

(2014) 07 MAD CK 0182

In the Madras High Court

Case No : W.P. (MD) No. 8529 of 2014 and M.P. (MD) Nos. 2 and 3 of 2014

M. Anbalagan

APPELLANT

Vs

The Registrar of Co-operative Societies

RESPONDENT

Date of Decision : 23-07-2014

Acts Referred:

General Clauses Act, 1897 — Section 16

Tamil Nadu Co-operative Societies Act, 1983 — Section 81

Citation : (2014) 07 MAD CK 0182

Hon'ble Judges : K.K. Sasidharan, J

Bench : Single Bench

Judgement

K.K. Sasidharan, J.—The legality and correctness of the action taken by the Joint Registrar of Co-operative Societies, Trichy, suspending the petitioner from service pending disciplinary proceedings is the core issue that arises for consideration in this Writ Petition.

THE FACTS:

2. The petitioner entered the service of Co-operative Department as Junior Inspector. The petitioner was, ultimately, promoted as Co-operative Sub-Registrar in 2008. The petitioner was given additional charge as Special Officer/Administrator of R.963 Thulaiyanatham Primary Agricultural Co-operative Credit Society, Musiri Circle from 14.10.2011 to 08.05.2013. He was also given additional charge as Special Officer in respect of 12 other Primary Agricultural Co-operative Societies and two Thrift Co-operative Societies.

3. While so, the third respondent initiated action to recover the revenue loss sustained by the Society, by his proceedings dated 21.10.2013. The third respondent initiated statutory enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983, by proceedings dated 25.10.2013.

4. The second respondent issued the impugned order of suspension dated 23.05.2014, pending initiation of disciplinary proceedings. The suspension order

is challenged primarily on the ground that there is nothing on record to show that the petitioner was involved in the alleged misconduct.

5. The Joint Registrar of Co-operative Societies, Trichy filed a counter-affidavit, in answer to the contentions raised in the affidavit filed in support of the Writ Petition. According to the Joint Registrar of Co-operative Societies, enquiry officer conducted enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983, with respect to the affairs of the Society in question. It was found that there was misappropriation of funds to the tune of Rs.5,81,10,505/-. The petitioner was the Special Officer of the Society and as such, he was expected to safeguard the interest of the Society. It was further contended that the petitioner, being the Field Officer, should have taken all efforts to curtail the illegal activities of the other employees. Accordingly, the second respondent justified the impugned proceedings.

SUBMISSIONS:

6. The learned counsel for the petitioner contended that after filing the present Writ Petition, the second respondent issued the charge memo to the petitioner. The charge memo shows that the only allegation against the petitioner relates to his failure to supervise the affairs of the Society. According to the learned counsel, a charge of this nature would not justify an order of suspension. The learned counsel, by placing reliance on the circular issued by the Registrar of Co-operative Societies dated 11.12.1991, contended that the impugned order was issued in clear violation of the said circular. According to the learned counsel, the petitioner is not in anyway responsible for the revenue loss and as such, he was unnecessarily dragged to the midst of disciplinary proceedings.

7. The learned Government Advocate, on the other hand, contended that the petitioner failed to supervise the affairs of the Society and the same helped the other officers to misappropriate the funds. The learned Government Advocate further contended that the petitioner, instead of facing the proceedings, rushed to this Court with a view to keep the disciplinary proceedings in cold storage.

THE CORE ISSUE:

8. The only question that arises for consideration is as to whether the second respondent was correct in passing the impugned order of suspension against the petitioner pending initiation of disciplinary proceedings.

DISCUSSION:

9. There is no dispute that the petitioner, in his capacity, as Co-operative Sub-Registrar, functioned as the Special Officer of R.963 Thulaiyanatham Primary Agricultural Co-operative Credit Society, Musiri Circle. It is also an admitted position that the act of misappropriation of funds took place during the period in which the petitioner was functioning as the Special Officer of the Society. The enquiry conducted under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983 prima facie found the involvement of the petitioner. The third

respondent filed a police complaint against all responsible officers including the petitioner. It was only under the said circumstances, the second respondent suspended the petitioner from service.

10. The circular dated 11.12.1991 was not issued by the Government. It was a confidential circular issued by the then Registrar of Co-operative Societies. The directions contained in the circular cannot be enforced through Court of law. No reliance could be placed on the confidential circular issued by the Registrar giving certain guidelines to the officers. The circular is not in the nature of an executive order. In fact, in the counter-affidavit filed by the second respondent, it was contended that the circular was amended subsequently. I am not inclined to place reliance on either the circular relied on by the petitioner or the amended circular issued later, which was relied on by the respondents.

11. The petitioner has no case that the second respondent is not having the authority to place him under suspension. The contention appears to be on the basis that the petitioner was not directly involved in the act of misappropriation. The charge against the petitioner itself was one of lack of supervision.

12. The judicial review in a matter of this nature is very limited. The Court is not expected to analyse the suspension order, in the light of the charge sheet and to arrive at a conclusion as to whether the authorities were correct in passing the order of suspension. In matters of this nature, the Court should give freedom to the employer. The employer is the best Judge to decide as to whether the employee should be placed under suspension pending initiation of disciplinary proceedings.

THE PRECEDENT:

13. The Constitutional Bench of the Supreme Court in R.P. Kapur Vs. Union of India (UOI) and Another, made it very clear that the appointing authority is entitled to suspend the employee pending departmental enquiry. The observation reads thus:

11. The general principle therefore is that an employer can suspend an employee pending an enquiry into his conduct and the only question that can arise on such suspension will relate to the payment during the period of such suspension. If there is no express term in the contract relating to suspension and payment during such suspension or if there is no statutory provision in any law or rule, the employee is entitled to his full remuneration for the period of his interim suspension; on the other hand if there is a term in this respect in the contract or there is a provision in the statute or the rules framed thereunder providing for the scale of payment during suspension, the payment would be in accordance therewith. These general principles in our opinion apply with equal force in a case where the government is the employer and a public servant is the employee with this modification that in view of the peculiar structural hierarchy of Government, the employer in the case of government, must be held to be the authority which has the power to appoint a public servant. On general principles therefore the

authority entitled to appoint a public servant would be entitled 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. This general principle is illustrated by the provision in Section 16 of the General Clauses Act, No.X of 1897, which lays down that where any Central Act or Regulation gives power of appointment that includes the power to suspend or dismiss unless a different intention appears. Though this provision does not directly apply in the present case, it is in consonance with the general law of master and servant. But what amount should be paid to the public servant during such suspension will depend upon the provisions of the statute or rule in that connection. If there is such a provision the payment during suspension will be in accordance therewith. But if there is no such provision, the public servant will be entitled to his full emoluments during the period of suspension. This suspension must be distinguished from suspension as a punishment which is a different matter altogether depending upon the rules in that behalf. On general principles therefore the Government, like any other employer, would have a right to suspend a public servant in one of two ways. It may suspend any public servant pending departmental enquiry or pending criminal proceedings; this may be called interim suspension. Or the Government may proceed to hold a departmental enquiry and after his being found guilty order suspension as a punishment if the rules so permit. This will be suspension as a penalty. These general principles will apply to all public servants but they will naturally be subject to the provisions of Art. 314 and this brings us to an investigation of what was the right of a member of the former Secretary of State's Services in the matter of suspension, whether as a penalty or otherwise.

14. The Supreme Court in *Balvantray Ratilal Patel Vs. The State of Maharashtra*, , reiterated the power of the employer to suspend the employee pending disciplinary proceedings.

4. The general principle therefore is that an employer can suspend an employee pending an inquiry into his misconduct and the only question that can arise in such suspension will relate to payment during the period of such suspension. If there is no express term relating to payment during such suspension or if there is no statutory provision in any enactment or rule the employee is entitled to his full remuneration for the period of his interim suspension. On the other hand, if there is a term in this respect in the contract of employment or if there is a provision in the statute or the rules framed thereunder providing for the scale of payment during suspension the payment will be made in accordance therewith. This principle applies with equal force in a case where the Government is an employer and a public servant is an employee with this qualification that in view of the peculiar structural hierarchy of Government administration, the employer in the case of employment by Government must be held to be the authority which has the power to appoint the public servant concerned. It follows therefore that the authority entitled to appoint the public servant is entitled 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. But what amount should be paid to the public servant during such suspension will depend upon the provisions of the statute or statutory rule in that connection. If there is such a provision the payment during suspension will be in accordance therewith. But if there is no such provision, the public servant will be entitled to his full emoluments during the period of suspension. On general principles therefore the Government, like any other employer, would have a right to suspend a public servant in one of two ways. It may suspend any public servant pending departmental enquiry or pending criminal proceedings; this may be called interim suspension. The Government may also proceed to hold a departmental enquiry and after his being found guilty order suspension as a punishment if the rules so permit. This will be suspension as a penalty. As we have already pointed out, the question as to what amount should be paid to the public servant during the period of interim suspension or suspension as a punishment will depend upon the provisions of the statute or statutory rules made in that connection.

15. The suspension order issued to the petitioner would not amount to punishment. The employer should be in a position to conduct the disciplinary proceedings without any kind of interference from the employee. The employee would be given the subsistence allowance in accordance with the rules and regulations. In case there are provisions giving a right to the employee to call upon the employer to review the punishment, it is always open to the suspended Government servant to make use of the said right and request the Government to review the punishment. These are the safeguards available to the Government servants under the relevant statutory regulations. There is no question of exercising the power of judicial review in matters relating to suspension in a routine manner.

16. The second respondent, having found that a case is made out *prima facie* against the petitioner, rightly passed the order of suspension. I do not find any ground to set aside the impugned order of suspension.

17. In the upshot, I dismiss the Writ Petition. Consequently, the connected miscellaneous petitions are also dismissed. No costs.