

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

**WRIT PETITION No.20307 of 2003**

**ORDER:**

The challenge in the present writ petition is to the order passed by the Vice-Chairman and Managing Director, the Andhra Pradesh State Handloom Weavers Co-operative Society Limited vide Ref.No.Admn-II/CO/KR/KNL/Janatha scandal/87, dated 06-02-2003.

The facts and circumstances, leading to filing of the present writ petition are as follows:

While working as a Divisional Marketing Officer, the petitioner was suspended pending enquiry by the 2<sup>nd</sup> respondent on 24-08-1987. Thereafter the 2<sup>nd</sup> respondent issued a charge memo vide reference No.L&C/CO/88, dated 09-03-1988, framing the following two (2) charges:

**“Charge:** *“That he while working as Divisional Marketing Officer, Kurnool with the active connivance of the then Procurement Officer, Technical Assts., Manager Cloth Godown, Kurnool, sales emporial primary weavers coop: societies created bogus records in respect of procurement and sale of janatha stock, and thereby he cheated the Apex Society.”*

**Charge No.2:** *“That at his behest, the staff booked and claimed heavy expenditure on transport without engaging lorry for transporting the so called allotted goods to various depots, the by he cheated the Apex Society.”*

In response to the said charge memo and the charges contained therein, the petitioner herein submitted explanation dated 05-04-1988, denying the charges and requesting to drop further action. Thereafter an Enquiry Officer was appointed who submitted a report and later the 2<sup>nd</sup> respondent issued a show cause notice bearing No.L&C/L2/Kurnool Divn/88-89, dated 03-02-1989, calling upon the petitioner to offer his explanation. In response to the same, an explanation was submitted by the petitioner. By way of an order No.APCO/KNL/Janatha/CO/L-2/88-89, dated 28-11-1992 the 2<sup>nd</sup> respondent herein dismissed the petitioner from service. Aggrieved by the said order of dismissal the petitioner herein filed appeal vide proceedings No.L&C/L2/Kurnook Division/Janatha/93, dated 30-04-1993. The order of punishment of dismissal was modified as punishment of stoppage of six (6) annual grade increments with cumulative effect and as a consequence of the same the petitioner was reinstated into service on 05-05-1993.

After lapse of nine (9) years, 2<sup>nd</sup> respondent herein issued a show cause notice, dated 09-10-2002 asking the petitioner to show cause as to why a sum of Rs.82,417-25 Ps. should not be recovered on the ground of alleged involvement of the petitioner in Janatha Bogus transaction while informing to remit the same. Responding to the same, an

explanation was submitted by the petitioner on 10-11-2002. Thereafter vide impugned order, dated 06-02-2003 the 2<sup>nd</sup> respondent directed the petitioner to remit the amount as indicated in the show cause notice, dated 09-10-2002.

In the above background, calling in question the validity and the legal sustainability of the said order, dated 06-02-2003 the present writ petition came to be filed.

This Court, while ordering *rule nisi* on 24-09-2003 granted interim suspension in W.P.M.P.No.25438 of 2003.

Heard, Sri S. Ravindranath, learned counsel for the petitioner and Sri N. Jayasurya, learned Counsel for the respondents, apart from perusing the material available before this Court.

It is contended by learned counsel for the petitioner that the order impugned is highly arbitrary, illegal and violative of Article 14 of the Constitution of India and opposed to the very spirit and object of the provisions of A.P. Co-operative Societies Act and the Rules framed thereunder. It is further submitted by learned counsel that since the impugned action was not preceded by any regular enquiry by framing charge, the same is un-sustainable and untenable and violative of the principles of natural justice. It is also submitted by learned counsel that in view of the provisions of Section 61 of the A.P.

Co-operative Societies Act r/w. Rule 49 of the A.P. Co-operative Societies Rules, 1964 the impugned action is impermissible and barred by limitation. It is further argued by learned counsel that in view of clean acquittal in C.C.No.614 of 2002, dated 15-06-2016 the petitioner herein cannot be fastened with any liability. It is further contended by learned counsel that in view of the findings of the House Committee in its report, dated 10-01-1990 the very action of respondents in seeking to recover the amount is untenable.

On the contrary, it is vehemently contended by learned counsel for the respondents, Sri N. Jayasurya, that there is no illegality nor there exists any procedural infirmity in the impugned action and in absence of the same the questioned order is not amenable for judicial review under Article 226 of the Constitution of India. It is further submitted by learned counsel for the respondents that since the order of punishment became final and as the petitioner suffered the punishment, it is absolutely not open for the petitioner herein to dispute the amount sought to be recovered from him. It is further argued by learned counsel that in absence of any dispute as to the quantum of amount fixed by the Domestic Enquiry Officer, the question of reference under Section 61 of the A.P. Co-operative Societies Act does not arise. It is further submitted that since the respondents offered complete opportunity to the petitioner herein, the complaint as regards

violation of principles of natural justice by the petitioner is untenable. It is also submitted by learned counsel for the respondents that in view of the Memo bearing reference No.8274/L&C/SEC-3/CO/B2, dated 10-12-1982 issued by the Apex Society, the respondents distributed amount equally among all the staff members, as such the impugned action cannot be faulted.

In the above backdrop, now the issues which this Court is called upon to consider and answer in the present writ petition are:

1. *Whether the order under challenge is sustainable and tenable and whether the same is in accordance with the provisions of A.P. Co-operative Societies Act and the Rules framed thereunder?*
2. *Whether the petitioner is entitled for any relief under Article 226 of the Constitution of India?*

The first and foremost submission of learned counsel for the petitioner is that since the impugned action was not preceded by any regular enquiry by framing a charge, the entire exercise undertaken by the respondents is unsustainable. As evident from the material available before this Court, the respondents herein did not frame any charge for the recovery of the amount.

As per bye-law No.43 of Special Bye-laws relating to service conditions of the employees of the respondent

institution the allegation on misappropriation of money or properties falls under gross misconduct. Bye-law No.48 of the said bye-laws stipulates procedure for holding enquiry for disciplinary action. Clause-1 of the said bye-law stipulates that an employee against whom a disciplinary action is proposed to be taken shall be given a charge sheet, clearly mentioning the charges made against him.

In the instant case, the respondents herein did not undertake any such exercise as contemplated under the said bye-laws and on the other hand, strait away issued a show cause notice and fixed the liability obviously falling back on the enquiry report submitted earlier during the course of domestic enquiry. In the considered opinion of this Court the said action on the part of the respondent authorities cannot be sustained in the eye of law and in absence of any charge the recovery sought to be made by the petitioner herein cannot be permitted.

Yet another submission made by learned counsel for the petitioner is that the impugned action is also in complete derogation of Section 61 of the A.P. Co-operative Societies Act r/w. Rule 49 of A.P. Co-operative Societies Rules, 1964.

Chapter VIII of the A.P. Co-operative Societies Act deals with the settlement of disputes and Section 61 of the A.P. Co-operative Societies Act, 1964 deals with the disputes,

which may be referred to the Registrar. According to the said provision of law, if any dispute, touching the constitution, management or the business of a society, other than a dispute regarding disciplinary action taken by the society or its committee against a paid employee of the society, arises such dispute shall be referred to the Registrar for decision.

Clause (c) of Section 61 of the A.P. Co-operative Societies Act, 1964 deals with the dispute between the society or its committee, and any past committee, any officer, agent or employee, or any past officer, past agent, or past employee or the nominee, heir or legal representative of any deceased officer, deceased agent or deceased employee of the society.

As per Rule 49 of the A.P. Co-operative Societies Rules, 1964 framed under the said legislation the period of limitation is also fixed for referring such dispute.

In the instant case, admittedly, beyond the period of limitation as stipulated under Rule 49 of the A.P. Co-operative Societies Rules, 1964 the impugned action is sought to be initiated. Therefore, on this ground also the impugned action is liable to be set aside. The contention that in the absence of any dispute, the reference under Section 61 of the A.P. Co-operative Societies Act, 1964 does not arise, is untenable, as the petitioner disputed the same in

the explanation and also in view of the findings in the report of House Committee.

Another crucial aspect, which needs to mention, is that the house committee in its report categorically found that the imperial staff did not cause any loss to the organization. Therefore, this Court does not find any justification on the part of the respondents herein in distributing the amounts on the strength of a Memo issued by the Apex Society.

Yet another crucial aspect is that the criminal prosecution launched against the petitioner herein in C.C.No.614 of 2002 on the file of the Court of Judicial Magistrate of First Class, Kurnool, ended in acquittal. In view of the above situation, this Court has absolutely no hesitation to hold that the impugned action on the part of the respondents cannot be sustained in the eye of law.

Accordingly, the writ petition is allowed, setting aside the Memo vide Ref.No.Admn-II/CO/KR/KNL/Janatha scandal/87, dated 06-02-2003 issued by the 2<sup>nd</sup> respondent.

Miscellaneous Petitions pending, if any, shall stand closed. There shall be no order as to costs.

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**A.V. SESA SAI, J**

December 14, 2016

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