

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

FRIDAY, THE 11TH DAY OF DECEMBER 2015/20TH AGRAHAYANA, 1937

WA.NO. 1246 OF 2015 () IN WP(C).14673/2005

AGAINST THE JUDGMENT IN WP(C) 14673/2005 DATED 16-09-2014

APPELLANT(S):

KAVUNKAL KSHEEROLPADAKA SAHAKARANA S
ANGHAM LTD NO. A - 181(D) APCOS
MANNANCHERRY - 688 538, ALAPPUZHA,
REPRESENTED BY ITS PRESIDENT V.K.JAYAPRAKASH

BY ADVS.SRI.B.ASHOK SHENOY
SRI.K.V.GEORGE
SRI.P.N.RAJAGOPALAN NAIR
SRI.P.S.GIREESH

RESPONDENT(S):

1. STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVERNMENT, AGRICULTURE (DAIRY) DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.
2. THE DEPUTY DIRECTOR OF DAIRY DEVELOPMENT, ALAPPUZHA 688 001.
3. K.S. SUDEVAN PILLAI, KULAKKATTU HOUSE, PONNAD P.O., MANNANCHERRY, ALAPPUZHA - 688 538.

R1 R2 BY SPECIAL GOVERNMENT PLEADER SHRI SMT. GIRIJA GOPAL
R3 BY SRI.B.PRAMOD

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 01.12.2015,
THE COURT ON 11-12-2015, DELIVERED THE FOLLOWING:

“C.R.”

ASHOK BHUSHAN, C.J.

and

A.M. SHAFFIQUE, J.

=====

W.A. No.1246 of 2015

=====

Dated this the 11th day of December, 2015

J U D G M E N T

Ashok Bhushan, C.J.

This Writ Appeal has been filed by the Writ Petitioner challenging the judgment dated 16.09.2014 by which the learned Single Judge dismissed the Writ Petition filed by the petitioner. Petitioner, a Co-operative Society, has filed the Writ Petition challenging Ext.P3 order, by which the Deputy Director of Dairy Department, Alappuzha, 2nd respondent, in exercise of the power under Rule 176 of the Kerala Co-operative Societies Rules, 1969 issued a direction to the petitioner to reinstate the 3rd respondent within 15 days of the said order. Petitioner has also prayed for setting aside Ext.P9 order dated 02.05.2005 passed by the State in the appeal filed by the petitioner, against

the order dated 29.10.2003 of the 2nd respondent, rejecting the appeal filed by the petitioner.

2. Brief facts of the case as emerged from the pleadings of the parties are as follows: The 3rd respondent was employed as a Secretary in the petitioner. By resolution dated 17.10.1994, after issuance of charge sheet, the 3rd respondent was dismissed from service. The 3rd respondent, against the resolution dated 17.10.1994, filed a petition before the Registrar under Rule 176 of the Kerala Co-operative Societies Rules, 1969 (for short, "the 1969 Rules") on 12.03.2002. The 2nd respondent exercising the power of the Registrar under Section 176 of the 1969 Rules issued notice to the petitioner and passed a detailed order on 24.03.2003, Ext.P1 setting aside the resolution dated 17.10.1994 of the Administrative Committee by which the 3rd respondent was dismissed. The 2nd respondent held that resolution dated 17.10.1994 is violative of Rule 198(1), (2), (3), (4) and (6) of the 1969 Rules.

3. After the decision of the 2nd respondent dated 24.03.2003, the Administrative Committee again passed a resolution dated 12.06.2003 to proceed with disciplinary action against the 3rd respondent. The disciplinary proceedings, however were not finalised. The 3rd respondent had filed a Writ Petition in this Court being W.P(C) No.24809 of 2003 for the inaction on the part of the petitioner in implementing the decision of the 2nd respondent. The Writ Petition was disposed of by a learned Single Judge on 04.08.2003 directing the 2nd respondent to ensure that the matter is given finality within two months from the date of receipt of copy of the said judgment. After the order of this Court, the 2nd respondent by order dated 29.10.2003 directed the petitioner to reinstate the 3rd respondent within 15 days from the said order. Being aggrieved, the petitioner filed appeal against the said order before the State Government which appeal was dismissed as per Ext.P9 order dated 02.05.2005 holding that the petitioner failed to implement the order as directed by

the 2nd respondent reinstating the 3rd respondent in compliance with the judgment of this Court. Aggrieved by the said order, Writ Petition was filed before this Court praying for the following reliefs:

“(a) Call for the records and files leading to Ext. P3 order issued by the 2nd respondent, Ext.P9 order issued by the 1st respondent and quash Exts.P3 and P9 by issuance of a writ in the nature of certiorari or any other appropriate writ, order of direction and

(b) Grant such other and further reliefs as are deemed just and necessary in the facts and circumstances of the case including the costs of this proceedings”.

4. Learned Single Judge, after considering the submissions raised by the learned counsel for the petitioner held that no sustainable grounds have been made out to interfere with Ext.P3 order which stands confirmed by Ext.P9 order. The learned Single Judge also observed that the direction issued by the 2nd respondent shall be treated as a direction invoking his supervisory powers vested under Section 66(5) of the 1969 Act. Aggrieved by the judgment of the learned Single Judge, the Writ Petitioner has come up in this

Writ Appeal.

5. We have heard Shri Ashok B.Shenoy, learned counsel for the appellant, Shri B.Pramod, learned counsel for the 3rd respondent and the learned Senior Government Pleader for the State.

6. Learned counsel for the appellant challenging the order of the learned Single Judge contends that even if the 2nd respondent had power to set aside the resolution of the petitioner in exercise of Rule 176 of the Rules, the 2nd respondent had no jurisdiction to direct for reinstatement of the 3rd respondent. It is further submitted that the view of the learned Single Judge that direction issued by the 2nd respondent on 29.10.2003 can be said to be a direction in exercise of the powers under Section 66 of the 1969 Act is not correct. It is submitted that Section 66 is not attracted in the facts of the present case.

7. Learned counsel appearing for the third respondent submitted that the 2nd respondent having set

aside the resolution dismissing the 3rd respondent from service and the said order having become final, it is not open for the appellant to contend that it shall not grant reinstatement to the 3rd respondent. It is submitted that though the Administrative Committee has taken a decision to proceed with the disciplinary enquiry, no finality was attained in the matter for the last 11 years. It is submitted that in the facts of the present case, no error was committed by the 2nd respondent in passing order dated 29.10.2003 and the Government has rightly rejected the appeal. It is submitted that the 2nd respondent had jurisdiction to issue direction to implement the orders issued by him.

8. Learned counsel for the parties placed reliance on various judgments of this Court which shall be referred to while considering the submissions in detail.

9. There is no dispute between the parties that the earlier order passed by the 2nd respondent on 24.03.2003, Ext.P1, setting aside the resolution dated

17.10.1994 of the petitioner dismissing the 3rd respondent from service has not been challenged and has become final. After the said order, the Administrative Committee has taken a decision to proceed with disciplinary enquiry but the enquiry never concluded nor any further order was passed. The 3rd respondent in the meantime has filed W.P(C) No.24809 of 2003 which was disposed of by a learned Single Judge wherein the following observation was made in paragraph 2:

“Government Pleader was heard in the matter. It is submitted that if Ext.P2 has not been subjected to any disability at the hands of the first respondent-society, appropriate steps will be taken for enforcement of the order. This may be done with due notice to the petitioner. Petitioner should make available a copy of this judgment to the first respondent for information. The second respondent should see it to that the matter is given a finality within a period of two months from the date of receipt of a copy of this judgment”.

After the direction of this Court, the 2nd respondent has issued direction dated 29.10.2003. The State has also affirmed the order passed by the 2nd respondent.

10. Submission which has been pressed by the

learned counsel for the appellant is that 2nd respondent has no power to issue any direction for reinstatement of the 3rd respondent. Learned counsel has placed reliance on the judgment of this Court in **P.S. Co-op. Society v. Rugmini Amma** (1996 [1] KLT 100). It is submitted that in the above case also Secretary of the Society was removed, the Registrar rescinded the decision of the Managing Committee. Order of the Registrar was challenged by the Society in the Writ Petition which was dismissed by a learned Single Judge. Against the said order, Writ Appeal was filed. Both the learned Judges of the Division Bench expressed different opinion, whereas both the learned Judges upheld the decision of the Registrar setting aside the resolution of the society, the Honourable Mr. Justice P. Shanmugam (as His Lordship then was) held that the Registrar has no power to issue any direction for reinstatement. Shri K.T. Thomas, Acting Chief Justice (as His Lordship then was) observed the following in paragraphs 15 and 16:

“15. Supreme Court in that case followed the earlier Constitution Bench decision in *Khem Chand v. Union of India* (AIR 1958 SC 300). The same position was reiterated in *State of Mysore v. Manche Gowda* (AIR 1964 SC 506). A full Bench of this Court has followed it in *S. Chandra Das v. Inspector of Post offices* (1968 KLT 718). True, the position is different when it involves a member of the civil service subsequent to the inclusion of the first proviso to Art.311. But in the absence of any such provision in R.198 the society cannot contend that principles of natural justice has been complied with even by allowing the Secretary to participate in the domestic enquiry. Hence the Joint Registrar's view that R.198(2) has been offended cannot be taken exception to.

16. Learned counsel for the appellant lastly contended that third respondent has no jurisdiction to interfere with the reasoning adopted by the enquiry officer on merits in reaching the findings. I find force in the said contention that a different factual finding or conclusion was not expected from the Joint Registrar while exercising power under R.176 of the Rules.

In paragraph 32 it was further observed as follows:

“32. Yet another contention raised on behalf of the appellant is that under R.176 the Joint Registrar has no authority to order reinstatement. A reading of the R.176 enables the Registrar to rescind a resolution and does not authorise the Registrar to issue a direction of reinstatement. That is exclusively the province of the Society governed by its own bye laws. However, that portion of the order which says that there is violation of the principles of natural justice and the 1st respondent must be reinstated in service is not

in accordance with law.”

However, the Writ Petition was dismissed upholding the judgment of the learned Single Judge setting aside the order of the Registrar.

11. Learned counsel appearing for the 3rd respondent has placed reliance on the decision in **Kunhammad v. Joint Registrar** (1998 [1] KLT 60) where the learned Single Judge considered Rules 176 and 198 of the 1969 Rules and relying on the judgment of the Full Bench held that the power of the Registrar under Rule 176 is extensive power and can be exercised in respect of disciplinary proceedings also. The following was observed in paragraphs 3 and 4:

“3. There is a passage of the Full Bench of this Court in the ruling reported in *Aji v. State of Kerala* (1995 (1) KLT 363 (FB)) with regard to the power of the Registrar under R.176 of the Rules which reads as follows:

"11. It is not possible to hold that Registrar's powers is limited to the supervision of the financial dealings of the society. R.176 clothes the Registrar with the power to rescind any resolution of any meeting of any society or of the committee of any society, if it appears to him that such resolution is ultravires 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. Thus the position is abundantly clear that the Registrar is not a mere passive spectator against an erring society. Registrar is vested with adequate power to rescind resolutions whenever situations demand. Contention that Registrar's power is limited only to supervise the financial dealings of the society is not tenable."

Another useful discussions is not available in the ruling reported in Padmakumari v. I.S.R.O. Employees' Cooperative Society (1989 (2) KLJ 170).

4. What emerges from reading all these decisions is that the power under R.176 of the Rules empower the Registrar to rescind any resolution of the Society in case he finds that such a resolution is against the objects of the Society, provisions of the Act, Rules, or Bye laws or of any directions or instructions issued by the Department. The Registrar can also interfere with the resolution if the above resolution is calculated to disturb the peaceful and orderly working of the Society or is contrary to the better interest of the Society. Thus, it can be seen that disciplinary proceedings are not taken out of the purview of R.176 of the Rules. As held by Justice T.L. Viswanatha Iyer in Padmakumari's case (1989 (2) KLT 170) R.176 should be available to check wanton discharge or termination of service of the employees of the society. Therefore, I think it is no longer possible to entertain an argument that the Registrar is helpless in the matter of interfering with any disciplinary action taken by the Society against an erring employee. It is equally beyond the dispute that the Registrar cannot while passing orders under R.176 of the Rules interfere with the findings of the fact arrived either by the sub committee or by the appellate body. The power is restricted to the area where the Registrar is only to see that the society works within the four corners of the

Cooperative Societies Act, Rules, Bye laws or orders issued under the Act or Rules”.

The argument that the Registrar cannot direct reinstatement of an employee was also rejected. The following was observed in paragraph 8:

“8. The argument that the first respondent has no authority to reinstate an employee against whom, an order of dismissal was passed and which was set aside may not be quite correct. In any view of the matter, since one learned Judge of this Court has expressed his opinion on that point, I am not going to decide the question in this Original Petition because it is not necessary to decide it. Therefore, the Original Petition is dismissed sustaining Ext. P - 5 but with the observation that the Board of Directors of the Society is free to take up the appeal filed by the 2nd respondent and pass appropriate orders in accordance with law. Since my finding that the decision of the appellate body is vitiated by the above fact, that part of the order which rescinds the resolution of the Board of Directors rejecting the appeal is sustained. The rescinding of Ext. P - 1 resolution is not to be interfered with. At present the whole matter is at large before the appellate body and the appellate body is directed to consider and take a decision on the appeal filed by the second respondent in accordance with law. If the Board of Directors of the Society want to take further action, it must be done within one month from the date of receipt of copy of this judgment”.

Another judgment relied on by the learned counsel for the 3rd respondent is **Poonjar Service Co-operative**

Bank Ltd. v. State of Kerala (2004 [1] KLT SN (Case No.50)). It was held by the learned Single Judge in that case that even though Registrar may not have power in arbitration case under Section 69 to order reinstatement as such, still he can bring about the same effect by rescinding the resolutions invoking his power under Rule 176.

12. Learned counsel for the appellant has relied on a Division Bench judgment of this Court in **F.A.C.T. Service Co-operative Society Ltd. v. Balakrishna Menon and Others** (2007 [3] ILR Kerala 483) where the Court had occasion to consider the provisions of Sections 66 and 69 of the 1969 Act. The Division Bench held that a dispute which is to be resolved under Section 69 of the 1969 Act cannot be the subject matter of jurisdiction under Sections 66 and 66A. The following was laid down in paragraph 9:

“9. A specific provision, namely S.69, is made in the Act for resolving disputes between a society and its employees. S.69 of the Act also excludes jurisdiction of any Court or authority to deal with a

dispute as is referred to in that section. The powers of superintendence under S.66 or the power to issue general directions and guidelines under S.66A do not override S.69. The scope of S.69 on the one hand and that of S.66 and S.66A on the other, are distinct and different. A dispute which is to be resolved under S.69 of the Act cannot be the subject matter of the exercise of jurisdiction under S.66 and S.66A. S.69 excludes the jurisdiction of Court or other authority in respect of the disputes coming within the purview of the section. Such 'other authority' referred to in S.69 would take in the authority empowered to exercise jurisdiction under S.66 or S.66A of the Act. We are of the view that the remedy of the writ petitioner was not to move the Assistant Registrar by a representation, but to raise a dispute under S.69 of the Act. The Assistant Registrar had no jurisdiction to dispose of such a representation considering it as a dispute, nor to issue a direction to pay a particular amount as salary or allowances or other service benefits to an employee of a society. Such orders could be issued only by an authority under S.69 of the Act".

13. Learned counsel appearing for the 3rd respondent submitted that the issue raised by the appellant that reinstatement cannot be ordered by co-operative authorities is fully covered by the Larger Bench decision of this Court in Chirayinkeezhu Service Co-operative Bank Ltd. v. K. Santhosh and another (2015

[4] KLT 163). It is submitted that in view of the aforesaid Larger Bench judgment, Registrar, Co-operative Societies has to be held to possess the power of directing reinstatement. In the aforesaid Larger Bench judgment, issue as to whether Co-operative Court/Registrar of the Co-operative Societies can direct reinstatement of an employee was not in issue. Submission raised on behalf of the learned counsel appearing for the employees of the Co-operative Societies was that Labour Courts have ample jurisdiction to direct reinstatement which jurisdiction is not possessed by the authorities under the 1969 Act and hence jurisdiction of the Labour Court cannot be said to be barred by provisions of Section 69 of the 1969 Act. The above submission was noticed by the Larger Bench in paragraph 67. However, the Larger Bench left the question open. It is useful to extract the relevant observations in paragraph 67 which are to the following effect:

“67. Learned counsel for the employees has also

reiterated the above submission before us. It is submitted that the Labour Court is competent to direct reinstatement, which relief can neither be granted by Civil Court nor by Registrar under Section 69. The beneficial provision to the employees be permitted to operate. There cannot be any dispute that power of Labour Court under the 1947 Act is in wider term and the Labour Court is empowered to grant relief of reinstatement and other reliefs to advance the cause of social justice. But on the premise that since the Labour Court can grant wider reliefs to employees, the jurisdiction of Labour Court should be allowed to be continued as a concurrent jurisdiction, despite overriding effect given to Section 69(1) does not appeal to us. Whether the Co-operative Arbitration Court can grant relief of setting aside termination or dismissal order is not the question which has arisen before us. The learned Single Judge in Cheranallur Service Co-operative Bank Ltd (supra) has rejected the contention that the Co-operative Arbitration Court cannot order reinstatement. As noted above, the 1969 Rules contain a statutory provision as amended with effect from 1974 regulating the disciplinary enquiry against the employees by certain statutory requirement whether breach of statutory provision shall not invalidate action of the Co-operative Societies is also to be looked into in appropriate cases. We thus leave the question open as to whether the action of Co-operative Society, even it violates any statutory provisions, cannot be declared by the Arbitration Court to be inoperative and void".

We are thus of the view that judgment of the Larger

Bench does not decide the issue as to whether Co-operative Court/Registrar of Co-operative Societies can direct for reinstatement. The said judgment thus does not help the parties in the facts of the present case.

14. For deciding the issue raised in this Writ Appeal it is not necessary for us to enter into the issue as to whether the order dated 29.10.2003 is referable to the the power under Section 66 of 1969 Act. The said issue is left open to be decided in an appropriate case. It is clear that Writ Petition was filed by the petitioner against the order dated 29.10.2003 of the 2nd respondent and the order of the State Government dismissing the appeal filed by the petitioner. It is further relevant to note that the earlier order of the 2nd respondent dated 24.03.2003 by which the 2nd respondent has set aside the resolution of the petitioner dismissing the 3rd respondent from service was never challenged by the petitioner. Even after the order of the 2nd respondent, the Managing Committee of the petitioner on 12.06.2003 resolved to

continue disciplinary proceedings against the 3rd respondent after curing the irregularities. It is useful to refer to the resolution dated 12.06.2003 which is to the following effect:

“14th number Decision of Administrative Committee on 12.6.03 as per Rule 198

Discussed elaborately the order of Deputy Director of Diary Development Department, Alappuzha No.C-64/2002 dated 23.3.03. The reasons to set aside the 3rd number committee decision dated 17.10.1994 as per Rule 176 terminating the then secretary K.S.Sudevan Pillai from services mentioning below:

1. The dismissal of Sudevan Pillai with retrospective effect was illegal.
2. During the suspension period he was not paid with subsistence allowance and also violated the Direction of Deputy Registrar to pay the same.
3. The punishment after the disciplinary action was taken by the Society Committee which was an appellate authority instead of sub committee.

The decision was set aside depending on these matters. These decision of dismissal was taken by the former Administrative Committee so the new committee is obliged to reconsider the matter without any prejudice. There is no one in the new committee who was taken disciplinary action against Sudevan Pillai so it is possible to take a decision without prejudice and partiality

regarding the disciplinary action. The decision to dismissal was set aside due to right to continue the disciplinary action after curing the irregularities. It is a new law declared by the Honourable Kerala High Court in President, Puthupariyaram Service Co-operative Society v. Rugmini Amma and Others (1996 [1] KLT 100). In the light of aforesaid judgment society decided to continue the disciplinary proceedings as mentioned below:

It was decided to give subsistence allowance for the period of his suspension: and authorised Secretary in charge to inform Sudevan Pillai in writing regarding this.

The committee member mentioned below is elected to proceed with as aforesaid disciplinary action on the basis of enquiry report dated 30.06.2003 submitted by Adv.Balachandran who has conducted the domestic enquiry.

V. Raghavan

Committee members

- (1) Sunil Kumar - sign
- (2) P.K. Sreedharan - sign"

The aforesaid resolution clearly indicate that the 3rd respondent was treated to be in service since the disciplinary action was decided to be proceeded against the 3rd respondent and that a further decision was taken to pay subsistence allowance to the 3rd respondent during

the period of suspension. Petitioner's resolution and conduct accepted the 3rd respondent in service, hence in the present case there was no question of issuing any formal order of reinstatement of the 3rd respondent by the petitioner. The petitioner by its conduct and resolution dated 12.06.2003 accepted the 3rd respondent to be in service, hence we do find any necessity, in the facts of the case to consider the submission of the learned counsel for the appellant that the 2nd respondent cannot issue a direction under Rule 176 of the Rules for reinstatement of an employee of a Co-operative Society. Order dated 29.10.2003 only recognized the existing status of the 3rd respondent. The 2nd respondent in the order dated 29.10.2003 noted the fact that the petitioner is continuing with the disciplinary action instituted through a single member sub committee. Order of the 2nd respondent dated 29.10.21003 thus was an order only recognizing the existence of status of the 3rd respondent as accepted by the petitioner itself. It was not the case of the petitioner that after the

earlier order of the 2nd respondent dated 24.03.2003 the dismissal of the 3rd respondent has become final and the 3rd respondent shall not be reinstated or any further consequential action should be taken with regard to the 3rd respondent. The petitioner society in fact accepted the earlier order dated 24.03.2003 and accepted the status of the 3rd respondent as continuing in service since it decided to proceed with further disciplinary action against the 3rd respondent. The petitioner never challenged the order dated 24.03.2003. Thus the order of the 2nd respondent dated 29.10.2003 can be held to be an order recognizing the existence of status of the 3rd respondent which was already accepted by the petitioner. We thus do not find any infirmity in the order dated 29.10.2003. The order passed by the State in the appeal filed by the petitioner has also to be sustained due to the aforesaid reason. We are of the view that the learned Single Judge has not committed any error in dismissing the Writ Petition. We, however, sustain the order dated 29.10.2003 and the order dated

02.05.2005 passed by the State Government but for the reasons as noted above.

In view of what has been stated above, this appeal deserves to be dismissed. Writ Appeal is dismissed.

**ASHOK BHUSHAN,
CHIEF JUSTICE.**

**A.M. SHAFFIQUE,
JUDGE.**

VSV