(1977) 01 KL CK 0006

In the High Court Of Kerala

Case No : O.P. No. 213 of 1975

Krishnan Embranthiri	APPELLANT
Vs	
The Cranganore Town Co-Operative Bank Ltd. and Another	RESPONDENT

Date of Decision : 05-01-1977

Acts Referred:

- Co-operative Societies Rules — Rule 4
- Industrial Disputes Act, 1947 — Section 33
- Kerala Shops and Commercial Establishment Act, 1960 — Section 18, 18(1), 18(2) , 18(3)

Citation : (1977) 01 KL CK 0006

Hon'ble Judges : T. Chandrasekhara Menon, J

Bench : Single Bench

Advocate : M.P. Menon and M. Ramachandran, for the Appellant; P. Balagangadhara Menon, Mathews P. Methew for Respondent No. 1 and Government Pleader, for the Respondent

Judgement

Chandrasekhara Menon, J.—An employee of a Co-operative Society, Cranganore Town Co-operative Bank - 1st Respondent, has filed this Original Petition challenging the legality and validity of the order of the Appellate Authority and Commissioner for Workmens Compensation dismissing his appeal against an order of dismissal from service passed by the Society. The main contention that was raised before me was that in disposing of the appeal the 2nd Respondent did not take due notice of its powers u/s 18 of the Shops and Commercial Establishments Act. Section 18 deals with the dismissal of an employee. Sub-section (1) of the section states that "no employer shall dispense with the services of an employee employed continuously for a period of not less than six months, except for a reasonable cause and without giving such employee at least one month''s notice or wages in lieu of such notice, provided however that such notice shall not be necessary where the services of such employee are dispensed with on a charge of misconduct supported by satisfactory evidence recorded at an enquiry held for the purpose. Under Sub-section (2) such an employee whose services are dispensed with may appeal to such authority and within such time as may be prescribed either on the ground that there was no reasonable cause for dispensing with his services or on the ground that he had not been guilty of misconduct as held by the employer. Under Sub-section (3) the appellate authority may after giving notice in the prescribed manner to the employer and the employee, dismiss the appeal or direct the reinstatement of the employee with or without wages for the period he was kept out of employment or direct payment of compensation without reinstatement or grant such other relief as it deems fit in the circumstances of the case. These provisions would indicate that the power of the appellate authority is very wide and is quite coextensive with that of the original authority. He can reappreciate the evidence that has been adduced in the matter before the enquiring authority and find for himself whether the charge of misconduct is supported by evidence. Even on the question of punishment the appellate authority can consider how far the punishment imposed was just and equitable in the circumstances of the case.

2. The Supreme Court in Remington Rand of India Limited Vs. Thiru R. Jambulingam, has considered the scope of the appeal in the Tamil Nadu Shops and Establishments Act (Act 36 of 1947). There it was said that the jurisdiction of the Commissioner is an appellate jurisdiction and is of wider scope unlike that of the Tribunal in an application u/s 33 of the Industrial Disputes Act. The Commissioner is competent to re-hear the matter completely and come to its own conclusion after reappreciation of the evidence. In that particular case it may be noted that the Commissioner had held that the order of dismissal was absolutely disproportionate to the gravity of the offence proved. This is considered by the Supreme Court and the Supreme Court pointed out, as stated earlier that the jurisdiction of the Commissioner is an appellate jurisdiction which is of wider scope. It is brought to my notice by the Learned Counsel for the Petitioner that the appellate authority has not at all considered the question whether the action itself amounts to misconduct, even if it in a way goes against the direction given by the Bank. Apart from that at the fag end of his career an employee is dismissed for what may amount only to a minor irregularity.

3. I am not expressing any opinion on the merits of the matter now. According to counsel for the Petitioner the appellate authority has not properly considered the question taking due note of its powers in the matter. It is also the Petitioner''s contention that the sub-committee appointed by the bank had no jurisdiction to consider the question in the light of Rule 4 of the Co-operative Societies Rules. In over ruling this contention the authority had based its conclusion on a decision of this Court in O.P. No. 100 of 1967 (Trichur District Co-operative Bank v. Echara Warrier). But the contention raised in the Original Petition was something different. There the appellate authority had found that the Executive Committee to which the Board of Directors had delegated its powers to terminate the service of the employee underwent a change in personnel and that the successor committee thus formed could not exercise the powers delegated to the Original Committee. In considering the question this Court said that the Board of

Directors was fully competent to delegate to a committee all or any of its powers. But the point that is specifically raised here namely the violation of rules has not been considered in that case. As I am remitting the whole matter to the appellate authority, it is not necessary to consider this question also here now. The appellate authority should consider the question in accordance with law and come to the conclusion on the same. In the light of what is stated above I quash Ext. P-6 order and remit back the matter to the 2nd Respondent for disposal in accordance with law. The Original Petition is disposed of as above. There will be no order as to costs.