

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

FRIDAY, THE 26TH JUNE 2009 / 5TH ASHADHA 1931

WP(C).No. 30687 of 2003(C)

PETITIONER(S):

**G.PRABHAKARAN, S/O. GOPINATHAN,
CHERUMANY HOUSE, KADACKAVOOR P.O.,
TRIVANDRUM DISTRICT.**

BY ADV. SRI.P.V.BABY

RESPONDENT(S):

- 1. MELKADAKAVOOR KSHEERA VYAVASAYA
CO-OPERATIVE SOCIETY, KADAKAVOOR P.O.,
TRIVANDRUM, REPRESENTED BY ITS SECRETARY.**
- 2. THE DEPUTY DIRECTOR OF DAIRY DEVELOPMENT
DEPARTMENT, TRIVANDRUM.**
- 3. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO AGRICULTURE(DAIRY)
DEPARTMENT, SECRETARIAT, TRIVANDRUM.**

**ADV. SRI.V.G.ARUN FOR R1
SRI.T.R.HARIKUMAR FOR R1**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
26/06/2009, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: TRUE COPY OF APPEAL DATED 28.1.98 FILED BY THE PETITIONER BEFORE THE BOARD OF MANAGEMENT OF THE 1ST RESPONDENT.

EXT.P2: TRUE PHOTOCOPY OF ORDER DATED 10.7.2000 OF THE 2ND RESPONDENT.

EXT.P3: TRUE PHOTOCOPY OF ORDER DATED 10.10.2000 OF THE 1ST RESPONDENT MANAGEMENT COMMITTEE.

EXT.P4: TRUE PHOTOCOPY OF PETITION DATED 15.1.2001 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

EXT.P5: TRUE PHOTOCOPY OF ORDER DATED 16.9.2002 OF THE 2ND RESPONDENT.

EXT.P6: TRUE PHOTOCOPY OF APPEAL DATED 13.11.2002 FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.

EXT.P7: TRUE PHOTOCOPY OF ARGUMENT NOTES DT 13.12.2002 SUBMITTED BY THE 1ST RESPONDENT IN EXT.P6.

EXT.P8: TRUE COPY OF ORDER DATED 5.8.2003 OF THE 3RD RESPONDENT.

EXTS. OF R1

EXT.R1(a): TRUE COPY OF THE MEMO OF CHARGES DT 3.5.1997.

EXT.R1(b): TRUE COPY OF THE SECOND MEMO OF CHARGES DT 8.7.97.

EXT.R1(c): TRUE COPY OF THE ARGUMENT NOT IN AP NO.35539/D2/2002 DT 13.12.2002.

//TRUE COPY//

P.A. TO JUDGE

Rp

ANTONY DOMINIC, J.
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W.P.(C) NO. 30687 OF 2003 (C)

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Dated this the 26th day of June, 2009

J U D G M E N T

Petitioner was Secretary of the 1st respondent, a Co-operative Society. On certain allegations of misconduct, he was placed under suspension w.e.f. 3/3/97. Subsequently, he was issued Ext.R1(a) memo of charges containing 13 charges. Later another memo of charges (Ext.R1(b)) containing two more charges were issued. His explanations were held to be unsatisfactory and finally the Sub Committee of the society appointed an Advocate to conduct a domestic enquiry into the allegations of misconduct.

2. Enquiry was conducted and report was submitted finding the petitioner guilty in respect of 12 charges. The report of the enquiry officer was accepted by the disciplinary authority, who dismissed the petitioner from service w.e.f. 15/1/98. Against the order of dismissal, petitioner filed Ext.P1 appeal to the Board of Management of the society, which was rejected. Petitioner carried the matter further by a petition under Rule 176 of the Kerala Co-operative Societies Rules. The 2nd respondent by Ext.P2

rescinded the decision of the Managing Committee and directed reconsideration of the appeal.

3. Accordingly, the matter was reconsidered and by Ext.P3, the appeal filed against the order of dismissal was rejected. Again the petitioner filed Ext.P4 petition under Rule 176 before the 2nd respondent. That was considered and by Ext.P5, the 2nd respondent confirmed Ext.P4 appellate order and confirmed the dismissal. Petitioner filed Ext.P6 appeal before the 3rd respondent invoking the appellate remedy under Section 83 of the Co-operative Societies Act and that was rejected as per Ext.P8. It is challenging the aforesaid proceedings, the writ petition is filed.

4. Contentions raised by the counsel for the petitioner are two fold. One is that the enquiry officer was not justified in proceeding with the enquiry ex parte. It was also contended that Ext.P8 passed by the Government confirming the dismissal of the petitioner is not a speaking order.

5. A copy of the report of the enquiry officer was produced before me and I have gone through the said report. It is seen from the report that the first sitting of the enquiry was held

in the office of the enquiry officer on 27/7/97 with intimation to the petitioner. He did not appear on that day, but made an application enclosing a medical certificate. In the application, he wanted the venue of the enquiry to be shifted to the office of the society and also requested that the enquiry be adjourned for 45 days. In so far as the request for adjournment on medical grounds is concerned, on a detailed verification of the medical certificate, the enquiry officer found that though he was certified to be suffering from diabetics, the Doctor had not advised any bed rest to disable the petitioner from attending the enquiry. The enquiry officer also did not agree to shift the venue of the enquiry as prayed for. Therefore both his requests were refused.

6. The next sitting of the enquiry was on 3/8/97, which was intimated to the petitioner by notice dated 26/7/97. On that occasion also, the petitioner by his letter dated 31/7/97 repeated his earlier request for change of venue of the enquiry. He also stated that if the venue of the enquiry is changed as requested by him, he would participate in the same. The enquiry officer examined his request and found his offer to participate in the enquiry to be contradictory to his claim that he was bed ridden

and was advised to take rest for 45 days. The petitioner also took objection to the conduct of the enquiry on Sunday, which was also not acceptable to the enquiry officer.

7. The third sitting of the enquiry was held on 10/8/97 with registered notice to the petitioner. The delinquent was absent on that day also. On that day, Secretary of the Society was examined in chief and 13 documents were marked and thereafter the enquiry was adjourned to 17/8/97 for further evidence. The report shows that the enquiry officer had sent copies of the documents and proceedings of the enquiry to the delinquent.

8. Even on 17/8/97, the petitioner failed to turn up for the enquiry. On that day, the Secretary was further examined and M14 to 44 were marked and thereafter the enquiry was again adjourned to 24/8/97 with notice to the delinquent. Here, it is also to be noticed that the management was throughout willing to pay bata for the workmen to travel to Trivandrum and attend the enquiry, which also did not persuade the workmen to co-operate with the enquiry officer. On 24/8/97, due to the absence of the petitioner, again the enquiry was adjourned to 17/9/97 with

registered notice to the delinquent for verification of the documents.

9. On 17/9/1997, the petitioner did not appear before the enquiry officer nor was there any representation on his behalf. It was on 17/9/97 on account of the repeated absence and indifference shown by the workmen as noticed above that the enquiry officer decided to proceed with the enquiry and evidence on behalf of the management was recorded and on closure thereof, the case was taken for report. It is stated that on 17/8/97, the enquiry officer issued a letter to the delinquent informing him that the enquiry was closed and that thereafter he did not file any application for reopening the evidence. It is stated in the report that the enquiry officer waited for about three months expecting that the workmen would make application and since there was no move on the part of the workmen seeking to reopen the evidence, the enquiry officer submitted the report, which was accepted and he was dismissed.

10. In my view, in the light of the facts as above, there is absolutely no substance in the contention raised on behalf of the petitioner that the enquiry was conducted in a hurried manner,

denying opportunity to the petitioner, in violation of the principles of natural justice. In my view, the enquiry officer was very lenient and gave every chance to the workmen, who could have appeared before the enquiry officer availed of the chance to prove his innocence.

11. The contention that the medical certificates were ignored by the enquiry officer is also without any substance. As rightly noticed by the enquiry officer, apart from certifying that the petitioner is a diabetic patient, there was no advise that he should take bed rest. That apart, the enquiry officer has also made reference to the certificate produced by the workmen from Sri.S.R.Biju, Medical Officer from Karunagappally and took the view that if the workmen could travel about 65 kms to Karungapally to obtain the certificate, the workmen could have very well attended the enquiry, travelling to Trivandrum situated within a lesser distance. Further the enquiry officer also found the workmen's offer to participate in the enquiry if the venue is shifted to the office of the society contradictory to his claim that he was bed ridden on medical advise. In these factual background, I cannot find fault with the enquiry officer.

12. The other contention raised by the counsel for the petitioner is that Ext.P8 order passed by the Government is not a speaking order. Ext.P8 is an order passed by the Government considering Ext.P6 appeal that was filed by the petitioner against Ext.P5 order passed by the Joint Registrar. When an appellate authority examines the appeal and if the order passed is one concurring with the view taken by the lower authority, except that the order should reflect consideration of the issues raised before it, it is not necessary that the appellate authority should deal with the entire matter and pass a lengthy order.

13. In my view, a reading of Ext.P8 order shows that the Government and the appellate authority have considered the issue, gone through the materials and thereafter endorsed the view taken by the lower authorities. In that view of the matter, I am not persuaded to agree with the counsel for the petitioner that Ext.P8 order is bad as it is a non speaking one.

Thus, the grounds raised by the petitioner are devoid of merits. The writ petition is only to be dismissed and I do so.

ANTONY DOMINIC, JUDGE

Rp