**(1998) 07 KL CK 0021**

**In the High Court Of Kerala**

**Case No :** O.P. No. 4405 of 1989 Y

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| Christian College Co-Operative Society | APPELLANT |
| Vs | |
| Annamma John and Another | RESPONDENT |

**Date of Decision :** 29-07-1998

**Acts Referred:**

**Citation :** (1998) 07 KL CK 0021

**Hon'ble Judges :** S. Marimuthu, J;A.R. Lakshmanan, J

**Bench :** Division Bench

**Advocate :** K.P. Vijayan, for the Appellant; P.C. Sasidharan and Jose Thettayil, Govt. Pleader, for the Respondent

## Judgement

A.R. Lakshmanan, J.—Heard Mr. K.P. Vijayan for the Petitioner, Mr. P.C. Sasidharan for Respondent No. 1 and Mr. Jose Thettayil, Govt. Pleader for Respondent No. 2. The above Original Petition has been filed by the Co-operative Society to set aside Ext. P-4. Under Ext. P-4 the Joint Registrar of Co-operative Societies, Alappuzha by his proceedings C.R.B. 4928/88, dated 5th April 1989 rescinded the resolution No. 2 of the 8th meeting of the managing committee of Christian College Co-operative Stores A. 372, Chengannur which the High Court Act for being heard according to the Joint Registrar of Co-operative Societies is in contravention of Rule 198(2) of the Co-operative Societies Rules.

2. The first Respondent, Annamma John was the Sales Assistant appointed by the Petitioner society. According to the society she has been indulging in many malpractices thereby causing great loss to the society and in the circumstances charge memo dated 5th February 1988 was issued to her. She was asked to show cause why disciplinary action should not be taken against her for various charges including meddling with the records of the society, misappropriation of money and dereliction of duty, etc. She submitted an explanation which was found not satisfactory. Therefore the management appointed a commission to enquire into the matter which investigated the matter in detail and found that the first Respondent is guilty of the charges levelled against her. The first

Respondent submitted a representation tendering apology for the misconduct and requesting the management to take a lenient view in the matter. The management taking a lenient view directed the first Respondent to reimburse to the society an amount of Rs. 4,415.75 on or before 7th June 1988 in lump sum or in instalments and also to pay Rs. 300 imposed by way of fine for the misconduct and dereliction of duty on the part of the first Respondent. The decision of the Managing Committee was duly communicated to her on 11th April 1988. She failed to remit the amount as directed. She did not care to keep the accounts of the society fairly and properly and even refused to sign the acquittance roll and to receive her salary. In the circumstances the first Respondent was kept under suspension with effect from 16th June 1988 and was again directed to make the payment on or before 30th June 1988. She refused to comply with the directions of the society. In the circumstances the Managing Committee decided to compulsorily retire the first Respondent from service of the society with effect from the date of suspension viz., 16th June 1988. The order of compulsory retirement was duly served on her. As against the disciplinary action taken by the society the first Respondent filed O.S. 113/88 before the Munsiff''s Court, Chengannur which was dismissed on 27th October 1988. Her Arbitration Suit in A.R.C. No. 13/88 before the second Respondent challenging the decision of the Petitioner society against the disciplinary action taken by the Petitioner and also seeking an order from the second Respondent reinstating her in service and when the A.R.C. 13/88 was pending she filed O.P. 5267/88 challenging the termination of her services as an employee of the society which was dismissed by this Court on 1st July 1988. In the Arbitration Case 13/88 the Petitioner society filed a preliminary objection contending that the action taken by the society is valid in law and the second Respondent has no jurisdiction to deal with the dispute relating to the termination of service of an employee of a Co-operative Society u/s 69 of the Co-operative Societies Act and that the Joint Registrar is incompetent to interfere in such matters by way of rescinding the resolution of the Board of Directors under Rule 176 of the Kerala Co-operative Societies Rules. The objection dated 6th July 1988 is marked as Ext. P-1. Upholding the contention raised by the society the Arbitration Case filed by the first Respondent was dismissed by the Joint Registrar by his order dated 6th July 1988 which has been marked as Ext. P-2. Thereafter the first Respondent filed another O.P. 9759/88 which was dismissed by this Court on 6th January 1989. The said judgment has been marked as Ext. P-3. Under Ext. P-3 this Court on 6th January 1989 passed the following judgment:

The service of the Petitioner was terminated by his employer, the third Respondent Co-operative Society. Petitioner sought to raise a dispute u/s 69 of the Co-operative Societies Act before the second Respondent Joint Registrar. Though he granted a stay initially, he passed Ext P-11 order holding that since the dispute was an industrial dispute he had no jurisdiction to entertain the same.

The decision of a Division Bench of this Court in Kalloorkad Service Co-op. Bank v. Assistant Registrar of Co-operative Societies (1973 K.L.T 523) has laid down to that industrial disputes between Co-operative societies and their workmen, who may be workmen as defined in the I.D. Act may not be within the comprehension of Section 69 of the Kerala Co-operative Societies Act. In view of the above, Ext. P-11 order is correct. The relief which the Petitioner seeks is to quash that order and direct the second Respondent Joint Registrar to entertain and decide the dispute relating to the termination of services. Those reliefs cannot be granted. The O.P. cannot therefore be entertained and the same is hereby dismissed.

After the dismissal of the O.P. the first Respondent filed a fresh petition before the second Respondent purportedly under Rule 176 of the Co-operative Societies Rules seeking to rescind the resolution passed by the society compulsorily retiring the Petitioner from the service of the society. The society appeared before the Joint Registrar and raised a preliminary objection that the petition filed by the first Respondent is not maintainable in law and the Joint Registrar has no jurisdiction to decide an industrial dispute. However rejecting the contentions raised by the society and ignoring his earlier decision rendered in A.R.G. 13/88 the Joint Registrar passed an order dated 5th April 1989 under Ext. P-4 setting aside the decision of the society compulsorily retiring the first Respondent. Aggrieved by the order passed by the Joint Registrar under Ext. P-4 the Society has filed the above writ petition to quash Ext. P-4. According to the society the Joint Registrar has no power to rescind any resolution pertaining to disciplinary action taken by a society against its employees acting under Rule 176 of the Kerala Co-operative Societes Rules and as such Ext. P-4 is without jurisdiction. It is also submitted that the interest of the society and its members would be adversely affected if the first Respondent is reinstated in service.

3. The first Respondent filed a counter affidavit stating that Ext. P-4 has been passed by the Joint Registrar of the Co-operative Societies by virtue of the powers conferred on him by Rule 176 of the Kerala Co-operative Societies Rules, 1969 which confers power on the Registrar to rescind resolutions taken by the society if such resolutions are ultra vires the objects of the society or is against the provisions of the Act, Rules or bye-laws of the society. It is further submitted that the action of the society compulsorily retiring the first Respondent from service is in clear violation of Rule 198 (2) of the Co-operative Societies Rules. Along with the counter affidavit the first Respondent filed Exts. R-1(a) to R-1(f). Along with C.M.P. 288/91 the first Respondent has also produced Ext. R-1(g) which is the extract of the audit certificate and audit memorandum for the year 1987-88.

4. The Petitioner filed reply affidavit through its Secretary reiterating the submission made earlier that the Joint Registrar has no power to pass an order under Ext. P-4 under Rule 176 of the Kerala Co-operative Societies Rules, 1969 and that the enquiry was conducted in accordance with Rule 198(2) of the rules and after affording ample opportunity to the first Respondent to cross-examine the witness at the time of enquiry. The society filed Ext. P-5 which is a true copy of the statement dated 16th June 1988 from the first Respondent to the

 

Petitioner.

5. When the matter came up for enquiry before Radhakrishna Menon, J., two sets of conflicting decisions were placed before him. One set saying that the Joint Registrar has the power to rescind the resolution of the society terminating the services of the first Respondent, invoking Rule 176 of the Rules and the other set saying that the Joint Registrar has no powers. The decisions are (vide judgment in O.P. 9114/87 and A.P. Padmakumari Vs. S.R.O. Employees Co. Op. Society and Another, and T. Bhaskaran Nair v. Deputy Registrar of Co-op. Societies (General) and Anr. 1981 Lab. I.C. 1512. In view of two sets of conflicting decision the learned Judge referred the matter before a Division Bench for authoritative pronouncement on the power of the Joint Registrar under Rule 176 of the Co-operative Societies Rules. The reference order reads thus:

The question involved in this case is, has the Registrar the power to rescind the resolution of the society terminating the services of the first Respondent, invoking Rule 176 of the Co-operative Societies Rules. There are two sets of conflicting decisions: (1) saying that it can be had. vide judgment in O.P. 9114 of 1987 and A.P. Padmakumari Vs. S.R.O. Employees Co. Op. Society and Another, and (2) the remedy of a dismissed employee is only to have recourse to the provisions of the Industrial law. vide T. Bhaskaran Nair v. Deputy Registrar of Co. op. Societies (General) and Anr. 1981 LAB. I.C. 1512. The Original Petition under the circumstances, is adjourned u/s 3 of the High Court Act for being heard by a Division Bench.

Kochu Thommen, J. in T. Bhaskaran Nair v. Deputy Registrar of Co-operative Societies (General) and Anr. 1981 Lab I.C. 1512 in para 6 held as follows:

Apart from the absence of any plea to the effect that the impugned orders were made in exercise of the power under Rule 176 to rescind any resolution, I am of the view, that that rule has no application to matters of disciplinary proceedings regulated under Rule 198. The resolution mentioned under Rule 176 does not take in a decision concerning disciplinary action under Rule 198. Nor has the Registrar, in my view, any power to direct the termination of the service of an employee. Such interference will be outside the power of supervision. The direction to the management in the impugned order to terminate the service of the Petitioner and recover from him salary already paid to him is, in my view, an order without power. This is so declared. But this declaration is without prejudice to the power vested in the Registrar under the various provisions of the Act in the matter of supervision and inspection.

Viswanatha Iyer, J., in A.P. Padmakumari Vs. S.R.O. Employees Co. Op. Society and Another, held as follows:

the termination of services of a regular employee (albeit a probationer) without reason is not for the welfare or in the interests of the society. The society has taken pains to hold the test and interview. All that will go waste, apart from the fact that the society''s credibility as well as finance will stand affected by such exercises. Even such talent who may be prepared to take up jobs in co-op. societies will feel jeopardized if they have no security of services. Rule 176 should therefore be available to check wanton discharge or termination of service of the employees.

6. The dispute is now resolved by a Full Bench decision of our High Court reported in Aji v. State of Kerala 1995 (1) KLT 363 (F.B.). The Full Bench has observed in para 11 as follows:

It is not possible to hold that Registrar''s power is limited to the supervision of the financial dealings of the society. Rule 176 clothes the Registrar with the power to rescind any resolution of any meeting of any society or of the committee of any society, if it appears to him that such resolution is ultra vires of the objects of the society, or is against the provisions of the Act, Rules, Bye-laws or of any direction or instructions issued by the Department, or calculated to disturb the peaceful and orderly working of the society or is contrary to the better interest of the society. Thus the position is abundantly clear that the Registrar is not a mere passive spectator against an erring society. Registrar is vested with adequate power to rescind resolutions whenever situations demand. Contention that the Registrar''s power is limited only to supervise the financial dealings of the society is not tenable.

Unfortunately the earlier two decisions reported in 1981 LAB. I.C. 1512 and A.P. Padmakumari Vs. S.R.O. Employees Co. Op. Society and Another, was not cited before the Full Bench. In 1996 (1) KLT 100 a Division Bench comprising of K.T. Thomas, Ag. C.J. and Shanmugam, J. in President, Pudupariyaram Service Co-op. Society v. Rugmini Amma and Ors. held that there is nothing in Rule 176 to suggest that power under the rule cannot be invoked if resolution relates to disciplinary actions against any employee. Nor is there any need to read such a rider into the rule. Even if the decision relates to disciplinary sphere of its employees the Registrar can nevertheless invoke powers under Rule 176 provided the resolution offends any provision of law or is against any direction issued by the department or is contrary to Society''s interest. Before the Division Bench 1981 LAB. I.C. 1512 and A.P. Padmakumari Vs. S.R.O. Employees Co. Op. Society and Another, was cited. All the earlier judgments including 1996 (1) KLT 100 was cited before the Division Bench. Unfortunately the Full Bench decision reported in Aji v. State of Kerala 1995 (1) KLT 363 (F.B.) was not cited. In Chithambaran v. Registrar of Co-op. Societies 1996 (2) KLT 66 a Division of this Court held as follows:

Normally, the power of the Registrar under Rule 176 should be invoked to tone up the administration of Co-operative Societies and if there is any serious infraction of any act or rules, the Registrar is given authority to intervene and correct such mistakes. This is a general power given to the Registrar for a smooth and effective functioning of the Co-operative Societies. In the matter of disciplinary proceedings, if the employees have got right of appeal, the proper remedy of the employees is to file appeal against such orders, It is quite possible that even in the disciplinary proceedings there may be violation of certain rules. But when the employees have got a right of appeal it is for them to challenge the order before the appellate authority and they contend before the appellate authority that there was violation of the Rules. In the instant case, the order of removal of the Petitioner from service was passed by the Board of Directors instead of the President of the Co-operative Bank, who was the competent authority. This could be characterised as an infraction of Rule 198 of the Co-operative Societies Rules and if a resolution is passed on that basis the Registrar can consider the matter under Rule 176.

1998(1) KLT 60 was rendered by C.S. Rajan, J. Before the learned Judge all the earlier decisions including the Full Bench decision was cited and relied on. The learned Judge in Kunhammad v. Joint Registrar 1998 (1) KLT 60 held thus:

What emerges from reading all these decisions is that the power under Rule 176 of the rules empower the Registrar to rescind any resolution of the society in case he finds that such a resolution is against the objects of the society, provisions of the Act, Rules or Bye-laws or of any directions or instructions issued by the Department. The Registrar can also interfere with the resolution if the above resolution is calculated to disturb the peaceful and orderly working of the society or is contrary to the better interest of the society. Thus, it can be seen that disciplinary proceedings are not taken out of the purview of Rule 176 of the Rules. As held by Justice T.L. Viswanatha Iyer in Padmakumari''s case 1989 (2) KLT 170 Rule 176 should be available to check want on discharge or termination of service of the employees of the society. Therefore, I think it is no longer possible to entertain an argument that the Registrar is helpless in the matter of interfering with any disciplinary action taken by the society against an erring employee. It is equally beyond the dispute that the Registrar cannot while passing orders under Rule 176 of the rules interfere with the findings of the fact arrived either by the sub-committee or by the appellate body. The power is restricted to the area where the Registrar is only to see that the society works within the four corners of the Co-operative Societies Act, Rules, Bye-laws or Orders issued under the Act or Rules.

In view of the Full Bench decision reported in 1995 (1) KLT 363 and followed by the other Division Bench judgments of this Court the judgment reported in 1981 LAB. I.C. 1512 is no longer good law.

7. In view of the voluminous decisions cited by the learned Counsel for the first Respondent, the contention of the Petitioner that the Joint Registrar is incompetent to interfere in disciplinary matters by way of rescinding the resolution of the Board of Directors under Rule 176 of the Kerala Co-operative Societies Rules cannot at all be countenanced. We therefore answer the reference and hold that the Joint Registrar is competent to interfere in such matters and rescind the resolution by invoking his powers under Rule 176 of the Co-operative Societies Rules, if it appears to him that such resolution is ultra vires of the objects of the society or is against the provisions of the Act, Rules or

 

bye-laws of any direction or instruction issued by the Department, or calculated to disturb the peaceful and orderly working of the society or is contrary to the better interest of the society. The Original Petition filed by the Petitioner society therefore fails and is dismissed. However there will be no order as to costs.

It is represented by the learned Counsel for the society that in view of the Ext. P-3 judgment in O.P. 9759/88 dated 6th January 1989 the matter has to go before the Industrial Tribunal and the matter has to be adjudicated by the said Tribunal. It is open to the Petitioner society to take any appropriate steps in accordance with law. It is also open to the Petitioner society to file an appeal against the order under Ext. P-4 on merits.