

1976 Present : Deheragoda, J., Malcolm Perera, J. and
Gunasekera, J.

S. L. D. C. DE ALWIS WEERASIRIWARDENA, Petitioner
and

AVISSAWELLA M. P. C. S. and ANOTHER, Respondents
S. C. Application No. 472 of 1975

Co-operative Employees Commission Act, No. 12 of 1972, sections 14 and 15—Co-operative society—Charges of fraud against employee—Inquiry—Duty on Commission of general supervision of co-operative societies—Direction to Society given to terminate services of such employee—Powers under sections 14 and 15 of the Act.

Held : That the Co-operative Employees Commission established under Act No. 12 of 1972 has in pursuance of its powers under sections 14 and 15 of the said Act and in the performance of its duties of general supervision of Co-operative Societies the power to direct a society to terminate the services of an employee. The petitioner had been fully heard on the charges of fraud against him, at the inquiry held by the Committee of Management and the direction was given with regard to the proper penalty to be imposed on the basis of findings made by the inquiring officer and the Committee of Management. This Application must therefore fail.

APPPLICATION for a Writ of Certiorari and/or Mandamus.

Prins Gunasekera, with *Miss U. K. Wimalachandra*, for the petitioner.

K. D. P. Wickremasinghe, for the 1st respondent.

Douglas Premaratne, Senior State Counsel, for the 2nd respondent.

October 11, 1976. GUNASEKERA, J.

The petitioner in this case had asked for a Writ of Certiorari and/or Mandamus on the Avissawella Multi-Purpose Co-operative Society as the 1st respondent and the Co-operative Employees Commission as the 2nd respondent in respect of an order terminating his employment as Store-keeper of the Wholesale Depot of the 1st respondent.

The petitioner states that after inquiry on certain charges involving fraud against him, the Committee of Management had decided to re-instate him in his post with certain financial penalties and that he appealed against this order to the 2nd respondent-commission. He complains that the 2nd respondent-commission had not decided his appeal nor communicated their decision thereon but that instead, the Commission has issued a direction to the society that the petitioner's services should be terminated (vide P5 dated 3.7.1975) and the society has on that direction, dismissed him.

We have examined the provisions of the Co-operative Employees Commission Act, No. 12 of 1972, and we find that sections 14 and 15 give the Commission ample power to give such a direction to the 1st respondent and that this direction, thus given, was apparently not made on the appeal taken by the petitioner but in pursuance of its powers under these sections and in the performance of its duties of general supervision of co-operative societies.

We have heard Mr. Gunasekera at this resumed sitting today on the scope of these sections. He complains that even though the Commission had the power to give this direction in terms of these sections, he should have been heard by the Commission before this direction was given to the 1st respondent-society.

We are quite satisfied that as far as the petitioner was concerned, he was heard fully at the enquiry held into the charges of fraud and that the Committee of Management, in fact, first decided on the report of the enquiring officer to terminate the services of the petitioner but that the petitioner was fortunate in being able to persuade six members of the Committee to meet on the very next day and change that decision and to decide that though the charges of fraud were proved against the petitioner, he should nevertheless be restored to his post, subject only to certain financial penalties. In these circumstances, we do not think the petitioner can strictly complain that he was not heard before his dismissal. The direction given by the Commission was

only with regard to the proper penalty to be imposed on the petitioner on the findings of both the enquiring officer and the Committee of Management.

For these reasons, the application is dismissed with costs payable to both respondents.

DEHERAGODA, J.—I agree.

MALCOLM PERERA, J.—I agree.

Application dismissed.