
(1998) 08 KL CK 0004

In the High Court Of Kerala

Case No : W.A. No. 1495 of 1998 and O.P. No. 8144 of 1998

Chandramathi K.K.

APPELLANT

Vs

Vadakkumpad Service Co-Operative Bank Ltd. and Another

RESPONDENT

Date of Decision : 18-08-1998

Acts Referred:

Citation : (1999) 3 LLJ 1223

Hon'ble Judges : D. Sreedevi, J;A.R. Lakshmanan, J

Bench : Division Bench

Advocate : P.C. Sasidharan, for the Appellant; P.K. Ravikrishnan, G.P. and P.V. Surendra Nath, for the Respondent

Judgement

Ar. Lakshmanan, J.—Heard Mr. P.C. Sasidharan for the appellant and Mr. R.V. Surendra Nath for the first respondent and learned Govt. Pleader for the second respondent.

2. Writ appeal is directed against the order in C.M.R No. 13981/1998 in O.P. No. 8144/1998. The original petition, has been filed by the Co-operative Bank challenging the order of the Joint Registrar of Co-operative Societies, Kannur, dated April 2, 1998, which is marked as Ext. P2 in the original petition. By the said exhibit, the Joint Registrar, invoking the powers u/s 66 and Rule 176 of the Kerala Co-operative Societies Act rescinded the order of the Disciplinary Subcommittee keeping the appellant under suspension. The Joint Registrar has issued Ext. P2 order on a representation filed by the appellant and as directed by this Court in O.P. No. 2309/1998. The Joint Registrar has found that the Sub-Committee constituted under Rule 198 of the Rules cannot suspend an employee pending enquiry into serious charges levelled against her, as the authority in terms of the Rules to keep an employee under suspension is the appointing authority. According to the appellant, the Disciplinary Sub-Committee is not the appointing authority and the appointing authority in so far as the appellant is concerned is the Managing Committee. The Joint Registrar passed an order rescinding the order of the Sub-Committee keeping the appellants under

suspension. That order was challenged by the Secretary of the Society in the writ petition. Along with the writ petition a CMP was also filed seeking the stay of the impugned order. This Court, while admitting the original petition, was pleased to stay the order. The matter was brought up at the instance of the appellant after filing the counter affidavit for vacating the interim order. The learned single Judge extended the stay order until further orders overruling the contentions raised by the appellant. Aggrieved by the said order the appellant has preferred the above appeal.

3. Mr. Sasidharan, learned counsel for the appellant placed three submissions. According to him, the appointing authority, which is the Managing Committee, has not passed the order of suspension, but the said order was passed by the Sub-Committee and, therefore, the said order is illegal. Rule 198 of the Rules deals with disciplinary action. The said Rule says that any member of the establishment of a Co-operative Society may, for good and sufficient reasons, be punished by imposing any of the penalties mentioned in Rule 198 (1) of the Rules. Rule 198(6) of the Rules deals with suspension of an employee. The said Rule says that an authority competent to appoint an employee may suspend him pending enquiry into serious charges against such employee. No employee shall, however, be kept under suspension for a period exceeding six months at a time. In no case an employee shall be kept under suspension for a continuous period exceeding one year without the prior approval of the Registrar. An employee under suspension shall be entitled to subsistence allowance payable under the Kerala Payment of Subsistence Allowance Act, 1972. Therefore, the learned counsel for the appellant contends that the appellant, who was suspended on June 13, 1997 cannot be kept under suspension beyond six months, i.e. December 13, 1997 without a fresh order of extension of suspension from the Managing Committee and at any rate, an employee cannot be kept under suspension for a continuous period exceeding one year without the prior approval of the Registrar, which period in the instant case expired on June 12, 1998. The submission made by the learned counsel for the appellant is well founded. As contended by him, the authority competent to appoint an employee, namely the Managing Committee, has not suspended him but only the Sub-Committee has passed this order of suspension. Secondly, as per Rule 198 (6) of the Rules an employee cannot be kept under suspension for a period exceeding one year without the prior approval of the Registrar. It is not the case of the learned counsel for the respondents that the prior approval of the Registrar has been obtained in this case.

4. From the above argument three things are clear. (1) The competent authority to keep an employee under suspension is the appointing authority. (2) No employee can be kept under suspension for a period exceeding six months at a time. (3) In no case an employee can be kept under suspension for a continuous period exceeding one year without the prior approval of the Registrar.

5. The order Ext. P1 is, therefore, in total violation of the Rules and the

continued suspension in our opinion is without any authority of law. However, the learned single Judge passed an order extending the interim stay granted by him till the matter is finally decided and has directed the Bank to complete the disciplinary action against the appellant within three months from the date of this order, namely, June 10, 1998. Aggrieved by the said order the above appeal has been filed by the appellant. As submitted by the learned counsel for the appellant the disciplinary sub-committee constituted under Rule 198 has no power or authority to suspend an employee, which has been rightly found by the Joint Registrar, who is having a supervisory control over the society. Under such circumstances, the learned Judge should not have stayed the valid order issued by the Joint Registrar.

It is not in dispute that the suspension order was not issued in the matter after the expiry of six months. Therefore, the original order automatically lapsed. A permanent employee working in the service of a society cannot be kept under suspension without any valid order. Likewise, no employee can be suspended from service for a continuous period of one year without prior concurrence of the Registrar. Hence, the order of the learned single Judge to extend the stay until further orders enabling the society to keep the appellant/petitioner out of service will defeat the very purpose of Rule 198(6). However, the learned Judge has relegated the matter to be considered finally in the original petition. In our opinion an interim order can be granted only when a prima facie case is made out. In this case, the appellant is unjustifiably kept under suspension for a long time and beyond the period stipulated under Rule 198(6). It is not the case of the respondent that the suspension of the appellant is necessary for the smooth conduct of the disciplinary proceedings. Merely for the reason that the disciplinary proceedings are pending, an employee cannot be suspended from service for a long period. In the absence of any likelihood of the respondent to interfere with the enquiry or tampering with the evidence keeping the employee under suspension is unwarranted and cannot be justified.

6. Since the subject-matter of dispute between the parties arises in a narrow compass we sent for the original petition itself with the consent of parties and disposed of the same along with the writ appeal. The original petition has been filed by the respondent to quash Ext. P2 order passed by the Joint Registrar of Co-operative Societies under Rule 176 of KCS Rules rescinding the decision taken by the disciplinary sub-committee of the Cooperative Bank to suspend the appellant herein.

7. In view of the observations and in the view of our above finding in regard to Rule 198(6), the order passed by the Joint Registrar in Ext. P2 cannot be quashed as prayed for by the respondent in the original petition. However, the Joint Registrar, while passing the order dated April 2, 1998 in Ext. P2, has directed the Bank to proceed with the disciplinary action against the appellant in accordance with law. We, therefore, make it clear that the revocation of the suspension order will not stand in the way of the Bank proceeding with the

disciplinary action against the respondent.

Both the writ appeal and the original petition are disposed of accordingly. No costs. The appellant is at liberty to report for duty immediately.