

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 14878 of 2017****With****CIVIL APPLICATION (FOR STAY) NO. 1 of 2017****In R/SPECIAL CIVIL APPLICATION NO. 14878 of 2017**

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JAYESHBHAI JIVANBHAI PATEL

Versus

SHREE SAYAN VIBHAG SAHAKARI KHAND UDHYOG MANDLI LTD & 2
other(s)

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Appearance:

DR BALRAM D JAIN(3146) for the Petitioner(s) No. 1

MR CHIRAG B PATEL(3679) for the Respondent(s) No. 1,2,3

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CORAM: **HONOURABLE MR. JUSTICE A.Y. KOGJE****Date : 06/07/2022****ORAL ORDER**

[1] This petition under Article 226 of the Constitution of India is filed by the petitioner for following reliefs:-

“(A) Your Lordships may be pleased to admit and allow the present petition.

(B) Your Lordships may be pleased to pass appropriate writ, order, relief, direction by quashing and setting aside the impugned communication dtd. 10/7/2017, 19/7/2017, 22/7/2017 and 1/8/2017 and the so called impugned termination order which is likely to be passed on 10/8.2017.”

(C) Pending admission hearing and final disposal of this petition Your Lordships may be pleased to stay the operation, implementation and execution of the impugned communication dtd. 10/7/2017, 19/7/2017, 22/7/2017 and 1/8/2017 and the so called impugned termination order which is likely to be passed on 10.8.2017.”

[2] From the pleadings, it appears that by an order dated 22.11.2021 an amendment was permitted to be carried out forthwith and afresh memo of petition was to be filed before this

Court, however, none of the above has been undertaken by learned advocate for the petitioner. Learned advocate for the petitioner is absent. Moreover the order sheet indicates that Id. advocate has remained absent.

[2.1] The order-sheet records that on the earlier occasion also, learned advocate for the petitioner has remained absent. As a result of which, the matter has been adjourned from time to time. Today also, learned advocate for the petitioner is absent however, considering the matter being of 2017, the same is being taken up for hearing with the assistance of learned advocate for the respondents.

[3] From the pleadings, it appears that the petitioner who was appointed as Manager in the management of the respondent society, on account of the negligence towards his duty was called up for some explanation which instead of offering had entered into the verbally abusing superior office bearers of the society which conversation was recorded. It is the case of the petitioner that the petitioner was trapped into a situation as a result of which the outburst had taken place. Moreover, the nature of misconduct or insubordination is not to such an extent that his services are required to be terminated. It is also stated that there is an irregularity in conducting of any departmental proceedings and therefore in violation of principles of natural justice, the impugned action is likely to be taken and the petitioner is likely to be terminated w.e.f. 10.08.2017.

[4] As against this, learned advocate for the respondents has relied upon the affidavit-in-reply and submitted at the outset that the petition itself is not maintainable as the nature of prayer is for executing of a specific performance of relief and that the

respondent is a co-operative society and not amenable to the writ jurisdiction. On merits also, learned advocate for the respondent had taken this Court through the various documents at Annexure-I and III which are the minutes and resolution in connection with the action contemplated against the petitioner and ultimately the order dated 10.08.2017 is passed, whereby the services of the petitioner were terminated and according to the petitioner as on date the petitioner's services terminated subject to the outcome of the present petition.

[5] In rejoinder, the case is that of a denial of all the averments made in the affidavit-in-reply, but does not take the case of the petitioner any further except for denying his role in so far as the maintenance of the affluent treatment plant is concerned.

[6] The Court has heard learned advocates for the parties and perused the documents placed on record. It appears that the entire proceedings were initiated on account of although, the petitioner has been rendering his services to the Cooperative Society, though he is an experienced person and holding a post of higher responsibility, it appears as if he has lost the sense as to how to speak and how to behave with the superiour office bearers of the Cooperative Society, the Managing Director and his senior officers. The behaviour of the petitioner has shocked all the employees/ staff/ officers of the society. However, considering the seriousness of this issue, the Managing Director has given a written complaint to the Management, wherein he has leveled allegations against the petitioner regarding the telephonic conversation and negligence and misconduct in performing his duty with regard to the online monitoring system and sprinkling of water through the E.T.P. Department. The board members in the meeting have discussed the complaint about the negligence and misconduct of petitioner and have decided unanimously that;

The petitioner is the Manager with the E.T.P. Department, which is an important division of the society and it deals with the matters related to the Government, the pollution laws and the public health. The petitioner is a Bachelor of Science having experience with the E.T.P. Department, who is required to oversee the work of sprinkling of water in the surrounding of the department and to keep the pollution under check as per the orders of the government. But, due to his negligence in performing duty, the cooperative has received a notice dated 03.02.2017 from the Pollution Control Department of the Government for not sprinkling water at the decided places. The notice has been perused. As stated in the notice, if water is not sprinkled at the determined places, the government may initiate legal actions against the cooperative. The society's reply to the notice is also taken into consideration, wherein the petitioner has stated that, "henceforth, water will be sprinkled." On the basis of the records produced, it clearly appears that earlier too, petitioner had not ensured sprinkling of water. It shows that the petitioner is habitual of not performing his duty and has been, deliberately, committing negligence in performance of duty. It is a serious issue for the society. It has come on the government records that water is not sprinkled, which is against the interest of the cooperative and the same is evident from the frequent visits-reports of the Officer of G.P.C.B. This issue has been stated in the Chairman's Report and the petitioner is guilty for committing negligence and misconduct in performance of duty. All the members are agreed to the conclusion of negligence and misconduct in performing duty as per the allegations. All the members, individually too, declare that the petitioner has committed negligence and misconduct in performing his duty, i.e. sprinkling of water and he is guilty of such negligence and misconduct.

[6.1] The area of the E.T.P. Department and the manufacturing and non-manufacturing units in the surrounding thereof is very large.

Moreover, the Boilers Department is also located nearby. The dust generated in the manufacturing process get mixed with the air and the entire atmosphere in the surrounding becomes dusty, which causes serious issues to the workman/ officers working there and the inhabitants of the residential area near the factory. Moreover, the E.T.P. Department is frequented by vehicles such as tractors, trucks, JCBs etc. The drivers/conductors of such vehicles, the workmen at the ground level, the employees of the cooperative keep moving in and out of the factory. All such activities result in spreading of a lot of dust in the surrounding, which is very harmful to respiratory system. Therefore, to solve the problem of pollution, as commended by the Pollution Control Department, sprinkling of water proves to be very beneficial. The cooperative has also arranged a tanker for sprinkling water. However, from the above noted facts, it has become clear that, the petitioner, the Manager of E.T.P. Department, has failed to use these equipment effectively and thereby he has committed negligence and misconduct in performing his duty. If this issue is taken into consideration seriously, it is this dust which pollutes the vegetation, trees, plants etc. in the surrounding, which will, in turn, affect the workmen/ employees of the cooperative. The petitioner is the Manager in this department who is having a separate chamber on the first floor. Therefore, he may be presuming that he would be least affected by the pollution. However, he may understand that, more or less, even his respiratory system will be affected as he performs duty at this department. But, it clearly appears that he has overlooked this fact while committing negligence and misconduct in performing his duty. With regard to the allegations leveled against him about not sprinkling of water in the surrounding, it is stated that the petitioner is guilty.

[6.2] The cooperative has also arranged a tanker for sprinkling water. However, from the above noted facts, it has become clear

that, the petitioner, the Manager of E.T.P. Department, has failed to use these equipment effectively and thereby he has committed negligence and misconduct in performing his duty. If this issue is taken into consideration seriously, it is this dust which pollutes the vegetation, trees, plants etc. in the surrounding, which will, in turn, affect the workmen/ employees of the cooperative. The petitioner is the Manager in this department who is having a separate chamber on the first floor. Therefore, he may be presuming that he would be least affected by the pollution. However, he may understand that, more or less, even his respiratory system will be affected as he performs duty at this department. But, it clearly appears that he has overlooked this fact while committing negligence and misconduct in performing his duty. With regard to the allegations leveled against him about not sprinkling of water in the surrounding, it is stated that the petitioner is guilty.

[6.3] The petitioner is responsible and guilty for the allegation against him i.e. for his misconduct that he is prima-facie responsible and guilty for non-compliance of the orders of the Government from time to time towards installing and keep the Online Monitoring System operational. He has shown gross negligence and carelessness towards his duty. It has tarnished the image of the society in the respective department. The society has to pass from many procedures and non-compliance of the legal provisions and all the members believe personally as well that the petitioner is guilty for his gross negligence and carelessness towards his duty and they declare that they agree with the findings of the chairman for the same. Discipline of the society, dignity of the managerial position, discipline maintained by the other workers/employees of the society and decorum maintained by the senior officers cannot be ignored under any circumstances. Discipline of the society stands first and of the Managing Director, who holds top and highest position in the entire management, administration and control of the society after

the managing committee of the society. It is moral as well as legal duty of all the workers/employees/officers working under him to maintain respect and dignity of the Managing Director and must maintain the decorum of his position. The Managing Director is responsible for the main management and operation of almost all the departments of the society.

[7] It appears that the petitioner was served with the necessary notice and document regarding action completed and thereafter, over and above considering the nature of negligence on his part with regards to affluent treatment plant, the management has also taken into consideration and conduct of the petitioner which is reflected from the the recording of the conversation dated 07/07/2017 with the Managing Director is also available with the management. It clearly appears from the the submissions of the petitioner at the end of necessary scrutiny thereof that the conduct of the petitioner with the Managing Director are gross misconduct by the petitioner at the petitionr is completely guilty for the same. The petitioner is managerial cadre employee. Many workers-employees have worked under the petitioner from time to time. Entire management, supervision and control of the department is with the petitioner. Entire responsibility of the department is with the petitioner and considering many such issues, the contribution and position in the entire management of the petitioner are very important and therefore, it is the legal and moral duty of the petitionr to maintain the decorum of position all the time. The petitioner is completely failed to show respect and dignity to his superior officer-the Managing Director Mr. Pravinkumar D. Patel. The petitioner has not maintained the decorum of his position as well.

Considering the discipline of the society, gravity of misconducts of the petitioner, management of the society and breach of the trust of the society and the issues of the entire management, the

management has completely lost trust in the petitioner and therefore, it does not seem advisable for the society and the management in any manner to keep the petitioner continue for to the society and in such circumstances, leaving with no option, due to aforesaid circumstances, grounds and facts, it has been resolved in the meeting dated 05.08.2017 of the managing committee of the society to discharge the petitioner from services and it has been resolved that services of the petitioner be terminated with immediate effect from 11.08.2017.

[8] Learned advocate for the respondent has relied upon decisions of Supreme Court. In the case of **Thalappalam Service Cooperative Bank Limited and others v/s. State of Kerala and others**, reported in **(2013) 16 SCC 85**, the Supreme Court has held as under:-

“14. We may first examine, whether the Co-operative Societies, with which we are concerned, will fall within the expression “State” within the meaning of Article 12 of the Constitution of India and, hence subject to all constitutional limitations as enshrined in Part III of the Constitution.

15.This Court in U.P. State Co-operative Land Development Bank Ltd. v. Chandra Bhan Dubey, while dealing with the question of the maintainability of the writ petition against the U.P. State Co-operative Development Bank Limited held the same as an instrumentality of the State and an authority mentioned in Article 12 of the Constitution. On facts, the Court noticed that the control of the State Government on the Bank is all pervasive and that the affairs of the Bank are controlled by the State Government though it is functioning as a co-operative society, it is an extended arm of the State and thus an instrumentality of the State or authority as mentioned under Article 12 of the Constitution.

16.In All India Sainik Schools employees’ Assn. v. Sainik Schools Society, this Court held that the Sainik School society is “State” within the meaning of Article 12 of the Constitution after having found that the entire funding is by the State Government and by the Central Government and the overall control vests in the governmental authority and the main

object of the society is to run schools and prepare students for the purpose feeding the National Defence Academy.

17. This Court in V aish Degree College v. Lakshmi Narain, while dealing with the status of the Executive Committee of a Degree College registered under the Cooperative Societies Act, held as follows:

“10.....It seems to us that before an institution can be a statutory body it must be created by or under the statute and owe its existence to a statute. This must be the primary thing which has got to be established. Here a distinction must be made between an institution which is not created by or under a statute but is governed by certain statutory provisions for the proper maintenance and administration of the institution. There have been a number of institutions which though not created by or under any statute have adopted certain statutory provisions, but that by itself is not, in our opinion, sufficient to clothe the institution with a statutory character.....”

18. We can, therefore, draw a clear distinction between a body which is created by a Statute and a body which, after having come into existence, is governed in accordance with the provisions of a Statute. Societies, with which we are concerned, fall under the later category that is governed by the Societies Act and are not statutory bodies, but only body corporate within the meaning of Section 9 of the Kerala Co-operative Societies Act having perpetual succession and common seal and hence have the power to hold property, enter into contract, institute and defend suites and other legal proceedings and to do all things necessary for the purpose, for which it was constituted. Section 27 of the Societies Act categorically states that the final authority of a society vests in the general body of its members and every society is managed by the managing committee constituted in terms of the bye-laws as provided under Section 28 of the Societies Act. Final authority so far as such types of Societies are concerned, as Statute says, is the general body and not the Registrar of Cooperative Societies or State Government.

26. The Co-operative society is a state subject under Entry 32 List I Seventh Schedule to the Constitution of India. Most of the States in India enacted their own Cooperative Societies Act with a view to provide for their orderly development of the cooperative sector in the state to achieve the objects of equity, social justice and economic development, as envisaged in the Directive Principles of State Policy,

enunciated in the Constitution of India. For co-operative societies working in more than one State, The Multi State Cooperative Societies Act, 1984 was enacted by the Parliament under Entry 44 List I of the Seventh Schedule of the Constitution. Co- operative society is essentially an association or an association of persons who have come together for a common purpose of economic development or for mutual help.”

[9] The other judgment relied upon by learned advocate for the respondents is in the case of **Maharashtra State Cooperative Housing Finance Cooperation Limited v/s. Prabhakar Sitaram Bhadange**, reported in **(2017) 5 SCC 623**, wherein it is held as under:-

“9. We may also clarify one more aspect. Contract of personal services is not enforceable under the common law. Section 14, read with Section 41(e) of the Specific Relief Act, 1963, specifically bars the enforcement of such a contract. It is for this reason the principle of law which is well established is that the Civil Court does not have the jurisdiction to grant relief of reinstatement as giving of such relief would amount to enforcing the contract of personal services. However, as laid down in the cases referred to above, and also in *Vaish Degree College v. Lakshim Narain*, there are three exceptions to the aforesaid rule where the contract of personal services can be enforced:

- (a) in the case of a public servant who has been dismissed from service in contravention of Article 311 of the Constitution of India;
- (b) in the case of an employee who could be reinstated in an industrial adjudication by the Labour Court or an Industrial Tribunal; and
- (c) in the case of a statutory body, its employee could be reinstated when it has acted in breach of the mandatory obligations imposed by the statute.

10. Even when the employees falling under any of the aforesaid three categories raise dispute qua their termination, the Civil Court is not empowered to grant reinstatement and the remedy would be, in the first two categories, by way of writ petition under Article 226 of the Constitution or the Administrative Tribunal Act, as the case may be, and in the third category, it would be under the Industrial Disputes Act. An employee who does not fall in any of the aforesaid

exceptions cannot claim reinstatement. His only remedy is to file a suit in the Civil Court seeking declaration that termination was wrongful and claim damages for such wrongful termination of services. Admittedly, the appellant Corporation is not a 'State' under Article 12 of the Constitution. The respondent also cannot be treated as a Government/public servant as he was not under the employment of any Government. He was also not 'workman' under the Industrial Disputes Act as he was working as Manager with the appellant Corporation.

[10] In view of the aforesaid, the Court is not inclined to interfere with the proceedings and the decision ultimately taken by the respondents. The petition therefore, deserves to be and the same is hereby **dismissed**.

[11] In view of the order passed in the main matter, no order is required to be passed in the Civil Application. Hence, Civil Application stands **disposed of** accordingly.

SIDDHARTH

(A.Y. KOGJE, J)

