

(1976) 06 KL CK 0011
In the High Court Of Kerala

P.S. Sebastian

APPELLANT

Vs

Co-operative Inspector

RESPONDENT

Date of Decision : 02-06-1976

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (1977) 1 LLJ 52

Hon'ble Judges : T. Chandrasekhara Menon, J

Bench : Single Bench

Judgement

T. Chandrasekhara Menon, J.—The petitioner an employee of a cooperative society seeks in this writ petition to quash Ext. P4 show cause notice issued to him by the society as to why his service should not be terminated on the basis of the report in the enquiry proceedings against him.

2. I do not think that the petition as such is maintainable in the light of the decision of the Supreme Court reported in Executive Committee of Vaish Degree College, Shamli and Others Vs. Lakshmi Narain and Others, . There it has been held on the basis of earlier decisions of the Court as follows:

A contract of personal service cannot ordinarily be specifically enforced and a Court normally would not give a declaration that the contract subsists and the employee, even after having been removed from service can be deemed to be in service against the will and consent of the employer This rule, however, is subject to three well recognised exceptions?(i) where a public servant is sought to be removed from service in contravention of the provisions of Article 311 of the Constitution of India : (ii) where a worker is sought to be reinstated on being dismissed under the Industrial Law ; and (iii) where a statutory body acts in breach or violation of the mandatory provisions of the statute.

What is a statutory body has further been explained in that case. S.M.F. Ali, J., speaking for himself and Khanna J., observed

It seem to us that before an institution can be a statutory body it must be

created by or under the statute and owe its existence to a statute. This must be the primary thing which has got to be established. Here a distinction must be made between an institution which is not created by or under a statute but is governed by certain statutory provisions for the proper maintenance and administration of the institution. There have been a number of institutions which though not created by or under any statute have adopted certain statutory provisions, but that by itself is not, in our opinion, sufficient to clothe the institution with a statutory character. In *Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation*, this Court clearly pointed out as to what constitutes a statutory body. In this connection my Lord A.N. Ray, C.J., observed as follows:

A company incorporated under the Companies Act is not created by the Companies Act but comes into existence in accordance with the provisions of the Act. It is not a statutory body because it is not created by the statute. It is a body created in accordance with the provisions of the statute.

It is, therefore, clear that there is a well-marked distinction between a body which is created by the statute and a body which after having come into existence is governed in accordance with the provisions of the statute. In other words the position seems to be that the institution concerned must owe its very existence to a statute which would be the fountainhead of its powers. The question in such cases to be asked is, if there is no statute would the institution have any legal existence. If the answer is in the negative, then undoubtedly it is a statutory body, but if the institution has a separate existence of its own without any reference to the statute concerned but is merely governed by the statutory provisions it cannot be said to be a statutory body.

3. In the light of this decision it will be futile to issue the writ prayed for because even if the show cause notice has been issued in violation of the statutory rules the Court would not be in a position finally to direct the co-operative society to continue the service of the petitioner. The petitioner's remedy is only for damages. O.P. is, therefore, dismissed. I make no order as to costs.