

HIGH COURT OF KARNATAKA**Date of Decision: 20th January 2024****Bench: Justice H.P. Sandesh**

M.F.A. NO.5141/2023 (CPC)

YOUNG MENS CHRISTIAN ASSOCIATION**... APPELLANT****Versus****MR. JOHN KENNEDY****... RESPONDENT****Legislation:**

Order 39 Rules 1 and 2, Order 43 Rule 1(r), Order 7 Rules 11(a) and 11(d) and Section 151 of CPC

Subject:

Appeal against the granting of temporary injunction in I.A.No.2, restraining the appellant from obstructing the respondent's office duties pending disposal of a suit challenging the legality of a suspension order.

Headnotes:

Suspension Order and Employee Rights – Appeal against temporary injunction preventing the appellant from obstructing the respondent's office work – Challenge to the legality of the suspension order issued by the appellant organization – Alleged procedural irregularities and bias in suspension proceedings. [Paras 2-5, 20-23, 26-27, 29-31, 33-34, 36-37, 39, 43-44, 46-47, 49]

Appellant's Contentions – Appellant argued that suspension followed due process, supported by organizational bye-laws, and was not a punishment but a necessary step for disciplinary proceedings – Reliance on various judicial precedents to justify suspension order's validity. [Paras 6-14, 40-42]

Respondent's Arguments – Respondent contended suspension was without proper authorization and lacked procedural fairness – Alleged absence of

board authorization for the suspension, with subsequent ratification being void – Emphasized the need for reasonable opportunity to respond to allegations. [Paras 20-25, 43, 45]

Court Analysis – Detailed examination of organizational bye-laws and personnel policies – Consideration of the factual matrix, including immediate responses to memos, and the absence of prior documentation of misconduct – Determination that suspension lacked adequate procedural justification, appeared pre-determined, and lacked immediate ratification. [Paras 28-31, 33-34, 36-38, 43-44, 46-48]

Judgment – Appeal dismissed, upholding the Trial Court's decision granting temporary injunction – Direction to appellant to pay subsistence allowance to respondent in accordance with law. [Para 49]

Referred Cases:

- M.Satyanarayan v. A.P.State Trading Corporation Limited [(1999) SCC online AP 298]
- Dhamankar.N.S v. Cantonment Board, Belagaum [1984 SCC Online KAR 231]
- Union of India and another v. Ashok Kumar Aggarwal [2013 (16) SCC 147]
- State of Orissa through its Principal Secretary, Home Dept. v. Bimal Kumar Mohanty [1994 (4) SCC 126]
- Sundareshan v. Supdt. Of Police, Kolar [1983 (2) KAR L J 523]
- National Institute of Technology and another v. Pannalal Choudhury and another [2015 (11) SCC 669]
- The Secretary, Bangalore Turf Club v. Kishan Srivastava [I.L.R 1996 KAR 1905]
- Sadashivanagar Club v. Nataraj [I.L.R 1993 KAR 2313]
- Secretary, Bangalore Turf Club, Bangalore and others v. Prakash Srivatsava and another [1955 SCC Online KAR 118]
- Marathwada University Case [(1989) 3 Supreme Court Cases 132]

Representing Advocates:

Sri Udaya Holla, Senior Counsel for Sri Sukumaran G., Advocate (for Appellant)

Sri Suresh S. Lokere, Senior Counsel for Sri Shraavan S. Lokre, Advocate for C/R (for Respondent)

J U D G M E N T

Heard the learned counsel for appellant and the learned counsel for the respondents.

2. This Miscellaneous First appeal is filed against allowing the application filed under Order 39 Rule 1 and 2 of CPC which is numbered as I.A.No.2 restraining the appellant herein from attending to his office work in the schedule premises and office of the Senior Associate Secretary pending disposal of the suit.

3. The factual matrix of case of the plaintiff before the Trial Court while seeking the relief of declaration that the letter and suspension order dated 25.04.2023 issued by the defendant Organization is null and void and not binding on the rights of the plaintiff and consequential relief of mandatory injunction. It is stated that he was joined the YMCA national council of the defendant on 20.11.1990 and worked extensively and after undergoing training in the defendant Organization training school in various parts of India. He was also appointed as Secretary based on the seniority and working experience in the year 1996. He joined in the defendant Organization in Bangalore, his previous seniority was fully taken into consideration and he was appointed as per the staff seniority practices in Bangalore YMCA. The plaintiff completed 25 years of extensive service in the position of the Secretary. It is also contended that he sought for the promotion to the post of General Secretary based on his seniority and work experience and the same was brought to notice of the office bearers or president of the defendant Organization and others, the same was not considered, but appointed junior Secretary in experience in service as General Secretary of the defendant Organization. Since he had brought up certain illegalities in the Board and in the manner in which certain immovable properties and schools came to be sold illegally by the board. When he brought out all these factors, he has been targeted by the defendant Organization, who are illegally suspended the plaintiff from the defendant Organization without seeking the approval of the Board of Directors and also without following the procedure established under bye laws.

4. It is also contended that the defendant hurriedly issued the suspension order letter dated 25.04.2023. The defendant is guilty of having issuance of suspension order based on the office memo dated 10.04.2023 and 17.04.2023, inspite of he has given reply on the very next day on 11.04.2023 stating that time rendered to answer within 24 hours is unreasonable and unsustainable. It is contended that there is no provision for suspending Secretaries and Associate Secretaries in the Organization, the defendant has adopted a procedure which has not validly exercised as per the constitution and bye laws of the defendant YMCA with intent to force the plaintiff to leave the Organization. The suspension order is complete violation of the constitution and bye laws of the defendant Organization. The plaintiff also inter-alia sought for the relief of temporary injunction restraining the defendant causing obstruction in discharging the duties as Secretary of the defendant Organization. In support of the said application, an affidavit is sworn to and the said I.A is numbered as I.A.No.2.

5. The Trial Court issued notice and defendant has appeared and filed I.A.No.5 under Order 7 Rule 11(a) and 11(d) of CPC R/w Section 151 of CPC to reject the plaint and also filed statement of objections contending that the very suit itself is not maintainable and no cause of action to file the suit. It is also contended in the statement of objections that the plaintiff has been kept under suspension with effect from 25.04.2023 onwards pending enquiry of the reasons stated in the order of suspension and before suspending him, show cause notice was given and reminder was also issued on 17.04.2023. Belated reply was given on 18.04.2023. The plaintiff being an employee of the defendant Organization, he cannot claim as a matter of right for on appointing him as a General Secretary of YMCA of its Board of Directors. It is a collective decision taken by them, therefore the question of plaintiff seeking an explanation to the Board by writing unwanted letters does not arise. The Board is not under obligation and decision under bye laws are final. The plaintiff need to report to General Secretary who is the C.E.O and disciplinary authority and does take instructions and refused all his calls and he is unilateral idling himself without doing any job and also duties inspite of oral warning and the plaintiff has not improved his attitude and continued to disobey causing dereliction, negligence and disobedience behaviour, unrude manner instigating other workers and therefore, the defendant having no other option, kept the plaintiff under suspension. The suspension order is in

accordance with bye laws. The plaintiff cannot find fault with the same. The Trial Court also considered I.A.No.5 filed under Order 7 Rule 11(a) and 11(d) of CPC together and the said application was rejected and I.A filed by the plaintiff is allowed by granting temporary injunction. Being aggrieved by the order passed on I.A.No.2 filed by the plaintiff, the present appeal is filed.

6. The counsel appearing for the appellant/defendant in his argument he vehemently contend that show cause notice was issued on 10.04.2023 and 17.04.2023. The plaintiff has given reply belatedly i.e., on 18.04.2023. The counsel also would vehemently contend that the memorandum and rules and regulations are also produced before the Court. The counsel would vehemently contend that having considered the reply, a suspension order was passed and the resolution was also passed ratifying the same. The enquiry officer is appointed, charges are also framed and enquiry is going on. The counsel would vehemently contend that before suspending plaintiff, show cause notice was issued, the procedure was followed and the Board has taken the decision. The counsel also would vehemently contend that the suspension order is not a punishment and several charges are also framed against the plaintiff.

7. The counsel also in his argument brought to notice of this Court, the memorandum and rules and regulations of the defendant Organization and brought to notice of Article 5 with regard to the management is concerned. Having considered the Article 5, the ultimate management and government of this association is vested with the Board of Directors of 15. There shall be 5 members to constitute a forum for a meeting of Board of Directors. The counsel also brought to notice of this Court Article 6 wherein Section 6 with regard to the General Secretary shall serve as the executive officer in respect of the work of the Association generally, under Section 8 is also Board of Directors shall appoint, confirm and terminate the services of any staff, under Section 9, the Board may establish under its control Departments of the Association and shall define the scope of their activities and under Section 10, the activities of each department shall be directed by a committee appointed by the Board of Directors and office bearers shall be members of all departmental committees.

8. The counsel also brought to notice of this Court Article 7 with regard to the Annual Election of Board of Directors. The counsel brought to notice of

this Court Article 15 with regard to the powers of the Board of Directors and under Section 6 and 7 with regard to fix their terms of services, their remuneration and perquisites and all documents relating to the properties of the Association shall be executed by the General Secretary and President of the Board. The counsel also brought to notice of this Court with regard to the defendant Organization personal policy objects and also the Board of Directors in terms of Section 1 and personal committee, duties and responsibilities of personnel committee and even with regard to the extension, retirement, termination of services.

9. The counsel brought to notice of this Court Section 4 with regard to the office staff shall be appointed by the Board on recommendation by the General Secretary through the Personnel Committee. The counsel also brought to notice of Section 8 wherein the powers are with regard to the resignation, removal, retirement and brought to notice of this Court that the Secretary/Staff may be dismissed or removed from office or reduced in rank for some of the reasons and brought to notice of this Court Clause (e) with regard to the insubordination and defiance of the employment body. The counsel also brought to notice of this Court Section 11 wherein held the decision of the Board shall be final in respect of implementation of Personnel Policy. The counsel referring this memorandum and rules and regulations and also the personnel policy of defendant Organization contend that the suspension order is issued following the said procedure of bye laws of the defendant organization. Hence, the very approach of the Trial Court is erroneous in coming to the conclusion that the prevention of the plaintiff from the workplace is against the procedure established under law. Hence, it requires interference of this Court.

10. The counsel in support of his argument, he relied upon the decision reported in **(1999) SCC online AP 298 in case of M.Satyanarayan V/s A.P.State Trading Corporation Limited** wherein held that it is repeatedly and consequently held by the Supreme Court that when the Court is called upon by reviewing the validity of the suspension order or a charge memo, it cannot go into the merits of the matter. When the employer proceeds to place an employee under suspension in contemplation of departmental enquiry, he need not state any reason in support of the suspension order.

11. The counsel also brought to notice of this Court the judgment reported in **1984 SCC Online KAR 231 in case of Dhamankar.N.S V/s Cantonment Board, Belagaum** wherein held the power of suspension is incidental to the master and servant relationship even though the rules and regulations governing disciplinary action against its employees may not provide specifically for suspension pending enquiry.

12. The counsel also brought to notice of this Court the judgment of the Apex Court reported in **2013 (16) SCC 147 in case of Union of India and another V/s Ashok Kumar Aggarwal** and brought to notice of paragraph No.27 wherein held that suspension is a device to keep the delinquent out of the mischief range and complete the proceedings unhindered. It is aid of disciplinary proceedings so as to prevent the delinquent from gaining custody or control of papers or take advantage of his position. At this stage the Court ought not to act as a appellate forum.

13. The counsel also in support of his argument relied upon the judgment reported in **1994 (4) SCC 126 in case of State of Orissa through its Principal Secretary, Home Dept. V/s Bimal Kumar Mohanty** and brought to notice of this Court paragraph No.13 wherein held that the objection of suspension is desirable employee and discharging the function. The object is to refrain him from perpetuating misconduct and to remove the impression from the mind among the members of the service that dereliction of duty pays fruits and he could get away pending enquiry. The object is also to prevent him from scuttling enquiry or winning witnesses.

14. The counsel also relied upon the judgment of this Court reported in **1983 (2) KAR L J 523 in case of Sundareshan V/s Supdt. Of Police, Kolar** and brought to notice of this Court paragraph No.7 wherein it is observed that it is neither feasible nor practicable insistence on giving of notice and hearing before placing the civil servant under suspension purpose of the power. The power is exercisable at the discretion of the authority on whom the power is confirmed but it has to be exercised bonafide.

15. The counsel also relied upon the judgment of this Court reported in **Manu/KA/0587/2018** and brought to notice of this Court paragraph No.9 wherein an observation is made that an opportunity of hearing should have been given to the petitioner prior to passing the

suspension order cum suffice it to say that a suspension order is not a punishment order. Moreover in case the requirement of giving an opportunity of hearing has to be read, it would defeat the very purpose of suspending an employee. After all, an employee is suspended when the employer is convinced that the continuation of an employee in the office would further adversely affect the smooth function of the office or the establishment. Therefore, the requirement of giving an opportunity before suspending an employee is a self deprecating proposition.

16. The counsel also relied upon the judgment reported in **2015 (11) SCC 669 in case of National Institute of Technology and another V/s Pannalal Choudhury and another** and brought to notice of this Court of paragraph No. 28 and 29 wherein the Apex Court held that the expression “ratification” means “the making valid of an act already done”. This principle is derived from the latin maxim “ *ratihabitio mandato aequiparatur* ” meaning thereby “ a subsequent ratification of an act is equivalent to a prior authority to perform such act ”. The ratification assumes an invalid act which is retrospectively validated.

17. The counsel also relied upon the judgment of the Apex Court reported **I.L.R 1996 KAR 1905 in case of The Secretary, Bangalore Turf Club V/s Kishan Srivastava** and brought to notice of this Court paragraph No.64 that intervention of Courts must be minimal in domestic enquiries and this Court held that it is needless to say that any interventions by the Civil Courts will tend to undermine legitimacy of a body of persons who are entrusted to take action by their own rules against a person who violated such rules. When once a horse owner, horse trainer or Jockey seeks a licence to perform their jobs in a race course they are governed by the rules framed by the Club. The conclusion reached by such body cannot be overturned by the Civil Courts as the limitation for the Civil Court is to find out the procedural aspect of domestic enquiry. Only unfairness and bias should be the subject matter of interference and not otherwise. A body of individuals forming a company and submitting themselves to the rules shall not be allowed to transgress and violates such rules to get immunity from other sources.

18. The counsel also relied upon the judgment reported in **I.L.R 1993 KAR 2313 in case of Sadashivanagar Club V/s Nataraj** and counsel brought to notice of this Court paragraph No.19 wherein also this Court made

an observation that I hasten to add here that these are the allegations and they are the allegations required to be proved in the inquiry. However, at this stage, it will suffice if it is remembered that it is in the context of the said allegations that the Executive Committee appears to have taken the decision to suspend the instant respondent. It is neither desirable nor proper for this Court to sit in judgment over the wisdom or otherwise of the Executive Committee of defendant Society in taking a decision which it has taken.

19. The counsel also relied upon the judgment of the this Court in **1955 SCC Online KAR 118 in case of Secretary, Bangalore Turf Club, Bangalore and others V/s Prakash Srivatsava and another** and brought to notice of this Court paragraph Nos. 8 and 9 and this Court held that before a Court interferes with such an order, extremely strong reasons will have to be demonstrated for interference such as an absolute travesty of the law. A Court has to consider the effect of such interference. Unfortunately, the wrong signals are conveyed through such hasty interference or premature interference to all parties concerned that a Court has interfered because it is of the view that the order is wrong or liable to be set-aside. In many cases therefore it has the contra effect and the Courts have come under criticism for such interference because it has the result of conferring a premium on misconduct. This is not the scheme of the law and therefore as far as interference in proceedings of this class are concerned, to my mind it is almost the reverse approach that the Court will have to adopt.

20. Per Contra, the counsel appearing for the respondent in his argument he vehemently contend that the respondent has filed the statement of objections to this main appeal and vehemently contend that it is not in dispute that the respondent/plaintiff is an employee of the Society. The counsel would vehemently contend that he is not the Board member and also contend that General Secretary has no authority unless the Board of Directors authorized him to take a decision to suspend him. The counsel would vehemently contend that with regard to the ratification is concerned, the same is not stated in the written statement. No document is placed before the Trial Court. The counsel would submits that the documents are created in the appellate stage with regard to the alleged ratification.

21. The counsel would submits that in the 1st February, the defendant Organization appointed a General Secretary who is junior most to the plaintiff. The counsel would submits that the plaintiff had joined the

organization in the year 1990 and General Secretary who has been appointed has joined the Organization in the year 1995. The counsel also would vehemently contend that on 10.04.2023 a office memo was issued making some allegations against the plaintiff, the same was six in number. The counsel also would submits that one more office memo was issued on 17.04.2023 wherein it is mentioned that he has not given reply.

22. The counsel would vehemently contend that when the office memo was issued on 10.04.2023 and on the very next day he has given reply stating that giving of reply within 24 hours is unreasonable and unsustainable. No reference was made in the said reply in the subsequent 2nd office memo dated 17.04.2023. The counsel also would submits that the 2nd memo was served on 17.04.2023 at 1.00 p.m., stating that the matter would be referred to the Board of Directors. The counsel would submits that on the very same day, according to the defendants, a decision was taken. The counsel also would vehemently contend that the General Secretary has passed an order of suspension without any authority. The alleged subsequent ratification is also void. The Board has not authorized the General Secretary to suspend the plaintiff.

23. The counsel also would vehemently contend that the ratification not bears the date and there is a correction of date. The counsel would submits that Board of Directors can take decision, but not separately as per Section 8. The counsel would vehemently contend that a reasonable opportunity has to be given, but only 24 hours was given. Hence, it is clear that they have already madeup their mind to take the decision of suspension. The counsel would vehemently contend that he has given reply on 18.04.2023 and rule does not permit delegating the powers to the Secretary. The counsel would submits that in the 1st memo, six allegations are made by the General Secretary. When the charges are framed during the enquiry, there are several charges. A suspension order is unreasonable .

24. The counsel in support of his argument he relied upon the judgment reported in **(1989) 3 Supreme Court Cases 132**. The counsel relying upon this judgment would vehemently contend that ratification is generally an act of principal with regard to a contract or an act done by his agent. The principles of ratification in the context of law of agency apparently do not have any application with regard to exercise of powers conferred under statutory

provisions. The statutory authority cannot travel beyond the power conferred and any action without power has no legal validity. It is *ab-intio* void and cannot be ratified. Likewise the principles of ratification governing transactions of a company where the general body is the repository of all powers cannot be extended to the present case. It is held that neither the action taken by the Vice Chancellor, nor the ratification by the Executive Council could be sustained.

25. The counsel referring this judgment would vehemently contend that when there is no authority given to the General Secretary to suspend him and no bye law permits the General Secretary to suspend the Secretary and question of ratifying the same subsequently does not arise. The Board of Directors has to take a decision, thereafter the General Secretary, since he is the CEO of the Organization to give effect to the same. The General Secretary is not having any power to suspend the Secretary without following the procedure. The powers are vested with the Board of Directors and not with the General Secretary.

26. The counsel also would vehemently contend that the Trial Court while entertaining temporary injunction application, in detail discussed the same in paragraph No.17 that no documents are produced by the defendant itself with regard to the allegations made in the office memo dated 10.04.2023 with regard to the allegation of not attending the work from 1st February-2023, even the attendance and refusal of taking any assignment as alleged in the office memo. No piece of material is placed on record with regard to the disobedience and negligence and not attending the staff meeting. The Trial Court also taken note of explanations sought within 24 hours and also taken note of reply was given on 11.04.2023 expressing inability to give reply within 24 hours, as the same is unreasonable and unjustifiable, the Trial Court also taken note of the same. The reply which was sent through RPAD as well as by hand and the same is acknowledged by the defendant and not referred the same in the 2nd office memo. The Trial Court in detail discussed the same in paragraph No.17 and rightly comes to the conclusion that the very suspension and preventing the plaintiff from attending the duty since he worked for the institution more than 25 years and need full fledged trial to conclude that whether the alleged suspension of plaintiff by the defendant Organization established as per rules and regulations of bye laws of the Organization and any other connected law regarding workmen in the interest of justice. Hence,

allowed the same and it does not requires any interference. The Trial Court also applies the judicious mind and passed the reasoned order.

27. Having heard the appellant's counsel also the counsel appearing for the respondent and on perusal of the pleadings and the relief as sought and also the principles laid down in the judgments referred by the respective counsel, the point that would arise for the consideration of this Court are:

- 1) *Whether the Trial Court committed an error in allowing the I.A.No.2 filed under Order 39 Rule 1 and 2 and the whether it requires interference of this Court?*
- 2) *What Order?*

POINT Nos.1 AND 2:

28. Having heard the respective counsel and also on perusal of material available on record, it is not in dispute that the plaintiff is an employee of the defendant Organization. It is also not in dispute that the administration and work pattern of the defendant should be inconsonance with memorandum and rules and regulations. It is also noted that in terms of the memorandum and rules and regulations, the designation of the General Secretary is also mentioned in Section 6 that he shall be member (ex-officio) by the Board of Directors and the Association and shall serve as the executive officer in respect of the work of the Association generally. Hence, it is clear that he is the executive officer in respect of the work of the Association.

29. It is also important to note that Board of Directors in terms of the Article 15 to approve agents and workers for the purpose of the Association and fix their terms of services, their remuneration and perquisites within the resource of the Association. It is also important to note that Section 7 of Article 15 with regard to all documents relating to the properties of the Association shall be executed by the General Secretary and President of the Board. Under Article 7, the Board of Directors shall appoint nomination committee of two members of the Board whose term does not expire within the current year along with the General Secretary. It is also important to note that in terms of personal policy of the defendant Organization, service conditions of all the staff shall be governed by the personal policy of YMCA,

Bengaluru and powers of the personal committee is also mentioned in Section 1 duties of responsibilities of personal committee includes transfers, extension, retirement, termination of services. So also Section 4 is clear that all the staff in the YMCA office in all the branches/Projects of the YMCA shall be appointed by the Board on recommendation by the General Secretary through the Personnel committee. Having perused, Section 8 is also clear with regard to the resignation and removal or retirement and particularly the post of Secretary/Staff may be dismissed or removed from office or reduced in rank. In case of the plaintiff is concerned the allegation is made with regard to the insubordination and defiance of the employing body.

30. Having considered the above memorandum and rules and regulations and also the personnel policy of the defendant Organization, powers are vest with the Board of Directors and same may be implemented through the General Secretary. It is to be noted that the main contention of the plaintiff before the Trial Court that he made a request to consider his name as General Secretary since he is a senior most and he has been ignored and the General Secretary has been appointed who is junior to him. Having considered this, it is very clear that the plaintiff also perturbed with the decision taken by the Board of Directors. He has reluctant to work under the General Secretary. It is also important to note that when the allegation made in the office memo dated 10.04.2023, an allegation that he has failed to carry out any office work in the Organization since 1st February-2023, since the General Secretary was appointed in the end of January-2023. It is also an allegation that not maintaining the office timings on reporting to the General Secretary and also not obtained permission while applying the leave and sending the letters to the President, the same is violation of normal procedure by passing the General Secretary and most disobedience manner and negligence of the work entrusted to him. It is important to note that the memo dated 10.04.2023 is a basis for taking action against plaintiff. On perusal of the same, he has been asked to give explanation to the undersigned within 24 hours on receipt of this memo, failing which it will be viewed very seriously.

31. It is the case of the plaintiff that on the very next day, he gave representation on 11.04.2023 that the period of 24 hours to give reply is unreasonable and unjustifiable, immediately he replied to the office memo. It is also important to note that on 17.04.2023, 2nd office memo was given to the plaintiff stating that he has not given explanation within the stipulated time

and also there is a reference that the matter will be referred to the Board for further action in view of no explanation offered by him. Thereafter on 18.04.2023 he has given reply and also he has mentioned that he has already replied on 11.04.2023 that the time of 24 hours is unreasonable and unjustifiable and the same is missing.

32. It is also important to note that in the suspension order a reference was made with regard to the reply mentioning the same as belated reply and also reference was made show cause notice dated 10.04.2023 and also the show cause notice dated 17.04.2023. There is no any reference in the suspension order giving immediate reply on 11.04.2023 contending that the same is unreasonable and unjustifiable and the same is missing.

33. The counsel appearing for the respondent also relied upon the documents of extract from the minutes of the personal committee meeting. In the said extract there is a reference with regard to he gave reply immediately on the next day mentioning that by giving explanation within 24 hours is unreasonable and unjustifiable and he will be responding during the course of time. But it is mentioned in the extract that personal committee asked General Secretary immediately to give another office memo. Consequently, another office memo was given on 17.04.2023.

34. It is also important to note that there was a reference in the second office memo that the matter will be posted before the Board of Directors, but in the extract from the minutes of Board meeting held on 17.04.2023, it is clear that after viewing the above matter and brief discussion, the Board suggested General Secretary to consult YMCA legal Advocate Dr.G.Sukumaran to take disciplinary action.

35. Having perused the 2nd office memo and also the extract, it is very clear that on the very same day, the decision was taken for disciplinary action without giving any opportunity to the plaintiff to give reply to the 2nd office memo. No doubt the reply was also given on the very next day. It is also important to note that having perused the 1st office memo dated 10.04.2023, six allegations are made with regard to not attending the duty and disobeying the General Secretary. The counsel also brought to notice of this Court the charges framed by the concerned by adding more allegations in the charges,

since the decision was taken to hold the disciplinary action against the plaintiff.

36. The Trial Court taking into note of the fact of issuance of the first memo, an observation is made that no document is produced by the defendant to show that any memo was issued to the plaintiff with regard to the six allegations made in the first memo stating that the plaintiff has failed to carryout any work in the organization since 01.02.2023 till date; about not maintaining office timings and reporting to the General Secretary; refusal for taking assignment and not obtaining prior permission to take leave; about disobedience and negligence and not attending staff meeting etc., and directed him to give explanation within 24 hours on receipt of the said memo. It is also observed that the defendant has not produced any documents of attendance, meeting minutes and documents regarding refusal of assignment and moreover there is no document in respect of the plaintiff absence to the staff meeting. It is also observed that the defendant would have maintained the meeting minute books or resolution books and also the attendance wherein recorded that the plaintiff has not attended either the meeting or the office.

37. It is also important to note that before issuance of any notice mentioning the absence the plaintiff for the duty regularly, memo should be issued seeking explanation for his irregularities but no such memos are produced as well as attendance registrar for having not attended the duty before the Trial Court. No doubt, now produced the document with regard to the attendance of meeting which was not placed before the Trial Court. The weekly staff meeting attendance book found only the signature of three persons and two persons in some of the days excluding the plaintiff signature. The question before this Court that whether the plaintiff has attended weekly staff meeting or not is the matter of merit. The defendant has already initiated disciplinary proceedings against the plaintiff but *prima facie*, no document is placed before the Court with regard to the charges leveled against him at the first instance in terms of the first memo dated 10.04.2023.

38. It is also important to note that the learned counsel for the appellant would vehemently contend that the suspension order is ratified. It is also important to note that the plaintiff produced some of the documents before this Court and this Court has already referred some of the documents

particularly, the extract of meeting which has not been placed before the Trial Court by the appellant. On perusal of the documents produced by the plaintiff along with the statement of objections dated 27.05.2023, a reference of letters addressed by the plaintiff was mentioned and in the extract of 15.04.2023, it is mentioned that Personnel Committee asked the General Secretary to immediately give him another office memo. No doubt, the second office memo was given consequent upon minutes of the Personnel Committee meeting held on 15.04.2023. It is also important to note that in the other extract dated 17.04.2023 of the minutes of the Board Meeting, there is a reference of the letter of the plaintiff dated 11.04.2023, wherein it is mentioned that a discussion was held and Board suggested the General Secretary to consult YMCA legal advocate to take disciplinary action. But no opportunity was given to the plaintiff in terms of second memo and decision was taken on the same day that means when the Board suggested the General Secretary to consult legal advisor. The extract is very clear that the General Secretary has to consult YMCA legal advocate and no such power is given to suspend the plaintiff and also ratification is made subsequently. It is mentioned in the extract from the minutes of the Board Meeting that the legal advisor advised to take action by suspending him pending enquiry and accordingly, the plaintiff was suspended and there is no any such ratification. It is also rightly contended by the counsel for the respondent/plaintiff that in the written statement nowhere the defendant took the defence that the suspension was ratified and only at the appellate stage, they have created the document of ratification and the same is a subject to proof.

39. The counsel appearing for the respondent/plaintiff in support of his case relied upon the judgments of the Apex Court referred supra. In the case of **MARATHWADA UNIVERSITY** (referred supra) the Apex Court held that when statute prescribes a particular body to exercise a power, it must be exercised by that body alone and not by others unless it is delegated. In the case on hand, suspension order was issued by the General Secretary and such power is not delegated to the General Secretary and Board of Directors is the competent authority to suspend the plaintiff. The contention of the counsel for the appellant that there is a ratification. The Apex Court also held that ratification is generally an act of principal with regard to a contract or an act done by his agent. The principles of ratification in the context of law of agency apparently do not have any application with regard to exercise of powers conferred under statutory provisions. The

statutory authority cannot travel beyond the power conferred and any action without power has no legal validity. It is also observed that as it is *ab initio* void and cannot be ratified. Likewise the principles of ratification governing transactions of a company where the general body is the repository of all powers cannot be extended to the present case. This judgment is aptly applicable to the case on hand as factual aspects of the case.

40. The counsel appearing for the appellant also relied upon the judgment **SATYANARAYANA** (referred supra) wherein the Apex Court held that inherent power of an employer to suspend an employee, pending enquiry, is with the employer. The counsel also would vehemently contend that he need not state any reason in support of the suspension order.

41. The counsel also relied upon the judgment of this Court in the case of **DHAMANKAR** (referred supra) wherein this Court held that the power of suspension is incidental to the master and servant relationship event though the Rules and Regulations governing disciplinary action against its employees may not provide specifically for suspension pending enquiry. The counsel also relied upon the judgment in the case of **UNION OF INDIA AND ANOTHER** (referred supra) wherein, the Apex Court held that suspension is a device to keep the delinquent out of mischief range and complete the proceedings unhindered. It is to aid disciplinary proceedings so as to prevent the delinquent from granting custody/control of papers or take advantage of his position. At this stage, the Court ought not to act as an appellate forum.

42. The counsel also relied upon the judgment in the case of **STATE OF ORISSA** (referred supra) wherein the Apex Court held that the object is also to prevent him from scuttling enquiry or winning witnesses. Intervention of Courts must be minimal in domestic enquiries as held in the case of **THE SECRETARY, BANGALORE TURF CLUB** (referred supra) and in the said judgment, it is also clear that the Court should not venture to intervene in a domestic enquiries. Hence, there is no dispute with regard to the principles laid down in the judgments referred supra.

43. Considered the principles laid down in the said judgments and also taking into the factual aspects of the case and the principles applicable in keeping the facts of each case. The Court has to look into the very first

memo issued by the appellant herein and the same is with regard to the disobeying the instructions of the General Secretary and not attending the duty and also not attending the weekly staff meeting. The same shall be only documentary evidence but no such documentary evidence is placed before the Trial Court. The very purpose of suspension is also on the delinquent employee that he should not come in the way of conducting of enquiry and scuttle the enquiry and influence the witnesses and having considered the first memo, no such circumstance is warranted to take such decision of suspension. The *prima facie* material is not placed with regard to the charges leveled in the first memo dated 10.04.2023 and no doubt, additional charges are also framed when the disciplinary enquiry is initiated. The suspension is only based on the allegations made in the first memo dated 10.04.2023 and other allegations in the second memo. It is also important to note that for reply, the time was given only 24 hours in respect of first memo and also the Court has to take note of the fact that immediately on the very next day, the plaintiff gave reply stating that giving of 24 hours is unreasonable and not justified and the same is not referred in the second memo dated 17.04.2023 and the same is suppressed. It is also to be noted that in the second memo dated 17.04.2023, it is mentioned that the matter will be placed before the Board of Directors and the material also discloses that on the very same day, the same was placed before the Board of Directors and the Board of Directors also suggested the General Secretary to get the opinion from the legal advocate and no purpose is served in issuing second memo. The record discloses that immediately on the very next day the plaintiff gave the reply but in the suspension order it is mentioned as belated reply. The ratification is also subsequently and the same is not immediately after the suspension, all act done by the General Secretary clearly discloses that it is pre-determined even while issuing the first memo by giving only 24 hours to give his reply. These are the aspects taken note by the Trial Court while granting the relief of temporary injunction.

44. It is also not in dispute that the plaintiff is working in the organization from last 25 to 30 years and an allegation in the first memo is also not very serious with regard to the dereliction of his duty except allegation of disobeying the General Secretary. The Trial Court also taken note of the second memo dated 17.04.2023 and on the same day Board Meeting was held, wherein it was directed the General Secretary to initiate action against the plaintiff after consultation with the legal advisor. The Trial Court also

observed that the Board without conducting proper enquiry handed over the matter to the General Secretary and hence, comes to the conclusion that it is not a proper action against the plaintiff as per the Bye-laws of the organization. The Trial Court also taken note of the fact that the plaintiff is the employee under the defendant organization since 1990 and the defendant has not produced any document to show his misconduct or irresponsible service in his long service till date of issuance of first memo. It is observed that without giving the documents of enquiry and without trial, it cannot be concluded that the suspension order of the plaintiff is tenable one. The Trial Court in paragraph 17 of the order in detail discussed the manner in which the proceedings has been initiated against the plaintiff and rightly granted the relief of temporary injunction allowing I.A.No.2. Hence, I do not find any error committed by the Trial Court in granting such a relief in coming to the conclusion that there is *prima facie* case and balance of convenience lies in favour of the plaintiff.

45. The counsel for the appellant would vehemently contend that suspension is not a punishment. I have already pointed out that suspension is only to conduct the fair enquiry. The High Court of Andra Pradesh also in the case of **SATYANARAYANA** (referred supra) in paragraph 5 made it clear that normally the Courts shall not interfere with the suspension orders passed by the employers in contemplation of departmental enquiry or pending departmental enquiry unless for very good reasons like mala fide. Having discussed the circumstances under which the proceedings is initiated it clearly discloses that it appears as mala fide and the judgment goes against the appellant. No doubt, this Court also in the judgment of **DHAMANKAR** (referred supra) held that the powers of suspension is incidental to the master and servant relationship and suspension order itself is sustainable but the same has to set out the reasons and suspension must be in a circumstances of grave misconduct on the part of the employee. The Trial Court and this Court found that no documents are placed before the Court before issuance of first memo with regard to his misconduct and disobeying the instructions of General Secretary. No doubt, the Apex Court in the case of **UNION OF INDIA** (referred supra) held that the Court should not exercise its powers, it is an appellate forum and at the same time it is the duty of the Court also to analyse the material available on record whether suspension is required for the purpose of placing a civil servant under suspension has to keep him away position where he can interfere with the conduct of enquiry and tamper with

the documentary or oral evidence in any manner and no such circumstances warranted with regard to the same and the documents are in the custody of the employer hence, the question of tampering of documents does not arise since the allegation is not attending office and disobeying the instructions.

46. The counsel for the appellant also brought to notice of this Court the judgment in the case of **SECRETARY, BANGALORE TURF CLUB** (referred supra) wherein it is held in paragraph 64 that it is needless to say that any interventions by the civil Courts will tend to undermine the legitimacy of a body of persons who are entrusted to take action by their own rules against a person who violated such rules. No dispute with regard to the principles laid down in the judgment and the Court has to take note of the gravity of the allegations made against the employee while exercising such powers. This Court also in the judgment of **SADASHIVANAGAR CLUB** (referred supra) held that it is neither desirable nor proper for this Court to sit in judgment over the wisdom or otherwise of the Executive Committee of defendant Society in taking a decision which it has taken. It is also observed that however, it is necessary to point out here that at present there are no materials to show that the executive committee is actuated by any improper motive. It is also observed that at this juncture, it is necessary to remember that if the action taken by the Executive Committee is not shown to have been taken with an ulterior motive, even if it is possible to say that the action taken is not warranted in the facts and circumstances of the case the same would not be a ground for the Court to interfere.

47. The materials which have been considered by this Court as well as the Trial Court is very clear that no such material is placed with regard to his misconduct for a period of 30 years from 1990 and all of a sudden when the General Secretary was appointed on 30.01.2023, trouble was started and made the reference of period between February and March with regard to the misconduct before suspension. The Trial Court and also this Court came to the conclusion that in between that period till the date of issuance of first memo, no documents are placed to show that the plaintiff has not attended the duty, not attended the weekly meeting and disobeyed the instructions of the General Secretary. The charges are not very serious in terms of the first memo. The charges is insubordination and also on account of suspension he was prevented from attending duty. Hence, discretion was exercised by the Trial Court granting the relief of temporary injunction against the organization.

48. Having reanalyzed the material available on record of office first memo and the second office memo it disclose that there is no reference of immediate reply given by the plaintiff and 24 hours fixed for reply is unreasonable and not justifiable as contended and the same is not shown in the second memo. Admittedly, he has given the reply on the very next day of second memo but an opportunity has to be provided to give reply and no immediate ratification. The grievance of the plaintiff is that the General Secretary who has been appointed is overlooking the seniority of the plaintiff and also it appears that the plaintiff also perturbed from the decision of the Board of Directors in overlooking him in considering his name for the appointment of the General Secretary. Though the counsel for the appellant would vehemently contend that a ratification is made with regard to the suspension, no doubt, in the principles laid down in the judgment of **NATIONAL INSTITUTE OF TECHNOLOGY** (referred supra) it is held that 'ratification' means the making valid of an act already done and Court comes to the conclusion that the ratification must be mode only if valid act has been done by the agent. Having considered all these material available on record, I do not find any error committed by the Trial Court in granting the relief of temporary injunction. The Trial Court taken note of the material available on record in detail and exercised the discretion having taken note of the conduct of the General Secretary in passing the suspension without having authority. Board of Directors are the competent authority to take a decision and not the Secretary in terms of the memorandum of Rules and Regulations of the defendant organization. The alleged ratification is a matter of merit. This Court also would like to consider the submission of respondent's counsel that even subsequent to the suspension of the respondent, no subsistence allowance is paid and the counsel for the appellant also not denies the same and submits that a direction may be given to pay the subsistence allowance. It is also not in dispute that immediately after suspension, enquiry officer is also appointed and the enquiry is in progress. The appellant ought to have paid the subsistence allowance in terms of the statute and the same is also not paid. The Court also can take note of the said fact into consideration. The very object of statute in payment of the subsistence allowance is also defeated. Hence, there is no merit in the appeal to reverse the finding of the Trial Court. The Trial Court applied its judicious mind while appreciating the facts of the case and material available on record, thus, the appeal is *de void* of merits.

49. In view of the discussions made above, I pass the following:

ORDER

The appeal is ***dismissed***.

The appellants are directed to pay the subsistence allowance forthwith to the respondent in accordance with law.

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