

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.59 OF 2006

ORDER:

This petition is filed for a writ of *Mandamus* declaring the show cause notice dated 14.11.2005 of the 2nd respondent as illegal and arbitrary and consequently to set aside the same and further direct the respondents to pay the terminal benefits i.e., earned leave encashment and gratuity together with interest @ 18% p.a.

The case of the petitioner is that he was initially appointed as Junior Assistant in the year 1969 in the 1st respondent-Corporation and later promoted as Senior Assistant in the year 1977. He attained superannuation on 31.05.2005 and consequently, the respondents relieved the petitioner from service from the said date. While so, on 04.06.2005, the petitioner received a notice dated 04.06.2005 wherein it is alleged that while the petitioner was working as Junior Assistant at Arku Valley during 1990 to 1997 certain deficits occurred in respect of the stocks dealt by the petitioner and he is required to pay a sum of Rs.1,69,863.45 Ps. To the said notice the petitioner submitted a detailed explanation on 22.06.2005 disputing the allegations and also stating that the allegations are vague and without any basis and that as per the proceedings of the 1st respondent dated 03.10.1996, adjustments were allowed by the corporation in respect of the very same deficits i.e., the deficits were within the allowable margin. The petitioner also brought to the notice of the respondents that the Corporation does not have complete record and also stated that the action of the respondents in trying to recover the alleged deficits pertaining to the old period after his retirement is illegal and the said claim of the respondents is also time barred. But, the 2nd respondent without considering the same, again

issued show cause notice dated 29.07.2005 by revising the deficit amount to Rs.2,69,312.45 Ps. and required the petitioner to submit explanation. Petitioner again submitted explanation on 14.11.2005 and thereafter, the 2nd respondent once again issued show cause notice dated 14.11.2005 mentioning that an amount of Rs.3,49,821.23 Ps was found to be inadmissible deficit, which was allegedly caused by the petitioner during the years from 1990-91 to 1994-1995, for which the petitioner once again submitted explanation dated 27.11.2005 stating that there is no basis for the claim. Since the respondents are trying to recover the said alleged deficit amounts mentioned in the show cause notice from the petitioner's terminal benefits, the petitioner filed the present writ petition challenging the final show cause notice dated 14.11.2005.

Respondents filed counter stating that the writ petition does not lie against a show cause notice. It is also stated that even before retirement from service, proceedings were initiated against the petitioner for recovery of huge deficits for the periods from 1990-1991 to 1996-1997, amounting to Rs.10,62,557.30 and that a notice was issued on 22.09.2004, 10.12.2004, 12.01.2005 and a final notice on 24.05.2005, asking the petitioner to appear before AR/Auditor on 27.05.2005 to get the defects rectified. Petitioner himself declared the deficits caused by him and submitted write off proposals to a tune of Rs.5,65,799.60 Ps. claiming admissible drilage in terms of RCS approved norms and that considering the same, about Rs.4,14,168.55 Ps. were written off and inadmissible deficits to a tune of Rs.1,69,863.45 Ps. calculated at sale price/cost price whichever is high were arrived and the petitioner was issued with a notice on 04.06.2005 and responding to the same the petitioner filed explanation on 22.06.2005. After considering the explanation letter dated 04.07.2005 was communicated requesting the

petitioner to remit the said amount which was not challenged by him and on this ground alone the writ petition is liable to be dismissed. It is also stated that subsequently, considering the proposals in respect of MFP deficits to a tune of Rs.1,09,128.80 Ps. from the year 1992-1993 after following due procedure in vogue admissible portion of deficits to a tune of Rs.17,273.46 ps., were written off and inadmissible deficits to a tune of Rs.99,449/- calculated at sale price/cost price which ever is high were arrived and as such a revised show cause notice dated 29.07.2005 was issued to the petitioner. While the matter stood thus, further dues were ascertained and an amount of Rs.6,458.78 ps. was found due for recovery which is to be recovered from the petitioner towards balance instalments besides an amount of Rs.74,050/- was also found as audit deficit in FAR 1994-1995 which amounts were not allowed by the Auditor. Hence a revised show cause notice was issued on 14.11.2005 to the petitioner as to why the said amount of Rs.3,49,821.23 ps. towards inadmissible deficits, audit deficits and other dues shall not be recovered from him and requested him to submit explanation on or before 30.11.2005. Responding to the same, the petitioner submitted an application on 27.11.2005, seeking to produce certain records and without waiting for the order to be passed pursuant to the show cause notice dated 14.11.2005, the petitioner filed the present writ petition. The respondent finally sought for dismissal of the writ petition.

Heard learned counsel for the petitioner.

Though the matter was listed yesterday i.e. 18.02.2016, there was no appearance on behalf of respondents and even when the matter is listed today, there is no appearance on behalf of the respondents.

Learned counsel for the petitioner submits that the petitioner has retired after attaining superannuation on 31.05.2005 and that the A.P.Co-

operative Societies Rules, 1964 do not provide continuation or initiation of any disciplinary proceedings after retirement of the employee from the respondent Corporation. When once the Rules do not permit for continuation or initiation of disciplinary proceedings or for withholding of terminal benefits, respondents have no authority to issue show cause notice for recovery or for withholding of terminal benefits. He also submits that the alleged dues pertain to the period from 1990-1991 to 1996-1997 and the same is barred by limitation as the same cannot be recovered under Section 61(1) (c) of the A.P.Co-operative Societies Act, 1964 read with Rule 49 (2) of the A.P.Co-operative Societies Rules, 1964. The alleged claim of the respondents is barred under proviso of Rule-49(2) of the Rules.

In support of his contentions, the petitioner relied on the Judgment rendered by the Supreme Court in ***Bhagirathi Jena v. Board of Directors, O.S.F.C and others***^[1] and also Judgment rendered by this Court in ***L.Ranga Rao v. vice Chairman and Managing Director, Girijan Co-operative Corporation Limited, Visakhapatnam***^[2].

In the present case admittedly, the petitioner retired from service after attainment of superannuation on 31.05.2005 and as per impugned show cause notice certain deficits pertaining to the years 1990-1991 to 1996-1997 were found by the respondents. Admittedly, the impugned show cause notice is issued after retirement of the petitioner. As per ratio laid down by the Apex Court in **Bhagirathi's** case (supra 1), no disciplinary proceedings can be initiated or continued after superannuation of the employee in the absence of specific provision enabling the employer to initiate or continue disciplinary proceedings after retirement.

In ***Bhagirathi Jena v. Board of Directors, O.S.F.C and others***

(supra 1) it is held;

“5. It will be noticed from the above said regulations that no specific provisions was made for deducting any amount from the provident fund consequent to any misconduct determined in the departmental enquiry nor was any provision made for continuance of departmental enquiry after superannuation.

6. In view of the absence of such provision in the above said regulations, it must be held that the Corporation had no legal authority to make any reduction in the retrial benefits of the appellant. There is also no provision for conducting a disciplinary enquiry after retirement of the appellant and nor any provision stating that in case misconduct is established, a deduction could be made from retrial benefits. Once the appellant had retired from service on 30.06.95, there was no authority vested in the Corporation for continuing the departmental enquiry even for the purpose of imposing any reduction in the retrial benefits payable to the appellant. In the absence of such authority, it must be held that the enquiry had lapsed and the appellant was entitled to full retrial benefits on retirement.”

In the counter it is not indicated whether the rules of the respondent Corporation provide for any of such provision for continuation or initiation of Disciplinary proceedings against the employees after retirement. Further, the alleged amounts are also not determined and the impugned notice is only a show cause notice which was issued to the petitioner after retirement. In view of the law laid down by the Apex Court in the aforesaid Judgment, the respondents cannot initiate proceedings for recovery of the amount from the terminal benefits as is done in the present case. When the impugned show cause notice is without authority of law, question of submitting explanation by the petitioner also does not arise. Normally, this Court will not interfere with the show cause notice, unless it is issued without jurisdiction. But, in the present case the impugned show cause notice is issued without authority of law, as such,

the same has to be quashed.

Section 61(1) (c) of the A.P.Co-operative Societies Act, 1964 reads as follows;

“61. Disputes which may be referred to the Registrar:- (1)

Notwithstanding anything in any law for the time being in force, 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_____

(c) 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;

Such dispute shall be referred to the Registrar for decision.

Rule-49(2) of the A.P.Co-operative Societies Rules reads as follows;

“49. Procedure for arbitration and settlement of disputes:__(1) A reference to the Registrar of any dispute under Section 61 of the Act shall be in writing.

(2) the period of limitation for referring a dispute touching the constitution, management or the business of a society to the Registrar under sub-section(1) of Section 61 of the act shall be regulated by the provisions of the Limitation Act, 1963 as if the dispute is a suit and the Registrar, a Civil Court:

Provided that a dispute arising between the parties mentioned in clause (a) of sub-section (i) of section 61, shall, where the dispute relates to any act or omission on the part of the Society or its committee, or any past committee, any past officer, past agent or past employee, or the nominee, heirs of legal representatives of any deceased officer, deceased agent or deceased employee of the society be referred to the Registrar within [six years] from the date on which the act or omission with reference to which the dispute arose, had occurred.

In the present case, admittedly, the petitioner is a retired employee, the present case falls under rule 49 (2). As per the said Rule,

the time allowed for referring the dispute is '6' years. But, admittedly, the same has also lapsed since dues pertain to petitioner which arose prior to the year. As such, the claim is barred by limitation. Further, this Court by way of interim order directed the respondents to pay the petitioner, terminal benefits such as earned leave encashment and gratuity and the same was also made absolute. It is stated by the learned counsel for the petitioner that terminal benefits have already been paid.

In view of the above facts and circumstances, the impugned show cause notice dated 14.11.2005 issued by the 2nd respondent is liable to be set aside.

Accordingly, the writ petition is allowed setting aside the show cause notice dated 14.11.2005, issued by the 2nd respondent. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition, shall stand closed.

A.RAJASHEKER REDDY, J

19.02.2016
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[\[1\]](#) AIR 1999 Supreme Court 1841

[\[2\]](#) 2013 (6) ALT 670