

THE HON'BLE SRI JUSTICE A.V. SESA SAI

WRIT PETITION No.11495 OF 2016

-

ORDER:

This Writ Petition, filed under Article 226 of the Constitution of India, challenges the proceedings, dated 14.03.2016, issued by respondent No.5, terminating the petitioner herein from service.

2. Heard Sri G.V. Shivaji, learned counsel for the petitioner, learned Government Pleader for respondent Nos.1 to 4 and

Sri S. Subba Reddy, learned Standing Counsel for respondent No.5, apart from perusing the material available before the Court.

3. According to the petitioner, he was initially appointed as Secretary in respondent No.5 – Society in the year 1986. By way of an order, dated 13.10.2015, respondent No.5 – Society placed the petitioner under suspension pending enquiry on the directions of respondent No.4 – Divisional Co-operative Officer, Kovvuru, West Godavari District, under Section 59 of the A.P. Co-operative Societies Act, 1964 (for short, 'the Act'). Thereafter, respondent No.5 – Society issued a charge memo, dated 06.02.2016. It is the further case of the petitioner herein that his father passed away on

07.02.2016 and when the petitioner was making arrangements for death ceremony of his father, the above said charge memo was served on 16.02.2016 at 05:30 PM. As evident from the charge memo, dated 06.02.2016, petitioner was asked to submit his explanation within a period of

15 days from the date of service of the same. According to the petitioner, after completion of his father's rituals and ceremony, he approached the office of respondent No.5 on 09.03.2016, where he was informed that the Enquiry Committee appointed by respondent No.5 already submitted its report on 05.03.2016 itself. It is further averred that the petitioner was under the impression that respondent No.5 would issue show-cause notice along with the report, but to his utter dismay, he was shocked to receive the impugned proceedings, dated 14.03.2016, removing him from service.

4. In the present Writ Petition, challenge is to the said order of removal passed by respondent No.5 on 14.03.2016.

5. It is contended by the learned counsel for petitioner that the impugned order of termination is highly illegal, arbitrary, unreasonable and in complete deviation of the principles of natural justice. It is also the contention of the learned counsel for petitioner that respondent No.5

passed the impugned order solely basing on the report submitted under Section 51 of the Act and the same cannot be sustained in the eye of law. It is further contended that the questioned order is also contrary to the Service Regulations of respondent No.5 – Society. In support of his submissions and contentions, learned counsel for the petitioner placed reliance on the order of this Court in W.P.No.2295 of 2010.

6. Per contra, it is vehemently contended by Sri S. Subba Reddy, learned Standing Counsel for respondent No.5 – Society, that there is absolutely no illegality nor there exists any procedural infirmity in the impugned action and since the petitioner herein did not participate in the enquiry, respondent No.5 is perfectly justified in passing the impugned order of termination.

7. In the above background, now the issue that emerges for consideration of this Court is – “whether the order of termination passed by respondent No.5 is in accordance with law?”

8. A perusal of the order of removal, dated 14.03.2016, candidly discloses that the Enquiry Committee appointed by respondent No.5 did not make any endeavour to conduct enquiry independently on its own and on the other hand, placed complete reliance on

the report submitted by the Enquiry Officer under Section 51 of the Act. In this context, it may be appropriate to refer to the order of this Court in W.P.No.2295 of 2010. In the said order, this Court categorically found that the enquiry held under Section 51 of the Act cannot form the foundation for disciplinary action against the employee and as per the bye-laws, the Society is bound to hold a disciplinary enquiry for the misconduct and only thereafter, can resort to any action through competent authority. In this case also, identical situation exists. Except the report of the Enquiry Officer, under Section 51 of the Act, there is no other material available to respondent No.5, who passed the impugned order of termination, which is writ large on the face of the impugned order. Another significant aspect which needs mention, at this juncture, is that as per the Service Regulations of respondent No.5 – Society, it is incumbent on the part of the competent authority to issue show-cause notice after receipt of the enquiry report to the employee and to afford opportunity to make further representation and the same is conspicuously absent in this case. There is yet another infirmity in the impugned action. There is absolutely no material available on record to show that the Managing Committee of respondent No.5 – Society had consulted the District Level Committee while imposing the punishment of removal as stipulated under the Service

Regulations. It is also noteworthy, as pointed out by the learned counsel for petitioner, that at no point of time, the Domestic Enquiry Committee issued notice to the petitioner to attend before it for enquiry. In view of these reasons, this Court has absolutely no scintilla of hesitation to hold that the impugned order of termination cannot be sustained in the eye of law.

9. Accordingly, the Writ Petition is allowed, setting aside the order of termination passed by respondent No.5 vide Rc.No.2/S.C/2016, dated 14.03.2016. However, this order will not preclude respondent No.5 – Society from proceeding in accordance with law.

10. Miscellaneous Petitions, if any, pending in this Writ Petition, shall stand closed. No costs.

A.V. SETHA SAI, J

April 20, 2016
MD