

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.2422 of 2006

ORDER:

This writ petition is filed seeking the following prayer:

“to call for the records in A.P.S.E.Case No.1 of 2003 on the file of the Authority Under Sec.48 of Andhra Pradesh Shops and Establishment Act-cum-Assistant Commissioner of Labour, Eluru, West Godavari District and quash the same by issuing the Writ of certiorari as the same is illegal, arbitrary and without jurisdiction and contrary to law and pass such other order or orders which are deem fit and proper. ”

The case of the petitioner-Society is that respondent No.2 filed a case in A.P.S.E.Case No.1 of 2003 under Section 48 of the Andhra Pradesh Shops and Establishment Act, 1988 before the 1st respondent alleging that she was appointed as clerk on 01.03.1999 in the petitioner's society; that she continued her services upto 31.10.2002; that her services were terminated without assigning any reasons and the termination was illegal and sought for reinstatement of her services with back wages.

The petitioner-Society contested the matter stating that respondent No.2 was never appointed as an employee since there is ban of appointments from the year 1995; that the norms fixed under Section 116-C of the A.P.Co-operative Societies Act, 1964 (for short 'the Act') and Rule 28 of the Andhra Pradesh Shops and Establishments Rules, 1990 (for short 'Rules') do not

permit the petitioner-Society to appoint 2nd respondent; that petitioner-Society also stated before the 1st respondent that respondent No.2 used to attend miscellaneous works and was paid Rs.25/- per day, which was enhanced to Rs.30/-; that there is no relationship of employee and employer between respondent No.2 and petitioner-Society; that during pendency of the said case, the Government of Andhra Pradesh brought into existence Ordinance 11 of 2003 which was promulgated on 30.12.2003 by making amendment to the A.P.(Regulation of Appointments to Public Services and Rationalisation of Staff pattern and pay structure) Act, 1994 by extending the provisions of the said Act to the Co-operative Societies also and hence I.A.No.4 of 2004 is filed by the petitioner-Society requesting respondent No.1 to abate the proceedings. But respondent No.1 vide its order dated 28.01.2006 allowed A.P.S.E.Case No.1 of 2003 filed by respondent No.2 holding that jurisdiction of the authority not specifically barred under Ordinance 11 of 2003 and directed the petitioner-Society to reinstate respondent No.2 with continuity service with back wages. Aggrieved by the same, this writ petition is filed.

Learned counsel for the petitioner submits that respondent No.2 was not appointed on regular basis and there was no approval for appointing her into the services of the Society as per Section 116-C (4) of the

Act; that respondent No.2 was appointed for doing casual work on daily basis and she was paid Rs.25/-, which was enhanced to Rs.30/- later and that there is no employer and employee relationship; that when the appointment of respondent No.2 is not in accordance with 116-C of the Act and Rule-28 of the Rules, the question of giving notice as per Andhra Pradesh Shops and Establishment Act, 1988 does not arise. He also relied on the decision reported in **A.Subramnayam Naidu v. Government of Andhra Pradesh, Co-operation Dept.** [\[1\]](#)

On the other hand, the learned counsel for respondent No.2 submits that in the cross examination, RW1 admitted that the respondent No.2 herein was appointed in the petitioner-Society and resolution also made for her appointment seeking approval from the Registrar as such petitioner-Society should not have terminated the services of respondent No.2 without following due process under Shops and Establishments Act by issuing notice. As per Section 47(6) of A.P.Shops and Establishments Act, the term 'employee' include part time employee also and there is no evidence to show that respondent No.2 is working as only part time employee and in view of the same sought for dismissal of the writ petition.

Section 116-C of the A.P.Co-operative Societies Act, 1964, reads as follows:

"116-C. STAFFING PATTERN OF SOCIETIES:-

(1) A society shall have power to fix the staffing pattern, qualifications, pay-scales and other

allowances of its employees with the prior approval of the Registrar of co-operative Societies subject to the condition that expenditure towards pay and allowances of the employees shall not exceed two per cent of the working capital or thirty per cent of the gross profit, in terms of actuals in a year whichever is less.

(2) No appointment or removal of a Chief Executive by whatever name called of any society, or class or societies as may be prescribed which are in receipt of financial aid from the Government, shall be made without the prior approval of the Registrar of Co-operative Societies.

Rule-28 of the A.P.Co-operative Societies Rules
read as under:

28. Officers and servants of societies

:- (1) No society shall appoint any person as its paid officer or servant in any category of service, unless he possesses the qualifications and furnished the security as specified by the Registrar, from time to time, for such category of service in the society or for the class of societies to which it belongs.

(2) All the existing societies with and without state aid shall, if not already approved, prepare service rules, within 45 days from the day of enforcement of these rules and submit to the Registrar for approval, which, among others, shall include the following if already not done so, with regard to staffing pattern, Scale of pay and allowances, Method of filling of posts, qualifications, and rules regarding disciplinary proceedings and other service matters,-

(3) All existing societies shall also furnish to the Registrar details of:

(i) Persons working in the society against the existing posts along with their qualifications;

(ii) Job Chart/Nature of work/pay Scales for each post/categories;

(iii) Staff in excess of staffing pattern if any, prescribed by Registrar;

(iv) Staff cost and contingent cost, and its percentage to working capital and gross income;

(v) identification of surplus staff or inadequate staff, if any, category wise, and how the society, intends to deal with surplus staff or inadequate staff;

(vi) Pay scales of existing staff and when they are approved and by whom;

(vii) Working capital and Gross Income;

(4) Every society within 45 days of registration shall frame and submit to the Registrar for approval of its staffing pattern which shall include,-

(a) Service rules for its employee, specifying staffing pattern, qualifications, method of appointment, scales of pay and allowances, responsibilities, duties, training, securities and disciplinary rules etc.,

(b) revision of any of the service rules or pay scales etc. shall be made by the General Body on the recommendation of the managing Committee provided the staff cost and contingencies are less than 2% of the working capital or less than 30% of the Gross Profit under intimation to Registrar of Coop-Societies. Provided further that if it is found to be in excess of the said norms either in audit, inspection or inquiry, the excess so spent shall be recoverable from members of the Managing Committee concerned under Section 60(1) of the Andhra Pradesh Coop.Societies Act and the Registrar shall have the powers to cancel such pay revision or modify it as deemed fit and adjust securities furnished by the paid servants.

(c) A Society in receipt of State aid shall not frame any rules relating to age of retirement, leave rules, leave travel concession and rules relating to loans to employees which shall be in excess of the subsisting rules of Government concerning these matters.

(4) No society shall appoint as its paid officer or servant in any category of service any person who is related to any director or member of the committee of a financing bank to which the society is affiliated.

(5) Notwithstanding anything contained in the Bye-laws/special bye-laws service regulations or common cadre regulations of the co-operative societies every paid servant and officer of the society other than those in the last grade service shall retire from service on the After Noon of the last date of the month of which he attain the age of 58 years.

In this case, I.A.No.4 of 2004 was filed by the petitioner for abatement of claim of respondent No.2 in view of Ordinance 11 of 2003 was dismissed and writ petition filed against the same is also dismissed. But respondent No.1 has not considered the aspect whether there was approval of appointment of

respondent No.2 as per Section 116-C. In the evidence of RW.1 also it is clear that the petitioner-Society passed a resolution for appointment of respondent No.2 and the same was sent for approval. In the cross examination RW.1 stated that name of respondent No.2 not found in the resolution. Even according to respondent No.2 , in the cross examination she is admitted that she does not have qualifications prescribed under the Co-operative Societies Rules and also she does not know about the approval of Registrar of Cooperatives. She admitted that no appointment order was also issued to her. RW.1 in his evidence clearly says that respondent No.2 only working for Rs.25/- per day. Even in the resolution dated 20.07.1999 the name of respondent No.2 is not there. When there is no approval by the Registrar as envisaged under Section 116-C (ii) of the Cooperative Societies Act, question of petitioner-Society appointing respondent No.2 does not arise and will not come under the Act. In the similar circumstances, this Court, in A.Subramanyam Naidu (supra) held as follows:

42. No doubt, the employees are entitled to minimum wages and the employer who cannot pay the minimum wages has no right to engage them and there cannot be any justification to run the industry. Therefore, to pay the minimum wages, it is the duty of the society to implement the provisions of [Section 116-C\(1\)](#) of the Act. Before implementing the said provision, it is not open for its employees to have the grievance of non-payment of minimum wages. They are appointed contrary to the provisions of [Section 116-C\(1\)](#) and

therefore, unless their services are regularized in the manner as contemplated under [Section 116-C\(1\)](#), they cannot have any grievance to complain against the implementation of minimum wages.

44. In the case of Ashwani Kumar Vs State of Bihar, the Supreme Court held that as the appointments had been made illegal and contrary to all recognized recruitment procedure and were highly arbitrary, the same were not binding on the State of Bihar. As the initial appoints have been made contrary to the statutory rules, the continuance of such appointees must be held to be totally unauthorized and no right would accrue to the incumbent on that score. The Supreme Court also held that it cannot be said that principles of natural justice were violated or full opportunity was not given to the employees concerned to have their say in the matter before their appointments were recalled and terminated. The said principles laid down by the Apex Court are equally applies to the present cases as the appointments of the petitioners are contrary to the provision of [Section 116-C\(1\)](#) and unless the staffing pattern, pay scales is approved fulfilling the conditions laid down therein, the petitioners cannot complain about the violations of other welfare enactments.”

Law laid down in above case squarely applies to the facts of the present case.

Accordingly, this writ petition is allowed and the impugned order dated 28.01.2006 in A.P.S.E.Case No.1 of 2003 passed by the Andhra Pradesh Shops and Establishment Act-cum-Assistant Commissioner of Labour, Eluru, West Godavari District is set aside. No costs.

Miscellaneous petitions, pending if any, shall stand closed.

A.RAJASHEKER REDDY, J

Date: 03-03-2016
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[\[1\]](#) 2005(4) ALT 684