C. A. Vijayam Vs Board of Directors, Shertallai Taluk Land Mortgage Bank and another

Court: High Court Of Kerala

Date of Decision: June 13, 1983

Acts Referred: Constitution of India, 1950 â€" Article 12, 226, 311(2)
Industrial Disputes Act, 1947 â€" Section 10

Citation: (1983) KLJ 419

Hon'ble Judges: K. Bhaskaran, J

Bench: Single Bench

Advocate: M. M. Cheriyan, George Jacob and Asok M. Cheriyan, for the Appellant; M. N. Sukumaran Nair, for the Respondent

Final Decision: Dismissed

Judgement

K. Bhaskaran, J.
The petitioner joined the Shertallai Taluk Co-operative Land Mortgage Bank Ltd., No. A. 327 (the Bank) as a clerk on

15-4-1974 pursuant to resolution No. 17 dated 14-4-1974 passed by the 1st respondent, the Board of Directors of the Bank. According to

resolution No. 69 dated 27-12-1974 the petitioner was appointed to the newly created post of Secretary by promotion; In January,1979 the

petitioner was charge sheeted alleging that she did not place before the Board of Directors a covering letter sent by the Central Land Mortgage

Bank which had some bearing to the norms governing the grant of loans; and that as against the sanction of a loan for Rs. 10,000/- made by the

Board, only a sum of Rs. 7,500/- was paid to a particular applicant; and that was done behind the back of the Board by the petitioner. Ultimately

the enquiry officer appointed found the charges to have been proved against the petitions; and the Board of Directors having accepted the finding

at the enquiry, and having tentatively come to the conclusion that the petitioner was to be reverted to the post of Senior Supervisor, issued Ext. P-I

show cause notice dated 4-2-1981 to which the petitioner sent Ext. P-2 explanation dated 16-2-1981. The Board, however, rejected the plea put

forward by the petitioner in Ext. P-2 representation, and passed Ext. P-3 order reverting the petitioner to the rank of Senior Supervisor. It is the

correctness of Ext. P-3 order that is being challenged in this writ petition. In the writ petition several legal points are seen to have been raised to

attack the validity of Ext. P-3 order. The points pressed before me are (i) the Board of Directors was net competent to pass an order inflicting a

punishment of reduction of the petitioner to a lower rank; (ii) the punishment of reversion was not warranted under the provisions of Rule 198(f) of

the Kerala Cooperative Societies Rules (the Rules); and (iii) by the Board of Directors passing the impugned order, Ext. P-3, the petitioner was

deprived of her valuable right for preferring an appeal from the order of the disciplinary authority. On behalf of the 1st respondent it was contended

inter alia that the writ petition was itself not maintainable in as much as the 1st respondent was not State within the meaning of Article 12 of the

Constitution; and there was no relief sought against the 2nd respondent, the Deputy Registrar of Co-Operative Societies. It was also submitted that

the Board of Directors was competent to pass Ext. P-3 order; and the order of reversion was perfectly valid, and no interference from this Court

was called for in exercise of the limited jurisdiction under Article 226 of the Constitution. It was further submitted that if the petitioner was

aggrieved by Ext. P-3 order, the petitioner ought to have either resorted to arbitration proceedings u/s 69 of the Act or approached the Industrial

Tribunal or the Labor Court for appropriate relief, if any, to which she felt she was entitled.

2. The scope of the term ''other authorities'' under Article 12 of the Constitution has been considerably enlarged by the decisions of the Supreme

Court in Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, and Som Prakask v. Union of India (AIR 1981 S.C. 212). Cataloguing

the characteristics of the ''other authorities'' under Article 12 of the Constitution, though not exhaustively, the Supreme Court said:-

1. One thing is clear that if the entire share capital of the corporation is held by Government, it would go a long way towards indicating that the

corporation is an instrumentality or agency of Government.

2. Existence of ""deep and pervasive State control may afford an indication that the Corporation is a State agency or instrumentality.

3. ""It may also be a relevant factor.... Whether the Corporation enjoys monopoly status which is State conferred or State protected.

4. ""If the functions of the corporation are of public importance and, closely related to governmental functions, it would be a relevant factor in

classifying the corporation as an instrumentality or agency of Government.

5. ""Specifically, if a department of Government is transferred to a corporation it would be a strong factor supportive of this inference"" of the

Corporation being an instrumentality or agency of Government,

3. It is interesting to note that both the petitioner and the 1st respondent have chosen to rely on the very same decisions. The main objects of the

Bank, as could be gathered from the bye law mentioned below, are to arrange funds for the members and to enable them to improve their

agricultural operations: -

2. (a) to promote the economic interests of its members and more particularly to arrange for funds to be lent to its members on mortgage security

and on the security of documents executed in its favor by statutory corporations carrying Government guarantee.

i) the redemption of mortgages on agricultural land;

ii) the improvement of agricultural land and of methods of cultivations;

iii) the discharge of other debts; and

iv) the purchase of land in special cases so as to enable the ryot to round off his holding and work it more economically; and b) to encourage the

members, the spirit and practice of thrift, mutual helps and self help in such ways as may be decided upon from time to time.

b) to promote rubber plantation and issue of loans for the same.

The shares are to be raised in the following way: (vide bye-law No. 4).

The share capital of the Bank shall for the present be Rs. 5,00,000/- made up of 49,000 A Class shares of Rs. 101/- each and 10,000 B Class

shares of Rs. 1/- each.

B Class shares are not transferable anti non-refundable and their value shall be transferred to the reserve fund on the clearance of the relative loans.

B Class share holders are not entitled to vote,

Relying on these provisions in the bye-laws, it was contended by the counsel for the 1st respondent that it could not be said that judged by the

characteristics laid down by the Supreme Court, the Bank in this case answers the description of ""other authorities"" within the meaning of Article

12 of the Constitution. On the other hand, the counsel for the petitioner submitted that substantial portion of the working capital was made

available to the Bank by the Reserve Bank of India through the Central Land Mortgage Bank, and the Government was having effective control

regarding the financial transaction, and as a matter of fact, the valuation officer used to scrutinize the grant and check utilization of the loans.

4. It was also pointed out by the counsel for the petitioner that in O.P. No. 4. 207 of 1979, which related to the termination of service of a

probationer, a Division Bench of this Court had quashed the order passed in" that behalf by the Board of Directors. I am afraid, the decision of the

Division Bench in that case, has hardly anything to do with the present case. Going through the judgment, 1 find, the question whether "the Kerala

Land Mortgage Bank" would fall within the ambit of "other authorities" in Article 12 of the Constitution has been left open without being decided

by the Division Bench. That writ petition was allowed and the order for the termination of the service of the probationer was quashed for the

reason that the Registrar of Co-operative Societies who, undisputedly, fell within the ambit of Article 12 of the Constitution, exercised the power

vested in him arbitrarily without applying his mind and in a manner opposed to the principles of natural justice. We have noticed, at the very outset,

that no relief is sought against the 2nd respondent in this writ petition; and no relief against the 2nd respondent with respect Ext. P-3 order

impugned in this writ petition could also be granted in the writ petition. If the bye-laws give any indications of the functions of the 1st respondent,

the 1st respondent Bank does not answer the essential characteristics of an instrumentality of the State to fall within the ambit of "other authorities"

as used in Article 12 of the Constitution.

5.. The writ petition ought to fail on the sole ground that no writ could issue against the 1st respondent who is not State within the meaning of

Article 12 of the Constitution. All the same, I would briefly deal with the other points raised also, inasmuch as the counsel for the petitioner and the

counsel for the 1st respondent have taken considerable pains to stress their points on the merits of the case with reference to Rule 198(4) of the

Rules. In the first place the question is whether the 1st respondent was competent to pass Ext. P-3 order. It was submitted that in terms of Rule

198(4) of the Rules it was only the Sub Committee that was competent to inflict a punishment of reduction to a lower rank, vide clause (f) of the

said rule, and, therefore, the Impugned order passed by the 1st respondent was invalid. I am not in a position to accept this argument. After all,,

this is a case where the Board has passed Ext. P-3 order after going through the finding of the enquiry officer. The argument that instead of the Sub

Committee it was the Board of Directors itself that had inflicted the punishment, and that had deprived the petitioner of her right to appeal against

the order of punishment, does not appeal to reason. For one thing, neither the petitioner nor the 1st respondent, has a case that a Sub Committee

had already been constituted in the Bank. Would that mean that the management of the Bank is bereft of powers to take disciplinary action against

erring employees? The rule framing authority could not have meant that. The clause in sub-rule (I) of rule 198 to be meaningful, has to be

understood to lay down that where a sub-committee exists, it is the sub-committee that would be competent to inflict the punishment of reduction

to a lower rank. For another thing, the very body which was competent to take a final decision is seen to have gone through the entire records and

taken a decision in the light of the finding of the enquiry officer. If the authority to order the punishment was the Board of Directors, but the order

was passed by the sub-committee or any other lower authority, it could have been said that the order is without jurisdiction. The worst that

probably could be said would be that in not having constituted a sub-committee and the Board of Directors itself having assumed the functions of

the sub-committee, there was irregularity; it could not, however, be said that the Board of Directors acted without jurisdiction or the order passed

by the Board is invalid, especially because it has not been shown that it resulted in any miscarriage of justice. At any rate, this could not be a

ground for interference by this Court with Ext. P-3 order in exercise of the power under Article 226 of the Constitution.

6. Last of the submissions made by the counsel for the petitioner is that Rule 193 provides only for the reduction in rank, not for reversion to a

lower rank. He has a two-fold argument; (1) reduction in rank could only mean reduction in the list of seniority in the same cadre without being

reduced to a lower rank; and (2) the rule permits only reduction, not reversion to a lower rank. In support of this argument on the factual

questions, it was submitted that the petitioner was appointed to be Secretary; and there was, therefore, no question of reverting her to any other

lower post. It is seen that on 15-4-1974 pursuant to resolution No. 17 dated 14-4-1974 the petitioner joined the Bank as a Clerk. I am not in a

position to know in which words and on what terms the order of appointment was made. Neither the petitioner nor the 1st respondent has

produced the order of appointment. Assuming that the order simply stated that the petitioner was appointed to the post of Secretary by virtue of

the resolution dated 27-12-1974, the question is whether the order to revert the petitioner to be Senior supervisor (which is the next rank available

in the Bank), is tainted with illegality. It is conceded on all hands that the Bank had no post of Assistant Secretary, and, therefore, there was no

other post between the secretary and that of the Senior Supervisor. It could not be said that Ext. P-3 order is bad in law. After all, the terminology

by itself is not of great moment; it is the intention of the legislature that matters. Whether it is termed as ''reversion'' or ''reduction,'' in either case a

reduction in rank is inevitable.

7. As far as the contention that rule 198 contemplates the reduction to a lower position in the seniority list in the same cadre is concerned, there is

no rationale behind it. Reduction in rank does not import the idea of reducing the rank in the seniority list in the same cadre. In this particular case it

would be a little absurd to conceive any such idea, as there was only one Secretary and there could never arise the reduction in seniority in the

same cadre. For my view that reduction in rank does not indicate mere loss of place in the same cadre, I find support in the decision of the

Supreme Court in High Court, The High Court, Calcutta Vs. Amal Kumar Roy, , wherein Sinha C.J., in paragraph 8 has stated as follows:

In our opinion, there is no substance in this contention because losing places in the same cadre, namely, of Subordinate Judges does not amount to

reduction in rank, within the meaning of Art. 311(2). The plaintiff sought to argue that "rank", in accordance with dictionary meaning, signifies

"relative position or status or place," according to Oxford English Dictionary. The word "rank" in Art. 311(2) had reference to a person"s

classification and not his particular place in the same cadre in the hierarchy of the service to which he belongs. Hence in the context of the Judicial

Service of West Bengal, "reduction in rank" would imply that a person who is" already holding the post of a Subordinate Judge has been reduced

to the position of a Munsiff, the rank of a Subordinate Judge being higher than that of a Munisiff. But Subordinate Judges in the same cadre hold

the same rank, though they have to be listed in order of seniority in the Civil List. Therefore, losing some places in the seniority list is not tantamount

to reduction in rank.

Similar was the view expressed by Ray, C.J., in Baradakanta Mishra Vs. High Court of Orissa and Another, ; and Hidayatulla, C.J., who in

Debesh Chandra Das Vs. Union of India (UOI), observed:

reversion to a lower post does not per se amount to stigma.

Whether it is called "reversion" or "reduction", there is little that matters in it. The petitioner cannot feel aggrieved because the expression used is

reverted"" instead of "reduced", she should feel aggrieved when it is accompanied by stigma, by whatever name it is called. Where the reversion or

reduction is a penalty, it would be accompanied by stigma, call it reversion or reduction.

8. The counsel for the 1st respondent submitted that the writ petition in any event was premature in as much as the petitioner had rushed to this

Court with the petition under Article 226 of the Constitution without resorting to the arbitration provisions u/s 69 of the Act or to the provisions

under the Industrial Disputes Act, The counsel for the petitioner submitted that this being a case falling within the ambit of the Industrial Disputes

Act, the arbitration clause u/s 69 of the Act was not attracted to it. He also submitted that the fact that in appropriate cases the Government might

make a reference u/s 10 of the Industrial Disputes Act would not necessarily mean that it should be treated as an alternate remedy which would

prohibit the aggrieved person approaching this Court for redressed of his grievances. The question is whether the other remedies provided for

would prove to be effective and efficacious or merely illusory. In this connection the counsel for the petitioner relied on the decision of a Division

Bench of this Court in Asst. Personnel Officer, Southern Railway v, K. T. Antony (1978,(2) LLJ. 254). I am in agreement with the argument of the

counsel for the petitioner that even if in certain circumstances, on the same set of facts, the aggrieved party could have approached the Industrial

Tribunal or the Labor Court, that by itself would not deprive the right of such a person to invoke the extra-ordinary jurisdiction of this Court in the

interest of justice; and the writ petition having been admitted to the file, it would be quite unfair to the petitioner if in the final hearing this Court

declines to go into the merits of the case on the ground that she has a alternate remedy. The question as to the relief, if any, on the question of

arrears of wages to which the petitioner might make claim is left open without being decided, as that question cannot be gone into in this writ

petition which I propose to dismiss on the ground that it is not maintainable against the 1st respondent. The dismissal of the writ petition, however,

would not preclude the petitioner from pursuing her remedies, if any, she is legitimately entitled, in other appropriate proceedings.

For the foregoing reasons the writ petition is dismissed. In the circumstances of the case, there will be no order as to costs.