

## HAKMANA MULTI-PURPOSE CO-OPERATIVE SOCIETY LTD.

v.

## FERDINANDO

SUPREME COURT.

WIMALARATNE, J., COLIN-THOMÉ, J. AND ATUKORALE, J.

S. C. APPEAL No. 17/84.

C. A. APPLICATION No. 215/81.

JUNE 3, 1985.

*Mandamus – Co-operative Society – Disciplinary action against employees – Co-operative Employees Commission Act section 11 (1) (e) – Clause 7 (1) of Circular No. 18/73 dated 27.7.1973 issued by Co-operative Employees Commission – Payment of half salary from seventh month to interdicted employee where inquiry is not completed within six months.*

Mandamus does not lie to compel a Co-operative Society to comply with Clause 7 (1) of Circular No. 18/73 dated 27.7.1973 issued by the Co-operative Employees Commission directing payment of half salary from the seventh month to an interdicted employee where the inquiry into the charges against him is not completed in six months. The duty prescribed by Clause 7 of the Circular No. 18 of 1973 is not in the nature of a public duty such as could attract relief by way of mandamus.

*Mendis v. Hakmana Textile Workers' Co-operative Society – C. A. No. 378/78 C. A. Minutes of 21.1.1979 not followed.*

**Cases referred to :**

- (1) *Weligama Multi-purpose Co-operative Society Ltd. v. C. Daluwatte*, [1984] 1 S.L.R. 195.
- (2) *Mendis v. Hakmana Textile Workers Co-operative Society* C. A. No. 378/78 C. A. Minutes of 21.1.79.

APPEAL from judgment of the Court of Appeal.

E. D. Wickremanayake for respondent-appellant.

Prns Gunasekera with K. Abeypala and D. M. S. Gunasekera for petitioner-respondent.

June 27, 1985.

### WIMALARATNE, J.

The petitioner-respondent, who was an internal auditor under the respondent-appellant, had been interdicted on 24.1.71 in consequence of allegations of fraud and defalcations amounting to about Rs. 70,000 against him and eight other employees. A charge sheet dated 28.6.71 was served on the petitioner, which charge sheet was amended on 7.9.73. Inquiry into the charges commenced on 30.1.75 and by 1.7.75 there had been 7 dates of inquiry but the inquiry was not concluded for various reasons.

Section 11 (1) of the Co-operative Employees Commission Act, No. 12 of 1972 stipulates the powers of the Commission, and in terms of paragraph (e) of that subsection the Commission has the power to determine the procedure or procedures to be followed by any co-operative society in exercising its rights of disciplinary action against its employees, to call upon any co-operative society to complete disciplinary inquiries against its employees within a time stipulated by the Commission, and to hear appeals arising out of any disciplinary orders made by any co-operative society. By virtue of those powers the Commission issued to all co-operative Societies a Circular No. 18/73 dated 27.7.73 on the subject of "Disciplinary Inquiries – Interdiction". Clause 7(1) of the Circular reads as follows :

"When the salary of an officer who is under interdiction has been stopped and if the disciplinary inquiry is not concluded within six months, the employee is entitled to receive half of his salary from the seventh month till the inquiry is concluded. During the first six months the inquiry may be postponed twice on the application of the accused. Notwithstanding the period of time involved on these two occasions, the employee is entitled to receive half salary for the period exceeding the six months due to the delay on the part of the employer. But after the expiry of six months the period of time granted on application of the employee should not be taken into account for purposes of half salary".

As the inquiry was not completed even by 1977 the Commission wrote two letters, one dated 27.3.77 (P4) and the other dated 11.7.77 (P5) requesting the Society to forthwith pay the half salary which the petitioner was entitled to. In the absence of any response from the Society the petitioner invoked the jurisdiction of the Court of Appeal by his petition dated 24.2.81 and prayed for a Writ of

Mandamus to compel the Society to pay him half his salary from the seventh month after the date of his interdiction. The Court of Appeal granted his prayer and the appellant has appealed to this Court.

The question as to whether a Co-operative Society could be compelled by Mandamus to pay half the salary due to an employee after the sixth month of interdiction came up for decision before five judges of this Court in the case of the *Weligama Multi-purpose Co-operative Society Ltd. v. C. Daluwatte* (1). It was held that the duty prescribed by clause 7 of Circular No. 18 of 1973 is not in the nature of a public duty such as to attract the grant of Mandamus for its enforcement. On the same basis the petitioner's application for relief by way of Mandamus must fail. The decision in *Mendis v. Hakmana Textile Workers' Co-operative Society Ltd.* (2) relied upon by the Court of Appeal in the instant case has been held in the *Weligama case* (*supra*) to have been wrongly decided.

Mr. Gunasekera for the respondent relied upon section 14 of the Co-operative Employees Commission Act for the proposition that a directive given by the Commission to a society imposes a duty in the nature of a public duty capable of being enforced by Mandamus. Section 14 is in the following terms :

"Any co-operative society, and any employee of such society, shall be subject to such directions as may be given by the Commission under this Act, and all decisions of the Commission in the discharge and exercise of its functions and powers under this Act, subject to the provisions of section 11 (2), shall be final, and shall be binding on all such co-operative societies as are not exempted from the operation of this Act by Order made under section 2 by the Minister and on the employees of such societies".

It seems to me that a direction used by a Commission, such as those contained in P4 and P5 are even less effective than Clause 7 of the Circular for attracting the remedy of Mandamus.

I would therefore allow this appeal, and dismiss the petition without costs. I would urge upon the Society the imperative need to complete the disciplinary inquiry against the petitioner with the least possible delay, if it has not already been concluded.

**COLIN-THOMÉ, J.** – I agree.

**ATUKORALE, J.** – I agree.

*Appeal allowed.*