

(1999) 02 KL CK 0024
In the High Court Of Kerala
Case No : O.P. No. 137 of 1998

Pattanakad Coir Mats and Matting Co-operative Society Ltd.	APPELLANT
Vs	
Project Officer (Coir)	RESPONDENT

Date of Decision : 24-02-1999

Acts Referred:

Citation : (1999) 3 LLJ 1605

Hon'ble Judges : S. Sankarasubban, J

Bench : Single Bench

Advocate : E. Subramani and P.V. Jayachandran, for the Appellant; S.P. Aravindaksha Pillai and K.K. Raveendranathan, for the Respondent

Final Decision : Allowed

Judgement

S. Sankarasubban, J.—Petitioner in the Original Petition is the Pattanakkad Coir Mats & Matting Co-operative Society Ltd. second respondent is a clerk working in the Society. By Ext.P3 dated September 18, 1997, the second respondent was suspended from service in order to facilitate a detailed enquiry into the allegations levelled against him. He challenged Ext. P3 before the first respondent, the Project Officer (Coir), Alappuzha. The Project Officer (Coir), Alappuzha is the Registrar for the petitioner Society. First respondent has now passed Ext. P8 order exercising his powers under Rule 176 of the Co-operative Service Rules by which he had rescinded resolution No. 125 dated September 17, 1997 of the petitioner Society placing the second respondent under suspension. It is challenging that the Original Petition is filed.

2. Learned counsel for the petitioner submitted that the Society has every right to initiate disciplinary action against erring members of the staff and that such action was taken by the Society against the second respondent. The Society found that the action of the second respondent was unbecoming of the staff of the Society and there were many allegations against the second respondent. It shows that he was acting against the interest of the Society. Even though the second respondent filed a reply to Ext. P1 allegation, that was not satisfactory

and the Society decided to conduct a detailed enquiry. For a proper enquiry, it was decided to suspend the second respondent from service till the enquiry was over. According to the petitioner, the order of suspension was properly exercised in the interest of the Society. Counsel submitted that the first respondent extended her powers under Rule 176 of the Cooperative Societies Rules. Rule 176 of the Rules empowers the Registrar to rescind resolution, if it appears that such resolution is ultra vires of the objects of the Society, or is against the provisions of the Act, Rules, Bye-laws or of any direction or instructions issued by the Department, or calculated to disturb the peaceful and orderly working of the Society or is contrary to the better interest of the Society.

3. Power to suspend an employee is derived from Rule 198(6) of the Co-operative Societies Rules. Rule 198(6) of the Rules states as follows:

"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 exceeding 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 Act, 1972 (27 of 1973)".

Learned counsel for the petitioner submitted that there was serious charges against the second respondent and that was why he was suspended. Hence, it cannot be said that the resolution of the Society was against any provision of law. Learned counsel for the second respondent as well as the learned Government Pleader supported Ext. P8 order. According to them, the power has been exercised properly and that there was nothing to interfere with the order. It was further submitted that the allegations made against the second respondent are frivolous and were made only to victimise the second respondent.

4. Now, let us examine Ext. P8 order and the grounds on which the resolution was rescinded. In paragraph 12 of Ext. P8 order it is stated thus:

"no charge memo has been issued to Sri V.R. Retnappan by the Society..... A charge is a precise formulation of a definite accusation..... Therefore, in my opinion nothing worth being called a charge has been raised or formulated against Sri V.R. Retnappan. Only suspension pending enquiry into the serious charges is authorised by Rule 198(6). The usual procedure of preparing a charge memo and statement of allegations serving it on the employee, getting his explanation, considering it and deciding whether an enquiry is to be conducted or not and appointing an Enquiry Officer if the explanation is found unsatisfactory do not seem to have been followed in this case. In such circumstances, I find that the order of suspension is violative of Rule 198(6) of the Kerala Co-operative Societies Rules 1969".

Thereafter, in paragraph 13 of the order, it is stated thus:

"On a perusal of the entire records of the case, I find that the Board of Directors of the Society had arrived at the decision to place Sri V.R. Retnappan under suspension without proper application of mind to the relevant materials".

The Registrar supports her view in paragraph 14 by stating thus:

"It is needless to state that the resolution of the Board of Directors of the Society to place an employee under suspension illegally is one which is calculated to disturb the peaceful and orderly working of the Society. It is also contrary to the better interest of the Society. It will have a demoralising effect on the members of the staff of the Society as a whole".

In the above order, the first ground for rescinding the resolution is that no formal charges have been made. According to the first respondent, to suspend an employee under Rule 198(6) it is necessary that a formal memo of charges should have been issued to the delinquent employee. Rule 198(6) only states that serious charges should have been levelled against the delinquent employee. I don't think that the word "charge" is used to mean that a definite memo of charges should have been issued to the delinquent employee. Normally, an employee is suspended in order to facilitate an enquiry against that employee. For this purpose, at the time of ordering suspension, there should have been some materials in the possession of the employer, which compels him to make a detailed enquiry against the delinquent employee. It is after collecting all the materials that formal charges should be served on the delinquent employee. If the interpretation given by the Registrar is accepted, the employee cannot be suspended even if there are prima facie materials to show that the employee has committed misconduct. Hence, according to me, the word "charge" occurring in Rule 198(6) of the Rules can only mean when there are serious allegations against the delinquent employee.

5. In this context, I refer to the decision of the Supreme Court in *Pratap Singh v. State of Punjab* (1966-I-LLJ-458) (SC). There, this question was considered while interpreting Rule 3.26(d) of the Punjab Civil Services Rules. It is as follows:

"A Government servant under suspension on a charge of misconduct shall not be required or permitted to retire on his reaching the date of compulsory retirement but should be retained in service until the enquiry into the charge is concluded and a final order is passed thereon".

There a Government servant was suspended, but formal charge has not been framed. Considering this, the Supreme Court held thus:

"This rule comes into play only after a prima facie case is made out against a Government servant and not at the stage of a preliminary investigation into accusations made against a Government servant. But it does not follow that suspension is not permissible till this stage of making a formal charge arrives. Rule 3.26(d) is of general application and therefore, the expression "charge of misconduct" in this rule is not to be interpreted narrowly as meaning "the

charges formally framed and communicated to the Government servant concerned" with the intimation that a formal departmental enquiry had been initiated against him on those charges. The appellant's contention does not find any support, as urged, from the last portion of this Rule which reads "until the enquiry into the charge is concluded and a final order is passed thereon." Of course, the enquiry would be into the charges of misconduct on account of which the Government servant has been suspended and the suspension will continue till a final order is passed on those charges. The requirements of the last portion of this rule do not in any way lead to the conclusion that the enquiry into the charges refers to a formal departmental enquiry into the charges framed and communicated to the Government servant in accordance with Rule 7 of the Punishment and Appeal Rules".

Thus, the word "charge" does not necessarily mean that formal charges should have been delivered to the delinquent employee. Hence in the present case, it cannot be said that suspension was violating the Rules. Thereafter, the first respondent states that the order of suspension is vitiated by errors of law apparent on the face of the record. Excepting for this bald statement, no reason has been given for arriving at such a conclusion. Finally, the first respondent is of the view that the suspension will disturb the peaceful and orderly working of the society and it will cause financial loss to the society. Suffice it to say that the above observations of the first respondent are relevant.

6. Hence, I set aside Ext. P8 order. The first respondent will give necessary instructions to the petitioner to conclude the disciplinary enquiry against the second respondent within a period of four months from the date of receipt of a copy of this judgment.