

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**Civil Appeal No 3115 of 2020
(Arising out of SLP (C) No 4658 of 2020)**

Keonjhar Central Cooperative Bank

Appellant(s)

Versus

Sri Sanatan Barik and Others

Respondent(s)

ORDER

- 1 Leave granted.
- 2 The appeal arises from a judgment and order of a Division Bench of the High Court of Orissa dated 4 September 2019 affirming, in a Letters Patent Appeal, the judgment of the Single Judge dated 8 March 2017.
- 3 The first respondent was employed on 16 August 2004 as an Accountant with the Anandpur Branch of the appellant, which is a cooperative bank. A disciplinary enquiry was convened against him on two charges of misconduct, which are extracted below:

“Charge No.1

As Accountant of the Branch you are the custodian of term deposit receipt books. Due to your negligence the peon Sri Susanta Kumar Rana could get scope to theft (sic) the receipt and 'issued to depositors fraudulently. Further you have allowed to Sri S.K.Rana, Peon to work as Cashier and Ledger Assistant at the time of Passing Officer for which Sri Rana could embezzle the depositors account and bank has sustained loss

and loses its image.

Charge No.2

As per the Special Audit Report. you have allowed mis-credit following nos. of deposits accounts for which bank made loss of Rs.27,486.00 as per list enclosed.”

- 4 The Enquiry Officer found that the first charge of misconduct was not proved. However, the charge of negligence was held to be established. Following a notice to show cause the disciplinary authority imposed the punishment of dismissal from service on 18 June 2009. The order of dismissal was challenged before the Managing Committee of the bank. On 24 May 2011, the Managing Committee passed a resolution by which it decided to grant fresh employment to the first respondent and to certain other employees of the bank against whom disciplinary action had been pursued on similar grounds. Besides this, a ‘surcharge proceeding’ had been initiated for recovery of the loss which had been caused to the bank. Pending the conclusion of the surcharge proceeding, the Managing Committee by its above resolution dated 24 May 2011 required the deposit of the entire amount of the loss, which was estimated at Rs 12,30,252, together with interest at the rate of 12 per cent per annum. The resolution of the Managing Committee was on the basis of an audit report.
- 5 Shortly after the resolution of the Managing Committee, the surcharge proceeding was decided by an order dated 24 August 2011. It appears that the order passed in the surcharge proceedings quantified the liability on the basis of a Special Audit. The Assistant Auditor General, Cooperative Societies issued the following directions in the surcharge proceeding:

“ORDER

In view of the above discussions the Bank is entitled to receive its loss from the persons found guilty. Shri D. Prusty, ex-Branch Manager, Sri S. Barik, ex-Accountant Sri Basant Pati, ex-Cashier, Sri Bidhan Dash, ex-Ledger Clerk and Sri S. K. Rana, ex-peon of Anandpur Branch of the Keonjhar Central Cooperative Bank Ltd. are jointly and severally liable for the loss caused to the Bank. They are directed to make good the loss to the tune of Rs.12,30,252.00 (Rupees Twelve Lakhs Thirty Thousand Two Hundred Fifty-Two) to the Bank with interest @ 12% p.a. till the date of full and final payment. This order shall be complied with within a period of three months failing which the Bank is at liberty to recover its dues in accordance with law.

Processing fee of Rs.3000.00 is levied upon the delinquents @ Rs.500.00 each delinquents. They are directed to deposit the amount in the Govt Treasury in Proper Head of Account and Submit Original Treasury Challan to the under signed for further action at his end.”

- 6 The first respondent had instituted a writ petition¹ before the High Court of Orissa against the order of dismissal, when the recourse taken to the remedy before the Managing Committee was pending. The writ petition was disposed of on 21 March 2012 with a direction to the Registrar of Cooperative Societies to examine and consider the representation of the first respondent and to pass an order within two months.
- 7 On 16 June 2012, the Registrar of Cooperative Societies rejected the prayer of the first respondent for reinstatement in service. In the writ petition² which the first respondent filed challenging the order of the Registrar, the learned Single Judge passed an order on 8 March 2017 directing the reinstatement of the first respondent in pursuance of the resolution passed by the Managing Committee on 24 May 2011. The order of the learned Single Judge has been

1 Writ Petition (C) No 19091 of 2010

2 Writ Petition (C) No 12106 of 2017

affirmed by the Division Bench in a Letters Patent Appeal.

- 8 Mr Venkit Subramonium, learned counsel appearing on behalf of the appellant submits that the Managing Committee of the bank had no jurisdiction to issue a direction in terms of the resolution which was passed on 24 May 2011, since the remedy of the first respondent against the order of dismissal lay in the form of an appeal under Section 67 B of the Act³ before the Cooperative Tribunal. Hence, it was submitted that notwithstanding the resolution which was passed by the Managing Committee, the Registrar was justified in rejecting the representation of the first respondent for reinstatement. On this ground, the appellant seeks to challenge the order of the learned Single Judge which has been affirmed in appeal by the Division Bench. Moreover, it has been submitted that in the course of the surcharge proceedings, a joint and several liability has been fastened on all the employees to the extent of Rs 12.30 lakhs, together with interest at the rate of 12 per cent.
- 9 On the other hand, Mr Ashok Panigrahi, learned counsel appearing on behalf of the first respondent submits that as a matter of fact, the records would indicate that the liability of the first respondent has been quantified by the bank to the extent only of Rs 27,000. Learned counsel submitted that the second charge which was found to be established in the course of the disciplinary enquiry is that a loss of Rs 27,000 has been caused as a result of the negligence of the first respondent and it is in that context that the liability has been quantified to the above extent. Moreover, it has been submitted that the Managing Committee having taken a decision on 24 May

2011 to reinstate the first respondent *albeit* as a fresh employee subject to the terms of the resolution, it is not open to the appellant to go behind the resolution and question the authority of the Managing Committee of the bank. On these grounds, it was urged that the order of the High Court does not call for interference.

10 The resolution adopted by the Managing Committee of the appellant on 24 May 2011 is extracted below:

- a) As per the resolution of the managing committee dtd. 14.10.2009 they have to deposit the entire amount as shown against their name in the special audit report of Anandapur branch along with interest @ 12% per annum.
- b) Instead of joint liability they will deposit their amount in their individual liability along with the interest from the date of commitment of the fraud. They will also be liable for the further detection of fraud if any. They will have to furnish an undertaking on that score.
- c) They will be punished as per the gravity of the fraud committed by them.
- d) Their period of dismissal will be treated as such.
- e) No past service seniority will be counted.
- f) They will deposit their individual liable amount within 45 days of communication of letter. No adjustment method for collection of liable amount from the receivable amount if any will be followed.
- g) They will not be posted for handing of cash independently.
- h) The Secretary is authorized to implement the decision in accordance with the rules and procedures as per the law to avoid any type of future complicity."

11 The Single Judge observed that since the Managing Committee had resolved to reinstate the first respondent as a fresh employee, it was not open to the bank to avoid complying with the terms of the resolution. The challenge

which has been adduced on behalf of the appellant to the order of the Managing Committee is on the ground that the remedy of the first respondent was under Section 67-B before the Cooperative Tribunal. Section 67-B(1) is extracted below:

“Notwithstanding anything contained in any law for the time being in force, any dispute arising in connection with the election of any Office bearer of a Society, or the disciplinary action taken by a Society or its Committee against any paid servant of the Society who is not a workman within the meaning of Clause (s) of section 2 of the Industrial Disputes Act, 1947, shall be referred to the Tribunal in the manner and within the period prescribed in that behalf”

- 12 On behalf of the first respondent, Mr Ashok Panigrahi, learned counsel has submitted that the above provision applies to disciplinary action which is taken by a cooperative society or a committee against a “paid servant” who is not a workman within the meaning of Section 2(s) of the Industrial Disputes Act 1947. The first respondent being an accountant, Mr Panigrahi submitted that the remedy under Section 67-B would not pose a bar on the Managing Committee considering the representation of the first respondent.

- 13 Once the Managing Committee of the bank, taking an overall view of the matter, came to the conclusion that the first respondent should be reinstated as a fresh employee, its decision would have to be implemented. The availability of the remedy under Section 67-B would not stand in the way of the disciplinary authority taking an objective view of the entire matter having regard to the nature of the misconduct that was found against the first respondent. In this view of the matter, we are inclined to agree with the view of the learned Single Judge of the High Court, which has been affirmed in

appeal by the Division Bench.

- 14 The order passed in the surcharge proceedings, fastening a joint and several liability on the employees, including the first respondent, in the amount of Rs 12.30 lakhs, together with interest as directed is not disturbed by the present order. The present order shall not come in the way of the enforcement of the order which has been passed in the course of the surcharge proceedings since that does not form the subject matter of the present proceedings.
- 15 On a considered view of the matter, we are of the view that the direction of the High Court to grant back wages quantified at 50% requires modification. The finding of negligence against the respondent was the basis of the disciplinary penalty. The Managing Committee decided to give him fresh employment. This does not obliterate the finding against him in the disciplinary enquiry. While we have held that the bank is bound by the resolution of its Managing Committee dated 24 May 2011 to engage the first respondent as a fresh employee, the award of 50% back wages would be excessive and arbitrary. Some component of back wages would need to be awarded because the implementation of the resolution remained unresolved for the nine years. The respondent justifiably needs to be compensated for this. The quantum of back wages is in the circumstances of the case quantified at a lump sum amount of Rs 5 lakhs. The order of the learned Single Judge directing payment of 50% back wages shall accordingly stand set aside and substituted by a direction in the above terms. The appointment which is to be granted to the first respondent in pursuance of the resolution of the Managing Committee, shall be in the nature of a fresh

appointment. The respondent shall as a condition precedent to receiving the benefit of this order first deposit the amount quantified towards his liability, pursuant to the resolution of the Managing Committee together with interest at 12% per annum. Since the surcharge proceedings do not form the subject matter of the dispute before this court, the present order will not affect them.

- 16 The appeal is partly allowed in the above terms. There shall be no order as to costs.
- 17 Pending applications, if any, stand disposed of.

.....J.
[Dr Dhananjaya Y Chandrachud]

.....J.
[Indu Malhotra]

.....J.
[K M Joseph]

New Delhi;
September 09, 2020
CKB

ITEM NO.2 Court 3 (Video Conferencing) SECTION XI-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No.4658/2020

(Arising out of impugned final judgment and order dated 04-09-2019 in WA No.84/2017 passed by the High Court Of Orissa at Cuttack)

KEONJHAR CENTRAL COOPERATIVE BANK Petitioner(s)

VERSUS

SRI SANATAN BARIK AND OTHERS Respondent(s)

(With appln.(s) for appropriate orders/directions and permission to file additional documents/facts/Annexures)

Date : 09-09-2020 These matters were called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MS. JUSTICE INDU MALHOTRA
HON'BLE MR. JUSTICE K.M. JOSEPH

For Petitioner(s) Mr. Venkita Subramoniam, Adv.
Mr. Haraprasad Sahu, Adv.
Mr. Pranaya Kumar Mohapatra, AOR

For Respondent(s) Mr. Ashok Panigrahi, AOR
Mr. Nabab Singh, Adv.

UPON hearing the counsel the Court made the following
O R D E R

- 1 Leave granted.
- 2 The appeal is partly allowed in terms of the signed order.
- 3 Pending applications, if any, stand disposed of.

(CHETAN KUMAR)
AR-cum-PS

(SAROJ KUMARI GAUR)
BRANCH OFFICER

(Signed order is placed on the file)