

16th April, 2024
(D/L No.58)
(SKB)

W.P.A. 4536 of 2022

Sadiful Islam Mondal
Versus
The State of West Bengal and others

Mr. Golam Mustafa,
Mr. T. S. Samanta,
Mr. S. Sardar
... for the petitioner.

Mr. Srijan Nayak,
Mrs. Rituparna Maitra
... for the State.

Mr. P. C. Bhattacharyya,
Mr. Chandan Kumar Lal,
Mr. Sovan Nayak
... for the respondent no.3.

1. The writ petitioner, the respondent no.3/the Barrackpur Central Zone Wholesale Consumers' Co-operative Society Ltd. and the respondent nos.2, 4 and 5/the Registrar of Co-operative Societies, West Bengal and its officials are represented by their respective learned advocates.
2. By filing the instant writ petition under Article 226 of the Constitution of India, the writ petitioner has prayed for issuance of writ of mandamus upon the respondent no.3 for not giving any effect over the reasoned order dated 23.2.2022 as passed by the A.R.C.S. and C.E.O. of the respondent no.3 with a further prayer for cancellation and/or quashing of the said order dated 23.2.2022.

3. It is the case of the writ petitioner that initially the writ petitioner was appointed on 27.1.1998 with effect from 1.1.1998 as an employee under the respondent no.3 and at that material time, his pay was fixed to the tune of Rs.2,200/- out of which Rs.200/- was deducted since a room was provided to him for his accommodation. It is the further case of the writ petitioner that in a meeting dated 31.1.1998, the salary of the writ petitioner was enhanced to the tune of Rs.2550/- which continued till 2005.
4. The writ petitioner was thereafter on some flimsy grounds removed from service and challenging the same, the writ petitioner had approached this court by filing a writ petition being W.P. No.13028(W) of 2005 wherein a co-ordinate Bench of this court by its order dated 5.12.2005 set aside such order of dismissal and, as a result whereof, the petitioner was reinstated.
5. It is the further case of the petitioner that despite such reinstatement, the petitioner's salary, pay and allowances were not fixed for which he again approached the Hon'ble court by filing another writ petition being W.P.A.10566 of 2021.
6. It is the further case of the writ petitioner that the second writ petition was disposed of by an order dated 9.11.2021 directing the respondent no.3 to

consider the prayer of the writ petitioner and to pass a reasoned order.

7. It is the case of the petitioner that though a reasoned order has been passed in compliance with the order dated 9.11.2021 but such order is not sustainable in the eye of law and the same has been passed without granting any relief to the writ petitioner.
8. Mr. Mustafa, learned advocate for the writ petitioner in course of his submission draws attention to this court to the copy of the reasoned order dated 23.2.2022.
9. It is argued by Mr. Mustafa that from the said reasoned order, which has been assailed before this court, it would reveal that the competent authority of the respondent no.3 has miserably failed to assign any reason as to what prevented the respondent no.3 from fixing the salary, more specifically, pay scale and other benefits though he has been treated as a regular employee.
10. Mr. Mustafa thus submits that it is a fit case for quashing of the said order dated 23.2.2022 as passed by the competent authority of the respondent no.3 with a further direction to the respondent no.3 to release all his arrears to which the writ petitioner is entitled.

11. While opposing the prayer of the writ petitioner, Mr. Nayak, learned advocate representing the respondent nos.2, 4 and 5, at the very outset, submits before this court that the present lis is not amenable to the writ jurisdiction inasmuch as the dispute which has been canvassed before this court is a dispute between a co-operative society and its employee and under Rule 106(10)(a) of the West Bengal Co-operative Societies Rules, 2011 (hereinafter referred to as the 'said Rule' in short), neither the State nor the Registrar of Co-operative Societies has got any role either to determine or for creation of a post of different levels of management of a co-operative society and the co-operative society itself is the appropriate authority to frame scale of pay, dearness allowance and other allowances in respect of each categories of employees of the society over which neither the State nor the Registrar of Co-operative societies has got any control.

12. In course of his submission, Mr. Nayak further submits that since the functioning of a co-operative society is guided by its own rules and regulations and bye-laws and since the said co-operative societies are being created by a group of private individuals, by no stretch of imagination, it can be

said that the respondent no.3 is a 'State' within the meaning of Article 12 of the Constitution of India.

13. It is, thus, argued by Mr. Nayak that in view of his submissions as noted supra, an appropriate order may be passed holding that the instant writ petition is not maintainable.

14. Per contra, Mr. Bhattacharyya, learned advocate appearing for the respondent no.3 in course of his submission draws attention to this court to the affidavit-in-opposition as filed by his client. Drawing attention to page numbers 30, 51, 63 and 64, it is argued that undoubtedly the present writ petitioner has been treated as a regular employee with effect from 01.01.1998 and in a meeting of Board of Directors of respondent no.3 as held on 20.02.2010 wherein the present writ petition was present, the pay scale of the writ petitioner was fixed with effect from 01.01.1998 with periodical increment which has to be taken effect from year to year along with other allowances and those have been disbursed to the writ petitioner which would be evident from page 51 of the affidavit-in-opposition being the copy of the salary bill of the respondent no.3.

15. It is, thus, argued by Mr. Bhattacharyya since nothing remains due to the present writ petitioner and since the pay scale and the periodical

increments have been fixed and since other service benefits have already been awarded, there is no reason on the part of this court to interfere with the order which has been challenged in the instant writ petition.

16. In considered view of this court, since the point of maintainability of the instant writ petition has been raised on behalf of the State as well as on behalf of the Registrar of the Co-operative Societies and since it has been extensively argued by Mr. Nayak that the *lis* as involved in the instant writ petition is not amenable to the writ jurisdiction of this court, this court in this judgment shall make an endeavour to answer the issue as raised by Mr. Nayak.

17. At this stage, this court proposes to look to the preamble of the West Bengal Co-operative Societies Act, 2006 (hereinafter referred to the 'said Act' in short) wherefrom the object and scope of the enactment of the said Act has been clearly expressed by the legislatures and the same has been quoted hereinbelow in verbatim:

“An Act to consolidate and amend the law relating to Co-operative societies in West Bengal.

WHEREAS in order to infuse a new life into the Co-operative movement of West Bengal on the face of the new challenge of globalization and liberalization of Indian Economy, it is necessary and expedient to make provisions to give healthy impetus and a sense of purpose for the Co-operative movement in West Bengal, to facilitate the voluntary formation and democratic functioning of the Co-operative

societies in the State, to ensure members' involvement in making decisions, to make the Co-operative societies self-reliant and vibrant by changing the vision and mission of the institutions as required to face a new competitive economic scenario to promote thrift, self-help and mutual aid amongst the people with needs and interest in common, to provide for transparent, devoted and efficient management and services relevant to the needs of the Co-operatives, to diversify their activities, to put them on sound financial footing and to increase production in all sectors of life including agriculture and industry and above all to bring about economic and social regeneration including better and happier conditions of living for the weaker and poorer section of the community including womenfolk and to bring them within the fold of Co-operative movement and for that purpose to consolidate and amend the law relating to the Co-operative societies in West Bengal."

18. Keeping in mind the aforesaid object of the said Act, if I look to the different chapters of the said Act, it appears to this court that Chapter II of the said Act deals with the registration of the West Bengal Co-operative Societies, Chapter III deals with the change of liabilities, transfer of assets and divisions and amalgamation of co-operative societies, Chapter IV deals with the status and management of the Co-operative Society and Chapter V deals with the duties and obligations of the Co-operative Societies.
19. On perusal of the contents of the said Act, it thus appears to this court that by the enactment of the said Act, the legislatures on their own wisdom had made relevant provisions for registration of the co-operative societies. Provisions have been made for appointment of Registrar and Director of Co-

operative Societies and other persons to assist them. Provisions have also been made conferring powers upon the Registrar to pass an appropriate order for division, reorganization or amalgamation of the Co-operative Societies. The said Act also provides for guidelines as to how the general body of a co-operative society is to be formed and as to when annual general meeting, half yearly meeting, general meeting and special general meeting of a co-operative society are to be conducted.

20. On cursory reading of the different sections of the said Act, it thus appears that though a co-operative society is being created by some private individuals but their activities while forming the society and while functioning the society are to be regulated by the said Act and further such society is under Administrative Control of respondent no.2.
21. At this juncture, this court proposes to look to a reported decision in ***Pradeep Kumar Biswas Vs. Indian Institute of Chemical Biology and others*** reported in ***(2002)5 SCC 111*** which is a Constitution Bench decision of the Hon'ble Apex Court. In the reported decision of ***Pradeep Kumar Biswas*** (supra), the Apex Court has occasion to revisit the meaning of Article 12 of the Constitution of India and

while doing so, Hon'ble Apex Court expressed the following views:

"29. The conclusion was then reached applying the tests formulated to the facts that the Society in *Ajay Hasia* [*Ajay Hasia v. Khalid Mujib Sehravardi*, (1981) 1 SCC 722 : 1981 SCC (L&S) 258] was an authority falling within the definition of "State" in Article 12.

31. The tests to determine whether a body falls within the definition of "State" in Article 12 laid down in *Ramana* [(1979) 3 SCC 489 : AIR 1979 SC 1628] with the Constitution Bench imprimatur in *Ajay Hasia* [*Ajay Hasia v. Khalid Mujib Sehravardi*, (1981) 1 SCC 722 : 1981 SCC (L&S) 258] form the keystone of the subsequent jurisprudential superstructure judicially crafted on the subject which is apparent from a chronological consideration of the authorities cited.

33. *B.S. Minhas v. Indian Statistical Institute* [(1983) 4 SCC 582 : 1984 SCC (L&S) 26 : (1984) 1 SCR 395] held that the Indian Statistical Institute, a registered society is an instrumentality of the Central Government and as such is an "authority" within the meaning of Article 12 of the Constitution. The basis was that the composition of Respondent 1 is dominated by the representatives appointed by the Central Government. The money required for running the Institute is provided entirely by the Central Government and even if any other moneys are to be received by the Institute, it can be done only with the approval of the Central Government, and the accounts of the Institute have also to be submitted to the Central Government for its scrutiny and satisfaction. The Society has to comply with all such directions as may be issued by the Central Government. It was held that the control of the Central Government is deep and pervasive.

40. The picture that ultimately emerges is that the tests formulated in *Ajay Hasia* [*Ajay Hasia v. Khalid Mujib Sehravardi*, (1981) 1 SCC 722 : 1981 SCC (L&S) 258] are not a rigid set of principles so that if a body falls within any one of them it must, ex hypothesi, be considered to be a State within the meaning of Article 12. The question in each case would be — whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the Government. Such control must be particular to the body in question and must be pervasive. If this is found then the body is a State within Article 12. On the other hand, when the control is merely regulatory whether under statute or otherwise, it would not serve to make the body a State."

22. In view of the proposition of the law as decided in the reported decision of **Pradeep Kumar Biswas** (supra) and in view of discussion made hereinabove, it appears to this court that the function of the respondent no.3 is regulated by the respondent no.2 by virtue of the said Act and therefore the respondent no.1/State through its co-operation department also possesses administrative control over the function of the respondent no.3/Co-operative Society by invoking the different provisions of the said Act as and when necessary. Admittedly, as per Rule 106(10)(a), the fixation of pay etc. of the employees of a society does not come under the domain of the State respondents but in considered view of this court, for the aforesaid reason only, the State respondents cannot contend that the respondent no.3 does not come under the purview of the Article 12 of the Constitution of India.

23. This court is, thus, in respectful disagreement with the submission of Mr. Nayak that the instant writ petition is not maintainable and this court, thus, holds that the instant writ petition is very much maintainable in view of the findings of this court that the respondent no.3 comes under the purview of the Article 12 of the Constitution of India.

24. Coming to the factual aspects of this case, it appears to this court that it is the contention of the writ petitioner that despite direction passed by a co-ordinate Bench of this court while disposing the writ petition being WPA 10566 of 2021, the respondent no.3 did nothing in fixation of pay and other allowances, though the writ petitioner has been treated as a regular employee.
25. As discussed above, in course of his submission, Mr. Bhattacharyya has placed documents on affidavit to substantiate that in a meeting of Board of Directors of the respondent no.3 dated 20.02.2010 wherein the writ petitioner was present, a resolution was passed with regard to the fixation of the pay of the writ petitioner with effect from 01.01.1998 i.e. from the day of his regularization of his service and further in the said resolution, provision has been made for periodical increment and disbursement of other allowances like D.A., H.R.A., M.A. etc. in view of the provisions of Rule 106(10)(a) of the said Rules as shown by Mr. Nayak in course of his argument.
26. Mr. Bhattacharyya has also placed documents on affidavit that immediately after the said resolution, salary bill was prepared which shows that Rs.2,57,000/- towards pay and other allowances have been disbursed in favour of the writ petitioner.

27. In view of the discussions made hereinabove, this court thus finds that really a reasoned order has been passed by the appropriate authority of the respondent no.3 in compliance with the direction passed by this court in WPA 10566 of 2021 and the respondent no.3 has taken appropriate steps for fixation of scale of pay, periodical increment and entitlement of the other dues of the instant writ petitioner.

28. In view of the discussions made hereinabove, this court, thus, finds that in view of the disbursement of the salary and other allowances including the periodical increment, the writ petitioner must not have any grievance against the respondent no.3. As a result, this court, thus, finds that the instant writ petition is devoid of any merit and is thus dismissed.

29. There will be, however, no order as to costs.

30. Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertakings after compliance of all necessary formalities.

(Partha Sarathi Sen, J.)