

AMARASINGHE
V.
CO-OPERATIVE EMPLOYEES COMMISSION
MADAMPE MULTI PURPOSE CO-OPERATIVE SOCIETY

COURT OF APPEAL.
DR. ANANDA GRERO, J.,
C. A. 1294/85
DECEMBER 08, 1992
NOVEMBER 12, 1993

Appeals – Co-operative Employees Commission Act No. 12 of 1972 – Appeals to the Commission by Employees, Societies – Regulations framed under Act 12 of 72 – Nos. S. 135, 137, 138 – Government Gazette 169/8 – Oral hearing – Distinction drawn between appeals from an Order of Termination and other Orders.

The services of the petitioner who was the General Manager of the 2nd Respondent Society were terminated on 12.1.84. He appealed to the Co-operative Employees Commission. The first appeal was dismissed on 21.9.94. The second appeal was also dismissed on 26.4.85. The Petitioner sought to quash the above said decision, and the decision of the 2nd Respondent Society dated 12.1.84. The Petitioner complains that he was not given a hearing and the 1st Respondent Commission acted contrary to the principles of natural Justice and Regulation 137.

Held:

- (i) There is no error on the face of the Record to quash the decision of the 2nd Respondent dated 12.1.84.
- (ii) Regulation 137 states "In every appeal **other than an appeal from an order of termination of services or dismissal**, the Commission may decide such appeal on the basis of the written material in appeal."

A reading of Regulation 137 reveals that the discretion is there for the Commission to decide an appeal on the basis of written material, but such an appeal is not one from an Order of termination of services or dismissal.

- (iii) Framers of the aforesaid Regulation had intended that the Commission should hear the appeal of the employee against the Order of termination of his services or dismissal.

- (iv) On a reading of the Regulations 135, 137, 138, it appears that, the Commission has to give an oral hearing before it makes an order in an appeal made by an employee against an Order of termination of his services or dismissal.

Application for Writ of Certiorari.

R. K. S. Sureshchandra for Appellant.
W. Dayaratne for 1st Respondent.

Cur. adv. vult.

January 20, 1994

DR. ANANDA GRERO, J.,

The petitioner was the General Manager of the 2nd respondent Multipurpose Co-operative Society. His services were terminated by the Chairman of the 2nd Respondent society by letter marked "I" dated 12.01.1984. Against such termination of his services, he had appealed to the 1st Respondent, Co-operative Employee's Commission as he was entitled to do so under the Co-operative Employees' Commission Regulations published in the Government Gazette bearing No. 169/8 of 1.12.81.

His 1st appeal to the said Commission has been dismissed as seen by letter dated 21.10.84 (which is marked and annexed to the petition as "K").

A 2nd appeal has been made by him in terms of regulation 135 of the aforementioned Gazette, and this appeal too was dismissed by the 1st respondent as seen by letter dated 26.4.85 (which is marked and annexed to the petition as "M1").

The 1st respondent through its Chairman and Secretary by letter dated 14.8.85 (marked "0") informed the petitioner that both his appeals were dismissed under regulations 135 to 138 of the regulations published in the aforesaid Gazette.

Thereafter the petitioner by his petition dated 2.11.85 made an application for a mandate in the nature of a writ of certiorari in order to quash the following decisions of the Respondents.

- a) Decision of the 2nd Respondent dated 12.1.84.
- b) Decision of the 1st Respondent dated 21.9.84.
- c) Decision of the 1st Respondent dated 26.4.85.

At the request of this Court both counsel submitted their written submissions. This Court perused the said submissions tendered to Court by both counsel. This Court also considered the petition of the petitioner along with the documents submitted to Court. Further the Court perused the statement of objections filed by the 2nd respondent along with the documents attached to the said statement.

Documents marked A, C, D, F, and H amply demonstrate that the petitioner has been warned by the Chairman of the 2nd Respondent society against general inefficiency on the part of the petitioner. By letter marked 'F' he had been warned of instances of insubordination. By letter marked 'D' he had been informed of negligence of duty and warned him not to do so in future. No doubt the petitioner had replied to these letters giving his explanations.

After a careful perusal of the said letters and the letters sent by the petitioner to the Chairman of the 2nd respondent society, this Court is of the view that the 2nd respondent had acted in terms of Co-operative Employees Commission Act, No. 12 of 1972 and the Regulations contained in the Government Gazette No. 169/8.

Taking into consideration all the aforesaid letters and the submissions of both counsel, I am of the view that there is no error on the face of the record to quash the decision of the 2nd respondent dated 12.1.84. Therefore no writ of certiorari lies against the decision of the 2nd respondent and such application against the said respondent is hereby dismissed.

The next question is whether a writ of certiorari lies against the decisions of the 1st respondent? The petitioner is entitled under regulation 135 of the Regulations published in the Government Gazette No. 169/8 of 1.12.81 to appeal to the 1st respondent against the decision by a committee of the society (i.e. the 2nd respondent society). He is also entitled under the aforesaid regulation 135 to make a second appeal to the 1st respondent Commission. He had acted under the said regulation and the 1st respondent had dismissed his appeals.

The grievance of the petitioner is, that he was not given a hearing and the 1st respondent acted contrary to the principles of natural justice. He says the 1st respondent has acted contrary to regulation 137 of the Employees' Commission Regulations published in the Government Gazette bearing No. 169/8 of 1.12.81.

Regulation 137 says:

"In every appeal other than an appeal from an order of termination of services or dismissal, the Commission may decide such appeal on the basis of the written material in appeal."

The learned counsel for the 1st respondent referring to the said regulation says that it does not say that the employees' oral evidence should be heard, but the Commission can decide the appeal on the material available before it.

It is common ground that the appeal to the Commission (i.e. the 1st respondent) by the petitioner was against an order of termination of his services.

A reading of regulation 137 clearly reveals that the discretion is there for the Commission to decide an appeal on the basis of written material. But such an appeal is not one from an order of termination of services or dismissal. In other words with regard to an appeal **other than an appeal from an order of termination of services or dismissal**, the Commission is empowered to decide it on the basis of written material before such commission.

A perusal of regulation 138 reveals that either the Commission can dispose of the appeal, or a person nominated by such commission can hear an appeal from an order of termination of services or dismissal.

The learned counsel for the appellant referring to regulation 137 states, that it is quite clear from the provisions in such regulation that specially in the case of an appeal against a decision regarding termination of services of an employee that an oral hearing should be given when it states that except in such a situation that the Commission can decide on the basis of the written material before it.

Although it is not specifically stated in regulation 137 that in case of an appeal from an order of termination of services or dismissal the Commission should hear the appellant orally the reasonable inference that can be drawn is, that the appellant should be so heard. Under regulation 137, the Commission is empowered to hear an appeal other than an appeal from an order of termination of services or dismissal of an employee on the written material before it. Why is it specifically stated "**Other than an appeal from an order of termination of services or dismissal**" ? Because the framer or framers of the aforesaid Regulation had intended that the Commission should hear the appeal of an employee against the order of termination of his services or dismissal. The hearing contemplated is, oral hearing. If it was intended to hear the appeal on written material furnished by the appellant then the words "**Other than an appeal from an order of termination of services or dismissal**" need not be so specifically stated in Regulation 137.

Once the services of an employee are terminated he loses his job. Such an act seriously affects his whole life. Therefore it is nothing but right for such a person to permit to make not one appeal but two appeals (as contemplated in Regulation 135) to the Commission against such termination or dismissal. Such a person should be given a fair hearing and that too to satisfy the Commission orally that the order of termination or dismissal was wrong. When such an opportunity is given he may be able to explain what has been stated in his petition of appeal and the Commission too is in a better position to question him and thereafter to arrive at a fair, and reasonable decision.

H. W. R. Wade on Administrative Law, 5th Edition at page 499 states :

"An opportunity for the employee to state his case, and apart from the code, (or Regulations etc) fairness alone will require that in most cases."

This Court is of the view that the Commission has to give an oral hearing before it makes an order in an appeal made by an employee against an order of termination of his services or dismissal.

Further more in this case, when the Commission had come to a finding that because of the petitioner's ill health he was inefficient and on that basis the appeal was rejected, as revealed by document 'K', it is fair and reasonable to hear him orally before his appeal is rejected. It appears that the question of ill health causing inefficiency was not a ground upon which the 2nd respondent took steps to terminate his services. It was general inefficiency due to failure on his part to take appropriate steps in the administration of the society that led to the finding of the 2nd respondent that he was guilty of such inefficiency.

When the petitioner by his appeal (2nd) dated 15.11.84 pointed out to the Commission that nothing was revealed in the letter of termination of his services that it was due to his ill health that he was found inefficient the Commission at least should have afforded an opportunity to explain his case orally, before it rejected his second appeal.

In the aforesaid circumstances this Court is of the view, that the 1st respondent Commission has acted in such a manner without giving the petitioner an opportunity to be heard (orally) and/or in violation of the principle of natural justice, i.e. to say that he was not given a proper hearing before his appeals were decided. In the circumstances, both decisions of the 1st respondent Commission are hereby quashed and this Court acting in Revision directs the Commission to re-hear his 2nd appeal with notice to him. The Commission should afford him an oral hearing when his appeal is taken up for hearing.

Writ of certiorari issued quashing the aforesaid decisions of the 1st respondent, and directing the Commission, to re-hear the 2nd appeal of the petitioner as stated above. Petitioner is entitled to recover Rs.350/- costs from the 1st respondent.

Application allowed