

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No. 16716 of 2003

ORDER:

This writ petition is filed seeking a direction to call for the records pertaining to the impugned proceedings dated 23.06.2003 issued by the 1st respondent, and set aside the same, as illegal and arbitrary, and also for a consequential direction to reinstate the Petitioner into service.

2. Heard Sri D. Narsing Rao, counsel for the petitioner and the learned Assistant Government Pleader for Cooperation, appearing for the Respondents.

3. It is submitted by the counsel for the petitioner that the Petitioner was appointed as a Clerk in the 1st Respondent Bank on 05.03.1996 and his services were also regularized. While so, there were large scale irregularities by the then Managing Committee of the 1st Respondent and consequently, the Reserve Bank of India had cancelled the license issued to the 1st Respondent for running the Bank. The District Registrar of Cooperative Societies has superseded the Managing Committee of the 1st Respondent Bank and appointed a person-in-charge on 10.11.1999, and thereafter there was change of persons in the office of the said person-in-charge.

Be that as it may, the Petitioner has applied for medical leave on 14.05.2001, but the same was not sanctioned and the Management directed the Petitioner to resume duty, vide orders dated 08.06.2001, and as such the Petitioner has resumed duty, as directed.

4. The principal submission made by the learned counsel for the Petitioner is that the person-in-charge, namely Sri Y.Venkat Kishan, was harassing the Petitioner on one pretext or the other, and while so, the Petitioner was placed under suspension, vide proceedings dated 06.11.2001 by the 2nd Respondent-Revenue Divisional Officer, and the Petitioner has challenged the said suspension order by filing W.P.No.4456 of 2003, apart from challenging the non-payment of subsistence allowance. In the said writ petition, this Court granted an interim direction on 25.04.2003 to the respondents to pay subsistence allowance to the Petitioner. However, in spite of the said interim direction, the Respondents have not complied with the same, and on the other hand, basing on the enquiry conducted by the Respondents, the Petitioner was dismissed from service, vide Orders 23.06.2003.

The learned counsel for the Petitioner further submits that no enquiry was conducted, and if any enquiry is conducted it is only on a paper, and further contends that as no opportunity was given to the petitioner, nor he was informed about the dates on which the enquiry was conducted. Challenging the said orders of dismissal from service, the present writ petition is filed.

5. One of the main submissions made by the learned counsel for the Petitioner is that the Petitioner was dismissed from service by person-in-charge, who is not the competent authority to do so, and it is only the Revenue Divisional Officer-cum-Chairman of the Bank, who is competent to dismiss the Petitioner, and hence the impugned order

is liable to be set aside, apart from the other ground that no subsistence allowance was paid to the Petitioner.

6. The learned Assistant Government Pleader appearing for the Respondents submits that every opportunity has been given to the Petitioner; after following the due process of law only the Petitioner was dismissed from service for the proven misconduct in the enquiry conducted; and as such, no prejudice has been caused to the Petitioner.

7. I have considered the rival submissions made by both the parties. Admittedly, the Petitioner has an effective and efficacious remedy under the A.P. Shops and Establishments Act (for short, 'the Act'), because he is an employee of the Cooperative Bank registered under the A.P. Cooperative Societies Act. Though the Petitioner is attributing *mala fides* against one Sri Y. Venkat Kishan, who has issued the impugned orders, but strangely the Petitioner has not impleaded the said Venkat Kishan as party, and whereas earlier the Petitioner, while challenging the suspension orders, has impleaded him as party, but when it comes to challenging the impugned orders of dismissal, the Petitioner has not chosen to implead the said Venkat Kishan, in his personal capacity, as party in the present writ petition. Apart from that, when an effective and alternative remedy is available to the Petitioner, and the Petitioner was pursuing his remedies in a wrong forum, for all these sixteen years, in my considered opinion, it would be appropriate if the Petitioner is directed to first exhaust the remedies that are available to him under the Shops and Establishment Act, and upon such application being

moved to condone the delay, the Authority under the Act is directed to consider and pass appropriate orders duly taking into account that the Petitioner is pursuing his remedies in a wrong forum for all these years.

8. It is further brought to the notice of this Court that the Petitioner has attained the age of superannuation during the pendency of the writ petition, and since it is the case of dismissal pertaining to the year 2003, the Authority under the Act would consider and dispose of the application of the petitioner, which is to be preferred, within a reasonable period of two months from the date of such application/ appeal.

9. With this direction, the writ petition is disposed of. As a sequel, the miscellaneous applications pending, if any, shall stand closed. There shall be no order as to costs.

Abhinand Kumar Shavili, J

December 26, 2017

*Note: Issue copy in
Two days. (bo)
Kv*

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