

Supreme Court of India

Registrar, Cooperative ... vs F.X. Fernando on 15 February, 1994

Equivalent citations: 1994 SCC (2) 746, JT 1994 (1) 666

Author: S Mohan

Bench: Mohan, S. (J)

PETITIONER:

REGISTRAR, COOPERATIVE SOCIETIES

Vs.

RESPONDENT:

F.X. FERNANDO

DATE OF JUDGMENT 15/02/1994

BENCH:

MOHAN, S. (J)

BENCH:

MOHAN, S. (J)

VENKATACHALLIAH, M.N. (CJ)

FAIZAN UDDIN (J)

CITATION:

1994 SCC (2) 746 JT 1994 (1) 666

1994 SCALE (1) 601

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by MOHAN, J.- Leave granted.

2. The facts leading to present appeal are as under:

3. The respondent joined the Cooperative Department as Deputy Registrar in the year 1969. He was promoted as Joint Registrar in 1981. He became the Joint Registrar/Special Officer of the Park Town Cooperative Wholesale Stores Ltd. in 1984.

4. During his tenure as the Joint Registrar/Special Officer of Park Town Cooperative Wholesale Stores Ltd. complaints were received by the Director, Vigilance and Anti-Corruption Department. The said Department approached the Registrar, Cooperative Societies to furnish the details to investigate into the alleged irregularities. Thereupon, the Registrar furnished the relevant material.

The Vigilance and Anti-Corruption Department was requested to complete the inquiry on or before December 31, 1987. However, no progress was made in that direction.

5.The Government of Tamil Nadu by its GOMs No. 185 Personnel and Administrative Reforms Department dated March 17, 1988 amended Rule 12 of the Tamil Nadu Civil Service (Classification, Control and Appeal) Rules. Under the said GO, the powers imposing minor penalty came to be conferred on the Heads of the Departments.

6.Finally, the Vigilance and Anti-Corruption Department submitted its detailed report. On an examination of the same, the Government issued GOMs No. 371 dated December 20, 1988 directing the Registrar to take disciplinary action against the respondent. Thereupon the Registrar issued the charge memo dated March 20, 1989. The Registrar (Marketing, Planning and Development) was appointed as Enquiry Officer to conduct the inquiry. The respondent appeared before the Enquiry Officer from January 24, 1990 to March 20, 1990. He also cross- examined one witness.

7.On March 20, 1990, he made a representation to the appellant alleging bias against the Enquiry Officer. The complaint was rejected. Again, another representation to the same effect was made. That was also rejected on May 8, 1990 and the Registrar called upon the respondent to appear before the Enquiry Officer. At this stage, the respondent moved an application OA No. 1294 of 1990 before the Tamil Nadu Administrative Tribunal to quash the order dated May 8, 1990 calling him by the Registrar to appear before the Enquiry Officer.

8.By the impugned order dated March 19, 1991, the Tribunal held that the proceedings under Rule 17(b) were liable to be set aside on the ground that the Registrar of Cooperative Societies was not empowered to impose even minor penalty. However, it was open to the Government as Disciplinary Authority to initiate fresh action by issuing a charge memo and conclude the proceedings within a period of six months. Aggrieved by this order, the present civil appeal has come to be preferred.

9.The learned counsel for the appellant would urge that the Tribunal has completely ignored GOMs No. 185 dated March 17, 1988 by which the Government had delegated the power to the Heads of the Departments to impose minor penalties.

10.Besides, by GOMs No. 371 dated December 20, 1988, the Government directed the Registrar to frame charges against the respondent and to initiate inquiry. Without regard to this GO, the Tribunal has held as though Registrar on his own under Rule 17(b) had issued a charge memo for which there was no power.

11.The learned counsel for the respondent would submit that if the Disciplinary Authority is the Government, the Registrar is not competent to frame charges and direct inquiry proceedings.

12.We will now proceed to consider whether the impugned order of the Tribunal is correct. The finding of the Tribunal is as follows:

"The Joint Registrar of Cooperative Societies is a State service officer and the Disciplinary Authority is the State Government. Therefore, proceedings under Rule 17(b) of the T.N.C.S. (CA) Rules can be initiated only by the person empowered to impose the penalties specified in that rule. The rules also contain a provision that an authority competent to impose the penalties mentioned in Rule 17(a) may institute a disciplinary action in respect of major penalties also. However, in this case, the Registrar of Cooperative Societies is not empowered even to impose the minor penalties and therefore initiation of disciplinary proceeding by him by issue of a charge memo and proceeding further by appointment of Enquiry Officer is beyond his powers and therefore on this ground alone the proceedings have to be set aside. It is open to the Disciplinary Authority, viz., the Government to initiate action afresh by issuing the charge memo and after obtaining the written statement of defence and examination thereof order inquiry if necessary by designating the Enquiry Officer." (emphasis supplied)

13. This finding is clearly wrong since it has not taken note of the amendment made to Tamil Nadu Civil Service (Classification, Control and Appeal) Rules amending Rule 12 whereunder the Heads of the Departments are enabled to impose minor penalties. We will now extract both original Rule 12 and the notification issued in GOMs No. 185, Personnel and Administrative Reform (Personnel-N) Department, dated March 17, 1988 amending the said rule:

"12. The State Government may impose any of the penalty specified in items (i) and (iii) to (viii) in Rule 8 on members of the State Service:

Provided that if the Governor of Madras is himself the appointing authority for any service or a class or category thereof, he may himself impose any of the said penalties on members of that service, class or category, as the case may be:

Provided further that in the case of the members of the Services specified in column (I) of Appendix IV to these rules, the authority which may impose any of the penalties mentioned in items (i), (iii) so far as it relates to withholding of increments and

(v) in Rule 8 shall be the authorities specified in the corresponding entries in columns (2), (3) and (4) thereof."

"NOTIFICATION In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Tamil Nadu hereby makes the following amendment to the Tamil Nadu Civil Services (Classification, Control and Appeal) Rules, in Volume I of the Tamil Nadu Service Manual, 1977:

Amendment In the said rules, Rule 12 shall be numbered as sub-rule (1) of that rule and after sub- rule (1) as so renumbered, the following sub- rule shall be added; namely:

`(2) Notwithstanding anything contained in these rules and in Appendix IV, the Heads of Departments concerned may impose any of the penalties mentioned in items (i), (iii) insofar as it relates to withholding of increments and (v) in Rule 8 on all members of the State Service other than such members who are immediately below such Heads of Departments.

14. The punishments that are referred to above are found in Rule 8 of Madras Civil Services (Classification, Control and Appeal) Rules as under:

"8. (i) Censure.

(iii) Withholding of increments or promotion, including stoppage at an efficiency bar.

(v)(a) Recovery from pay of the whole or part of any pecuniary loss caused to the State Government or the Central Government or to a local body by negligence or breach of orders, or

(b) Recovery from pay to the extent necessary of the monetary value equivalent to the amount of increments ordered to be withheld, where such an order cannot be given effect to, or

(c) Recovery from pay to the extent necessary of the monetary value equivalent to the amount of reduction to a lower stage in a time-scale ordered where such an order cannot be given effect to.

Explanation.- In cases of stoppage of increment with cumulative effect, the monetary value equivalent to three times the amount of increments ordered to be withheld may be recovered."

15. This is not a case in which a Registrar has taken disciplinary action on his own. The Government of Tamil Nadu by GOMs No. 371 dated December 20, 1988 directed the appellant to take disciplinary action against the respondent for the following irregularities:

"He appointed candidates for the post of Salesmen to the newly opened fair price shops of Park Town Cooperative Wholesale Stores, Madras during 1984-85 directly without being sponsored by the Employment Exchange and thereby violated GOMs No. 1138, Labour and Employment Department, dated May 25, 1978, and the instructions given by the Registrar of Cooperative Societies in Lr. No. 149614/84 PDS2, dated September 26, 1984. He had violated departmental instructions and purchased consumer goods such as rice, tamarind and chillies directly from traders at higher rates without placing orders through joint purchase committee meetings as prescribed by the Registrar of Cooperative Societies circulars etc. and thereby conferred undue pecuniary advantages to the private traders."

16. It was on the basis of this GO, on March 20, 1989 the Registrar issued the charge memo. In this connection, it is worthwhile to refer to a recent decision of this Court reported in *P.V. Srinivasa Sastry v. Comptroller and Auditor General*. The relevant observations at pages 132324 are as under: (SCC pp. 422-23, paras 4-5 and 6) "But Article 311(1) does not say that even the departmental proceeding must be initiated only by the appointing authority. However, it is open to Union of India or a State Government to make any rule prescribing that even the proceeding against any delinquent officer shall be initiated by an officer not subordinate to the appointing authority. Any such rule shall not be inconsistent with Article 311 of the Constitution because it will amount to providing an additional safeguard 1 (I 993) 1 SCC 419: 1993 SCC (L&S) 206: (1993) 23 ATC 645 : AIR 1993 SC 1321 or protection to the holder of a civil post. But in absence of any such rule, this right or guarantee does not flow from Article 311 of the Constitution. It need not be pointed out that initiation of a departmental proceeding per se does not visit the officer concerned with any evil consequences, and the framers of the Constitution did not consider it necessary to guarantee even that to holders of civil posts under the Union of India or under the State Government. At the same time this will not give right to authorities having the same rank as that of the officer against whom proceeding is to be initiated to take a decision whether any such proceeding should be initiated. In absence of a rule, any superior authority who can be held to be the controlling authority, can initiate such proceeding.

In the case of *State of M.P. v. Shardul Singh*² the departmental enquiry had been initiated against the Sub-Inspector of Police by the Superintendent of Police, who sent his inquiry report to the Inspector General, who was the appointing authority. The Inspector-General of Police dismissed the officer concerned from the service of the State Government. That order was challenged on the ground that the initiation of the departmental enquiry by the Superintendent of Police was against the mandate of Article 31 1 (1) of the Constitution. This contention was accepted by the High Court. But this Court said: (SCC p. 112, para 10) "[We are unable to agree with the High Court that the guarantee given under Article 31 1 (1) includes within itself a further guarantee that the disciplinary proceedings resulting in dismissal or removal of a civil servant should also be initiated and conducted by the authorities mentioned in that Article.' * * * Although Article 311 of the Constitution does not speak as to who shall initiate the disciplinary proceedings but, as already stated above, that can be provided and prescribed by the rules. But if no rules have been framed, saying as to who shall initiate the departmental proceedings, then on the basis of Article 311 of the Constitution it cannot be urged that it is only the appointing authority and no officer subordinate to such authority can initiate the departmental proceeding. In the present case, it was not brought to our notice that any rule prescribes that the Accountant General, who is the appointing authority, alone could have initiated a departmental proceeding."

17. Then again the finding that there is long delay in initiating of departmental proceedings cannot be supported because in this case the Directorate of Vigilance and Anti- Corruption had not been prompt. Therefore, the appellant cannot be faulted. Accordingly, we set aside the order of the Tribunal and direct that the matter be proceeded with from the stage at which it was left. It is a settled principle of law that justice must not only be done but must be seen to be done. Therefore, we would direct that 2 (1970) 1 SCC 108 another Enquiry Officer be appointed in order to remove any apprehension of bias on the part of respondent. The civil appeal will stand allowed with no cost.

ORDER

1. Special leave granted.

2. The father of the respondent having passed away the respondent sought appointment in the Rajasthan Police Service as Sub-Inspector on compassionate ground. The authorities could not accede to his request as he had crossed the prescribed age limit (including relaxation) for the post of Sub-Inspector of Police. The authorities, therefore, offered him the post of Lower Division Clerk for which upper age limit is 31. The respondent instead of accepting the same moved the High Court by way of a writ petition. The High Court allowed the writ petition and directed that he be given appointment as Sub-Inspector of Police ignoring the age limit prescribed under the Rajasthan Police Subordinate Service Rules, 1989. The special appeal to the Division Bench was dismissed and hence this appeal.

3. We have heard counsel on both sides. It is one thing to say that a family member of the deceased is entitled to appointment on compassionate ground, but it is altogether a different thing to say that his appointment should be made regardless of the rules. Since he had crossed the maximum age prescribed for the post of Sub-Inspector of Police, the authorities were fully justified in offering him the post of Lower Division Clerk, which he + Arising out of SLP (C) No. 1848 of 1993 SHANKER MOTIRAM NALE v. SHIOLALSING GANNUSING RAJPUT should have accepted. We fail to see how the High Court could in the face of the rules direct the authorities to make his appointment as Sub-Inspector of Police. We, therefore, cannot allow the order to stand. We set aside the order of the learned Single Judge as well as the Division Bench and direct that the respondent may join as Lower Division Clerk, if he so desires, within four weeks from today. Any appointment made on pain of contempt proceedings pursuant to the impugned judgment may be cancelled. The appeal is disposed of accordingly with no order as to costs.

ORDER

1. This appeal is obviously incompetent. It is against an order of a Division Bench of the High Court rejecting the application for review of a judgment and decree passed by a learned Single Judge, who seems to have retired in the meantime. It is not against the basic judgment. Order 47 Rule 7, of CPC bars an appeal against the order of the court rejecting the review. On this basis, we reject the appeal. No costs.

I.A. No. 1/93 (Application for substitution)

2. No orders are necessary in view of the rejection of the appeal.