

HONOURABLE SRI JUSTICE S.RAVI KUMAR

WRIT PETITION No.15127 OF 2003

Dated 9-3-2016

Between:

Syed Mohiuddin Hussain.

..Petitioner.

And:

The District Co-operative Officer, Medak District
at Sangareddy and others.

..Respondents.

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HONOURABLE SRI JUSTICE S.RAVI KUMAR

WRIT PETITION No.15127 OF 2003

ORDER:

This writ petition is filed to issue direction, more particularly one in nature of writ of mandamus declaring the impugned action of third respondent in issuing proceedings dated 4-7-2003 suspending the petitioner from service for drawal of salaries which is in pursuance of general body resolution dated 28-12-2002 as illegal, arbitrary and violative of article 14 of Constitution of India and also contrary to provisions of A.P.C.S. Act and consequently, set aside the same and pass such other orders in the interest of justice.

The case of petitioner as per affidavit is as follows:

Petitioner is Paid Secretary of Primary Agricultural Cooperative Society and he was suspended on 14-6-1999 and he was continued for more than one year and on pursuation, second respondent issued orders of reinstatement on the basis of which he submitted joining report to third respondent but he was not allowed to join duty on the ground that disciplinary enquiry was pending.

Petitioner then filed W.P.No.16715 of 2000 and the same was disposed of on 16-7-2001 directing the third respondent to complete disciplinary enquiry within three months and with further direction that arrears of subsistence allowance if any shall be paid to the petitioner in the meantime proceedings were issued on 25-1-2002 stating that charges are proved but the petitioner has not received any enquiry report but a lenient view was taken and the petitioner was reinstated into service fixing the scale at Rs.3,500/-. In the meantime, General Body of third respondent passed resolution on 28-12-2002 resolving to treat the period of suspension as on duty and resolved to pay salary to the petitioner and in pursuance of the said resolution, petitioner has drawn the amount towards his salary but now third respondent contended that the drawal of said amount is not correct and contended that it amounts to misappropriation and issued proceedings dated 4-7-2003 keeping the petitioner under suspension and the same is illegal and contrary to law. He contended that the action of third respondent would amount to sitting over the resolution passed by General Body of the society and the same is contrary to the A.P.C.S. Rules and also arbitrary and therefore, liable to be quashed.

Counter affidavit is filed on behalf of third respondent disputing affidavit averments of the petitioner. Contentions of third respondent as per counter affidavit are as follows:

As per the directions of this court in W.P.No.16715 of 2003, an enquiry was conducted and the Enquiry Officer in his report held that the charges leveled against the petitioner are proved and the Disciplinary Authority after considering the entire material took a lenient view by taking long service of

petitioner and imposed punishment of reinstatement with minimum scale of Rs.3,500/- per month and also paid Rs.54,233-40ps as subsistence allowance for the period from 11-6-1999 to 30-6-2000. It is contended that petitioner who is Chief Executive of the society has managed the things without placing the directions/instructions issued by financing bank/J.R/District Cooperative Officer before P.I.C. Committee of the society. PACS is running in loss to the extent of Rs.26.73 lakhs from audit certificate dated 19-2-2002 and the Managing Committee without noticing the punishment imposed on 25-1-2002 passed the resolution.

It is further contended that petitioner without remitting the money collected from loanee adjusted it towards his arrears of salary in the books of accounts by suppressing punishment imposed by the Disciplinary Authority. It is contended that the disciplinary Authority fixed the salary at minimum scale of Rs.3,500/- and the petitioner has drawn full wages upto December, 2002 misguiding the General Body in the month of March, 2003 and since the action of petitioner is against statutory provisions of Section 116-C of APCS Act, 1964, issued proceedings to take disciplinary action and also to file Criminal Case against the petitioner for causing financial loss to the society. The suspension orders are only issued basing on the proceedings of second respondent dated 17-6-2003 and 14-5-2003 and the same was in accordance with rules. It is further contended that as per the byelaws of the society, salaries should be discussed in the Managing Committee and the same has to be placed before General Body for approval and procedure and byelaws were not followed in passing resolution dated 28-12-2002. It is contended that the petitioner is not

entitled for relief sought for in the writ petition and the writ petition is liable to be dismissed.

Heard arguments.

Both sides have submitted their arguments reiterating contentions of their respective parties.

As seen from the material, this writ petition is filed questioning suspension orders dated 4-7-2003 on the ground that petitioner has drawn his salary as per the resolution of the third respondent and there is no contravention of any rules.

On the other hand, it is the contention of the respondents that the petitioner being Chief Executive kept third respondent in a dark about punishment imposed on him i.e, reducing his scale to Rs.3,500/- and got the resolution passed and consequently withdrawn the amount for full pay and as the same was found to be contrary to the rules for initiating the disciplinary action, he was kept under suspension.

The main ground on which suspension order is challenged is that as the money was drawn as per the resolution, there is no fault on the petitioner therefore, keeping him under suspension is not warranted. From the material, it is clear that a disciplinary action was initiated against the petitioner for which a departmental enquiry was ordered and he was found guilty in that enquiry and a punishment of reducing his scale was ordered. Present allegation against the petitioner is that he has not placed the punishment order before the committee at the time of passing of the resolution and he has withdrawn full salary contrary to the punishment of reduction of scale. The correctness of these allegations and counter allegations have to be determined in a domestic enquiry and as seen from the counter affidavit of the respondent, the petitioner was kept under suspension only to initiate

departmental enquiry but the petitioner without waiting approached this court by way of this writ and obtained stay orders.

The contentions raised by the petitioner are defences available to him in the proposed departmental enquiry and without availing that remedy, he has invoked the jurisdiction of this court and in my view such remedy is not available to the petitioner. When specific allegations are made for violation of certain rules and procedures, the petitioner has every right to defend them by showing his innocence or the correctness of the action in drawing amount by him but he cannot prevent departmental enquiry to enquiry into the matter. When a departmental enquiry is contemplated, the disciplinary authority has power to put the employee under suspension and then initiate enquiry and it can also initiate enquiry without suspending the employee and that discretion would be exercised as per facts and circumstances of each case. Unless such discretion is arbitrary or in violation of procedure, such discretion cannot be interfered.

For these reasons, I am of the view that petitioner failed to show that the Disciplinary Authority acted arbitrarily in exercising its discretion in putting the employee under suspension, therefore, writ petition is devoid of merits.

Accordingly, this Writ Petition is dismissed, but, in the circumstances without costs.

As a sequel to the disposal of this writ petition, Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE S.RAVI
KUMAR

Dated 9-3-2016.
Dvs.

Dated 9-3-2016