordance with law, within a period of six weeks of receipt/production of a copy of this order.

4. The writ petition stands disposed off on the aforesaid terms.”

And also in case of ***Praveen Kumar Vs. The State of Bihar through the Principal Secretary, Co-operative Department, Government of Bihar, Patna*** passed in ***C.W.J.C.***



No. 9433 of 2020 dated 07.03.2022 whose operative part is as follows:-

“3. Petitioner has statutory remedy of appeal before the Corporation against the order of Managing Director, Bihar State Scheduled Caste Co-operative Development Corporation Limited, dated 16.01.2020.

4. Without exhausting such remedy of appeal, petitioner has rushed to this Court. Therefore, petitioner is permitted to prefer appeal before the Appellate Authority – Corporation within a period of eight weeks from the date of receipt of this order. If such memorandum of appeal is filed by the petitioner, the Appellate Authority – Corporation is hereby directed to decide petitioner’s appeal in accordance with law, within a period of four months from the date of receipt of such appeal.

5. With the above observations, writ petition stands disposed off.”

10. After going through all the three judgments passed by this Hon’ble Court in which the present respondent is the party, this Court is of the firm view that the appeal shall lie to the Board of Directors against the decision of the Managing



Director, but the apprehension of the petitioner is also correct that Managing Director is automatically the member of the Board of Directors. Therefore, it is directed to the respondent authority that at the time of hearing the appeal of the petitioner, the Board of Directors shall not include the Managing Director as he is the one of the person whose order has been challenged before the Appellate Authority.

11. From the pleadings, it also transpires to this Court that presently, the appeal is pending before the Board of Directors and therefore, it is directed to the respondent to decide the appeal of the petitioner within 90 days from the date of production of the order.

12. Since the general elections of Lok Sabha, 2024 is going on, therefore, the said 90 days shall be counted from the date of end of the general elections of Lok Sabha, 2024.

13. Accordingly, with the aforesaid observations and directions, this writ petition is hereby disposed off.

(Dr. Anshuman, J)

Divyansh/-

AFR/NAFR	
CAV DATE	NA
Uploading Date	02.05.2024
Transmission Date	NA

