

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION No. 10159 OF 2015

ORDER:

The petitioner functioned as a Secretary of Deva Primary Agricultural Cooperative Society Limited, Penugonda Mandal, West Godavari District. He now calls in question the orders dated 12.12.2014 placing him under suspension pending inquiry, in this Writ Petition.

Heard Ms. Shalini, learned counsel for the petitioner and learned Government Pleader for Cooperation (Andhra Pradesh).

In the course of the impugned order, very serious allegations have been levelled against the petitioner. The first and the foremost allegation is that he rendered himself scarce by not reporting to duty from 19.12.2013 onwards and when the records of the society have been got verified, a sum of Rs.25,07,183/- was found to have been mis-utilised. Further, when the books of account of the society maintained for the year 2012-13 were audited by the departmental auditor, a *prima facie* opinion was expressed that a sum of Rs.11,10,000/- has been misappropriated. Similar are the other allegations. In view of the serious nature of the allegations levelled against the petitioner, the Registrar of the Cooperative Societies, as per the definition contained in Section 2(n) of the Andhra Pradesh Cooperative Societies Act, 1964 (for short, 'the Act'), invoked the power available to him under sub-section (3) of Section 55-A of the Act and placed the petitioner under suspension, pending inquiry.

Learned counsel for the petitioner would submit that the allegations have all been trumped up only to implicate falsely the petitioner because of a fall out between the elected representatives of the society and the petitioner. This apart, the petitioner has filed a detailed explanation, explaining each one of the allegations levelled against him, on 02.02.2015. In spite of receiving the same, the Registrar has not moved his little finger in the matter and has not ordered for reinstatement of the petitioner. He has not initiated any action in the past four months after he placed the petitioner under suspension and all the more so, after the petitioner has submitted the detailed explanation on 02.02.2015, explaining as to how he is not guilty of the allegations levelled against him.

The learned counsel Ms. Shalini would also submit that under sub-section (4) of Section 55-A, the Registrar was required to put the petitioner on notice before any penal action is initiated against him and in the instant case, the petitioner has not been put on notice at all. I am afraid, the latter contention canvassed at the Bar is without regard to the provision contained under sub-section (4) of Section 55-A, where the Registrar has come to a *prima facie* conclusion that the loss sustained by the society is liable to be recovered from any person, in such an event, the person considered responsible for causing such a loss has got to be put on notice and only after hearing his objections, an order can be passed for recouping the loss so sustained. In the instant case, unless a detailed inquiry is conducted, at the first instance, and only in the event of holding the charges levelled against the petitioner as established and proved and also after finding as to whether he alone is responsible or someone else, either jointly or severally, is also responsible, the question of considering fixation of accountability for the loss so caused would not arise. Only after fixing the accountability, the question of recovering the loss would come up. Therefore, this is not the stage where the provision under sub-section (4) of Section 55-A of the Act will spring for consideration.

So far as suspension pending inquiry is concerned, sub-section (3) of Section 55-A has clearly provided for such an order to be passed by the Registrar. There is no challenge made in this Writ Petition about the competence of the 2nd respondent passing the impugned order. Whether the allegations will stick to the petitioner or not, is a question, which can be examined only after a detailed inquiry is conducted, but not at this stage.

It is not enough for the Registrar to place the employee concerned under suspension and forget about his existence. He has to follow it up with necessary and prompt steps. Any protracted or prolonged suspension of an employee will reduce the very efficacy of such a measure from being adopted. Prolonged suspension is considered to be one form of penalizing the employee even before the charge is held established against such an individual.

Therefore, Respondents 1 and 2 are directed to ensure that the inquiry initiated against the petitioner is completed as expeditiously as is possible, preferably within a maximum period of four months from the date of receipt of a copy of this order, duly providing every opportunity to the petitioner to establish his

defence and also making available copies of such documents, which he requires genuinely for establishing his defence and in the event such copies cannot be furnished, the petitioner shall be provided an opportunity to peruse the same on any working day during the working hours and also make notes there from and he shall also be allowed to examine any witness, who may be willing to depose on his behalf and he shall also be provided an opportunity to bring on record any document, which he seeks to rely upon in his defence. Let this exercise be completed accordingly and the final order be communicated to the petitioner.

It is needless for me to observe that the petitioner's claim for payment of subsistence allowance for the period of suspension shall be dealt with immediately and appropriate measures shall be taken for such payment.

With this, the Writ Petition stands disposed of at the admission stage. No costs.

Consequently, the miscellaneous applications, if any shall also stand disposed of.

NOOTY RAMAMOHANA RAO, J

10th April 2015

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