

(2013) 01 KL CK 0143
In the High Court Of Kerala
Case No : W.A. No. 2190 of 2009

V.S. Radharamani, Pratheeksha, Vydhyuth Nagar, Palakkad	APPELLANT
Vs	
K.S.E.B Employees Co.-Operative Society Limited No. 671, Palakkad - 678014, The Joint Registrar of Co.-Operative Societies, Palakkad and State of Kerala	RESPONDENT

Date of Decision : 08-01-2013

Acts Referred:

Kerala Co-operative Societies Act, 1969 — Section 66, 69

Citation : (2013) 01 KL CK 0143

Hon'ble Judges : S. Siri Jagan, J;K. Harilal, J

Bench : Division Bench

Advocate : P. Ramakrishnan, for the Appellant; M.P. Ashok Kumar and Sri D. Somasundaram, Spl. Government Pleader, for the Respondent

Judgement

Siri Jagan, J.—The petitioner in W.P (C) No. 16567/2009 is the appellant in this writ appeal. She was dismissed from the service of the 1st respondent-Co-operative Society on certain allegations of misconduct, after having been found guilty in an enquiry conducted for that purpose. The dismissal was on 14.2.1995. The appellant filed a petition under Rule 176 of the Kerala Cooperative Societies Rules before the Joint Registrar of Cooperative Societies seeking to rescind the resolution passed by the society to dismiss the appellant from service. By Ext. P1 order, the joint Registrar found that the punishment of dismissal imposed on the appellant is disproportionate to the gravity of the misconducts alleged against the appellant. The said decision of the Joint Registrar was upheld by the Government in an appeal filed by the society, by Ext. P2 order. That was challenged by the society in O.P. No. 25306/1998, wherein a learned Single Judge of this Court upheld the orders of the Joint Registrar and the Government giving liberty to the society to impose any one of the minor penalties on the appellant in accordance with law, if so advised. The society took the same in appeal before the Division Bench as also before the Supreme Court. But the appeals were dismissed. Subsequently, by Ext. P4 order, the appellant was

reinstated in service, but imposing on her the punishment of barring of three increments with cumulative effect. But, she was denied backwages for the period during which she was kept out of service on account of the punishment of dismissal. At the same time, it was ordered that the said service would be counted for pension and gratuity. The appellant filed another petition before the Joint Registrar of Co-operative Societies seeking a direction to the society to pay service benefits for the period during which she was kept out of service. In that petition, the Joint Registrar, by Ext. P6 order, directed the society to pay to the appellant all service benefits for the period from 15.2.1995 to 9.11.2004. The society filed an appeal against that order before the Government. By Ext. P8 order, the Government set aside the order of the Joint Registrar directing payment of service benefits, but directing that the period of absence from service would be counted for pension and gratuity. The appellant filed W.P(C) No. 16567/2009 challenging the order of the Government. The same was dismissed by the learned Single Judge. The writ appeal is filed against the said judgment. According to appellant, the appellant is entitled to full wages for the period during which she was kept out of service. It is submitted that the appellant was imposed with the punishment of dismissal for very trivial irregularities involving negligible amounts of money, which was found to be illegal by all authorities up to the Supreme Court. That being so, the appellant ought to have been paid all service benefits for the period during which the appellant was illegally kept out of service, is the contention raised.

2. The learned counsel for the society, supporting the decision of the Government and the learned Single Judge, raises a technical contention as well. It is submitted that at the time when the appellant filed Ext. P5 petition before the Joint Registrar of Co-operative Societies, by virtue of the amendment to the Kerala Co-operative Societies Act in respect of the service matters also, the appellant could approach the Arbitration Court u/s 69 of the Kerala Co-operative Societies Act. That being so, the Joint Registrar of Co-operative Societies did not have any powers to consider Ext. P5 application submitted by the appellant and to direct the society to pay to the petitioner service benefits for the period in question.

3. The learned counsel for the appellant would argue that in view of Section 66 of the Kerala C-operative Societies Act, the Joint Registrar of Co-operative Societies was perfectly competent to consider the petition filed by appellant seeking a direction to the society to pay service benefits due to the appellant during the period when the appellant was illegally kept out of service.

4. We have considered the rival contentions in detail. We are of opinion that after the amendment of the Kerala Co-operative Societies Act, which came into force in 2003, bringing service matters relating to the employees of the Co-operative Societies also within the purview of Section 69 of the Act, the Joint Registrar could not have exercised powers of general superintendence u/s 66 of the Kerala Co-operative Societies Act to interfere with an order of the society in disciplinary

proceedings. But, that does not mean that the appellant should be left with no remedy in the matter. The appellant was, all along, prosecuting her grievances before the authorities including the Joint Registrar as well as this Court at the appropriate time. Therefore, we find that the appellant should be given another opportunity to prosecute the matter u/s 69 of the Kerala Co-operative Societies Act. In the above circumstances, the writ appeal is disposed of with the following directions:

The judgment of the learned Single Judge is set aside. But, we hold that Ext. P5 petition is not maintainable u/s 66 of the Kerala Co-operative Societies Act. Therefore, Ext. P6 order passed by the Joint Registrar of Cooperative Societies is also unsustainable. The appellant is relegated to the remedy u/s 69 of the Kerala Cooperative Societies Act. If the appellant files an application u/s 69 within one month from today, the Arbitration Court shall consider the same on merits as if filed within time and dispose of the same in accordance with law, after affording an opportunity of being heard to both parties expeditiously.