

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

TUESDAY, THE 22ND DAY OF SEPTEMBER 2015/31ST BHADRA, 1937

WP(C).No. 30910 of 2008 (D)

PETITIONER(S):

THE PRESIDENT, VALLIKUNNU SERVICE
CO-OPERATIVE BANK LTD.NO.M-4, VALLIKUNNU P.O,
MALAPPURAM DISTRICT.

BY ADV. SRI.GEORGE POONTHOTTAM

RESPONDENT(S):

1. C.VASANTHAKUMAR,CHERIYODATH VEEDU,
P.O.VALLIKUNNU, MALAPPURAM DISTRICT.
2. THE SECRETARY,
KERALA STATE EMPLOYEES UNION, TIRUR TALUK COMMITTEE,
PURATHUR CO-OPERATIVE BANK, PURATHUR P.O., TIRUR-2,
MALAPPURAM DISTRICT.
3. THE INDUSTRIAL TRIBUNAL, KOZHIKODE.

* ADDR.R4 TO R6 IMPEADED

4. THANKAM BALAKRISHNAN, W/O.LATE CHERIYEDATH BALAKRISHNAN,
CHERIYEDATH HOUSE, VALLIKUNNU P.O., MALAPPURAM -673314.
5. SULOCHARA, W/O.AE C.VASANTHAKUMAR, CHERIYODATH VEEDU,
P.O.VALLIKUNNU, MALAPPURAM DISTRICT.
6. KUM.ATHIRA VASANTH (MINOR), D/O.LATE C.VASANTHAKUMAR,
CHERIYODATH VEEDU, P.O.VALLIKUNNU, MALAPPURAM DISTRICT.

ADDL.R4-R6 ARE IMPEADED AS PER ORDER IN IA.10331/11 DATED 12/8/11

R1 BY ADV. SRI.PIRAPPANCODE V.S.SUDHIR
R3 BY GOVERNMENT PLEADER SRI.P.PADMALAYAN
R 4 TO 6 BY ADV. SRI.PIRAPPANCODE V.S.SUDHIR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PJ

WP(C).No. 30910 of 2008 (D)

APPENDIX

PETITIONER(S)' EXHIBITS

P1 : COPY OF THE JUDGMENT IN OP.NO.253/1994 DATED 30/1/2003

P2 : COPY OF THE PROCEEDINGS NO.CRP.2872/93 DATED 4/5/93

P3: TRUE COPY OF THE AWARD DATED 26/3/2006 IN I.D.9/2005 (OLD ID.NO.6/90).

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

ANU SIVARAMAN, J.

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W.P. (C) No. 30910 of 2008

Dated this the 22nd day of September, 2015

J U D G M E N T

Petitioner is a co-operative society. It challenges Ext.P3 award directing reinstatement of the 1st respondent with 50% back wages. The contention of the petitioner society is that the 1st respondent was appointed as an 'Attender' in the service of the society on 30.06.1986. It is stated that the services of the 1st respondent were not satisfactory and the initial period of probation was therefore extended by a further period of one year. In the extended period of probation also the services of the petitioner were not satisfactory. The society had therefore issued show cause notices to the 1st respondent which were not replied to. Thereafter, it is stated that the 1st respondent was discharged from service since his services during the period of probation were not satisfactory. The petitioner society relies on the provisions of Rule 184 Kerala Co-operative Societies Rules which reads as follows:

*"184. **Probation**:- (1) Every person appointed to any of the categories of the service of a society [by direct recruitment and by promotion] shall, from the date on*

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which he joins duty be on probation for a total period of one year on duty within a continuous period of two years. However the appointing authority may extend the period of probation up to two years to enable the appointing authority to decide whether the probationer is suitable for regularisation or not.

.....

(3) If the appointing authority decides that the probationer is not suitable for such appointment, it shall by order in writing discharge him from service or in case of promotion revert him to the lower category.

Provided that no such order shall be passed unless the prior approval of the Registrar therefore has been obtained and unless the person concerned has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him.

Provided further that where there are more than one grade to the same category, and duties and responsibilities attached to the different grades are one and the same, and appointment to the higher grade or grades made by promotion from lower grades, probation shall be insisted only in the lowest grade to such category."

2. It is the contention of the petitioner in the writ petition that by Ext.P2 order dated 04.05.1993, permission of the Registrar has been obtained for discharging the probationer and

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therefore, the order of discharge was proper and valid. It is submitted that after the 2nd respondent had raised a dispute which was referred for adjudication to the Tribunal, the Tribunal had found that the order of discharge was proper. This was challenged before this Court by filing Writ Petition No. 253 of 1994. By Ext.P1 judgment, the matter was remanded for a fresh consideration. While, remanding the matter to the Tribunal, this Court has held that a plain reading of Rule 184 (3) would make it clear that the probationer could be discharged within the period of probation or the extended period of probation under the Rule. The contention of the workman that there was no prior approval before discharge was taken note of by this Court and the contention that prior approval is necessary only if the discharge is in the initial period of probation was found against by Ext.P1 judgment. The petitioner had also produced Ext.P2 order before the Tribunal after the remand as Ext. M18. It was contended that permission had since been obtained by the petitioner society, the requirement of prior sanction stood satisfied and therefore the order of discharge should not be interfered with. This contention raised by the petitioner is specifically considered in Ext.P3 award.

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The petitioner had also pointed out that the employee was guilty of grave misconduct and therefore his services were found unsatisfactory and it was found that his confirmation in the service of the society would not be in the best interest of the society. This aspect is also been considered by the Tribunal. It was found that in case misconduct is alleged against the 1st respondent, the society ought to have conducted an enquiry against him and relied on the findings of such enquiry to take disciplinary action against the 1st respondent. This having not been done, it was found in Ext.P3 that what survived for consideration was only the plea of discharge of probationer. As regards the plea of discharge of the 1st respondent, after considering the evidence adduced on either side, including Ext.M18 which is marked as Ext.P2 here, it was found that the permission for discharge of the 1st respondent having been issued on 04.05.1993, after the order of discharge was issued, it could not satisfy the requirement of prior sanction as contained in the proviso to Rule 184 (3) of the Kerala Co-operative Societies Rules. On these grounds the Tribunal found that the 1st respondent was entitled to reinstatement with 50% back wages. It is now

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submitted that the 1st respondent is no more and that all the survival is for calculating and disbursing the amount of back wages and wages payable.

3. Heard, Sri.George Poonthottam, learned counsel appearing for the petitioner and Sri. Pirappancode V.S. Sudhir, learned standing counsel appearing for the respondents.

4. From a careful consideration of the pleadings and the materials on record, it is clear that the order of discharge of probationer rendered against the 1st respondent under Rule 184 of Kerala Co-operative Societies Rules did not have the prior sanction of the Registrar. Proviso to Rule 184 (3) specifically provides for prior sanction before an order of discharge being passed within the period of probation or extended period of probation as the case may be. Since Ext.P2 order by the Joint Registrar dated 04.05.1993, is long after the order of discharge and since no fresh orders has been passed by the petitioner against the 1st respondent after obtaining the sanction as evidenced by Ext.P2, the finding in Ext.P3 award is valid, legal and sustainable. I am of the opinion that Ext.P3 award does not suffer from any legal infirmity and this was valid and sustainable.

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The writ petition fails and it is accordingly, dismissed.

The additional respondent shall be entitled to all benefits flowing from Ext.P3 award. It is made clear that amounts deposited by the petitioner before the 3rd respondent shall also be given credit to while calculating the amounts payable to the additional respondents. The amounts due under Ext.P3 award shall be calculated and paid to the additional respondents within a period of four months from the date of receipt of the copy of this judgment. In the meanwhile, the amount deposited by the petitioner before the 3rd respondent towards Ext.P3 award in compliance with the interim order issued by this Court shall be released to the additional respondents forthwith.

Sd/-

**ANU SIVARAMAN,
JUDGE**

DST

//True copy//

P.A. To Judge