

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

WEDNESDAY, THE 15TH DAY OF FEBRUARY 2017/26TH MAGHA, 1938

WP(C) .No. 18274 of 2016 (H)  
-----

PETITIONER:  
-----

M/S.MALABAR REGIONAL CO-OPERATIVE  
MILK PRODUCERS' UNION LIMITED  
PERINGOLAM, KUNNAMANGALAM P.O,  
KOZHIKODE - 673 571,  
REPRESENTED BY ITS MANAGING DIRECTOR.

BY SRI.K.ANAND (SENIOR ADVCOATE)  
ADVS.SMT.LATHA ANAND  
SRI.M.N.RADHAKRISHNA MENON  
SRI.JOSEPH SEBASTIAN (PARACKAL)

RESPONDENTS:  
-----

1. SHRI. PRAKASH M.V,  
THIRUVONAM HOUSE, MUTTICHARAL,  
IRIYA P.O, ANANDHASHRAMAM, KANHANGAD,  
KASARAGOD DISTRICT, PIN - 671 531
2. THE DIRECTOR,  
DAIRY DEVELOPMENT DEPARTMENT,  
OFFICE OF THE DIRECTOR OF DAIRY DEVELOPMENT,  
PATTOM, THIRUVANANTHAPURAM - 695 004.

R1 BY ADV. SRI.P.N.MOHANAN  
R2 BY SENIOR GOVT. PLEADER SRI.PAUL VARGHESE M.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD  
ON 15-02-2017, THE COURT ON THE SAME DAY DELIVERED  
THE FOLLOWING:

mbr/

APPENDIX

PETITIONERS' EXHIBITS:

- EXHIBIT P1: TRUE COPY OF THE APPLICATION FOR LEAVE.
- EXHIBIT P2: TRUE COPY OF THE MEDICAL CERTIFICATE ISSUED  
DR.VIVEK M. KANHANGAD.
- EXHIBIT P3: TRUE COPY OF THE REQUEST FOR MEDICAL OPINION  
DATED 18/07/2013.
- EXHIBIT P4 TRUE COPY OF THE MEDICAL BOARD REPORT  
DATED 13/11/2013.
- EXHIBIT P5: TRUE COPY OF CHARGE MEMO DATED 22/11/2013.
- EXHIBIT P6: TRUE COPY OF REPLY DATED 03/12/2013 OF THE  
1ST RESPONDENT.
- EXHIBIT P7: TRUE COPY OF ENQUIRY OFFICER'S REPORT  
DATED 25/04/2014.
- EXHIBIT P8: TRUE COPY OF THE MEMO DATED 20/05/2014 ISSUED TO  
THE 1ST RESPONDENT.
- EXHIBIT P9: TRUE COPY OF REPRESENTATION DATED 05/06/2014 OF  
THE 1ST RESPONDENT.
- EXHIBIT P10: TRUE COPY OF THE DISMISSAL ORDER ISSUED TO THE  
1ST RESPONDENT EMPLOYEE DATED 13/06/2014.
- EXHIBIT P11: TRUE COPY OF BOARD RESOLUTION DATED 23/08/2014.
- EXHIBIT P12: TRUE COPY OF THE ORDER DATED 30/04/2016 ISSUED  
BY THE 2ND RESPONDENT TO THE 1ST RESPONDENT  
EMPLOYEE.

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

mbr/

**P.B.SURESH KUMAR, J.**

=====

**WP.(C).No.18274 of 2016-H.**

=====

Dated this the 15<sup>th</sup> day of February, 2017.

**J U D G M E N T**

Ext.P12 order of the Registrar of Co-operative Societies is under challenge in this writ petition.

2. The first respondent was an employee in the service of the petitioner. The petitioner is a Central Society of Milk Producers Co-operative Societies registered under the Kerala Co-operative Societies Act. As per Ext.P10 order, the first respondent was dismissed from service. The first respondent challenged Ext.P10 order before the Board of Directors of the petitioner. The Board of Directors of the petitioner rejected the appeal preferred by the first respondent by Ext.P11 order. Aggrieved by Ext.P11 order, the first respondent preferred a representation before the Government. The Government referred the said representation to the Registrar of Co-operative Societies. Thereupon, the Registrar of Co-operative Societies, after hearing the petitioner as also the first respondent, passed Ext.P12 order

holding that the dismissal of the first respondent from the service of the petitioner is illegal. It is stated in Ext.P12 order that the same has been issued in exercise of the power of the Registrar under Rul 176 of the Kerala Co-operative Societies Rules. The petitioner is aggrieved by Ext.P12 order.

3. Heard the learned counsel for the petitioner as also the learned counsel for the first respondent.

4. The learned counsel for the petitioner, relying on the decision of this Court in **Prakasini v. Joint Registrar** (2006 (1) KLT 199) and the decision of the Larger Bench of this Court in **Chirayinkeezhu S.C.B. Ltd. v. Santhosh** [2015 (4) KLT 163 (L.B.)], contended that the Registrar of Co-operative Societies cannot interfere in a dispute between a Society and their employees and that such disputes are required to be resolved, going by the scheme of the Act, under Section 69 of the Act. The learned counsel for the first respondent has not disputed the fact that the Registrar of Co-operative Societies has no authority to pass an order in the nature of Ext.P12. However, it was contended by the learned counsel that Ext.P10 order by which the first respondent was dismissed from the service of the

petitioner is also one rendered without jurisdiction and that therefore, this Court shall not interfere with the impugned order. The learned counsel for the first respondent elaborated the said submission relying on sub-rule (2A) of Rule 198 of the Kerala Co-operative Societies Rules. According to the learned counsel, it was obligatory for the petitioner to constitute a disciplinary committee consisting of not more than three of its members for the purpose of disciplinary action against its employees and orders in the nature of Ext.P10 can be passed only by such disciplinary committee. It is pointed out that a committee as provided for under sub-rule (2A) of Rule 198 has been not constituted by the petitioner and that the order passed by the Managing Director of the petitioner dismissing the first respondent from service is, therefore, without jurisdiction.

5. I have considered the rival contentions. Going by the scheme of the Kerala Co-operative Societies Act, it is evident that the jurisdiction of the Registrar is impliedly barred to entertain disputes between the societies and their employees. It is seen that in **Prakasini's case** (supra), this Court has considered the point specifically and held that the Registrar, in

exercising the power under Rule 176 of the Kerala Co-operative Societies Rules, has no jurisdiction to entertain a dispute between the society and its employees pertaining to the service of the employees. Further, in **Chirayinkeezhu S.C.B. Ltd's case** (supra), the Larger Bench of this Court has considered an identical issue and held that service disputes between the employees of co-operative societies and their employers shall be resolved in accordance with the provisions contained in Section 69 of the Kerala Co-operative Societies Act. Though there was no reference to Rule 176 of the Rules in the said Larger Bench decision, a reading of the decision indicates beyond doubt that the dictum laid down in the said case is that disputes of this nature shall be resolved by recourse to Section 69 of the Act. In the said view of the matter, I have no hesitation to hold that Ext.P12 passed by the Registrar of Co-operative Societies is without jurisdiction.

6. Coming to Ext.P10 order, a reading of sub-rules (2A) and (3) of Rule 198 of the Rules indicates that only a sub-committee constituted under sub-rule (2A) of Rule 198 of the Rules can act as a disciplinary authority as far as an employee of

a co-operative society is concerned. The fact that such a Committee was not constituted by the petitioner is not disputed. In the circumstances, Ext.P10 order passed by the Managing Director of the petitioner can only be considered as an order passed without jurisdiction. If this Court interferes with Ext.P12 order, it is beyond dispute that Exts.P10 and P11 orders which are rendered without jurisdiction would revive. It is now settled that if the interference in an order, in exercise of the discretionary jurisdiction of this Court under Article 226 would result in resurrection of an illegality, this Court may not interfere in such orders [See **Kadungalloor Service Co-operative Bank Ltd. v. State of Kerala** (I.L.R. 2016(1) Kerala 376)]. On the other hand, if this Court does not interfere with Ext.P12 order, the same will have the effect of absolving the first respondent from the misconduct alleged to have been committed by him. In the circumstances, I deem it appropriate to dispose of the writ petition, clarifying that Ext.P12 order of the Registrar of Co-operative Societies will not preclude the petitioner from initiating/continuing the disciplinary action against the first respondent for the alleged misconduct referred to in Ext.P10

**WP.(C).No.18274/2016-H.**

6

order, in accordance with law. Ordered accordingly.

*Sd/-*  
**P.B.SURESH KUMAR,**  
**JUDGE.**

*Kvs/-*

*// true copy //*