
(1998) 02 GAU CK 0021
In the Gauhati High Court
Case No : Civil Rule No. 2284 of 1992

G.Gopalan Nair

APPELLANT

Vs

State of Arunachal Pradesh

RESPONDENT

Date of Decision : 19-02-1998

Acts Referred:

Constitution of India, 1950 — Article 12, 12

Citation : (1998) 1 GLJ 401

Hon'ble Judges : M.Sharma, J

Bench : Single Bench

Advocate : H.Rahman, P.K.Barman, N.Ahmed , H.K.Deka, B.Chakraborty, N.Barua, Advocates appearing for Parties

Judgement

1. In this writ petition under Article 226 of the Constitution of India petitioner has challenged the Annexure VII order dated 27.8.92 terminating the service of the petitioner as Salesman (Senior) wef 1.9.92 issued by the respondent No.3.

2. Briefly stated the facts are that the petitioner was appointed as Sales Assistant in the respondent No.2 society in the year 1966. Thereafter the petitioner was designated as Senior Sales Assistant. The petitioner was entrusted with the duties of receiving stocks purchased by the society, dispatching different commodities to various fair price shops and other cooperative societies displaying and arranging different items for sale, issuing cash memos, delivering goods and depositing daily sales proceeds to cashier through the Daily Sale Abstract Register etc. According to the petitioner other employees were engaged for maintaining the daily sale abstract and stock register and the petitioner had no occasion to verify or confirm as to the correctness of the entries made by them. Respondent No.3 by order (Annexure II) informed all the employees of the society that for violation of the provisions of the Arunachal Pradesh Cooperative Societies Act and the Rules, the defaulting employees would be terminated from service and asked to clear the dues within 30 days.

3. On 26.7.91 the petitioner was called by the respondent No. 3 and asked few

questions relating to matters regarding his qualification and experience as mentioned in Annexure III to the petition. The petitioner was again called by the Administrator on 24.6.92 and put few questions regarding excess and shortage of stocks during the year 198384 and 198889, as mentioned in Annexure IV to the petition. Thereafter on 4.8.92 the petitioner informed the respondent No.3 on the ground that the society in question is not an authority under Article 12 of the Constitution of India. In support of his contention Mr. Chakraborty has produced a copy of memorandum dated 24.3.92 (No.Coop (G)/33/91) issued by the Registrar of Cooperative Societies, Govt of Arunachal Pradesh, Naharlagun. Paragraphs 1 and 2 of the said Memorandum run thus:

"It appears that initially, in the year 1964 a handful of few Managers for the cooperative societies then functioning in the erstwhile NEFA, now Arunachal Pradesh, were appointed by the Registrar of Cooperative Societies, on behalf of the societies, in pursuance of a resolution passed by the cooperative societies, and deployed them to various societies. This was considered essential in view of the fact that the relevant time local talents, or educated youths were not readily available for taking up such jobs and the societies were in need of services of Managers. But the situation has now changed with all round development in Arunachal Pradesh, especially in the fields of education and economic activities,

2. Then with the increase in number of registered cooperative societies, the cadre strength of the Managers also gradually grew. Larger is the cadre, greater is the problem. And therefore, the RCS placed the services of all Managers at the disposal of the cooperative union, now Arunachal Pradesh Cooperative Union, by issuing order bearing No.Coop(A)/219/70 dated 16.12.77. And since then the cadre of the Managers is being administered by the cooperative union."

6. I have perused the memorandum dated 24.3.92. In para 9 of the said memorandum it has been stated that:"... in the interest of the cooperative societies, it is hereby directed that wef 1.4.92, the power of appointment and all consequential authority with respect to remuneration, promotion, transfer, discipline, punishment, dismissal etc in respect of the Managers of the cooperative societies, shall be exercised by the respective cooperative societies as inherent in the autonomous institutions. These powers now vested in the AP Cooperative Union is hereby withdrawal (sic) from and on 1.4.1992. Henceforth, the Managers now in service of different cooperative societies in this State shall be the employees of the respective cooperative societies, on as is where is basis, akin and similar to other categories of employees of each societies..." Learned counsel for the petitioner however submits that a cooperative society under the Arunachal Pradesh Cooperative Society Act, 1978 is a "State" within the meaning of Article 12 of the Constitution. According to the counsel for the petitioner in the financial sphere of the respondent No.2 society the State of Arunachal Pradesh has a very vast and dominating control over the respondent No.2. As per Bye Laws of the respondent No.2 society, respondent No 2 is bound to credit such amount as may be directed by the respondent No.4 to the scholarship fund,

common good fund and building fund etc. Under Article 37, the General Body of the respondent No.2 society can write off any amount due to the society only under approval of the respondent No.4 the Registrar of Cooperative Societies. Therefore, according to the petitioner, respondent No. 1 State of Arunachal Pradesh has a deep rooted control over the management of the respondent No,2 society through respondent No.4 and day to day works are conducted and performed through respondent No.3 who is also a Govt officer.

7. In a catena of judicial pronouncement the established position of law is that if substantial finance and involvement of the State is there in a particular institution it can be termed as a "State" within the definition of Article 12 of the Constitution. The Govt Advocate however submits that on and from 1.4.92 the power of appointment and all consequential authority with respect to remuneration etc are being exercised by the respective cooperative societies. The memorandum dated 24.3.92 relates to decentralisation of the cadre of Managers of the cooperative societies and introduction of certain welfare/safeguard measures. But this memorandum has not been annexed with the affidavit in opposition. It is also seen that the proceeding against the petitioner has been started before issuance of this memorandum and the society was very much under deep and pervasive control of the State, therefore, in my opinion the petitioner can invoke the writ jurisdiction. The question whether the respondent No.2, society is a State within the meaning of Article 12 of the Constitution, I hold that at the relevant time the cooperative society in question was under the financial control of the State and therefore, for the purpose of invoking jurisdiction of this Court, the society is a State within the meaning of Article 12 of the Constitution.

8. Coming to the merit of the case, the counsel for the petitioner submits that there is no termination order as such and even if the Annexure 7 order is taken into consideration the impugned order is not tenable in law, because no reasonable opportunity was given to the petitioner and no enquiry was also conducted by the authorities as per the provisions of law. As per the Annexure 2, certain questions were made to the petitioner by respondent No. 3 in the form of enquiry and on the basis of such questions, the services of the petitioner cannot be terminated. According to the Govt Advocate petitioner was given opportunity and before such interrogation several correspondences were made with the petitioner. Upon perusal of the documents and hearing the counsel for the parties, I am constrained to hold that such interrogation and correspondence cannot be held as an enquiry and on the basis of such document or interrogation the services of the petitioner cannot be terminated, in the way it has been done. If the petitioner has committed any illegality or irregularity the respondent authority would have proceeded in accordance with the provisions of law by initiating proper enquiry. In that view of the matter, the impugned order of termination is not sustainable and accordingly, it is set aside. The respondents are at liberty to initiate fresh proceeding against the petitioner and take necessary steps in accordance with the provisions of law. The petitioner is

directed to cooperate with the respondents in completing the enquiry. In that view of the matter the impugned order of termination is set aside the respondents authorities are directed to reinstate the petitioner in service. The question of back wages and other benefits and extent of the period are to be decided by the authority concerned on culmination of the renewed inquiry (Re (1993) 4 SCC 727).

With the above direction this petition is disposed of. No order as to costs.