

(2009) 03 KL CK 0003
In the High Court Of Kerala
Case No : Writ Petition (C) No. 9764 of 2009

T.K. David

APPELLANT

Vs

Kuruppumpady Service Co-Operative Bank and Others

RESPONDENT

Date of Decision : 26-03-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 69, 70, 70A
Industrial Disputes Act, 1947 — Section 17(B)

Citation : (2011) 1 KLJ 1

Hon'ble Judges : Thottathil B. Radhakrishnan, J

Bench : Single Bench

Advocate : P.P. Jacob, for the Appellant; P.V. Baby, for the Respondent

Judgement

Thottathil B. Radhakrishnan, J.—The Petitioner is an employee of the first Respondent. He was placed under suspension and later on dismissed from service. There were different rounds of litigations before the RCS and before this Court. Ultimately, the parties stood relegated to the Co-operative Arbitration Court. That authority issued an order setting aside the findings in the enquiry conducted as part of the disciplinary proceedings. It also gave liberty to the employer to establish the charges against the employee before the Arbitration Court. The Co-operative Tribunal: took the view that the said order does not amount to an award for the purpose of appeal or revision. This Court interfered with that and held that such a decision would amount to an award. The Tribunal, thereafter decided on merits and affirmed the decision of the Arbitration Court. That was challenged by the employer before this Court and that writ petition was dismissed and W.A is also dismissed. Therefore the logical need is a conclusion of the proceedings in ARC 27 of 2006. The Arbitration Court has, therefore, now to offer an opportunity to the rival parties to adduce evidence, hear them on the sustainability of the allegations and charges against the delinquent, who is the writ Petitioner and then decide on the mode of final disposal of the matter. That may be one resulting in upholding the charges against the Petitioner or in his reinstatement or any other manner of terminating or continuing the relationship

between the employer and the employee. The issues regarding the payment of back wages, rates thereof etc may also arise in the event of re-instatement being ordered. The Petitioner's request for such a decision on an interlocutory measure has been rejected by the Co-operative Arbitration Court as per impugned Ext.P9. I do not find any jurisdictional error or legal infirmity in that action more particularly because the Arbitration Court has rightly held that these are issues for a final disposal and not for any interlocutory order. Therefore the challenge to the impugned order fails.

2. At this stage, the learned Counsel for the Petitioner states that the proceedings before the Co-operative Tribunal may be ordered to be expedited in view of the enormous delay and the long period during which the Petitioner is out of service. The question whether the Petitioner should be treated as one continuing under suspension and whether he is entitled to any allowance by way of subsistence allowance or otherwise, may be a matter for the Tribunal to decide but taking note of the work load of the Kerala Co-operative Arbitration Tribunal, which is manned by a single person and the skeletal supporting staff that would it has, which fact is a matter within the knowledge of this Court in the earlier proceedings, I am not inclined to issue any direction for any time bound consideration and disposal of the case, though the Tribunal would consider any request of the Petitioner for expediting the final disposal.

3. The powers of the Co-operative Arbitration Tribunal are referable to Section 69, 70 and 70A included in Section 70(3). The same powers as are vested in a civil court as under the CPC while trying a suit in respect of the summoning and enforcing the attendance of any Defendant or witness and examining the witness on oath and also the power of issuance of any Commission for examination of any witness. There is no reason why the Co-operative Arbitration Court should not utilize this statutory rule including by issuing Commission for examination of witnesses. This could save a good load of time and the Tribunal could find more time for hearing matters rather than recording the evidence except in cases where it becomes abundantly necessary that the evidence has to be recorded by the court itself. Having regard to the provisions of Code of Civil Procedure, which apply and are incorporated by reference as per Section 70(3), there is no reason why Co-operative Arbitration Court cannot permit proof affidavits being filed as is done in civil courts. The attempt to create an Arbitration Court, is to provide exclusive jurisdiction and thereby relieve civil courts of matters which would have otherwise come to it. That process should not ultimately result in stagnation leading to citizens walking from pillar to post for appropriate opportunity for redressal of their grievances. Taking note of the work load in the Kerala Co-operative Arbitration Court, it is high time that the Government considers appointment of more Presiding Officers for that court and enlarging the quorum of that court by appointing more Presiding Officers as may be necessary to take work load. The government has to do this to alleviate the sufferings of those who have to go successfully to the Co-operative Arbitration Court, in terms of the exclusive jurisdiction conferred in terms of the Kerala Co-operative Societies Act.

4. In so far as the case in hand is concerned, the learned Counsel for the Petitioner states that recording of evidence is almost over from the side of the management. Learned Arbitration Court will therefore consider the appointment of Commission to record any further evidence, if necessary. The court will also consider any request of the Petitioner for adjudication on an issue of payment of any allowance akin to those that would be available as subsistence allowance pending disciplinary proceedings or u/s 17(B) of Industrial Disputes Act 1947 when matters are pending before the authorities under that Act, because such provisions for allowances are made with the socialistic goal and with reference to right to life under Article 21 and also basic human rights which could never be refused to any individual, particularly a citizen.

5. Writ petition ordered accordingly.