

(2012) 01 CAL CK 0039

Calcutta High Court

Case No: Writ Petition No. 1354 (W) of 2011

Chandra Kanta Das

APPELLANT

Vs

The State of West
Bengal and Others

RESPONDENT

Date of Decision: Jan. 30, 2012

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2012) 3 CALLT 747

Hon'ble Judges: Biswanath Somadder, J

Bench: Single Bench

Advocate: Indranath Mitra, for the Appellant; P.C. Bhattacharjee and Mr. Manas Das for the Respondent Nos. 4-8, for the Respondent

Final Decision: Dismissed

Judgement

Biswanath Somadder, J.

Affidavits filed in Court today be kept on record. The writ petitioner has approached this Court essentially challenging his order of dismissal as well as the findings of the Enquiry Officer which led to his dismissal from service. The writ petitioner has also sought for issuance of a writ in the nature of mandamus commanding the respondent authorities to withdraw and/or cancel and/ or rescind the charge-sheet as well as the order of suspension issued against him.

2. From the facts of the instant case, it appears that the writ petitioner was posted as Assistant Grade - III (Deposit) in Durgapur Steel People's Co-operative Bank Ltd. Disciplinary proceedings as well as criminal proceedings were initiated against him on account of alleged withdrawal of Rs. 3,90,000/- from the account of one Sunil Kumar Dhibar, who had a Savings Bank Account in the concerned Co-operative Bank. The writ petitioner was initially placed on suspension on 21st October, 2009 and thereafter disciplinary proceeding commenced which culminated in his

dismissal from service by an order of dismissal dated 28th December, 2010, issued by the Chief Executive of the Bank.

3. At the outset, a point of maintainability was raised by the learned Advocate representing the Bank. He submitted that the writ petitioner had a statutory right of appeal against the order of dismissal and ought to have exhausted his statutory appellate remedy first, before approaching the writ court. In this context, the learned advocate drew this Court's attention to the proviso of sub-Rule 3 of Rule 69 of the West Bengal Co-operative Societies Rules, 1987. He submitted that although the petitioner has relied on the "Service Rules" of the concerned Bank to contend that no right of appeal is provided in the said Rules, the proviso under sub-Rule 3 of Rule 69 of the West Bengal Co-operative Societies Rules, 1987, casts a mandate upon the Board of the concerned Cooperative Society to follow the conditions laid down in appendix to Chapter VI of the West Bengal Co-operative Societies Rules, 1987, and only then formulate other conditions of service, preferably through a bipartite agreement. He, thus, submitted that the conditions laid down in appendix to Chapter VI would be applicable in the facts of the instant case. He, thereafter, referred to clause 15 of the appendix to Chapter VI which provides for disciplinary and appellate authorities and submitted that an employee aggrieved by an order passed by a disciplinary authority has a right to appeal against such order. In particular, he referred to sub-clause 2 of clause 15, which reads as follows:-

An employee aggrieved by an order of the disciplinary authority shall have a right to appeal against such order. An appeal shall lie (1) against any order passed by the Chief Executive Officer, to the Chairman of the board, (2) against the order passed by the Chairman or the vice-Chairman of the Board, to the Board, (3) against the order of the Board, to the general body of the society. Even appeal shall comply with the following conditions:

It shall contain all material statements and arguments relied on and shall be complete in itself. It shall specify the relief desired. It shall be submitted through proper channel. The appellant authority shall decide the appeal within two months from the date of submission of the application except where the general body is the authority.

4. The learned advocate for the petitioner, in reply to the point of maintainability as raised by the learned advocate representing the Bank, submitted that the disciplinary authority proceeded to take disciplinary action against his client following the Service Rules of Durgapur Steel People's Co-operative Bank Ltd. and did not follow the West Bengal Co-operative Societies Rules, 1987 and the Bank's Service Rules do not provide any right of appeal. As such, a writ petition was maintainable in the facts of the instant case.

5. After considering the submissions made by the learned advocates for the parties, it appears that sub-Rule 3 of Rules 69 of the West Bengal Co-operative Societies

Rules 1987, provides that conditions of service of employees of Co-operative Societies shall as laid down in appendix to Chapter VI of the said Rules. The proviso attached to sub-Rule 3 makes it clear that in addition to the conditions of service laid down in appendix to Chapter VI, the Board of the concerned Co-operative Society may formulate other conditions of service, preferably through a bipartite agreement. The statutory Rule, thus, make it clear that the conditions of service of employees of Co-operative Societies have been laid down under appendix to Chapter VI, which provides right of appeal to an employee aggrieved by an order passed by a disciplinary authority. The submission made by the learned Advocate for the petitioner that the disciplinary authority has proceeded on the basis of the Service Rules of Durgapur Steel People's Co-operative Bank Ltd. is inconsequential in view of the clear statutory right of appeal provided to an employee in sub-clause 2 of clause 15 under appendix to Chapter VI of the West Bengal Co-operative Societies Rules. 1987.

6. The conditions of service of employees of Co-operative Societies have to be in accordance with appendix to Chapter VI. The Board of a Co-operative Society may, in addition thereto, formulate other conditions of service, preferably through a bipartite agreement. Thus, even if the Service Rules of Durgapur Steel People's Co-operative Bank Ltd. do not specifically provide for a right of appeal, the same cannot, in any manner, take away the statutory right of appeal given to an employee of a Co-operative Society against an order passed by the disciplinary authority.

7. The writ petitioner clearly did not avail his statutory remedy and instead rushed to the Writ Court. Although alternative remedy is not an absolute bar for entertaining an application under Article 226 of the Constitution of India, in the facts of the instant case there is no plausible or justifiable reason as to why the extraordinary jurisdiction of the writ Court should be allowed to be invoked by a dismissed employee of a Co-operative Bank who could have easily availed his statutory appellate remedy, which still remains open for him. For reasons stated above the writ petition is liable to be dismissed and is accordingly dismissed.

Urgent photostat certified copy of this order, if applied for, be given to the learned Advocates for the parties.