

24.04.2024
Court No. 15
Item No. 03
(**Suwendu**)

W.P.A. 14052 of 2009

Pradip Kumar Sinha
-Versus-

Coochbehar Wholesale Consumers' Co-operative
Society Ltd. & Ors.

Mr. Debabrata Dhar
Mr. Prodyot Kumar Ray
Ms. Paramita Sahu

...for the petitioner

Mr. D.K. Sengupta
Mr. Arnab Ray
Ms. Sweta Saha
Ms. Farlin Mustaque

.....for respondent nos. 1 & 4

Mr. Ankit Sureka
Mr. Biplab Das

.....for the respondent nos. 2 & 3

The writ petition was filed by throwing challenge to the order of dismissal dated 22nd May, 2009 passed by the Chief Executive Officer of Coochbehar Wholesale Consumers' Co-operative Society Limited (hereafter referred to as "said society").

The matter is heard in presence of the learned advocates representing the petitioner, said Society and the Registrar of Co-operative Societies.

The learned advocate representing the petitioner has entered appearance through virtual mode.

The affidavit-in-reply filed on behalf of the petitioner is taken on record.

While considering the dismissal order passed by the Chief Executive Officer of the said Society dated 22nd May, 2009, which is subject matter of challenge in the present writ petition, it has been pointed out on behalf of the said Society that this order is an appealable order. In support of such contention, reliance has been placed on Rule 106 (15)(2) of the West Bengal Co-operative Societies Rules, 2011 and Section 36(4)(b) of the West Bengal Co-operative Societies Act, 2006. It is also contended on behalf of the said Society that at present board is not functioning and a Special Officer is in the helm of the administration of the said Society. Therefore, in the present case while preferring an appeal Section 36(4)(b) of the West Bengal Co-operative Societies Act, 2006 needs to be adhered to.

The learned advocate representing the petitioner submits that the disciplinary proceeding has not been properly initiated before passing the impugned order of dismissal dated 22nd May, 2009. It is also submitted that board

is not functioning in the said Society. Therefore, there may be a difficulty in preferring an appeal against the order dated 22nd May, 2009.

While considering the submissions made by the respective parties and taking note of the aforesaid relevant statutory provisions, it appears when the board is functioning then appeal needs to be preferred under Rule 106(15)(2) of the West Bengal Co-operative Societies Rules, 2011 before the Chairman of the board since the dismissal order has been passed by the Chief Executive Officer. However, in the present case in absence of board, as submitted on behalf of the said Society, a Special Officer is functioning, therefore, Section 36(4)(b) of the West Bengal Co-operative Societies Act, 2006 comes into play and the appeal needs to be preferred before the Special Officer since it has specifically been provided under Section 36(4)(b) of the West Bengal Co-operative Societies Act, 2006 that the Special Officer shall exercise all the powers and perform all the duties which may, under this Act or the rules or the by-laws, be exercised or performed by the board or any officer of the Co-operative Society.

In view of the aforesaid statutory provisions of appeal against the impugned order of dismissal dated 22nd May, 2009, the present

writ petition stands disposed of thereby granting leave to the petitioner to prefer appeal before the Special Officer/ Chairman of the board within a period of fortnight from date. If the appeal is preferred within the aforesaid time, the appellate authority shall decide the said appeal within a period of three months thereafter without taking the point of delay in preferring the appeal since the petitioner preferred the writ petition challenging the order of dismissal dated 22nd May, 2009 contemporaneously.

There shall be, however, no order as to costs.

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

(Saugata Bhattacharyya, J.)