
(2016) 01 KL CK 0082
In the High Court Of Kerala
Case No : WP(C).No. 829 of 2016 (C)

K.B. Sunny

APPELLANT

Vs

Sahakarana Sathabdi Mandiram

RESPONDENT

Date of Decision : 21-01-2016

Acts Referred:

Kerala Civil Services (Classification, Control and Appeal) Rules, 1960 — Rule 10
Kerala Co-operative Societies Rules, 1969 — Rule 198(6)

Citation : (2016) 2 KLT 113

Hon'ble Judges : Dama Seshadri Naidu, J.

Bench : Single Bench

Advocate : M.M. Monaye, M. Paul Varghese and T. Koshy, Advocates, for the Appellant; D. Sreekumar and V. Vijulal Sr. Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Dama Seshadri Naidu, J.—All the three petitioners are the employees of the third respondent Bank. In the course of time, the petitioners have been subjected to disciplinary proceedings on account of serious irregularities in the grant of gold loans. As a part of the ongoing disciplinary proceedings, the respondent Bank suspended the petitioners from service through Exhibits P3 to P5 orders dated 21.12.2015. Assailing the said orders of suspension, the petitioners have filed the present writ petition.

2. Mr. M. M. Monaye, the learned counsel for the petitioners, has singularly contended that the impugned orders of suspension were passed by the General Manager, who is not competent in terms of Rule 198(6) of the Kerala Co-operative Societies Rules (the "Rules" for brevity). In support of his submissions, the learned counsel has placed reliance on State of Kerala v. Saseendran, 2009 (2) KLT 482 (FB).

3. Per contra, Sri. D. Sreekumar, the learned Standing Counsel for the respondent Bank, has submitted that the General Manager has only

communicated the Executive Committee's decision to suspend the petitioners. In elaboration, he has submitted that the Executive Committee, which includes the President of the respondent Bank, through Resolution No. 6 dated 21.12.2015 suspended the petitioners. He has further submitted that the said decision of the Executive Committee was ratified by the Managing Committee through Exhibit R3(b) proceedings.

4. Thus contends the learned counsel for the respondent Bank that the order of suspension is unassailable and needs no interference. In support of his submissions, the learned counsel has placed reliance on *Prasanth Maroli v. Kannur Primary Co-op. Agri. and Rural Development Bank Ltd.*, 2008 (4) KLT 451 and *Chandrikamma v. Assistant Registrar (General) Cooperative Societies*, 2000 (3) KLT 940.

5. The learned counsel, in the alternative, has submitted that Exhibit R3(a) Staff Regulations approved by the Government amply empowered the General Manager to place any employees of the third respondent Bank under suspension. According to him, even the learned Full Bench of this Court in *Saseendran (supra)* has held that an officer authorised by the Government can place an employee under suspension though the said officer may not be the appointing authority or the superior authority to the appointing authority. The learned counsel has further placed reliance on *Secretary, Ministry of Defence and Others v. Prabhaskar Chandra Mirdha*, (2012) 11 SCC 565.

6. Heard the learned counsel for the petitioners and the learned Standing Counsel for the respondents, as well as the learned Government Pleader, apart from perusing the record.

7. The bone of contention in this writ petition is whether the General Manager is competent to place the petitioners under suspension. On the other hand, the alternative issue to be resolved is whether the order of General Manager has been duly ratified by the Managing Committee of the respondent Bank in terms of Rule 198(6) of the Rules.

8. To begin with, we may keep in mind that Rule 198(6) authorizes an authority competent to appoint an employee to suspend the said employee pending enquiry into serious charges against the said employee.

9. It is very evident that the authority who is to place an employee under suspension shall be the authority competent to appoint the said employee. In other words, it is too well established a proposition of law to be called in question that either an appointing authority or a superior authority shall be entitled to place a delinquent employee under suspension.

10. In the light of the alternative submissions made by the learned counsel for the third respondent, we may examine the validity of Exhibits P3 to P5 on both counts the competence of General Manager and also the supposed ratification by the Managing Committee.

11. We may begin our discussion with the issue of the General Manager's competence to place the petitioners under suspension. Indeed, in *Saseendran* (supra) a learned Full Bench of this Court has held that the suspension orders can be passed either by the appointing authority or by any authority to which the appointing authority is subordinate or by any other authority which is specifically empowered by the Government in that behalf.

12. It is apposite to mention that Exhibit R3(a) contains the revised service regulations, Clause (iii) of which reads as follows:

"(iii). In appropriate cases, an employee may be kept under suspension pending enquiry. In the case of General Manager and Deputy General Manager, the powers for suspension pending enquiry shall be exercised by the President and in all other cases by the General Manager, subject to ratification by the Board of Directors. In the normal circumstance, no employee shall be kept under suspension pending enquiry for more than one year. In cases where it is found necessary to extend the period of suspension beyond one year the prior permission of Registrar of Co-operative Societies shall be taken."

(emphasis supplied)

13. A mere perusal of the above provision makes it clear that the General Manager has the power to suspend an employee pending enquiry subject to his decision getting ratified by the Board of Directors. To a specific query as regards the Government's source of powers to issue Exhibit R3(a) revised Service Regulations, the learned counsel for the petitioners has submitted that the only provision that could be referred to is Rule 196, which in any event speaks of the byelaws to be framed and implemented by the Society regarding the duties and responsibilities of the employees. It is further evident from the provision that those bye-laws shall not be inconsistent with the provisions of the Kerala Co-operative Societies Act and any other statutes having relevance.

14. Indeed, in *Saseendran* (supra) a learned Full Bench has held that the power of suspension can be exercised by any other authority which is specifically empowered by the Government in that regard. It is trite to observe that the ratio of any decision is to be understood only in relation to the facts of the said case. It is further well established that the application of ratio as a matter of stare decisis is possible only where the facts of the case to which the ratio is sought to be applied do not come in conflict with those of the case in which the ratio has been obtained.

15. Keeping that in mind, if we examine *Saseendran* (supra), it is clear that the petitioners therein are the Government employees, to whom the Kerala Civil Services (Classification, Control and Appeal) Rules 1960 apply. As can further be seen, Rule 10 of the Government Service Rules specifically provides for the Government empowering any other authority to place an employee under suspension. Under those circumstances, especially having referred to Rule 10 of the Service Rules, the learned Full Bench has held that not only an appointing

authority, but also an authority authorised by the Government can place a petitioner under suspension.

16. In the present instance, Rule 198 (6) is the only provision that speaks of an authority competent to place an employee under suspension. Once Exhibit R3(a) regulations cannot be traced to any specific statutory source, I am afraid they cannot have the force of nullifying Rule 198 (6) of the Rules. In other words, if at all this Court has to treat Exhibit R3(a) as an outcome of Rule 196 and is further prepared to treat them on a par with the bye-laws, they shall not, still, come in conflict with any regnant statutory provision.

17. Under the above circumstances, I am constrained to hold that Exhibit R3(a) service regulations cannot be taken into account in the face of Rule 198(6) of the Rules. For the same reason, the dictum of Saseendran (*supra*) cannot come to the respondent Bank's aid.

18. Viewed in a different perspective, I must observe that the Co-operative Societies are autonomous entities with limited governmental interference and only as has been provided statutorily, at that. Further, any ratio decidendi of a case in service jurisprudence shall be applied having regard to the statutory scheme of the organisation in which the employee works. In the present instance, the provisions of CCA Rules, applicable to the employees of the Government, cannot be imported to hold that the Government has the power to authorise any officer than those provided under Rule 198 (6) of the Rules to place an employee of the Society under suspension. Accordingly, the first limb of the contention of the learned counsel for the respondent Bank stands rejected.

19. Now, we may examine the respondent's alternative contention: that the decision initially was taken by the Executive Committee, communicated by the General Manager, but eventually ratified by the Managing Committee. In Prasanth Maroli (*supra*), this Court, per a learned Single Judge, has held that the President of Co-operative Society has the power to suspend an employee though such action is subject to ratification by the Managing Committee. Further, in Chandrikamma (*supra*), this Court has held that the President being the Chief Executive of the Committee is competent to issue a suspension order, which can be treated as an order issued by the Committee if it is to be ratified by the Committee in the course of time.

20. In Saseendran (*supra*) a learned Full Bench has observed the decisional cleavage between Balakrishna Pillai v. State of Kerala, 1993 (1) KLT 625 and Hareendranath v. State of Kerala, 1998 (1) KLT 98. In Balakrishna Pillai (*supra*), a learned Single Judge has held that the appointing authority or any other authority superior to the appointing authority or any other authority empowered by the Government in terms of Rule 10 (1) of the Kerala Civil Services (CCA) Rules can alone place a Government servant under suspension.

21. In Hareendranath (*supra*), another learned Single Judge has approved the order of suspension passed by an authority below the rank of the appointing

authority. Further, in *Unnikrishnan Unni v. Travancore Devaswom Board*, 1999 (3) KLT SN 52 (C. No. 54) a learned Division Bench has held that an authority lower than the appointing authority can as well place an employee under suspension provided the very Rules authorise the said person in that regard.

22. Under the above circumstances, when the matter was referred to a learned Full Bench, their Lordships have held that sub-rule (2) of Rule 10 of the CCA Rules, contrary to what has been held in *Hareendranath*(supra), does not empower an authority lower than the appointing authority to place an employee under suspension. At any rate, their Lordships have further held that since sub-rule (1) of Rule 10 amply empowers the Government to authorise an authority lower than the appointing authority to place a delinquent employee under suspension, it has eventually held that the following authorities could place an employee under suspension: (1) an appointing authority, (2) an authority superior to an appointing authority and (3) an authority who is authorised by the Government.

23. Since all the decisions referred to above are in relation to the Government servants, what has been considered by the different benches of this Court is Rule 10 of the Kerala Civil Services (CCA) Rules, which has no application in the present instance.

24. Further, in *Philomina Dominic v. P.C. Babu and others*, 2011 (1) KLT SN 34 a learned Single Judge of this Court has held that the power of suspension is a power available to the appointing authority, who alone can exercise it wherever it is necessary. In *R.P. Kapur v. Union of India*, AIR 1964 SC 787 a constitution Bench of the Honourable Supreme Court on the issue of suspension has held that on general principles the authority entitled to appoint a public servant would have the right to suspend him pending a departmental enquiry into his conduct or pending a criminal proceeding, which may eventually result in a departmental enquiry against him.

25. True, in *Prabhash Chandra Mirdha* (supra) the Honourable Supreme Court has held that merely because the removal and dismissal of a delinquent on misconduct must be by the authority not below the appointing authority, it does not, however, mean that the disciplinary proceedings should not be initiated against delinquent by the authority lower than the appointing authority. As can be seen from *Prabhash Chandra Mirdha* (supra) the issue concerns the validity of the show cause notice.

26. It is apposite to quote in full *Prabha Chandra Mirdha* (supra) on the issue of initiation of disciplinary proceedings:

"4. The legal proposition has been laid down by this Court while interpreting the provisions of Article 311 of the Constitution of India that the removal and dismissal of a delinquent on misconduct must be by the authority not below the appointing authority. However, it does not mean that disciplinary proceedings may not be initiated against the delinquent by the authority lower than the

appointing authority.

5. It is permissible for an authority, higher than the appointing authority to initiate the proceedings and impose punishment, in case he is not the appellate authority so that the delinquent may not lose the right of appeal. In other case, the delinquent has to prove as to what prejudice has been caused to him."

27. Viewed compendiously, the above proposition only underlines the importance of the statutory scheme governing a service dispute. In the present instance, Rule 198 being the solitary provision concerning the issue of suspension, I do not see any relevance for Prabhask Chandra Mirdha (*supra*) to be applied.

28. Indeed, the learned counsel for the respondent Bank has made herculean efforts to convince the Court that it is the Executive Committee that has taken a decision to place the delinquent employees under suspension. According to him, the Managing Director has merely communicated the said decision.

29. A perusal of Exhibits P3 to P5 does not in express terms reveals that the General Manager has merely communicated the Executive Committee's decision. To be fair to the respondent Bank, I must observe that in the impugned orders there is a reference to the resolution passed by the Executive Committee. In the course of hearing, the learned counsel has also produced a translated copy of the said resolution. *Ex facie*, the order does not disclose that it is a mere communication of the decision taken by somebody else.

30. That said, I may have to add further that even the Executive Committee is not competent to place an employee under suspension. The next defence on the part of the respondent Bank is that this Court through a plethora of judicial pronouncements has held that the President of the Society can place an employee under suspension. By extension of the said proposition, since the Executive Committee comprises the President as well, the learned counsel for the Bank contends that the order does not suffer from any infirmity. Indeed, at a later point in time, the very Managing Committee has passed Exhibit R3(b) ratifying the said decision of the executive committee. As is evident from Rule 182(2) of the Rules, the Managing Committee is the appointing authority.

31. Even if one were to accept that the Executive Committee has passed the order of suspension and it was later approved by the Managing Committee, given the recitals in Exhibits P3 to P5, it is difficult to arrive at such a conclusion. Even otherwise, the President of a Society is different and distinct from the Executive Committee in which he is only a constituent. In other words, the decision of the Executive Committee cannot be attributed to the President of the Society as if he had acted individually on his own.

32. Putting the issue in perspective, I may observe that the Managing Committee is the appointing authority; *ipso facto*, it is also the disciplinary authority. It can suspend a delinquent employee. By judicial interpretation, this Court, on more than one occasion, has held that the President of a Society can as well suspend

an employee provided his action is ratified by the Managing Committee.

33. In the present instance, neither of the eventualities has occurred. The General Manager passed the impugned order of suspension. The respondent Bank would have us believe that it was done at the behest of the Executive Committee; the action of the said committee is deemed to have been, in turn, at the behest of the Chairman of the Society. It further would have us accept that ratification of the Executive Committee's action by the Managing Committee should be treated as the ratification of the President's action, for he is a constituent of the Executive Committee. An unending convolution of legal presumptions to save an administrative action—best avoided. For the proposition of law of vintage value beginning from the days of *Taylor v. Taylor*, 1876 (1) Ch D 426 stands firm: that once a statute mandates a particular procedure, it ought to be followed in the manner prescribed or not at all.

34. In the facts and circumstances, this Court hereby sets aside Exhibits P3 to P5. It is, however, made amply clear that the interdiction of Exhibits P3 to P5 are only on a technicality that they have not been passed by the competent authority. Ipso facto, the Managing Committee of the respondent Bank, if satisfied, is at liberty to take further steps concerning the disciplinary proceedings pending against the petitioners, including that of suspending them.