(2002) 01 KL CK 0038

In the High Court Of Kerala

Case No : W.A. No. 617 of 1999

Mohammedkutty APPELLANT

Vs

Secretary to Government RESPONDENT

Date of Decision : 17-01-2002

Acts Referred:

Citation : (2003) 1 ILR (Ker) 497

Hon'ble Judges : K.S. Radhakrishnan, J;K. Balakrishnan Nair, J

Bench : Division Bench

Advocate : K. Ramakumar, for the Appellant; M.A. Thomaskutty, Government Pleader and T.R. Ramachandran Nair, for the Respondent

Final Decision : Allowed

Judgement

K.S. Radhakrishnan, J.—The point raised in both these cases are the same. Hence we are disposing of these cases by a common judgment. Question raised in this case is whether Government or Joint Registrar has got power to direct the Co-operative Bank to suspend its employee. Learned Single Judge felt that when gross irregularities or misappropriation are found against employees it is always open to the Government or Joint Registrar to direct the society to suspend their employees. Counsel appearing for the appellant submitted that learned Single Judge was not justified in holding that Joint Registrar and Government have got power to issue such a direction. Learned Government Pleader could not point out any provision either in the Co-operative Societies Act or in the Rules empowering the Joint Registrar or State Government to direct a society to suspend its employees. Rule 198(6) of the Co-operative Societies Rules authorises only the competent authority to suspend an employee pending enquiry. We may extract the said provision for easy reference:

"An authority competent to appoint an employee may suspend him pending enquiry into serious charges against such employee. No employee shall however, be kept under suspension for a period extending six months at a time. in no case an employee shall be kept under suspension for a continuous period exceeding one year without the prior approval of the Registrar. (An employee under suspension shall be entitled to subsistence allowance payable under the Kerala Payment of Subsistence allowance payable under the Kerala Payment of Subsistence Allowance Act, 1972 (27 of 1973)."

2. The above mentioned provision would indicate that if the period of suspension exceeds one year prior approval of the Registrar is necessary. In case the employee is kept under suspension for more than one year without the approval of the Registrar appropriate direction could be issued by the Registrar. Beyond that the Registrar or the Government have no power. In the absence of any such provision we are of the view direction given by the Government as well as the Joint Registrar cannot be sustained. We may point out due to misconduct of its employee or otherwise the societies affairs may be affected. It is always open to the Joint Registrar to take appropriate action under the provisions of the Co-operative Societies Act and Rules. There is also ample power on the Registrar to take action under Sections 65 and 66 of the Co-operative Societies Act and power u/s 32 can also be invoked in appropriate situations. In the absence of any provision in the Act or Rules giving power on the Government or Joint Registrar to direct suspension of an employee of the Co-operative Society we are of the view learned single Judge was not justified in declining relief to the petitions. Order of suspension in both cases would stand quashed. This will not stand in the way of the Managing Committee to consider the materials before it and take an independent decision as to whether the employee should be suspended or not.

3. Appeals are therefore allowed and the judgment of the learned Single Judge would stand set aside.