

Ajit Kumar Chanda Vs. State of West Bengal and ors.

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Court : Kolkata

Decided On : Jun-29-2001

Reported in : (2001)3CALLT47(HC)

Judge : Barin Ghosh, J.

Acts : [Constitution of India](#) - Articles 12 and 226; ;West Bengal Co-Operative Societies Act, 1983; ;West Bengal Co-Operative Societies Rules, 1987

Appeal No. : C.O. No. 17000(W) of 1989

Appellant : Ajit Kumar Chanda

Respondent : State of West Bengal and ors.

Advocate for Pet/Ap. : Mr. Keshab Bhattacharjee and ;Mr. Asis Chakraborty, Advs.

Judgement :

B. Ghosh, J.

1. On 17th January, 1990 the respondent Nos. 4 and 5 appeared through learned counsel engaged by them. When directions were given for filing affidavits, no affidavit-in-opposition has been filed by the said respondents. When the matter was last considered on 19th April, 2001 this Court directed the petitioner to serve notice upon the respondent Nos. 4, 5 and 6. Such notice has been served by

registered post with acknowledgement due and an affidavit of service to that effect has been filed. Despite such service, none appears on behalf of the respondent Nos. 4 and 5.

2. The subject matter of challenge in the instant writ petition is the resolution dated 20th November, 1989 said to have been taken by the Board of Directors of the respondent No. 5 whereby and whereunder it has been decided to terminate the services of the petitioner. It is the case of the petitioner that prior to taking such decision, the petitioner was not told either by issuing a charge-sheet or otherwise as to what conducts of the petitioner entailed a punishment of termination of services. This ascertainment has not been denied by filing an affidavit.

3. In paragraph 1 of the petitioner, it has been stated that the respondent No. 5 is guided and controlled by the State Government and the entire funds of the respondents No. 5 have been provided by the State Government and the deficiencies thereof are being made by the State Government by giving subsidy. In that view of the matter. It is contended that the State Government has a deep and pervasive control over the affairs of the respondent No. 5 and, accordingly, the respondent No. 5 is an other authority within the meaning of Article 12 of the [Constitution of India](#). This ascertainment has not been denied by the respondent No.5.

4. An other authority within the meaning of Article 12 of the [Constitution of India](#), it is well settled, cannot remove an employee by a adopting Henry VIII Laws permitting such removal, as it appears was applied while adopting the impugned resolution.

5. In that view of the matter, the impugned resolution is set aside. The service of the petitioner is reinstated. It shall be deemed that the impugned resolution was never passed. The respondent Nos. 4 and 5 are directed to give effect to this order immediately but not later than three months from the date of communication of this order.

6. By reason of that illegal order, the petitioner was prevented from rendering services. In the event, that order had not been brought into existence, the petitioner would have rendered his service in accordance with the conditions of his

service and, accordingly. It shall be deemed that the petitioner had been and still is rendering his services. In that view of the matter, the arrear salaries of the petitioner, which have not been paid on the shield of the said illegal orders, shall also be released after giving appropriate adjustments to which, the petitioner is entitled to and also by fixing the salaries of the petitioner on the basis of the relevant Rules framed by the respondent No. 5 within the time mentioned above.

This disposes of the writ petition.

There will be no order as to costs.

7. Petition disposed of

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