

THE HON'BLE SRI JUSTICE DILIP B. BHOSALE
AND
THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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WRIT APPEAL No.236 of 2007

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JUDGMENT: (Per Hon'ble Sri Justice A.Ramalingeswara Rao)

This Writ Appeal is directed against the order in W.P.No.29796 of 1998 dated 30.11.2006. In the said Writ Petition filed by the present appellant, he prayed for quashing the order dated 24.07.1998 issued by the respondent dismissing him from service, after due enquiry. The Writ Petition was dismissed by the learned single Judge.

The appellant/petitioner was working as Secretary of the Katrenipadu Primary Agricultural Co-operative Society. Initially he was placed under suspension and challenging the same he filed W.P.No.34816 of 1997, and it was dismissed. Against the same he filed W.A.No.388 of 1998 and the same was disposed of on 16.03.1998 directing the respondent to conduct an enquiry within two months and pass orders in accordance with law. Thereafter, a charge memo was issued on 11.06.1997 framing five charges, and the appellant was asked to submit his explanation. He submitted his explanation on 30.06.1997. The enquiry was conducted from 14.11.1997 to 24.04.1998. The enquiry officer submitted his report on 12.05.1998. A copy of the enquiry report was furnished to the appellant along with a show cause notice and the appellant submitted his explanation on 10.07.1998. After considering the explanation submitted by the appellant, the impugned order was passed on 24.07.1998 dismissing the appellant from service. Challenging the same, he filed the above Writ Petition.

A counter affidavit was filed before the learned single Judge by the respondent admitting the facts leading to the passing of the dismissal order and stating that during the course of enquiry, the charges framed against the petitioner were proved. The counter affidavit enumerated the

various charges made against the appellant and proof in support of the same. The counter affidavit further stated that the appellant should have filed an appeal before the appointing committee under the Andhra Pradesh Agricultural Credit Societies Paid Secretaries Common Cadre Regulations. Ultimately, the respondent prayed for dismissal of the Writ Petition.

Learned single Judge after considering the following grounds raised by the learned Counsel for the writ petitioner before him rejected all the contentions.

- “1. Since the enquiry officer was a panel advocate of the bank, he was biased against the petitioner and the entire proceedings are vitiated by the inherent bias of the enquiry officer;
2. Since the enquiry officer was an advocate, the petitioner should also have been permitted to engage the services of an advocate as his defence representative and his not being permitted to do so vitiated the enquiry;
3. The letter addressed by him to M/s.Sai Agencies was at the behest of the President of the Society who was not summoned for being examined as a witness in the enquiry proceedings. Non-examination of the President of the Society vitiated the enquiry proceedings.
4. The General Manager of the Krishna District Co-operative Central Bank, who passed the impugned order of dismissal, was incompetent to pass the order, since prior approval of the Registrar of Co-operative societies, as required under Rule 72(5), was not taken by him.”

Before the learned single Judge, the contention that the General Manager of the Krishna District Co-operative Central Bank was incompetent to pass the impugned order was also raised. The said contention was considered in the light of Rule 72(5) of the Andhra Pradesh Cooperative Societies Rules and the same was rejected by observing that the said plea is a mixed question of fact and law and since the same was not pleaded in the affidavit filed in support of the Writ Petition it could not be examined during the course of hearing. Learned single Judge further observed that whether prior approval of the

Registrar has been taken or not is not a pure question of law and, in the absence of a specific plea in that regard taken in the affidavit filed in support of the Writ Petition, the said plea cannot call for examination as the respondent did not have the opportunity to controvert those allegations in the counter affidavit.

Learned Counsel for the appellant raised only one point with regard to the competency of the General Manager of the Krishna District Co-operative Central Bank to pass the impugned order without obtaining the previous approval of the Registrar of Cooperative Societies. He did not argue any other point. Learned Counsel drew our attention to reference No.7 of the order dated 24.07.1998 and contended that the order of dismissal was passed at the instance of the President, Krishna District Co-operative Central Bank Limited, Machilipatnam, and hence, the said order is bad.

Learned Counsel for the appellant fairly admitted before this Court that he is not challenging the procedure of conducting the enquiry and he is challenging only the impugned order which is passed without obtaining approval of the Registrar of Cooperative Societies but on the instructions of the President, Krishna District Co-operative Central Bank Limited.

We heard learned Counsel for the appellant and perused the record.

The record clearly reveals that five charges were framed against the appellant and a domestic enquiry was conducted. In the said domestic enquiry, all the charges were held proved and the appellant was given an opportunity to submit his explanation along with a copy of the enquiry report. The appellant submitted his explanation on 10.07.1998. After considering the objections raised by the appellant in his representation dated 10.07.1998 to the enquiry report, the impugned order was passed on 24.07.1998 dismissing him from service. The issue with regard to the prior approval of the Registrar was not raised in the

affidavit filed in support of the Writ Petition and it was fairly admitted by the learned Counsel for the appellant before the learned single Judge. Learned single Judge rightly held that whether a prior approval of the Registrar was obtained or not is a mixed question of fact and law and it cannot be considered in the absence of raising such a plea. We are in agreement with the view of the learned single Judge. It is not as if the appellant was denied of fair opportunity before passing the impugned order. The impugned order was passed after conducting the enquiry where the appellant participated. In the circumstances, we cannot hold that the impugned order passed by the respondent is illegal. The order was passed on 24.07.1998 and sixteen years have elapsed from the date of order of dismissal. No substantial grounds are shown for our interference with the order of the learned single Judge.

In view of the above, the Writ Appeal is liable to be dismissed and is, accordingly, dismissed. The miscellaneous petitions, if any, stand disposed of. There shall be no order as to costs.

(DILIP B. BHOSALE, J)

(A.RAMALINGESWARA RAO, J)

09.02.2015
vs