

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:
The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Smita Das De

M.A.T. 195 of 2025
With
CAN 1 of 2025

Sri Subodh Kumar Mondal @
Sri Subodhkumar Mondal
Vs.
The State of West Bengal & Ors.

For the Appellant	: Mr. Pranit Bag Mr. Soumyadeep Biswas
For the State	: Mr. Srijan Nayak Mr. Rituparna Maitra
For the Respondent No. 2, 3 & 4	: Mr. Ankit Surekha Mr. Biplob Das Mr. Partha Sarathi Pal
For the Respondent No. 7, 8 & 9	: Md. Baharuzzaman
Hearing concluded on	: 11.03.2025
Judgment on	: 28.03.2025

SMITA DAS DE, J.:-

1. The instant appeal is preferred by the appellant in WPA No. 18169 against an Order dated January 17, 2025 whereby the Learned Single Judge was pleased to dismiss the writ petition of the appellant.

2. The fact emerges which is not in dispute, that the appellant retired as the manager of the said society on April 30, 2022 upon reaching the age of 60. The Board of the society by a resolution extended the service of the appellant for an additional period of 5 years. During the period of extension the society issued a show cause notice dated June 6, 2024 alleging inter alia, certain misconduct on the part of the appellant. The said notice was duly responded by the appellant on June 30, 2024 and upon consideration of the said reply, the respondent via email on July 11, 2024 communicated the impugned order of dismissal accordingly.

3. Against the aforesaid backdrop, the appellant filed a writ petition being No. 18169 of 2024 praying inter alia, for quashing and/or setting aside the notice being annexure “P9” and termination being annexure “P11” as per law.

4. The question arises in the writ petition is whether the service by the appellant could be extended beyond the age of superannuation age of 60 years and whether the Circular dated January 3, 2020 can come in the aid of the appellant for extension of the appellant’s service.

5. Further question arose whether the Credit Co-operative Society is amenable to writ jurisdiction and is a State within the meaning of Article 12 and whether there has been compliance of principles of natural justice by the concerned Society.

6. Learned Advocate appearing for the appellant submitted that the Learned Single Judge erred in dismissing the Writ Application. He submitted that it is an undisputed fact that the appellant retired as the Manager of the Kishorepur Samabay Krisi Unnayan Society

(hereinafter referred to as the Society) on April 30, 2022 upon reaching the age of 60. However, the Board of the Society passed resolutions regarding the extension of the appellant's service, and consequently, the appellant's service was extended for an additional period of five years.

7. Learned Advocate of the appellant submitted that during the extension period a Show Cause Notice was issued by the society on June 26, 2024, alleging certain misconduct on the part of the appellant, which was duly replied by the appellant. He thereafter, relied on a Circular dated January 3, 2020 and submitted that the said Circular supports the contention of the appellant regarding extension of the appellant's service.

8. Learned Advocate for the appellant submitted that the said dismissal order was bad on the ground that in the instant case no charge sheet was filed, no enquiry was conducted and the appellant was not provided an opportunity for a hearing before being dismissed from service.

9. Learned Advocate for the appellant submitted that the said Credit Co-operative Society is amenable to writ jurisdiction and is a State within the meaning of Article 12 of the Constitution of India and accordingly cited decision reported in **(2014) 9 SCC 294 (Akalakunnam Village Service Cooperative Bank Limited and Another vs. Binu N. and Others)**, **1990 SCC Online Cal 220 (Arjed Ali Gazi vs. State of West Bengal)**, **(2004) 7 SCC 112 (Umarani vs. Registrar, Cooperative Societies and Others)** and **2008 SCC Online Cal 787 (Bhabani Adhikari vs. West Bengal State Co-operative Bank Limited & Ors)** in support of his contentions.

10. Relying upon **(2006) 11 SCC 634 (S.S. Rana vs. Registrar, Coop. Societies and Another)** learned Advocate for the respondents submitted that the writ petition was not maintainable as the concerned Co-operative Society was not an authority within the meaning of Article 12 of the Constitution of India.

11. Learned Advocate for the respondents submitted that the appellant service could not be extended beyond the superannuation age of 60 years. He submitted that since the appellant's service extension was illegal, hence, the question of illegal dismissal does not arise.

12. Learned Advocate for the respondents submitted that the Circular dated January 3, 2020, stipulates two conditions for the extension of service i.e., (a) the resolution to extend the service must be approved by members of the cooperative society and (b) it must be included in the society's bye-laws, in accordance with Section 19 of the West Bengal Co-operative Societies Act, 2006. He also submitted that it is evident that the resolution to extend the service was adopted by the Board of the Society and not by its members and the application to amend the bye-laws was submitted to the Registrar, such amendment is yet to be approved.

13. Issue of maintainability of the writ petition requires consideration. It is admitted that, the concerned Co-operative Society falls within the parameters of Chapter XIII A of the West Bengal Co-operative Societies Act, 2006. By virtue of the concerned Co-operative Society coming within the purview of Chapter XIII A of the Act of 2006, the regulations governing the service of an employee of a co-

operative society was not applied to a co-operative society coming within the purview of such chapter.

14. The decisions of the Calcutta High Court, cited on behalf of the appellant, in support of the contention that, the service conditions of the appellant are governed by statutory provisions and therefore, a writ is maintainable, cannot be accepted in view of the fact that the concerned society comes within the ambit of Chapter XIII A of the Act of 2006. Moreover, the appellant before us is an employee who superannuated from service. The rules of service governing an employee of a co-operative society, assuming that, they are applicable to an employee of the concerned co-operative society, then also, such statutory rules, do not govern an employee who superannuated from the service of the Co-operative Society.

15. Contract of employment of the appellant with the concerned Co-operative Society subsequent to his superannuation is not imbued with any public law element, and therefore, the writ petition cannot be held to be maintainable.

16. We find that the Learned Single Judge held that society in question is not governed by the Rule 106 of the West Bengal Co-operative Society Rule, 2011 as it is a Credit Co-operative Society. Therefore, the appellant's service conditions are in the realm of contract. Ample opportunity was afforded to the appellant to reply the show cause notice and after due considering his response, the society decided to dismiss the appellant from his service. Hence the principles of natural justice has been followed and the judgment reported in **2018 (12) SCC 807 (State Bank of India Vs. Ranjit Kumar Chakraborty)** does not given any assistance to the appellant in the facts and circumstances of the case as in that case it was held that

appointing authority could only have dismissed after adhering the principles of natural justice which is done in the instant case.

17. In view of the aforesaid facts we are in the opinion that appellant's service could not have been extended beyond the age of superannuation through a resolution adopted by the Board of the society without the necessary amendment to the society's bye-laws. Further we hold that the dismissal order issued to the appellant should not be considered as illegal, when the appellant was no longer holding the position of manager in accordance with the law.

18. We are also in agreement with the submissions made by the Learned Advocate for the respondents that the Circular dated January 3, 2020 stipulates two conditions for extension of service, firstly, resolution to extend service must be approved by the members of the co-operative society and secondly it must be included in the society's bye-laws in accordance with Section 19 of the West Bengal Co-operative Societies Act, 2006. Further the said resolution to extend the appellant's service was adopted by the Board of the Society and not by the Members of the Society and further the application to amend the bye-laws was submitted to the Registrar of the Co-operative Society, such amendment has yet to be approved.

19. We find that this decision cited on behalf of the appellant does not support the case of the appellant.

20. With regard to the judgment reported in **1990 SCC Online Cal 220 (Arjed Ali Gazi Vs. State of West Bengal)** has ultimately held that co-operative society in West Bengal is not a State

within the meaning of Article 12 of the Constitution of India and is also not a public undertaking. It is essentially a private body formed at the initiation of private individuals hence, if the condition of the service of an employee of the co-operative society are not left to be controlled by the said statutory rules but are controlled by the terms of the contract or bye-laws of the society which is not a statutory rule, then no writ will lie for enforcing any breach of the terms of employment of the employee of the co-operative society.

21. The decision reported in **2004(7) SCC 112 (A. Umarani vs. Registrar, Cooperative Societies and Others)** where it has been held that although it does not wish to express any opinion as to whether the co-operative society is a State within the meaning of Article 12 of the Constitution of India but it is beyond any cavil of doubt that the writ petition will be maintainable when the action of the co-operative society is violative of mandatory statutory provisions. In the case reported in **2008 SCC Online Cal 787 (Bhabani Adhikar vs. West Bengal State Co-operative Bank Limited & Ors.)** it has held that breach of statutory service conditions of service can be made the basis of a writ petition against a co-operative society which is not a “State” or “Other authority” within the meaning of Article 12 of the Constitution of India.

22. With regard to the decision reported in **2014 (9) SCC 294 (Akalakunnam Village Service cooperative Bank Limited and Another vs. Binu N. and Others)** the said decision does not say or discusses anything about whether the co-operative society is a State within the meaning of Article 12 of the Constitution of India.

23. Hence the decision cited on behalf of the appellant does not give any assistance to the appellant in support of their case.

24. The decision cited on behalf of the respondent reported in **2006 (11) SCC 634 (S.S. Rana vs. Registrar, Cooperative Societies and Another)** says whether the respondent is 'State' within the meaning of Article 12 of the Constitution of India, the appellant is to show that the State has deep and pervasive control over the society but the appellant does not satisfy the test laid down in **2002 (5) SCC 111 (Pradeep Kumar Biswas v. Indian Institute of Chemical Biology)** hence, the respondent society cannot be earmarked as 'State' within the meaning of Article 12 of the Constitution of India.

25. In such circumstances mentioned hereinabove, we find no ground to interfere with the impugned judgment and order of the Learned Single Judge.

26. **MAT 195 of 2025** along with connected applications being **CAN 1 of 2025** are dismissed with no order as to costs.

(Smita Das De, J.)

27. I agree.

(Debangsu Basak, J.)