

K.P. Mathai Vs. the Principal, Regional Engineering College and anr.

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Court : Kerala

Decided On : Nov-03-1971

Reported in : (1972)IILLJ283Ker

Judge : P. Govindan Nair, J.

Appellant : K.P. Mathai

Respondent : The Principal, Regional Engineering College and anr.

Judgement :

P. Govindan Nair, J.

1. The petitioner was an employee of the Regional Engineering College, Calicut. The first respondent to this petition is the Principal of the College. The petitioner was dismissed from service and that dismissal is challenged in this petition.

2. A preliminary objection has been raised by counsel for the respondents that this petition is not maintainable under Article 226 of the Constitution as the relationship between the petitioner and the first respondent is purely that of master and servant. It is further urged that the college is not a statutory body, is not created by a statute and does not discharge any sovereign powers. It has no power to give directions. There are no statutory rules which have been infringed and which may give rise to a complaint justiciable under Article 226 of the Constitution. All these contentions of the first respondent, I consider, are well-founded. The college is a

society registered under the Societies Registration Act, 1860. It does not become a statutory body nor does it become a creature of a statute by the registration. Its position more or less is the same as that of a company registered under the Companies Act. And as regards a company registered under the Companies Act, the Supreme Court has ruled in Praga Tools Corporation v. C.A. Imanuel and Ors. reported in 1969--II L.L.J. 749, that it is a separate legal entity and that when 56% of its shares are held by the Union Government and the Union Government had the power to nominate the company's directors it cannot be said to be a Government corporation. Counsel for the petitioner has invited my attention to the decision of the Delhi High Court in Mohinder Singh v. Union of India reported in : AIR1969 Delhi170 . Therein it appears to have been held that a society registered under the Societies Registration Act, 1860 is an 'authority' created under a statute on which some powers were conferred by law. With great respect, I find it difficult to accept this proposition. The society registered under the Societies Registration Act is not a creature of statute, though it is registered under a statute. Whatever powers the society has are powers contained in the Memorandum and Articles of Association which are framed by the society subject to restrictions if any contained in the statute. Powers are, therefore, not conferred by law on the society.

3. Counsel for the petitioner then invited my attention to Ext. R2 which details a resolution that has been passed by the society. One of such resolutions was that the employees of the society will be governed by the rules contained in the Kerala State and Subordinate Services Rules. This resolution is not a law either. An infringement of these rules will not, therefore, be an infringement of law as far as the employees of the society are concerned.

4. I do not think that I should go into the merits of the contentions regarding bias and regarding the violation of the provision of Rule 15 of the Kerala State and Subordinate Services Rules. A similar matter came up for decision before This Court on a former occasion and Justice Gopalan Nambiar in the judgment in O.P. No. 1850 of 1967 refused to entertain the writ application. I dismiss this petition. I need hardly say that this dismissal will not preclude the petitioner from seeking and getting such reliefs as he may have either under the rules applicable to him or under the general law. There will be no order as to costs.

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