

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE Dr. SHAMEEM AKTHER

W.P.No. 27633 OF 2017

DATED 24TH AUGUST, 2017

Between:

S.Jayasankar ... Petitioner

AND

The State of Andhra Pradesh,
Rep. by its Principal Secretary,
Home Department,
Secretariat Buildings,
Velagapudi, Guntur District, and others ... Respondents

Counsel for the petitioner : Sri V.Maheswar Reddy

Counsel for the respondents : G.P. for Services (A.P.)

THE COURT MADE THE FOLLOWING

ORDER: (per Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This Writ Petition is filed by the applicant in O.A.No. 2115 of 2017 feeling aggrieved by the dismissal of the said O.A. by the Andhra Pradesh Administrative Tribunal at Hyderabad (for short, 'the Tribunal').

2. The brief facts of the case are that the petitioner is a Head Constable, working in Zonal Intelligence Office, Kadapa. He is an Executive Member/Director of Devuni Kadapa Police Department Employees Mutually Aided Cooperative House Building Society Limited, Kadapa (for short, 'the Society'). An inquiry was initiated under Section 29 of the Andhra Pradesh Mutually Aided Cooperative Societies Act, 1995 (for short, 'the Act'), into the functioning of the said Society. The DLCO, Prodduturu, was appointed as inquiry officer and he submitted his report on 04-05-2016. Considering the said report, the Special Commissioner and Registrar of Cooperative Societies, passed an order, wherein he has recommended civil action against N.Chandra Sekhar Reddy, President, for recovery of Rs.6,53,358/- allegedly misappropriated by him. He has also recommended criminal action against him under Section 38 (4) of the Act for having misappropriated the funds of the Society. The Commissioner also referred to the recommendation made by the inquiry officer for initiating criminal action on promoter members including the present managing committee members for functioning without authority. Based on the inquiry report and also the order of the Special Commissioner and Registrar of Cooperative Societies, a criminal complaint was given, based on which F.I.R.No. 100 of 2016 was registered for offences under Sections 406, 409 and 420 of the Indian Penal Code and Section 38 (4) of the Act. As many as 26 persons have been arraigned as accused in the said criminal case. The petitioner was shown as accused No. 14 and one R.Vrishikeshava Reddy was

shown as accused No. 23. In the remand report of accused No. 1 dated 04-11-2016, the Inspector of Police, RIMS U/G Police Station, Kadapa, stated that as per the investigation done so far and basing on the available documentary evidence, *prima facie* case is made out against accused No. 1 and that the role of the remaining accused *i.e.* accused Nos. 2 to 26 will be verified in due course of investigation as to whether they are hand in glove with accused No. 1 or not.

3. The grievance with which the petitioner filed O.A.No. 2115 of 2017 before the Tribunal was that he is being overlooked for the post of Assistant Sub Inspector (Civil) merely on the ground of pendency of criminal case and that as neither the inquiry officer nor the investigation officer has found any *prima facie* case against him, it was wholly unjust for the respondents to overlook him for promotion. The petitioner has also alleged discrimination on the ground that R.Vrishikeshava Reddy – accused No. 23 was promoted as Additional Superintendent of Police (A.R.). The Tribunal has dismissed the O.A. *in limine* on the main ground that if the petitioner was overlooked for promotion, he has alternative remedies available under Rules 23 and 26 of the Andhra Pradesh State and Subordinate Service Rules, 1996 (for short, 'the Rules').

4. On 21-08-2017, we have adjourned the case to enable learned Government Pleader to obtain instructions as to why the petitioner's case was overlooked when accused No. 23 to the criminal case was promoted as Additional Superintendent of Police (A.R.). On 22-08-2017 Learned Government Pleader has requested for further adjournment for instructions on the above aspect. Today, again a further adjournment has been sought. However, as we have decided to dispose of the Writ Petition on merits *dehors* the plea of the petitioner regarding discrimination, we have declined to adjourn the case.

5. The reasoning of the Tribunal, that the petitioner has alternative remedy under Rules 23 and 26 of the Andhra Pradesh State and Subordinate Service Rules, 1996 (for short, 'the Rules'), is wholly misconceived. These Rules are reproduced hereunder:

"23. An order appointing a member of a service or class of service or category, to a higher post by transfer or by promotion may, within a period of six months from the date of such order, be revised by an authority to which an appeal would lie against the order of dismissal passed against a member of a service, class or category. Such revision may be made by the appellate authority aforesaid, either on its own motion or on an appeal filed by the aggrieved member of the service, class or category:

26. Appeal against seniority or other conditions of service: -

- (a) Except where otherwise provided in these or the special rules, an appeal shall lie against an order fixing the seniority of a person or affecting any conditions of service, passed by the appointing authority, to the authority to whom an appeal would lie against an order of dismissal passed against the member of the service, class or category.*
- (b) The powers in sub rule (a) shall be exercised by the Head of the Department, if he is not the appellate authority, or by the State Government on its motion, or on an appeal received by the Head of the Department or the State Government, as the case may be.*
- (c) The appellate authority, if it is not the Head of the Department or the Government, shall dispose of such appeal within a maximum period of one year. If the appeal has not been disposed of within the aforesaid period, the head of the department or the state government may intervene in the matter, for sufficient reasons to be recorded in writing and take such action as may be considered necessary by them in the matter.*
- (d) No appeal for restoration of seniority or assignment of notional seniority on par with his junior shall be entertained by the*

appellate authority after a period of 90 days from the date on which junior was promoted.

A perusal of these Rules would show that no appeal is maintainable by a person whose case for promotion is overlooked.

6. The facts referred to above would show that so far, no *prima facie* case has been made out on the involvement of the petitioner in the alleged misappropriation of funds of the Society. It is only the President of the Society who was found guilty of misappropriation and the only reason for registering the criminal case against the petitioner is his continuance as managing committee member allegedly without authority. Therefore, we do not find any semblance of justification for the respondents to overlook the petitioner for promotion to the post of Assistant Sub Inspector (Civil) on account of the fact that a criminal case is pending against him.

7. In the above facts of the case, the order of the Tribunal is set aside. The Writ Petition is allowed. The respondents are directed to forthwith consider the case of the petitioner for promotion as Assistant Sub Inspector (Civil) without reference to the pendency of the criminal case.

8. As a sequel to disposal of the Writ Petition, W.P.M.P.No. 34330 of 2017 shall stand closed as infructuous.

C.V.NAGARJUNA REDDY, J.

Dr. SHAMEEM AKTHER, J.

Date: 24-08-2017.

JSK