
(2011) 06 MAD CK 0199

In the Madras High Court

Case No : Writ Petition No. 34936 of 2004 and W.P.M.P. No. 42150 of 2004

P. Govindan

APPELLANT

Vs

The State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 07-06-2011

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (2011) 06 MAD CK 0199

Hon'ble Judges : V. Dhanapalan, J

Bench : Single Bench

Advocate : R.N. Amarnath, for the Appellant; P.S. Siva Shanmuga Sundaram, Additional Govt. Pleader for RR1 to 3 and S. Gopinathan, for R4, for the Respondent

Final Decision : Dismissed

Judgement

V. Dhanapalan, J.—The Petitioner, who was employed as Salesman in the fourth Respondent society, has come forward with the present writ petition challenging the enquiry communication issued by the fourth Respondent dated 25.10.2004 and the consequential communication dated 08.11.2004.

2. It is the case of the Petitioner that he was employed as a Salesman in the fourth Respondent/Sethunampalayam Weaver's Co-operative Production and Sales Society, hereinafter called as "the Society", on 01.06.1981 and he continued in the same position. While so, the third Respondent issued a memo dated 15.10.2001 directing the fourth Respondent to take action against the servants of the society for specific charges framed against each of them, in which, in para-3, the charge against the Petitioner was referred. On the basis of such memo, the fourth Respondent issued a charge memo dated 02.03.2002 containing the very same charge as contained in para-3 of the memo dated 15.10.2001 issued by the third Respondent. The charge came to be levelled against the Petitioner and Ors. on the basis of a report u/s 81 of the Tamil Nadu Co-operative Societies Act, 1983, hereinafter referred to as "the Act". In the said

report, it was mentioned that the Petitioner had issued an appraiser receipt to the members on 20.12.2000 as if they have manufactured and supplied textiles, though they have not manufactured or supplied textiles to the society. For the above said charge, the Petitioner submitted his explanation denying the same. Thereafter, the Petitioner was placed under suspension from service, by an order dated 12.11.2002. It is the contention of the Petitioner that during the period of suspension, he was not paid subsistence allowance. Subsequently, an enquiry officer was appointed, who enquired into the charges and held that the charges framed against the Petitioner were not proved and a report to that effect was submitted on 31.07.2004. On receipt of the enquiry report, the fourth Respondent revoked the order of suspension and reinstated the Petitioner in service on 28.08.2004 and he also joined duty on 30.08.2004. However, the fourth Respondent imposed a penalty of stoppage of increment for a period of three months without cumulative effect. While so, the fourth Respondent, by order dated 11.09.2004, once again suspended the Petitioner from service referring to all the earlier proceedings of the fourth Respondent with respect to the charge memo dated 02.03.2002, including the enquiry officer report dated 31.07.2004. According to the Petitioner, No. fresh charges or allegations were referred to in the order of suspension dated 11.09.2004. Subsequently, the fifth Respondent issued a notice for enquiry on 30.10.2004 for enquiring into the alleged charges contained in the charge memo dated 15.10.2001, but No. such charge memo dated 15.10.2001 was issued to him and only a reference was made to the memo dated 15.10.2001 issued by the third Respondent to the fourth Respondent directing him to take action against the servants of the society. Therefore, the Petitioner challenges the enquiry communication dated 25.10.2004 issued by the fifth Respondent and the subsequent communication dated 08.11.2004 on the ground that the action of the fourth and fifth Respondents is arbitrary and against the principles of natural justice.

3. The writ petition was admitted on 01.12.2004 and rule nisi was served on the Respondents on 03.12.2008, 08.04.2009 and 10.04.2009. This Court granted interim stay and the same is in force till date. The Respondents have not filed counter till date.

4. At the outset, the learned Counsel for the Petitioner submits that when the Petitioner was imposed with punishment in respect of the charges contained in the charge memo dated 02.03.2002, for the very same set of charges and in the absence of any new charges framed, the Respondents cannot proceed against the Petitioner by conducting an enquiry. Therefore, the impugned communication issued by the fifth Respondent is without jurisdiction and not based on any charges and the fifth Respondent cannot be allowed to proceed further. The learned Counsel for the Petitioner also brought to the notice of this Court that during the pendency of the present writ petition, the Petitioner retired from service.

5. On the other hand, the learned Additional Government Pleader raises a

preliminary objection relating to maintainability of the writ petition on the basis of the decision rendered by the Full Bench of this Court reported in K. Marappan Vs. The Deputy Registrar of Co-operative Societies and The Special Officer, Vattur Co-operative Agricultural Bank, . The learned Additional Government Pleader, relying upon the aforesaid decision of the Full Bench of this Court, would contend that the writ petition, which is filed challenging the action of the Special Officer of the Cooperative Society, is not maintainable and prayed for dismissal of the same.

6. The learned Counsel for the fourth Respondent would contend that in view of the interim stay granted by this Court, the fourth Respondent is not in a position to complete the departmental proceedings initiated against the Petitioner and it is pending against the Petitioner. He would further contend that the Petitioner has chosen to challenge only the communication of the enquiry officer appointed by the fourth Respondent and therefore also, the writ petition is not maintainable and he also prayed for dismissal of the writ petition.

7. Heard Mr. R.N. Amarnath, learned Counsel for the Petitioner, Mr. Sivashanmuga Sundaram, learned Additional Government Pleader appearing for the Respondents 1 to 3 and Mr. Gopinathan, learned Counsel for the fourth Respondent. Perused the material documents annexed with the typed set of papers.

8. It is not in dispute that the Petitioner was employed as a Salesman with the society from 01.06.1981. During the course of his employment, proceedings were initiated by third and fourth Respondent against the Petitioner and Ors. based on the report filed u/s 81 of the Act. Subsequently, the Petitioner was suspended from service and a charge memo was also issued to him. Pending departmental proceedings, the Petitioner was also placed under suspension. Thereafter, an enquiry officer was appointed, who, after conducting enquiry, submitted his report holding that the charges against the Petitioner are not proved. Based on the report of the enquiry officer, the order of suspension passed against the Petitioner was revoked and he was allowed to join duty. Notwithstanding the report of the enquiry officer, the fourth Respondent imposed a penalty of stoppage of increment for a period of three months without cumulative effect. While so, the fourth Respondent again suspended the Petitioner from service on 11.09.2004 and the fifth Respondent was appointed as enquiry officer to conduct enquiry into the charges. For the purpose of conducting enquiry, the fifth Respondent issued an enquiry communication dated 25.10.2004 and subsequent communication dated 08.11.2004 and on receipt of the same, the Petitioner rushed to this Court to challenge the above said two communications of the fifth Respondent.

9. The impugned communications assailed by the Petitioner were issued by the fifth Respondent, who was appointed by the fourth Respondent, Special Officer of the society. In view of the decision rendered by the Full Bench of this Court in Marappan's case holding that a writ petition will not lie against the co-operative society, particularly against an order issued by the Special Officer of the society,

this writ petition is not maintainable inasmuch as the ratio laid down by the Full Bench of this Court is applicable to the facts of the present case on hand. It is useful to extract the relevant portion of the decision of the Full Bench of this Court, which runs as follows:

21. From the above discussion, the following propositions emerge:

(i) If a particular co-operative society can be characterised as a "State" within the meaning of Article 12 of the Constitution (applying the tests evolved by the Supreme Court in that behalf), it would also be "an authority" within the meaning and for the purpose of Article 226 of The Constitution. In such a situation, an order passed by a society in violation of the bye-laws can be corrected by way of Writ Petition;

(ii) Applying the tests in *Ajay Hasia* it is held that a co-operative society carrying on banking business cannot be termed as an instrumentality of the State within the meaning of Article 12 of the Constitution;

(iii) Even if a society cannot be characterised as a "State" within the meaning of Article 12 of the Constitution, a Writ would lie against it to enforce a statutory public duty cast upon the society. In such a case, it is unnecessary to go into the question whether the society is being treated as a "person" or "an authority" within the meaning of Article 226 of the Constitution and what is material is the nature of the statutory duty placed upon it and the Court will enforce such statutory public duty. Although it is not easy to define what a public function or public duty is, it can reasonably said that such functions are similar to or closely related to those performable by the State in its sovereign capacity.

(iv) A society, which is not a "State" would not normally be amenable to the writ jurisdiction under Article 226 of the Constitution, but in certain circumstances, a writ may issue to such private bodies or persons as there may be statutory provisions which need to be complied with by all concerned including societies. If they violate such statutory provisions a writ would be issued for compliance for those provisions.

(v) Where a Special Officer is appointed in respect of a co-operative society which cannot be characterised as a "State" a writ would lie when the case falls under Clauses (iii) and (iv) above.

(vi) The bye-laws made by a co-operative society registered under the Tamil Nadu Cooperative Societies Act, 1983 do not have the force of law. Hence, where a society cannot be characterised as a "State", the service conditions of its employed governed by its bye-laws cannot be enforced through a Writ Petition.

(vii) In the absence of special circumstances, the Court will not ordinarily exercise power under Article 226 of The Constitution of India when the Act provides for an alternative remedy.

(viii) The decision in *M. Thanikachalam and others Vs. Maduranthakam*

Agricultural Producers co-operative Marketing Society and others, , is No. longer good law, in view of the decision of the Seven Judge Bench of the Supreme Court in Pradeep Kumar Biswas case and the other decisions referred to here before.

10. Therefore, in the light of the decision of the Full Bench of this Court referred to above, on the question of maintainability of this writ petition, for want of jurisdiction, the prayer sought for in this writ petition is rejected. However, it is for the Petitioner to move the appropriate authority as per the provisions of the Act and contest the matter in a manner known to law. In that event, it is always open to the Petitioner to raise all the issues raised in this writ petition and this Court, without expressing any opinion on merits of the case, only holds that for want of jurisdiction, this writ petition is not maintainable.

11. With the above observation, the writ petition is dismissed. No. costs. Consequently, connected miscellaneous petition is closed.