

E. Senthilkumar and Others Vs. the Registrar of Co-operative Societies and Another

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Court : Chennai

Decided On : Nov-16-1995

Reported in : (1996)IMLJ465

Judge : K.A. Swami, C.J. and ;S. Janarthanam, J.

Acts : [Industrial Disputes Act, 1947](#) - Sections 33C(2)

Appeal No. : L.P.A. No. 76/1994 and W.P. No. 11660/1993

Appellant : E. Senthilkumar and Others

Respondent : The Registrar of Co-operative Societies and Another

Judgement :

K.A. Swami, C.J.

1. When the L.P.A. came up for hearing before this Court on March 8, 1995, Writ Petition No. 11680 of 1993 was directed to be posted along with L.P.A. Accordingly, both the matters are posted together and the learned counsel appearing on both sides in both the matters are heard.

2. As the decision in the writ petition will have a bearing on the L.P.A., we first take up the writ petition for consideration.

3. The petitioners have sought for quashing the order of the Registrar of Co-operative Societies (Housing), Madras-17 (first respondent) bearing R.C. No. 2057/92/C-4, dated February 25, 1993 and also the order dated April 28, 1993 passed by the Special Officer. The Kancheepuram Co-operative Housing Society Limited, Kancheepuram (second respondent), insofar as they relate to the denial of backwages.

4. The first respondent has passed the aforesaid impugned order in the purported, exercise of his powers under Sec. 181 of the Tamil Nadu Co-operative-Societies Act, 1983 (Tamil Nadu Act of 1983 - for short 'the Act') directing reinstatement of the petitioners with immediate effect treating the period from the date of dismissal till the date of reinstatement as the period of non-employment and as leave on loss of pay and further directing that the pay of the petitioners shall be fixed by the society, considering their services, with the approval of the Registrar (Housing) from the date of their joining in the society.

5. The order dated April 28, 1993 passed by the second respondent is in implementation of the order dated February 25, 1993 passed by the first respondent. The said order dated February 25, 1993 directs the petitioners to comply with the following conditions :

'(1) An undertaking to accept the reinstatement without backwages for the period of non-enjoyment from the date of dismissal till the date of reinstatement as leave on loss of pay.

(2) An undertaking to join the service of the society with immediate effect.

(3) An undertaking to the effect that you will continue to serve the society till the date of your normal retirement and that you will not discontinue the services before such date.

(4) An undertaking to accept the pay that may be fixed by the society after considering, your services with the approval of the Registrar (Housing) as directed in the reference from the date of your joining in the society'

It also further directs that the aforesaid conditions shall be satisfied or complied with within seven days from the date of receipt of the impugned order/letter. In addition to this, the aforesaid order further directs that in the event of failure to furnish the aforesaid undertaking and accept the conditions for reinstatement, within seven days from the date of receipt of that letter, it would be construed that the petitioners are not willing to join the services of the society without backwages as per the terms in the above order and further action will be taken as per rules.

6. During the tendency of the writ petition, the petitioners sought for an interim direction. Accordingly after hearing both the sides, learned single Judge, by order dated September 23, 1993 issued the following interim direction (in W.M.P. No. 17784 of 1993).

'The writ petitioner succeeded before the appellate authority under the Tamil Nadu Shops and Establishments Act, which has held that the dismissal of the petitioner from the services of the 2nd respondent society is illegal. The order was passed on January 10, 1990. The petitioner has been trying to get reinstated on the basis of that order and he has not been successful so far. He has filed an application under Sec. 33-C(2) of the Industrial Disputes Act for backwages. It is, at this stage, that the direction of the Registrar of Cooperative Societies, the impugned order dated April 28, 1993 has been passed, permitting reinstatement on the condition that the petitioner undertakes not to claim the backwages. Prima Facie, this order is illegal, especially because petitioner's application for computation for backwages is pending, on the file of the Labour Court. In the miscellaneous petition, the petitioner is seeking the order of stay relating to the conditions imposed for a direction to reinstate the petitioner in service, without insisting on such conditions.

2. I have absolutely no doubt, in my mind, the prayers sought for are justified consequently direct the second respondent to reinstate the petitioner within two weeks from today, without insisting on any conditions. The application under Section 33(C)(2) of the Act can be proceeded within, in accordance with law'.

It is contended on behalf of the petitioners that there is no justification for the Registrar to issue the impugned order dated February 25, 1993 in as much as after the petitioners were dismissed by the Society in question. The

Kancheepuram Co-operative Housing Society Limited, the order of dismissal was challenged before the Shop Act authority to set aside the order of dismissal. Accordingly, the shop Act authority allowed the appeal and set aside the order of dismissal. Further, the order by the Shop Authority was challenged in the Writ Petition No. 2015 of 1990 and the same was dismissed with costs of Rs. 1,000. W.A. No. 603 of 1991 filed by the society was also dismissed on June 10, 1991 S.L.R No. 14861 of 1991 was also dismissed by the supreme Court on September 30, 1991. The petitioner filed C.P. No. 967 of 1991 before the Principal Labour Court, Madras claiming back-wages for the period from June 1, 1980 to May 31, 1991 under Section 33-C(2) of the [Industrial Disputes Act, 1947](#) and the same is pending. As the order of dismissal was set aside, the petitioner were to entitled to be reinstated to the same positions, which they would have occupied on the date of reinstatement, had there been no order of dismissal.

8. On the contrary, it is contended on behalf of the respondents by the learned Government Advocate Mr. S.T.S. Moorthy and learned counsel Mr. G. Krishnamoorthy appearing on behalf of the society that the Registrar has ample power under Section 181 of the Act; that having regard to the financial conditions of the Society such an order is warranted; that the petitioners are not prepared to obey the directions of the Society regarding the work and therefore, the order passed by the Registrar is well within the powers of the Registrar and hence, interference with the same is not called for.

9. As far as L.P.A. is concerned, it is contended that no appeal lies against the order dismissing the complaint filed under Sec. 12 of the Contempt of Courts Act, in view of the provisions contained in Sec. 19 thereof. When the special enactment provides for an appeal against an order imposing a sentence, the said provisions cannot be overcome or circumvented by resorting to L.P.A. It is also further submitted that there is no other direction issued or finding recorded, in the order passed by the learned single Judge while dismissing the Contempt of Court petition filed on November 12, 1993, so as to contend that the order passed falls outside the purview of the Contempt of Court proceedings therefore, L.P.A., is not maintainable.

10. On the contrary, it is contended by Mr. Prasad, learned Counsel appearing for the Appellants in the L.P.A., that certain directions issued and the findings recorded by the learned single Judge, while dismissing the Contempt of Court petition do fall outside the purview of the proceedings, inasmuch as in the Contempt of Court proceedings, what was complained of was the wilful disobedience of the Interim order dated September 23, 1993 passed in W.M.P. Nos. 17784 and 17785 of 1993, whereas the direction issued and finding recorded not only issued beyond scope of the proceeding but also adversely affect the right of the appellants.

11. Having regard to the aforesaid rival contentions, the following points arise for consideration :

(1) Whether the order dated February 25, 1993 passed by the Registrar of Co-operative Societies (Housing), Madras lies within the scope and ambit of Sec. 181 of the Act

(2) Even otherwise, whether such an order could have been passed by the Registrar of Co-operative Societies, having regard to the fact that the issue has been adjudicated by the Shop Act authority and the same has been affirmed by the High Court and the Supreme Court by rejecting the S.L.P.

(3) Whether L.P.A., is maintainable If so, what order has to be passed in the L.P.A.?

(4) What directions should be issued

12. Point No. 1 : While advertng to the contentions of the learned Counsel for the petitioners, we have already stated the previous history of the case. However, we would like to state the facts which are undisputed and which are relevant to points No. 1.

13. These petitioners were the employees of the Kancheepuram Co-operative Housing Society Limited. Each one of them had been fixed in different category. They were dismissed from service by the society. The order if dismissal was challenged under Sec. 41 of the Tamil Nadu Shops and Establishments Act, 1947

(Act XXXVI of 1947 - for short 'Shop Act'). The appeal was allowed on January 10, 1990. The order dismissing the petitioners from service. The Co-operative society in question went up before the High Court in Writ Petition No. 2015 of 1990 and the same was heard and decided on merits on March 21, 1991 and the writ petition was dismissed with costs of Rs. 1,000. The society, did not stop at that. It also preferred W.A. No. 603 of 1991, which was dismissed on June 10, 1991, S.L.P. No. 14861 of 1991 filed by the society was also dismissed on September 30, 1991. Thus, the litigation was carried to till its logical end. The order of the Shop Act Authority setting aside the order of the dismissal of the petitioners became final and conclusive. The Shop Act authority held as follows :

'I am unable to appreciate the argument of the learned Counsel for the Respondent. Secs. 41 (1) and 41(2) should be read together and the intention of the legislature understood in its correct perspective. It has not been the intention of the Legislature that on the charge of misconduct the Authority must accept the verdict of the employer and confirm the orders of dismissal. The High Court has held in a number of cases that the appellate authority has to be satisfied about the reasonableness of the action of the employer. I do not attach much importance to the argument. The next contention of the respondent is their justifiability of the second enquiry ordered through a sub-committee. Here too, I am unable to agree with the arguments of the learned counsel for the respondent. The decisions quoted by him also do not convince me about the justifiability of the second enquiry. On the other hand, I am led to accept the plea of the learned Counsel for the appellants that the second enquiry was ordered with malafide intention of victimising the appellants, that the respondent had not been able to substantiate the charges before the Enquiry Officer (Advocate). In this respect the decisions quoted by the learned Counsel for the appellants, which had referred to in this order earlier derive support to his argument. It is the prime responsibility of his argument. It is the prime responsibility of the respondent to place before the Enquiry Officer at a later stage order for a second enquiry which cannot be accepted. On the other hand it would only expose the mala fide intention of the respondent. When the learned Counsel for the respondent argues that the report of the Enquiry Officer is only a supporting document to decide the case they would have been justified in taking final decision on the fact of the report of the first

enquiry. I am unable to appreciate or reconcile their reasoning for the second enquiry. It only reflects their anxiety and hasty action to dispose with the services of the appellants for their action in raising demands for the betterment of their service conditions.

It is on record that all the appellants have put in services ranging from 12 to 17 years with proved record and they cannot become hostile unless they are provoked to circumstances. The Honorable High Court while disposing of the writ petition in this case in paragraph 7 has considered the facts of the case and I feel that I need not extract the facts of this case. In this case, the acts of misconduct have not been proved at the first enquiry and the action of the respondent to order second enquiry and decide the case on the strength of the second enquiry is unreasonable, unjust and would amount to victimisation of the appellants who have raised demands for their betterment and for genuine cause.

The respondents have therefore failed to substantiate their action. I am in full agreement with the arguments of the learned Counsel for the Appellant that the action of the respondent lacks bonafide.

I have therefore no hesitation in holding that the dismissal of the appellants is not justified and the orders of the Respondent are liable to be set aside. It therefore follows that the dismissals of the appellants are admittedly on a charge of misconduct which has not been proved. The first issue is answered accordingly.

The second issue also would have to be answered in favour of the appellants as dismissal has not been effected in accordance with the provisions of law. This issue is found against the respondent. In the result, I allow all the five appeals and set aside the order of dismissal dated February 23, 1981. No costs.'

14. No doubt, in the order of the Shop Act authority, there was no specific direction for reinstatement. But, whenever an order of dismissal is set aside, reinstatement is implicit in such an order of dismissal. In fact, the Supreme Court in *R. M. Ramual v. State of Himachal Pradesh* : 1991 CriLJ1415 , has held that though there was no specific direction to consider the case of the complainant for promotion with effect from May 26, 1982 such a relief was implicit in the reasoning

of the order. Similarly, in the case of setting aside the order of dismissal, even in the absence of a specific direction, would be implicit in such an order that the dismissed employee should be reinstated and all the benefits that would accrue out of such reinstatement should be extended. That being so, the co-operative society in question was required to reinstate and grant all the consequential benefits without any efforts being made by the petitioners, no sooner an order was passed by the Shop Act Authority on January 10, 1990 or at any rate, after September 30, 1991 when the S.L.P. was dismissed by the Supreme Court. The society did not do it. We are only stating this to show that the conduct of the society is not normal. It is deprecable conduct and it is nothing but bordering on Contempt of Court.

15. Even for reinstatement with backwages also, the petitioners are compelled to approach this Court in the present writ petition. But for the interim direction issued by learned single Judge on September 23, 1993 directing reinstatement without insisting on any condition, probably the society in question would not have reinstated the petitioners even to this day. It is in this background, we have to see whether the power under Sec. 181 of the Act can be availed by the Registrar Co-operative Societies. The said Section reads thus :

'181, Power of Registrar to give directions in the public interest, etc. : (1) Where the Registrar is satisfied that in the public interest or for the purpose of securing proper implementation of co-operative production and other development programmes approved or undertaken by the Government or to secure the proper management of the business of any class of registered societies generally, or for preventing the affairs of any registered society being conducted in a manner detrimental to the interests of the members or of the depositors or the creditors thereof. It is necessary to issue direction to any class of registered societies generally or to any registered society or registered societies in particulars' he may, by order issue directions to them from time to time, and all registered societies or the registered society concerned as the case may be shall be bound to comply with such directions.

(2) The Registrar may, by order, modify or cancel any directions issued under sub-Sec. (1) and in modifying or cancelling such directions may impose such conditions as he may deem fit.

16. The contention of the learned Counsel appearing for the respondents is that taking into consideration the financial position of the society, it is open to the Registrars to pass any order, which would safeguard the financial position of the society. A close reading of sections reveals that the power under Sec. 181 should be exercised only in public interest or for the purpose of securing proper implementation of the cooperative production and other development programme approved or undertaken by the Government. It could also be exercised to secure the proper management of the business of any class of registered societies generally or for preventing the affairs of any registered society being conducted in a manner detrimental to the interests of the members or of the depositors or the creditors thereof. Even in such cases also, the Registrar must be satisfied that it is necessary to issue such directions to any class of registered societies generally or to any registered society or registered societies. Thus, it is clear that the present case does not fall under any of these categories. It is a case in which the order of the Court has to be implemented. The order of the Shop Act Authority has been upheld by this Court and also by the Supreme Court. We have already been pointed out that the implication of the order setting aside the order of dismissal is to reinstate the dismissed employee. That being so the purported exercise of power under Sec. 181 of the Act in issuing the order dated February 25, 1993 cannot at all be construed to be in public interest; nor it is intended or serves to secure the proper management of the business of the society. It is an illegal act causing great damage and injury to the administration and management of the society subjecting it to avoidable litigation and to harassing its staff. It is nothing but an arbitrary, wanting in bonafides and a designed attempt made under the garb of purported exercise of power under Sec. 181 of the Act to defeat the order of the Court. The Registrar has acted in a very arbitrary manner and also in a manner unbecoming of a responsible Officer. The Registrar of Co-operative Societies (Housing) is empowered to administer the Act and the societies and he is required to safeguard the interest of all concerned. If such is the understanding of the law by the Registrar. Who has the audacity to pass such an order in the

teeth of the order of this Court and also of the Supreme Court, we have no doubt that the interest of their members and the staff are not at all safe in the hands of the Officer in question. He does not appear to have any respect for Rule of Law and the orders of the Court. It is surprising how this officer is posted to such an important and responsible post of the Registrar of Co-operative Societies. We are also constrained to observe that the Government should take immediate action against this Registrar in question to ensure and safeguard the interest of the Society and its members and the employees. Accordingly, point No. 1. is answered in the negative.

17. Point No. 2 : For the reasons already stated while adjudicating Point No. 1, Point No. 2, has to be answered in the negative, inasmuch as the order of the Registrar of Co-operative Societies (Housing), and also of the second respondent, which is passed for implementing the aforesaid impugned order of the Registrar could not have been passed so as to defeat or nullify the orders of this Court and of the Supreme Court. Accordingly, Point No. 2 is answered in the negative.

18. Point No. 3 : We have been taken through the order passed by the learned single Judge dismissing the Contempt of Court application. No doubt, learned single Judge has dismissed the Contempt of Court application. However, in the course of the order, learned single judge has issued further directions, which clearly fall outside the scope of the Contempt of Court proceedings. In the Contempt of Court application, the petitioners averred that on reinstatement, the salary was fixed at Rs. 443, after a lapse of twelve years and not the actual salary required to be paid, had they been continued in service, in the absence of the order of dismissal.

19. During the tendency of Contempt of Court proceedings, the respondents have fixed the salary at Rs. 1,750. Rs. 1,583. Rs. 1,534. Rs. 1,102 and Rs. 1,108 to the five of the petitioners respectively. Therefore, the learned single Judge was right in observing that the fixation of the salary pending disposal of the writ petition needs to be gone into. However, while Disposing of the said petition, it has been observed that if the petitioners are willing to work as per the Office Order No. 1/93, date November 10, 1993. They should be paid the above salary, pending

adjudication by the competent authority. It is also further observed by the learned single Judge that the petitioners are also to give letters or undertaking to the Officer, as per the order dated November 10, 1993 and to receive the salary. These directions squarely fall outside the scope of the Contempt of Court proceedings. In the proceedings, what was required to be seen as to whether the order dated September 23, 1993 was wilfully violated. A Division Bench of this Court, while considering such a situation, in *R. Rajagopal v. Chellamuthu*, 1994 I MLJ 78 : has held that even though the order dismissing the Contempt of Court application is not appealable under Sec. 19 of the Contempt of Courts Act, nevertheless, such an order to the extent it travels beyond the scope of the proceedings and affects the rights of the parties, Letters Patent Appeal under clause 15 of the Letters Patent can be entertained to the extent the order travels beyond the scope of the proceedings and affects the rights of the parties. The relevant portion of the decision is as follows (at pp. 81.82) :

'7. Let us first examine the preliminary objections raised by the learned Counsel for the first respondent with regard to the maintainability of this L.P.A. The contention of the learned Counsel for the first respondent is that inasmuch as by the order under appeal, respondents 2 to 4 have been discharged and nobody is punished under the provisions of the Act, the appeal filed against such an order is not maintainable under Sec. 19(1) of the Act. The learned Counsel further contended that if an appeal against the order made in Contempt Application No. 507 of 1992 does not lie Under Sec. 19 (1) of the Act, it does not follow that Clause 15 of the Letters Patent could be invoked and therefore, the present appeal filed under clause 15 of the letters Patent is also not maintainable if a Letters Patent appeal came up for consideration before a Division Bench of this Court is *Vidya Charan Shukla v. Tamil Nadu Olympic Association and another*. Contempt Appeal No. 5 of 1990 and Letters patent Appeal No. 123 of 1990. A Division bench of this Court by the judgment dated August 14, 1990 in *Vidya charan Shukla v. Tamil Nadu Olympic Association and another*, Contempt Appeal No. 5 of 1990. and Letters Patent Appeal No. 123 of 1990, has held that an appeal under Clause 15 of the Letters patent would lie against any order or decision passed in exercise of the contempt jurisdiction of the High Court, provided such an order or decision is a judgment and satisfies the other requirements of Clause 15 of the Letters Patent,

and has observed as follows : 'Various judgments, where recourse to an appeal under the Letters Patent has not been permitted, dealt with cases where the act provided an express prohibition or exclusion of an appeal under any other law. That was the petition in Union of India v. Mahindra Supply Company : [1962]3SCR497 , which concerned with the provisions contained in Sec. 39(2) of the Arbitration Act and South Asia Industries (P.) Limited v. S. B. Sarup Singh, : [1965]2SCR756 , dealing with the Delhi Rent Control Act. Sec. 100-A of the Code of Civil Procedure is again one of such instances where recourse to the Letters Patent cannot be had. Since, in our opinion, Sec. 19(1) of the Act cannot be construed to be destructive of the valuable right of an appeal granted by Clause 15 of the Letters Patent Appeal and there is no provision contained in the Contempt of Courts Act abrogating or excluding the provisions of Clause 15 of the Letters Patent, we hold that except to the extent of the occupied field covered by Sec. 19(1) of the Act, an appeal under clause 15 of the Letters Patent would lie against any order or decision passed in exercise of the contempt jurisdiction of the High Court, provided such an order or decision is a judgment and satisfied the other conditions laid down in Clause 15 of the Letters Patent and does not fall in any of the excluded categories. We therefore, overrule the preliminary objection relating to the non-maintainability of the appeal under clause 15 of the Letters Patent on the facts of the instant case.'

We are in entire agreement with the above view expressed by the Division Bench of this Court in Vidya Charan Shukla v. Tamil Nadu Olympic Association and another (supra), Contempt Appeal No. 5 of 1990 and Letters Patent Appeal No. 123 1990. Inasmuch as by the order under Appeal, the learned single Judge has declared that the first respondent is entitled to quarry sand in the area in question for a period of 3 1/2 months and directed the respondents 2 to 4 to permit the first respondent to quarry sand for a period of 3 1/2 months from May 1, 1993, we are inclined to hold that such an order is a Judgment for the purpose of Clause 15 of the Letters Patent. In these circumstances, we have no hesitation in holding that the present appeal is maintainable under Clause 15 of the Letters Patent. Therefore, applying the ratio of the said decision, it follows that the L.P.A., has to be held as maintainable to the extent it relates to the direction issued by the learned Judge. Point No. 3 is answered on the affirmative.

20. In the light of the findings recorded on point Nos. 1 to 3, the writ petition has to be allowed and the L.P.A., has to be allowed in part. We accordingly allow both in the following terms :

(1) the impugned order dated February 25, 1993 passed by the Registrar of Co-operative Societies (Housing), Madras (first respondent), bearing R.C. No. 2057/92/C4 and the order letter dated April 28, 1993 of the second respondent - society to the extent those orders deny the backwages and also direct the filing of an understating by each of the petitioners (as produced at pages 51-53 and 54-55 respectively of the typed set of papers) are quashed :

(2) No direction regarding payment of current wages need be issued, as it is stated before us that the petitioners are now being paid Rs. 1,750 Rs. 1,583, Rs. 1,534, Rs. 1,102 and Rs. 1,018 respectively. We only, make it clear that this payment is only subject to the determination to be made by the Principal Labour Court, Madras in C.P. No. 967 of 1991.

(3) The order dated February 1, 1994 passed in Contempt application No. 320 of 1993 and sub-application Nos. 166 of 1993 and 3 of 1994 to the extent it travels beyond the scope of the Contempt of Court proceeding as indicated in the course of the order, is set aside and the order is treated as the one passed pure and simple, dismissing the Contempt of Court proceedings and nothing more.

(4) The Petitioners shall also be entitled to costs of Rs. 2,500/- (Rupees Two thousand five hundred only) which shall be personally paid by the Registrar of Co-operative Societies (Housing), Madras (first respondent).

21. A copy of this judgment shall be sent to the Chief Secretary, to the Government, Government of Tamilnadu. Fort. St. George. Madras-9 for taking follow up action