
(2006) 12 MAD CK 0021
In the Madras High Court
Case No : W.A. No. 1284 of 2006

The Special Officer

APPELLANT

Vs

A. Sundaram

RESPONDENT

Date of Decision : 13-12-2006

Acts Referred:

Citation : (2006) 12 MAD CK 0021

Hon'ble Judges : S.J. Mukhopadhyaya, J; F.M. Ibrahim Kalifulla, J

Bench : Division Bench

Advocate : M.S. Palanisamy, for P.P. Shanmugasundaram and G. Sankaran, AGP, for the Appellant; C. Prakasam, for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhyaya, J.—This writ appeal has been preferred by the appellant Special Officer, Isukkazhikatter Primary Agricultural Co-operative Bank, Tiruvannamalai District, against the order dated 10.8.05 passed by the learned single Judge in W.P. No. 38525/04 whereby and whereunder the learned single Judge held that the appellant Special Officer had no jurisdiction to pass the order of dismissal and, thereby, set aside the impugned order of dismissal.

2. The writ petitioner, A. Sundaram, while functioning as the Secretary of Isukkazhikatter Primary Agricultural Co-operative Bank (hereinafter referred to as the Bank), was proceeded departmentally and having been found guilty, the appellant Special officer issued the order of dismissal vide Na. Ka. No. NIL dated 30.08.03. This was challenged by the writ petitioner on the ground that the committee alone is competent to pass the order of punishment, the writ petitioner being a member of common cadre of secretary of the Bank and the Special Officer has no jurisdiction.

3. It was pleaded on behalf of the appellant that the Board of Directors of the Bank were superseded by the State Government and in its place Special Officer was appointed. Subsequently, the G.O. Ms. No. 55 dated 24.3.00 as was issued

by the Government of Tamil Nadu in exercise of powers conferred u/s 75 of the Tamil Nadu Co-operative Societies Act, 1983, constituting a committee, having been stayed by this Court immediately after issuance of the said order, only the Special Officer was only competent to take disciplinary action against the employees of the bank, including the Secretary. The learned single Judge, referring to by-law 13, was of the view that the committee alone was competent to dismiss the officer of the rank of Secretary of the bank and not the Special Officer.

4. Parties circulated English version of the order of appointment of the writ petitioner, A. Sundaram; the copy of the resolution taken in the proceedings of the administrative meeting of the bank held on 16.8.97; the copy of G.O. Ms. No. 55 dated 24.3.00 issued by the Government of Tamil Nadu; interim order passed by this Court in some of the cases; abstract of the order passed by the Government of Tamil Nadu vide G.O. Ms. No. 17 dated 23.1.01 and abstract of G.O. Ms. No. 79 dated 5.3.04, which relates to the bank in question.

5. One of the stand taken by the appellant is that the writ petitioner, A. Sundaram, was not the regular Secretary of the bank, but merely functioning as in-charge secretary; his order of appointment as a regular secretary as was issued on 11.1.97 was subsequently cancelled by the bank on 16.8.97. Thus, he was never taken in the common cadre of secretary.

6. From the order dated 11.1.97 issued by the President of the Bank, it appears that the Board of Directors of the bank appointed the writ petitioner, A. Sundaram, as the Secretary of the bank on regular basis with effect from the date of issuance of the order, i.e., 11.1.97. In the proceedings of the administrative meeting of the bank held on 16.8.97, though it was resolved to cancel the appointment, promotion and disbursement of new salary earlier allowed to one or other officer/employee, as also to cancel resolution No. 12 passed on 11.1.97, but there is nothing on record to suggest that the bank or any competent authority of the bank issued any order cancelling the appointment of the writ petitioner, A. Sundaram as the Secretary of the Bank as was made vide order dated 11.1.97. The said order of appointment dated 11.1.97 having not been cancelled by any subsequent order issued by the bank or its competent authority, it cannot be presumed that the writ petitioner, A. Sundaram, was reverted to his original post or was functioning as in-charge Secretary as suggested by the counsel for the appellant. If any decision was taken in the administrative meeting held on 16.8.97, the same having remained in file and having not been given effect by issuance of a formal order of cancellation of appointment, the same cannot be relied upon to defeat the claim of the petitioner's absorption as Secretary.

7. The Government of Tamil Nadu issued G.O. Ms. No. 55 dated 24.3.00 in exercise of powers conferred u/s 75 of the Tamil Nadu Co-operative Societies Act, 1983, constituting a common cadre of service in respect of the post of Secretaries of the banks. By the said G.O. Ms. No. 55 dated 24.3.00, Tamil Nadu

Primary Agricultural Co-operative Bank Common Cadre Service Regulation, 2000 (hereinafter referred to as Regulation, 2000) was framed and circulated. Regulation 3 deals with composition of common cadre to be maintained separately for "A" Class, "B" Class and "C" Class bank and the Secretary of such bank shall form the common cadre service in respect of respective class of banks. Under Regulation 3, all employees holding the post of Secretary of bank shall be deemed to have been absorbed in the common cadre service.

8. Section 75 of the Tamil Nadu Co-operative Societies Act, 1983, deals with the constitution of common cadre of service. As per Sub-section (2) of Section 75, when any such common cadre of service is constituted under Sub-section (1) in respect of any post, all the employees holding such posts on the date of constitution of such common cadre of service, shall be deemed to have been absorbed in the common cadre of service with effect on and from the date of constitution of such common cadre. The common cadre of service was constituted vide G.O. Ms. No. 55 dated 24.3.00 with effect from the date of issuance of the said order. Thus, as per Sub-section (2) of Section 75 read with Regulation 3, the writ petitioner, A. Sundaram, who was holding the post of Secretary of the bank on 24.3.00 is deemed to have been absorbed in the common cadre of Secretary of the bank.

9. Regulation 3 also deals with cadre authority, which reads as follows:

Cadre Authority is the committee as provided in the Section 75 of the Act. Pending constitution of the committee under first proviso to Sub-section (3) of Section 75 of Tamil Nadu Co-operative Societies Act, the Joint Registrar of Co-operative Societies in the region concerned shall be the "Cadre Authority" in respect of Primary Agricultural Co-operative banks for a period of three years from the date of coming into force of these regulations.

10. Sub-section (3) of Section 75 of the Tamil Nadu Co-operative Societies Act, 1983, reads as follows:

(3) The order under Sub-section (1) shall provide for the constitution of the competent authority which shall be a committee consisting of both officers of the Government and non-officials and the total strength of such committee shall not exceed five, from among whom one of the officers of the Government not below the rank of Joint Registrar in the Co-operative Department or not below such rank in other departments of the government as may be prescribed shall be appointed by the Government as the Chairman, to exercise the powers of recruitment, appointment, transfer and disciplinary control (including censure, stoppage of increment, withholding of promotion, suspension by way of punishment, reduction to a lower rank in the seniority list or to a lower post or time scale whether in the same service or in another service or to a lower stage in time scale, compulsory retirement, removal or dismissal) and such other powers as may be prescribed in respect of holders of posts in such common cadre of service. After the constitution of such competent authority, registered

society concerned shall not, in respect of holders of posts in such common cadre of service, exercise any of the powers which are conferred by or under this Act or the rules made thereunder on the competent authority in respect of such common cadre of service. There shall be a separate competent authority in respect of each common cadre of service:

Provided that the Government may direct that for such period not exceeding three years from the date of constitution of a common cadre of service, such committee in relation to that common cadre of service, shall consist of only a single officer of the Government not below the rank of Joint Registrar in the Co-operative Department or not below such rank in other departments of the Government as may be prescribed and such officer shall be the "competent authority constituted under Sub-section (3) of Section 75" for the purposes of this Act and any reference to the competent authority in this Act shall, for the period mentioned in this proviso, be construed as a reference to the single officer aforesaid:

Provided further that the registered society under which an employee borne on a common cadre of service is for the time being employed shall also have the power to impose on such employee the penalty of censure or stoppage of increment up to two years without cumulative effect.

11. As per Sub-section (3) of Section 75 of the Act and Regulation 3, a committee was to be constituted, but before that, in the middle of the year 2000, interim order of stay was passed by this Court in one or other case staying the operation of the entire G.O. Ms. No. 55 dated 24.3.00. During the pendency of these cases, the State Government issued G.O. Ms. No. 17 dated 23.1.01 and the following committee was constituted:

"The Cadre Authority shall be a Committee consisting of the following as provided in Sub-section (3) of Section 75 of the Tamil Nadu Co-operative Societies Act, 1983:

1

Managing Director or Special Officer as the case may be of the respective District Central Co-operative Bank

..Chairman

2

President of the concerned District Central Co-operative Bank

..Member

3

Vice-President of the concerned District Central Co-operative Bank

..Member

4

Regional Joint Registrar of Co-operative Societies of the concerned region only

..Member

5

President of the Primary Agricultural Co-operative Bank with highest working capital

..Member

12. However, the said G.O. Ms. No. 17 dated 23.1.01 by which the cadre authority was constituted could not come into effect due to the interim order of stay passed by this Court. Finally, all the writ petitions were dismissed on 23.6.03 vide the judgment in P. Baluchamy Vs. The State and Others, and the interim order of stay stood vacated. It is only thereafter, the appellant Special Officer, issued the impugned order of dismissal dated 30.08.03 removing the writ petitioner, A. Sundaram from the services of the bank.

13. Learned Counsel for the State has produced a copy of the recent G.O. Ms. No. 79 dated 5.3.04, whereby another amendment has been made and a committee has been constituted to function as Cadre Authority, which reads as follows:

The Cadre Authority shall be a Committee consisting of the following as provided in Sub-section (3) of Section 75 of the Tamil Nadu Co-operative Societies Act, 1983:

1

Regional Joint Registrar

..Chairman

2

Special Officer of the District Central Co-operative Bank

..Member/

Convenor

3

Two Circle Deputy Registrars in the region

..Members

4

The Special Officer of the Primary Agricultural Co-operative Bank with highest working capital in the region

..Member

Thus, since 5.3.04, the aforesaid committee is the Cadre Authority for the Secretary of the Bank to take any decision.

14. From G.O. Ms. No.205 dated 25.5.01, it appears that the State Government refused to extend the term of the members of the Boards of Primary Agricultural Co-operative Societies and authorised the Registrar of the Co-operative Societies/ Regional Joint Registrars of the Co-operative Societies to appoint Special Officers in all those societies. Pursuant to the said G.O. No. 205 dated 25.5.01, the Special Officer was appointed to perform the duty of the Board of the bank. However, he has not been invested with the power and duty of Cadre Authority, either under Sub-section (3) of Section 75 or under Regulation 3. Even if the G.O. Ms. No. 55 dated 24.3.00 is stayed by this Court, any action already taken on the basis of such Government Order cannot be treated to have been stayed. If the Secretaries of the Bank were deemed to have been absorbed in the common cadre on 24.3.00, the effect of the order of stay of G.O. Ms. No. 55 dated 24.3.00 will be applicable to such absorption. Only effect will be that no further order could have been passed thereafter as per Regulation, 2000 circulated by the said G.O. Ms. No. 55 dated 24.3.00. Similarly, the order of stay passed by the Court will not amount to investing the special officer with the power of the cadre authority till such power is vested u/s 75(3) of the Act. This apart, as per Sub-section (3) of Section 75, only an officer in the rank of Joint Registrar or above can be empowered by the State to function as cadre authority of bank in the absence of a committee and no officer below such rank, including the special officer can exercise the power of the cadre authority. Thus, even if G.O. Ms. No. 55 dated 24.3.00 was stayed by this Court in one or other case, the Special Officer was not empowered to act as a Cadre Authority. The impugned order dated 30.08.03 has also been issued by the appellant Special officer after the order of stay stood vacated on dismissal of the writ petitions (dismissed on 23.6.03). So he cannot take any advantage of stay order passed by this Court.

15. In this background, we are not inclined to interfere with the order dated 10.8.05 passed by the learned single Judge in W.P. No. 38525 of 2004, but allow the cadre authority/competent authority to proceed further and the cadre authority/competent authority may pass appropriate order after giving opportunity to the writ petitioner. The writ appeal is dismissed but with the aforesaid liberty. However, there shall be no order as to costs.