

HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

W.P.No.14843 of 2004

ORDER

The petitioner joined as Secretary in the 3rd respondent-Fishermen Co-operative Society, Manchineellapeta in the year 1974. He was transferred to different places of Primary Agricultural Co-operative Societies. Thereafter, he was posted as Paid Secretary at Calingapatnam, PACS and worked as such till his retirement on 31.8.1996. As per his date of birth entered into records, he was supposed to retire on 30.9.1995, but he was continued in service till 31.8.1996. The 3rd respondent-Society issued proceedings on 28.8.1996 retiring the petitioner from service on 31.8.1996. While so, surcharge notice dated 14.12.2001 was issued to him by the 1st respondent-Deputy Registrar of Co-operative Societies, Srikakulam, directing him to submit explanation by 29.12.2001. It was stated in the surcharge notice that though the said surcharge notice was sent to the petitioner by registered notice, the same was not served on him. The petitioner appeared-in-person before the 1st respondent on 29.12.2001 and his statement was recorded. Thereafter, the petitioner was not aware of the subsequent developments till an order dated 31.8.2003 was passed, signed by the 1st respondent on 13.2.2004 and served on him on 21.7.2004 informing him that he should pay Rs.1,22,024/- along with the expenses within 10 days. The petitioner issued legal notice on 28.7.2004 to the 1st respondent stating that no enquiry was conducted, but an order was communicated to him on 21.7.2004, which is dated 31.8.2003. The petitioner states that

he has right to file an appeal within 60 days from the date of communication of the order. Even after receiving the said notice, no reply was given, but an order of attachment was issued on 11.8.2004 stating that the petitioner was liable to pay an amount of Rs.1,22,024/- as on 13.2.2004. Challenging the same, the present writ petition was filed.

A counter-affidavit is filed on behalf of the 1st respondent admitting the submission of explanation by the petitioner on 29.12.2001. It is stated that the surcharge order was passed on 29.12.2001, but the date of surcharge order was wrongly mentioned as 31.8.2003. It was also stated that the Board of Management is not competent to continue the petitioner in service beyond 30.09.1995, but the petitioner was continued in service beyond 30.09.1995 and received salaries for about 11 months causing loss to the society. In view of the allegation of the petitioner that he was not put on notice with regard to the surcharge enquiry and communication of order of surcharge, this Court called for the original record and the original record does not indicate the service of any notice subsequent to the statement given by the petitioner on 29.12.2001 or communication of the surcharge order. Even otherwise also, the charges levelled against the petitioner are as follows:

1. an amount of Rs.51,560/- was paid towards salary for the period from 1.10.1995 to 31.8.1996.
2. an amount of Rs.8,950/- collected by him, but the same was not brought to cash book;
3. an amount of Rs.17,633/- was paid to him towards advance, medical aid and interim relief.

The petitioner submitted his explanation stating that since he was continued in service beyond the date of superannuation and retired on 31.8.1996 and as he was paid salary for the period from 1.10.1995 to 31.8.1996, the same cannot be recovered from him. The amount of Rs.8,950/- was remitted by him through challan along with the explanation and with regard to the 3rd amount of Rs.17,633/-, the same was paid to him towards medical aid and interim relief. It was stated that the secretaries of the Primary Agricultural Societies are eligible to avail the said amount as it was paid to Co-operative Central Banks.

So far as the amount of Rs.51,560/- is concerned, since the petitioner continued beyond the age of superannuation at the instance of management, the amount drawn towards salary cannot be called as misappropriation. He was retired from service on 31.8.1996 and he drew the amount towards salary from 1.10.1995 to 31.8.1996 i.e., during the period he worked. The 2nd amount of Rs.8,950/- was already paid by him. With regard to 3rd amount of Rs.17,633/-, which was paid to him towards medical aid and interim relief, the counter-affidavit is silent.

As stated above, the surcharge order itself was not communicated to the petitioner and this Court is not in a position to ascertain the reason for allowing those amounts by the 1st respondent against the petitioner which mounted to Rs.1,22,024/-. Now the immovable property of the petitioner was sought for attachment. The alleged surcharge order was passed on 31.8.2003, but it was stated to have been passed on 29.12.2001 itself, the date when the petitioner gave statement. The said order was not communicated to the petitioner, but a demand

notice was issued after two years and it was actually served on 21.7.2004.

The whole approach is arbitrary.

In view of facts and circumstances of the case and the justification given by the petitioner for the amounts charged against him, this Court sees that it is a fit case where extraordinary jurisdiction of this Court should be invoked for setting aside the demand notice dated 31.8.2003 demanding to pay an amount of Rs.1,22,024/- and the notice of attachment of immovable property dated 11.8.2004 issued by the 2nd respondent.

Accordingly, the Writ Petition is allowed.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE A.RAMALINGESWARA RAO

8th December, 2016
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