

(2014) 03 KAR CK 0155
In the Karnataka High Court
Case No : Writ Petition No. 5870 of 2014 (S-DIS)

M. Puttaramegowda

APPELLANT

Vs

The Horticulture Produce Co-Operative Marketing and
Processing Society Limited (HOPCOMS)

RESPONDENT

Date of Decision : 25-03-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 311(2)
Karnataka Co-operative Societies Act, 1959 — Section 70

Citation : (2014) 5 KarLJ 430

Hon'ble Judges : A.N. Venugopal Gowda, J

Bench : Single Bench

Advocate : A.N. Gangadharaiah, Advocate for the Appellant; M.S. Prathima,
High Court Government Pleader, Advocate for the Respondent

Judgement

1. Petitioner, an employee of the 1st respondent, filed this writ petition to quash Enquiry Officer's report vide Annexure-L and an order of dismissal from service dated 22-1-2014 vide Annexure-M. The 1st respondent served on the petitioner, memorandum of charges dated 29-3-2013 and appointed an Enquiry Officer to conduct disciplinary enquiry into the charged misconduct. Enquiry Officer having submitted a report dated 11-10-2013, copy was furnished to the petitioner on 5-11-2013 and in view of the resolutions of the Managing Committee dated 3-12-2013 and 9-1-2014, an order dated 22-1-2014 was passed, dismissing the petitioner from service.

2. Sri A.N. Gangadharaiah, learned Advocate, contended that the impugned action being against the principles of natural justice, even if an alternative remedy as provided under Section 70 of the Karnataka Co-operative Societies Act, 1959 (for short "the Act") is available, this is a fit case for interference in exercise of the power under Article 226 of the Constitution.

3. Respondent 1 is a Co-operative Society. A dispute can be raised as against the impugned order under Section 70 of the Act. As against the award passed by the

Registrar, if prejudicial to the interest of either of the parties, an appeal can be preferred before the Karnataka Appellate Tribunal.

4. Based on a domestic enquiry conducted, after furnishing copy thereof and in terms of the resolutions passed by the Managing Committee, the petitioner was dismissed from service on 22-1-2014 vide Annexure-M, by the 1st respondent.

5. In Union of India (UOI) Vs. T.R. Varma, , the respondent therein filed a writ petition in the High Court, to quash an order of dismissal passed against him, for the reason that there was no proper enquiry. Writ petition was allowed on the ground that the writ petitioner was denied an opportunity to cross-examine witnesses who gave evidence in support of the charge which amounted to denial of reasonable opportunity to show cause against the dismissal and that the impugned order of dismissal was bad as being in contravention of Article 311(2) of the Constitution of India. Consequently, impugned order was set aside and the writ petitioner was directed to be reinstated. The correctness of the said order was questioned before the Apex Court mainly on the ground that even if there was a defect in the enquiry, that was a matter that could be set right in the stage following the show-cause notice and as the employee did not ask for an opportunity to cross-examine witnesses, he could not be heard to urge that the order of dismissal was bad as contravening Article 311(2). Apex Court while deciding the case has observed as follows:

"6. At the very outset, we have to observe that a writ petition under Article 226 is not the appropriate proceeding for adjudication of disputes like the present. Under the law, a person whose services have been wrongfully terminated is entitled to institute an action to vindicate his rights, and in such an action, the Court will be competent to award all the reliefs to which he may be entitled, including some which would not be admissible in a writ petition.

It is well-settled that when an alternative and equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and not invoke the special jurisdiction of the High Court to issue a prerogative writ."

Section 70 of the Act provides a forum, to an aggrieved person against whom the Society and its authorities under the Act have passed the order. The Act provides the mechanism for seeking of redressal of the grievance before the Registrar and Appellate Tribunal. Though, Sri A.N. Gangadharaiah contended that the impugned order has been passed in violation of principles of natural justice, there being no dispute, that prior to the passing of the order dated 22-1-2014, petitioner was furnished with the copy of the enquiry report on 5-11-2013, with an opportunity to show cause, whether the cause shown by the petitioner has been considered by the Disciplinary Authority is a matter to be gone into in detail by the Registrar of Co-operative Societies. The question whether the impugned order is bad for violation of principles of natural justice even while holding enquiry by the Enquiry Officer or by the respondent is a matter which the Registrar also can go into. Consequently, it is not appropriate to entertain this

writ petition in view of the availability of the alternative and efficacious remedy by way of raising a dispute under Section 70 of the Act before the Registrar of Co-operative Societies, wherein, an enquiry into all aspects can be held and findings recorded.

In view of the foregoing, the writ petition is rejected, reserving the liberty to the petitioner to raise a dispute as against the impugned order before the Registrar of Co-operative Societies, who shall decide the dispute on merit and in accordance with law, without being influenced by any of the observations made in this order. All contentions raised in the writ petition are left open for consideration and decision by the Registrar of Co-operative Societies.