

(2001) 03 KL CK 0074
In the High Court Of Kerala
Case No : W.A. No. 3146 of 2000

Director of Panchayats

APPELLANT

Vs

P.K. Krishnan and Others

RESPONDENT

Date of Decision : 27-03-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 1 KLJ 856

Hon'ble Judges : K.S. Radhakrishnan, J;G. Sasidharan, J

Bench : Division Bench

Advocate : C.K. Pavithran, Govt. Pleader, for the Appellant; M.J. Thomas, for the Respondent

Judgement

Radhakrishnan, J.—The question that has come up for consideration is whether President of a Grama Panchayat has got power to take disciplinary action against a non-gazetted government servant allotted to the Panchayat. Learned single Judge took the view that since first respondent - petitioner was not appointed by the President of the Grama Panchayat he has no power to take disciplinary proceedings against the petitioner. Short facts which are necessary for the disposal of the case are as follows: Petitioner in the original petition was working as U.D. Clerk in the, Elikulam Grama Panchayat. Petitioner accepted two applications, one from M.K. Gopalan and another from Sherly Emmanuel for regularisation of certain unauthorized construction and issued receipts for entertaining the applications. Panchayat Committee met on 1-7-2000 noticed that the said conduct of the petitioner was unauthorized and illegal. On the basis of the resolution of the Panchayat Committee, President issued an order dated 1-7-2000 placing the petitioner under suspension pending disciplinary proceedings. It is that order which was challenged in the writ petition.

2. Counsel for the petitioner Sri. M.J. Thomas submitted that since President of the Panchayat is not the appointing authority, he has no power to suspend the petitioner. Appointing Authority as far as the petitioner is concerned, is the

Director of Panchayats. Counsel pointed out that Rule 10 of the Kerala Civil Service (Classification, Control and Appeal) Rules mandates that government servant could be suspended by the appointing authority or by an authority to which he is subordinate. The provisions in Kerala Civil Service (Classification, Control and Appeal) Rules were made applicable to the Panchayat department employees vide Rule 10 of the Kerala Panchayat Subordinate Service Rules, 1994. Since President of the Panchayat is not the authority empowered by the Government, counsel submitted, he has no power to suspend the petitioner. Counsel submitted that Ext. P5 order of suspension itself is arbitrary. Receipt of applications for regularisation of construction is not an unauthorised act. He received the amount and gave receipts on the direction of the Secretary of the Panchayat and in any view of the matter suspension is erroneous, illegal and malafide.

3. Learned Government Pleader on the other hand submitted that President of the Panchayat has got the power to suspend any of the employees allotted to the Panchayat if he is not a gazetted officer. Reference was also made to Sec. 156(6) (b) of the Kerala Panchayat Raj Act, 1994. Learned Government Pleader submitted that if the order is bad, unauthorised or malafide, petitioner has to file objection against the suspension order and not to challenge the order under Art. 226 of the Constitution of India before this court. Counsel submitted that provisions of the Kerala Panchayat Raj Act and Rules would enable the petitioner to file objection against the suspension order.

4. Kerala Panchayat Raj Act, 1994 is enacted for securing a greater measure of participation of people in planned development and in local governmental affairs, by constituting village, block and district panchayats. The Act is intended to invest such panchayats with such powers and authority to enable them to function as institutions of self-government. Considerable amount of power has been conferred on the President or the Panchayat Committee in the matter of carrying out various welfare activities and to exercise various activities for planned development of the Panchayat as unit of self-government. Section 180(2) of the Kerala Panchayat Raj Act states that the control of the officers of the Panchayat shall be with the Panchayat. Section 180(4) also enables the Government subject to the provisions of the Act to frame rules under the Kerala Public Services Act, 1968 to regulate the classification methods of recruitment, conditions of service, pay and allowances and discipline and conduct of officers and employees. It is in line with those objects powers have been vested on the President of the Panchayat under Sec. 156 of the Kerala Panchayat Raj Act. By amendment Act 13 of 1999 which came into effect on 24-3-1999 sub-section (6) was added to Sec. 156. Section 156 (6)(b) enables the President of the Panchayat to take disciplinary action in case of dereliction of duty or on failure to comply with the lawful directions of rules and orders issued by the Panchayat. Provision also enables the President to keep the officer under suspension. President can suspend any of its employees who are not gazetted officers.

5. Government have also issued Kerala Panchayat Raj (Controlling of Officers) Rules 1997. The said Rules were published in the Kerala Gazette dated 10-7-1997. Rule 7 enables the Panchayat to impose minor penalty. Rule 8 enables the Panchayat to keep an officer under suspension. Aforementioned provisions give ample power to the President of the Panchayat to keep a government servant deputed to the Panchayat under suspension if he is below the rank of a gazetted officer. We are of the view that President has got the legal right to suspend the petitioner pending disciplinary proceedings. We therefore set aside the judgment of the learned single Judge and allow this appeal. We make it clear if the petitioner has got any grievance he may file his objections in the event of which the same shall be considered by the Panchayat. We make it clear we have not expressed any opinion on the merits of the case. The appeal is disposed of as above.