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Court : Patna

Decided On : Apr-11-2002

Judge : Aftab Alam, J.

Appeal No. : C.W.J.C. No. 1859 of 2002

Appellant : Priya Ranjan Sinha and ors.

Respondent : State of Bihar and ors.

Disposition : Petition Dismissed

Prior history : Aftab Alam, J. 1. There are four petitioners before this Court. They seek to challenge an office order issued by the Deputy General Manager (Personnel and Administration) of the Bihar State Co-operative Bank Limited (hereinafter referred to as 'the Bank') under his Memo No. 6095, dated 24.1.2002 (Annexure-11). By the impugned order the deputation of six persons with the bank including the four petitioners, was terminated and they were relieved from the bank for-going back to their respective p

Judgement :

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1. There are four petitioners before this Court. They seek to challenge an office order issued by the Deputy General Manager (Personnel and Administration) of

the Bihar State Co-operative Bank Limited (hereinafter referred to as 'the Bank') under his Memo No. 6095, dated 24.1.2002 (Annexure-11). By the impugned order the deputation of six persons with the bank including the four petitioners, was terminated and they were relieved from the bank for-going back to their respective positions in the Bihar State Co-operative Marketing Union Limited (hereinafter to be referred as 'the Biscomaun').

2. Now, it is well known that the Biscomaun is moribund, its employees, whatever there are left, who are posted in its field offices have not been paid any salary for the past several years. It is doubtful whether it would even be possible to observe the formality of the petitioners' joining at the Biscomaun. If the petitioners are able to join there, it is certainty that they shali not be paid any salary in the months to come. Thus, the impugned order of the bank for all intent and purposes renders the petitioners unemployed. It is this aspect of the matter which makes the petitioners quite desperate and upon which Dr. S.N. Jha, learned Senior Counsel appearing on their behalf laid great stress.

3. Dr. S.N. Jha submitted that the deputation of the petitioners at the bank was not a deputation in the ordinary sense of the term. It was in reality a case of their rehabilitation after it was clear that there was no hope to salvage the Biscomaun and that its employees may be adjusted elsewhere. Dr. Jha strenuously argued that the petitioners' deputation at the bank must be viewed in the light of the relevant facts and circumstances in which the petitioners were accepted at the bank and the impugned order by which their deputation was being terminated must also be judged in that perspective. The petitioners must not be thrown out by simply telling them that as deputationist they had no legal right and they must, therefore, pack-up and leave the bank once the bank had decided to end their deputation.

4. Dr. Jha is correct to an extent. It is undeniable that the case of the petitioners was not a case of deputation in the ordinary sense. Had it been a case of ordinary deputation, this Court would not have concerned itself much with the reasons for the bank's decision to terminate the petitioners' deputation. But it was only because the petitioners had gone to the bank not in the ordinary sense of

deputation that this Court asked the bank to disclose its reasons for terminating the petitioners' deputation. It is in the aforesaid background that the Court proposes to examine and scrutinize the reasons assigned by the bank for terminating the petitioners' deputation.

5. But before proceeding further it would be necessary to take note of the basic facts of the case.

6. The Biscomaun and a number of other Societies, Boards and Corporations in this State have been on a down-slide for a long time. When it was realised that there was little likelihood of the redemption of these bodies, a proposal was mooted in the Government to have the employees of these non-functioning Societies, Boards and Corporation adjusted and rehabilitated, on deputation, in Government departments and other Co-operative Societies, Boards or Corporations which were still functioning normally. There are materials to indicate that the idea received approval at various levels in the Government. But it is also evident that no serious effort was made to implement the proposal in any organised or planned manner. However, on the basis of the Government decisions in this regard individual employees of the sick organizations sought to find places for themselves mostly on individual initiatives. It appears that a number of employees of the Biscomaun, including the petitioners, made applications before the bank for coming there on deputation. The bank asked the Biscomaun to furnish full bio-data of its employees who had applied for coming on deputation to the bank. After the necessary details were furnished by the Biscomaun, the bank took their interview and selected some of them, including the petitioners, for taking on deputation. The deputation orders of the petitioners are at Annexure-5 series by which they were taken on deputation on purely temporary basis. Following the issuance of the orders by the bank, the petitioners were relieved by the Biscomaun and their relieving orders are at Annexure-6 series. The petitioners, thus, started to work in the bank on deputation, the period of which was extended from time to time.

7. In the counter-affidavit filed on behalf of the bank, it is clarified that as the number of applicants was far more than the available vacancies, the bank had

asked for their bio-data from the Biscomaun and had selected them on the basis of an interview, in order to avoid any malpractices in taking persons on deputation.

8. In the bank's counter-affidavit, it is further revealed that its own financial position is far from satisfactory. At one time the bank used to make profits and it made profits till 1996-97 but it began to incur losses from 1997-98 and at present its accumulated losses stand at Rs. 9498.79 lacs. It may here be pointed out that according to the bank's balance sheet as on 31.3.2001, published in the Hindustan Times, Patna of September 24, 2001 (copy at Annexure 1) the bank was shown to have made a modest profit in the year, 2000-2001. And this fact was greatly stressed on behalf of the petitioners. But it is undeniable that the bank's accumulated losses now reach a staggering figure.

9. It is further stated in the counter-affidavit that NABARD was the financing agency of the bank and kept a strict vigil on the bank's performance and functioning; that the NABARD in its recent inspection note of January, 2002 had criticised the bank for taking 22 staff of Biscumaun on deputation instead of filling up its vacant posts through the normal recruitment process. The communications, notes and comments from NABARD are made annexures to the counter-affidavit; in the notes of inspection held from September, 29 to October 22, 2001 it was stated in para I (iv), as follows:

The bank may re-assess its manpower requirement both at Head Office departments and at the branches to ensure optimum per employee productivity by judicious deployment of available staff/officers. Computerization of the Head Office and 5 branches may also be taken into account at the time of assessment of manpower requirement.

10. As regards the accumulated losses, it was stated in Para V as follows:

Accumulated loss of the bank stood at Rs. 9498.79 lakh as on 31.3.2001. The bank may make efforts to attain sustainable viability at the earliest.

11. Further, in its letter, dated 18.1.2002 NABARD made adverse comments on the failure of the bank to comply with the provisions of Section 11(1) of the Banking

Regulations Act, 1949 and in the enclosure to that letter, it was stated, in paras IV and VII, as follows:

IV. Manpower planning was not done.

VII. Instead of initiating recruitment process, the bank had taken 22 staff of BISCOMAUN on deputation who did not have any experience in banking.

12. According to the bank, it was in the light of the aforesaid criticism and adverse comments by NABARD that it was constrained to terminate the deputation of the petitioners and all others from Biscomaun or from any other agencies.

13. In the counter-affidavit, it is emphasised that for its finances, the bank was dependent upon NABARD and it was not in a position not to follow or flout the instructions and directions given by NABARD in matters of functioning of the bank.

14. To my mind, the reasons assigned by the bank for terminating the petitioners' deputation are quite reasonable. It is not a case where the deputation of the petitioners was being terminated without any reason or for reasons which may be held to be whimsical, arbitrary or discriminatory.

15. Before parting with this issue, it is to be noted that Dr. Jha relied upon two decisions in support of his submission that in a fit case the Court may intervene in favour of the deputanist and may interfere with an order terminating the deputation. Dr. Jha relied upon the decision of Shri Anadi Muktra Sadguru S.M.V.S.J.M.S. Trust v. V.R. Rudani : (1989)IILLJ324SC . This decision is based on certain broad propositions and does not seem to have a direct application to the facts of this case. This Court has already found that the bank had good reasons for terminating the deputation of the petitioners and those reasons cannot be said to be unreasonable, arbitrary or whimsical.

16. Dr. Jha relied upon another set of decisions in a case nearer to the issue. In Amarnath Singh v. State of Bihar CWJC No. 3513 of 1994, the petitioner who was an employee of the Bihar State Agro Industries Dev. Corporation Limited came to work, on deputation, as Motor Vehicle Inspector, Dumka in the Transport Department, Government of Bihar. The circumstances in which the deputation was

made were quite similar to the present case. But the similarity between the two cases ends there and the reason for cancelling the deputation of Amarnath Singh was entirely different. In that case a complaint against Amarnath Singh was received before the Lok Ayukta which was forwarded to the Government. The authorities in the Transport Department, instead of taking any disciplinary action against him on the basis of the complaint, cancelled his deputation and sought to send him back to the Corporation from where he had come. Even while cancelling the deputation of Amarnath Singh, other employees who had come to that department on deputation were retained in service. When the matter came before this Court, the Government sought to resist the claim of Amarnath Singh on the ground that as a deputationist he had no right and once his deputation was cancelled, he must go back to his parent Corporation. The learned Judge found and held that the order cancelling the deputation was not a simple order of reversion but having regard to the facts and circumstances of the case, it was in fact a veiled order of punishment. The learned Judge also held that the order was discriminatory because other employees similarly situated as Amarnath Singh were retained on deputation. It was on those findings that by judgment and order, dated 12.9.1997, the order cancelling the deputation of Amarnath Singh was quashed, though leaving it open to the authorities to proceed against him on the basis of the complaint. The order of learned single Judge was upheld in appeal before this Court and also before the Supreme Court.

17. I think that in the facts of that case, the decision in CWJC No. 3513 of 1994 took a very correct view of the matter but that decision was rendered in a different set of facts and that decision, therefore, does not have any application to the facts of the present case. In the present case the petitioners are not reverted on grounds of any complaint against them nor is there any charge against the petitioners. It is also not the case that the petitioners were arbitrarily picked up for reversion while others similarly on deputation were retained. It is undeniable that the bank was returning all employees working there on deputation and it did not make any exception in the case of any deputationist.

18. I am, therefore, of the view that the decisions relied upon by Dr. Jha do not help the petitioners in this case.

19. Dr. Jha next submitted that it was now well settled that the right to life guaranteed under Article 21 of the Constitution also included the right to livelihood. Earned Counsel submitted that the bank's action amounted to denying the petitioners their livelihood and was, thus, an infringement of their right guaranteed under Article 21 of the Constitution. In support of the submission, earned Counsel relied upon a Supreme Court decision in *Air India Statutory Corporation v. United Labour Union and Ors.* : (1997)ILLJ 1113 SC .

20. I am unable to accept the submission. In my view the petitioners' right to livelihood cannot be stretched to a point where it could lead to the collective doom of the bank, its other employees and all its constituents and beneficiaries. It is seen above that the bank's own financial condition is not very sanguine. Its accumulated losses are very high. It is also noted above that the bank is totally dependent for its finances on NABARD and it can ill afford not to follow the advice and instructions given by its financial agency. In these circumstances, the bank cannot be compelled to continue to retain the petitioners on deputation, putting in jeopardy its own survival.

21. Dr. Jha next submitted that NABARD never said that the petitioners were not good and efficient workers. He further stated that vacancies were undeniably available in the bank. In those circumstances, according to him, there was no reason why the services of the petitioners should not be regularised and absorbed in the bank. Dr. Jha pointed out that in the past steps were in fact taken in that direction. He invited my attention to an order, dated 5.7.1999 passed by the Administrator of the bank, then in office. By this order the Administrator stopped payment of deputation allowance to the employees drawn from Biscomaun, stating that for all practical purposes they were working not as deputationists but as employees of the bank and ultimately they might get absorbed in the service of the bank. He also referred to Annexure-10 which is a copy of a letter from the Managing Director of the bank to the Registrar, Cooperative Societies and in which a strong recommendation is made for absorption of the deputationists, including the petitioners, in the service of the bank.

22. It cannot be denied that from time to time some Managing Directors/Administrators of the bank made recommendations for absorption of the deputationist, including the petitioners, in the service of the bank, but on this issue the petitioners seem to face an insurmountable hurdle.

23. In the counter-affidavit filed on behalf of the bank, it is stated that the recommendations in question were no more than the views of the Managing Director/Administrator in office at that time. Moreover, any recommendation for the petitioners' absorption in the bank's service was contrary to the express prohibition imposed by law.

24. At this stage, it will be useful to refer to Section 66B of the Co-operative Societies Act which is as follows:

66B. (1) Notwithstanding anything contained in this Act or the rules and bye-laws made thereunder, the State Government may, from time to time, by special or general order, determine the nature and number of post to be created and the mode of recruitment of personnel by Co-operative Societies and prescribe among other.

(1) the qualifications, age and experience,

(2) the pay scale and other emoluments,

(3) the method of recruitment;

(4) the condition of service, and

(5) the disciplinary procedure to be followed.

(2) Any appointment made in contravention of the order of the State Government under Sub-section (1) shall be void as if no such appointment ever existed and salary and other allowances paid if any, shall be recoverable under Section 40. (emphasis added)

Sub-section (2) of Section 66B expressly declares as void any appointment made in contravention of the order of the State Government made under Sub-section (1)

of that section. Now, the State Government issued a notification, dated 9.2.1989 in exercise of the powers under Section 66B(1) of the Act. This notification, apart from constituting a committee, also laid down the procedure for recruitment in all State level Co-operative Societies.

25. It may here be noted that a bench of this Court in *Teja Prasad and Ors. v. State of Bihar* 1992 (2) PLJR 568 found the provisions of Section 66B of the Cooperative Societies Act as constitutionally valid and upheld the legality and validity of the notification, dated 9.2.1989.

26. In Para 16 of the counter-affidavit, a reference is made to the aforesaid notification, dated 9.2.1989 and it is submitted that any absorption/regularisation of the deputationist in the service of the bank would be contrary to the provisions of that notification and the vacancies in the bank could only be filled up following the provisions of that notification; that any recruitments by any other means would be void in terms of Sub-section (2) of Section 66-B of the Act. The objection raised on behalf of the bank cannot be said to be without substance.

27. It was noted earlier in this judgment that the proposal of sending employees of sick Societies/Corporations/Boards on deputation to other Societies/Corporations/Boards or different Government department, though approved by the Government, was never sought to be implemented by the Government in a planned manner and the individual employees were left to find for themselves. Had the Government tried to implement the idea in a planned and organised manner then perhaps such matters of legal details might have been taken care of.

28. Dr. Jha next made submissions on different factual aspects. Learned Counsel contended that though the petitioners might not have any experience in the work of the bank at the time of their deputation, they could no longer be described as in experienced after having worked for about five years. He also referred to the vacancies available in the bank and suggested the manner in which those vacancies should be filled up.

29. I do not think it is open to the petitioners to question of personnel policy which the bank should adopt on the advice and directions by the NABARD, nor it is for

this Court to sit in appeal over this aspect of the matter and to review the personnel policy of the bank.

30. Lastly, Dr. Jha submitted that at the end of the day the petitioners were in a highly discriminatory position. It was stated that from the Biscomaun a very large number of employees were sent on deputation to different co-operative bodies and Government departments. Many other persons who joined the Biscomaun after the petitioners and who were also sent on deputation from there to different Corporations, Co-operative bodies and Government departments were settled on their deputation-posts but the petitioners after putting in long years of service were faced with the prospect of unemployment. This was simply because unlike the other employees of the Biscomaun they had the misfortune of being sent to the bank which had taken a decision not to retain any deputationists.

31. This complaint cannot be directed against the bank and in this regard it may further be noted that though the State Government is a party respondent in this case, no relief is sought against the State. The State also kept itself withdrawn from this case and did not even file a counter-affidavit.

32. The last grievance agitated on behalf of the petitioners may be legitimately raised against the State and if the State does not respond favourably to the petitioners, it will be open to them to seek their remedies in accordance with law.

33. For the reasons discussed above, I am clearly of the view that the petitioners cannot be given any relief against the bank. This writ petition is accordingly dismissed but without any order as to costs.