

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3711/2012

THE STATE OF JHARKHAND
THROUGH THE SECRETARY
COOPERATIVE DEPARTMENT & ANR.

Appellant(s)

VERSUS

KEDAR SINGH & ORS.

Respondent(s)

O R D E R

Respondent No.1 as an employee working in the post of a Co-operative Extension Officer attached to the office of the District Co-operative officer faced three departmental enquiries - all relating to alleged embezzlement and irregularities. Suffice to say that after the initial proceedings, an order was passed on 27.02.2001 by the Registrar, Co-operative Society, Bihar, Patna holding respondent No.1 guilty.

It is the say of respondent No.1 that he preferred an appeal against this order in the mode of a representation but on the Court query is unable to state what is the date when the same was preferred. This is crucial for the reasons to be set out hereinafter.

The stated appeal made through a representation without

any date was taken up by the appellate authority, the Secretary concerned on 06.04.2004 and an order was passed on the same date. Incidentally, that is also the date when the concerned Secretary was demitting office i.e. the order was passed on the last day of his service, stated to have been made without any notice to the appellant or calling for record from the appellant. It may also be noticed that the secretary concerned joined the post in service in the Cooperative Department only in June, 2003.

The aforesaid proceedings apparently gave rise to various suspicions and an order was issued by the successor Secretary on 07.10.2004 when this order dated 06.04.2004 came to light. We may notice that in the meantime, due to the bifurcation of the State of Bihar, the subject matter fell within the domain of the Government of Jharkhand. This subsequent order records that the appeal can be preferred within a period of six months from the date of the issuance of the order and thus, the date the former Secretary joined the post, even by that date the appeal would have been barred by time having been filed after two years and four months from the date of issuance of the punishment order of 27.02.2021. In view thereof, the order dated 06.04.2004 was kept in abeyance.

The aforesaid order dated 07.10.2004 was assailed by respondent No.1 by filing a Writ Petition (S) No.5678/2004 and that Writ Petition was allowed by the order dated 30.04.2009.

A perusal of the aforesaid order shows that the main plea advanced by respondent No.1 before that Court was that before keeping the order dated 07.10.2004 in abeyance, no opportunity was given to respondent No.1. Not only that, there is a finding that the successor authority cannot keep the order in abeyance as it would amount to a review of the order.

A direction was issued to implement the order dated 06.04.2004.

The appellant Government of Jharkhand preferred an appeal against this order and by the impugned order of the Division Bench dated 24.11.2010 the appeal has been dismissed by a non-speaking order except recording the factum of the nature of proceedings before the learned single Judge in one paragraph. It was, however, simultaneously made clear that the Department is free to take appropriate remedy, if so advised.

In the Special Leave Petition preferred against these orders, the operation of the impugned order was stayed on 22.07.2011 and subsequently leave was granted on 20.04.2012.

We have heard learned counsel for the parties.

In view of there being doubts raised over the manner of conduct of proceedings which resulted in the order dated 06.04.2004, we categorically put to learned counsel for respondent No.1 as to which is the date when he made the representation and was there any proof of having made the representation on a particular date. Learned counsel for

respondent No.1 expresses his inability to state anything on this account from the records. It is not in doubt that an adverse order had been passed against respondent No.1 on 27.02.2001. Whether the representation/appeal was preferred by him within time or not is also not clear. The order dated 06.04.2004 has been passed without calling for record from the Department and that too on the date the officer was demitting office. The officer having joined the post in June, 2003, unless the appeal has been preferred before that date, there would be grave doubts over the entire proceedings before him. Even if they were preferred earlier, whether they were preferred in time or not is not apparent from the record before us.

In view of the facts and circumstances of the case, we are of the view that appropriate order to be passed would be to set aside all the orders passed starting from the order dated 06.04.2004, the subsequent order recalling the same dated 07.10.2004, the order of the learned Single Judge dated 30.04.2009 as well as the impugned order of the Division Bench dated 24.11.2010 and remit the matter back to the appellate authority to examine the controversy in accordance with, law including the issue of limitation but not confined to it.

The matter being almost two decades old, we expect the appellate authority to bestow consideration on the matter within a period of three months from the date of receipt of the order.

If some records are still with the State of Bihar and have not been called by the State of Jharkhand, it is always open for the concerned officer of the State of Jharkhand to call for records and State of Bihar will forthwith provide the records.

The appeal is allowed in the aforesaid terms leaving the parties to bear their own costs.

.....J.
[SANJAY KISHAN KAUL]

.....J.
[HEMANT GUPTA]

NEW DELHI;
APRIL 06, 2021.

ITEM NO.105 Court 9 (Video Conferencing)

SECTION XVII

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

Civil Appeal No(s). 3711/2012

THE STATE OF JHARKHAND
THROUGH THE SECRETARY
COOPERATIVE DEPARTMENT & ANR.

Appellant(s)

VERSUS

KEDAR SINGH & ORS.

Respondent(s)

Date : 06-04-2021 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE HEMANT GUPTA

For Appellant(s) Mr. Tapesh Kumar Singh, AOR

For Respondent(s) Mr. Akhilesh Kumar Pandey, AOR

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

The appeal is allowed in terms of the signed order.

Pending application, if any, stands disposed of.

(ASHA SUNDRIYAL)
ASTT. REGISTRAR-cum-PS

[SIGNED ORDER IS PLACED ON THE FILE]

(POONAM VAID)
COURT MASTER (NSH)