THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.2830 of 2006

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed seeking the following relief:

> '..to issue a Writ, Order or Direction morefully in the nature of Writ of Mandamus declaring the proceedings in Ref.No.CDR/F/159/D/285 dated 18-10-2005 and consequential notice in ref.No.CDR/F/159/D.400 dated 24-01-2006 of the 1st respondent herein Ref.No.Enq/KUR/2005, dated 30-01-2006 of the 3rd respondent herein as illegal, improper, arbitrary and unenforceable and direct the respondents to pay the Gratuity and Leave Encashment amount with interest to the petitioner..'

2. I have heard the submissions of *Smt. K. Sesharajyam*, learned senior counsel representing *Sri K. Chaitanya*, learned counsel for the writ petitioner, and of *Sri A.H. Ramakrsihna Rao*, learned Standing Counsel appearing for the respondents. I have perused the material record.

3. The facts of the case are as follows:

At a time when the petitioner worked at the Head Office of AP State Co-operative Central Bank (hereinafter 'the Bank'), Hyderabad, certain allegations, which related to the period during which he worked as in-charge General Manager of District Co-operative Central Bank, Kurnool, were levelled against him. A memo, dated 02.11.2001, issued by the respondent was served upon him, on 06.11.2001. He gave a reply, dated 26.12.2001. A further memo, dated 27.06.2002, was issued by the Chief General Manager of the Bank alleging misconduct during the period he worked as in-charge General Manager, District Co-operative Central Bank, Kurnool. The petitioner submitted a further reply. Eventually, the charge memo, dated 09.01.2003, was issued by formulating verbatim the following charges: 'Charge no.1: '*that B.*

Ramakrishna Reddy, the then GM, DCCB, Kurnool, had collected amounts from the Br. Managers during the time of opening of Banks' new building and during the visit of House Committee members to the DCC Bank in the year 1998 but booked expenditure in the DCCB a/c and used the collected amounts for his personal gains. Thus, he had acted against the interest of DCC Bank, Kurnool.'; Charge No.2: '*that Sri B. Ramakrishna Reddy, former GM, DCCB, Kurnool had effected transfer of staff in DCC Bank Kurnool in violation of the transfer policy of the Bank. He had also allowed Asst. Managers to hold full charge of the post of Managers in some of the branches though regular managers are available. Thus, he acted detrimental to the interest of Bank.*'; Charge No.3: '*that Sri B. Ramakrishna Reddy, former GM, DCCB, Kurnool had irregularly sanctioned personal loans to staff and Gold loans in some of the branches of DCC Bank in violation of norms and acted against the interest of DCC Bank, Kurnool*'.; Charge No.4: '*that several irregularities were noticed during the tenure of Sri B. Ramakrishna Reddy as GM, DCCB in advancing of SAO Loans, LT Loans, NPS loans and in adjustment of interest rebate. Thus, Sri B. Ramakrishna Reddy has acted detrimental to the interest of DCC Bank.*'; Charge No.5: '*that many corrupt practices, irregularities & malpractices of the Br.Managers, PACs Chairmen and Secretaries were noticed and mismanagement of PACS by the paid Secretaries/Presidents of PCAS in Kurnool District which resulted in losses to 171 PACS during his tenure but he failed to check these irregularities. Thus, he had acted against the interest of the Bank*'. The petitioner submitted a letter, dated 21.02.2003, and sought for supply of certain material documents including the report of omissions and commissions against him, if any, submitted to the cadre authority. A reply, dated 22.03.2003, was sent to the petitioner enclosing report, dated 23.10.2001, of the Intelligence Department of the State and a petition, dated 17.06.2002, received from K. Anand. The petitioner sought further documents. The 1st respondent issued a letter, dated 08.04.2003, stating that all necessary documents and information is already communicated to the petitioner. Thereafter, 1st respondent did not consider the further reply, dated 02.05.2003, of the petitioner complaining that enquiry report submitted by the Zonal Manager is not supplied to him and appointed an enquiry officer *vide* his proceedings, dated 18.07.2003, for conducting a domestic enquiry. The petitioner filed a writ petition in W.P.No.16370 of 2003 to quash the charge memo, dated 09.01.2003, *inter alia,* contending that it is against regulation 28(C) of the Common Cadre Regulations. This Court, by order, dated 25.07.2005, allowed the said writ petition and set aside the charge memo, dated 09.01.2003, observing that the said order of this Court does not preclude the respondent to take appropriate action against the petitioner in accordance with the provisions and as per law. Thereafter, by proceedings dated 18.10.2005, the 1st respondent issued charge memo by referring to the same old charges mentioned in the charge memo, dated 09.01.2003, *inter alia,* stating that the Cadre Committee has reviewed the entire disciplinary case with particular reference to the orders of this Court and authorised the Managing Director/Member Secretary to issue a fresh charge memo. The Managing Director of the Bank, therefore, issued the charge memo, dated 18.10.2005, in his capacity as Member Secretary of the Cadre authority having been duly authorised by the Cadre authority.

4. Aggrieved of the said charge memo and the consequential proceeding and notice, the writ petitioner filed the present writ petition.

5. In this setting of facts, the case of the writ petitioner, in brief, is this:

The earlier charge memo, dated 09.01.2003, was set aside by this Court, *vide* orders dated 25.07.2005 in WP.No.16370 of 2003 *inter alia,* holding that the regulation 28(C) makes it clear that the cadre authority is competent to initiate departmental proceedings, but, the regulation does not define what is meant by 'cadre authority'; and, since the petitioner retired from service, regulation 28(C) is only applicable to him; therefore, the cadre authority is alone competent to proceed against a retired cadre officer for any omissions and commissions; and, since the Member Secretary is defined under the relevant regulations, he cannot be the Cadre Authority; and, the Member Secretary means the Managing Director of the Bank, who shall function as Ex-Officio Member Secretary of the Cadre committee; and, by no stretch of imagination, it can be said that he is the cadre authority to initiate disciplinary proceedings against the retired employee. Therefore, the earlier charge memo, dated 09.01.2003, which is admittedly issued by the Member Secretary is without jurisdiction and was set aside by this Court. Now making the self same allegations and mentioning the same old charges, the charge memo, dated 18.10.2005, was again issued by the same Member Secretary to the petitioner by stating that the cadre committee has reviewed the entire disciplinary case with particular reference to the orders of the High Court and that it was resolved *vide* circular, dated 19.09.2005, to authorise Managing Director/Member Secretary to issue a fresh charge memo and take further disciplinary action as per Cadre Regulation No.28(C) and that in accordance with the said resolution, the charges were framed and the charge memo was issued. Under regulations, the cadre authority has no jurisdiction to take action against retired employee after one year of retirement. If the cadre authority has no authority, the cadre authority authorising the Member Secretary of the cadre authority to issue a charge memo does not arise. The cadre authority has no authority to delegate its powers to any person or authority as a delegated authority cannot further delegate its powers. Under Regulation 28(C) any undertaking given by an employee subjecting himself for disciplinary action is valid only for one year. The petitioner retired from service, on 30.06.2002; and, after 30.06.2003, the respondents have no jurisdiction to initiate any disciplinary action against the petitioner. There is separate procedure for imposing minor and major penalties. For imposing minor penalty no enquiry officer need be appointed. Since in the case of the petitioner, a charge memo was issued and an enquiry officer was appointed, the same indicate that the intendment is to impose a major penalty. This petitioner retired on attaining the age of superannuation. No major penalty can be imposed. There is no provision for withholding the retirement benefits. Gratuity and amount due towards encashment of leave are not paid and the same are withheld, though the same cannot be withheld. The petitioner's requests to release the same are not being considered. The initiation of disciplinary proceedings is illegal, improper, *mala fide* and without jurisdiction. After issuance of the charge memo, by proceedings, dated 24.01.2006, the 3rd respondent was appointed as enquiry officer; and, by proceedings, dated 30.01.2006, the 3rd respondent issued notices calling upon the petitioner to appear before him for enquiry, on 18.02.2006. The charge memo as well as the said proceedings, dated 24.01.2006, and notice, dated 30.01.2006, are liable to be set aside in the facts and circumstances stated.

6. The case of the respondents as stated in the counter affidavit of the General Manager (HRD & legal) of the Bank, in brief, is this:

A preliminary enquiry was conducted, on 21.06.2002, against the petitioner by the former Zonal Manager, Kadapa; and, he submitted a report, dated 27.08.2002. One of the allegations against the petitioner is that he had sanctioned loans to the employees who were not getting 1/3 of their salary. It was also observed that the petitioner had sanctioned loans to five employees during the year 1995 without following the norms. Preliminary enquiry report need not be communicated to the petitioner. In the charge memo no reference was made to such reports. Only records that will be relied upon during domestic enquiry need be supplied to the petitioner. As per the Common Cadre Regulation no.2(i) Cadre Committee means the Committee which may be constituted by the Registrar of Co-operative Societies for exercise of such powers as specified in the regulations, whereas the cadre authority is a statutory body comprising of Cadre Committee, Selection Committee and Cadre Secretariat etcetera. The 1st respondent, Managing Director/Member secretary of the cadre authority of the Bank shall have powers of general administration of cadre authority. The Managing Director of the Bank functions as ex-officio Member Secretary of the cadre authority. Hence, the 1st respondent is empowered to initiate disciplinary action against a retired cadre officer as per provisions of regulation 28(C). It is true that the petitioner filed a writ petition in W.P.No.16370 of 2003 and this Court passed orders, dated 25.07.2005, and gave liberty to the respondents to proceed with enquiry and passed orders as sought for by the petitioner. In view of the said orders of this Court, a resolution dated 19.9.2005 was passed resolving to authorise Managing Director/Member secretary to issue a fresh charge memo to the petitioner and take further disciplinary action as per cadre regulation no.28(C); in accordance with the said resolution, the subject charge memo, dated 18.10.2005, was issued. The petitioner submitted his explanation. As the said explanation was found not satisfactory, domestic enquiry was ordered *vide* proceedings, dated 24.01.2006, appointing the then General Manager, APCOB, as enquiry officer. Thus, the action was duly initiated as per the provision of Cadre Regulation No.28(C). The petitioner has given an undertaking subjecting himself for any disciplinary action that may be initiated during one year period subsequent to his retirement as per the provisions of Common Cadre Regulation No.28(C). No time limit is specified for conclusion of disciplinary proceedings. The action of respondents in issuing charge memo, dated 09.01.2003, and proceedings, dated 24.01.2006, ordering domestic enquiry are well within the authority and jurisdiction. The averments in the writ petition are untenable. The petitioner was permitted to retire pending disciplinary action *vide* memo, dated 27.06.2002. His terminal benefits such as gratuity and leave encashment salary were withheld in view of the pending disciplinary enquiry. The writ petition may be dismissed.

7. I have perused the pleadings and material documents particularly Common Cadre Regulations.

The Cadre regulation no.28(C) reads thus:

'Action against retired cadre officers:

Provided it shall be competent for the Cadre Authority to consider a report made to the Cadre Authority as to omissions and commissions of retired Cadre Officer with APCOB and DCCB. It shall be lawful for the Cadre Authority to proceed against a retired Cadre Officer for omissions and commissions with APCOB and DCCBs within one year from the date of retirement/resignation and to recover the losses and to proceed with criminal action against the alleged officer as per the provisions of AP Cooperative Societies Act, 1964. It shall be competent for Cadre Authority to insist and the duty of the cadre officer to submit an undertaking subjecting himself for any disciplinary action that may be initiated during one year period subsequent to his retirement.

However, the amended Cadre regulation no.28(C) read as follows:

'Action against retired cadre officers:

(i) Not withstanding anything contained in the Cadre Regulations, in all cases where the disciplinary proceedings are initiated or enquiry is not concluded by the time of superannuation/retirement of a Cadre Officer such pending disciplinary proceedings/enquiry would continue thereafter and the Member Secretary is empowered to dispose off such pending disciplinary proceedings against the concerned retired Cadre officer.

(ii) It shall be lawful for the Member Secretary to proceed against a retired Cadre Officer for omissions and commissions with APCOB and DCCBs within four years from the date of retirement on superannuation/voluntary retirement/resignation and to recover the losses and to proceed with criminal action against the alleged officer as per the provisions of AP Cooperative Societies Act, 1964. It shall be competent for the Member Secretary to insist and the duty of the cadre officer to submit an undertaking subjecting himself for any disciplinary action that may be initiated during four years period subsequent to his retirement.

(iii) However, the disciplinary proceedings if not instituted while the Cadre Officer was in service, whether before his/her retirement or afterwards shall not be in respect of any event which took place more than 4 years before such institution. In other words no disciplinary proceedings shall be instituted in respect of a stale cause of action which arose more than 4 years before such institution after the Cadre Officer has retired from service.

(iv) There shall however be no bar for initiation/launching of civil/criminal action/prosecution for misappropriation against a retired/voluntarily retired/resigned/terminated/dismissed Cadre officer even 4 years after the retirement/voluntary retirement/ resignation/ termination/ dismissal.

(v) Where disciplinary action is initiated and pending at the time of retirement of a Cadre Officer, the Member Secretary may withhold the terminal benefits viz., Gratuity, Encashment of leave on superannuation of such Cadre Officer until the disciplinary action is finally concluded.

(vi) Further, the terminal benefits viz., Gratuity, leave encashment etc., payable to a Cadre Officer on superannuation/ voluntary retirement/ resignation/termination/death etc., may be adjusted toward any dues/financial loss caused to the APCOB/DCCB and only after making such adjustments balance amount, if any, will be payable to the Cadre Officer.

8. It is pertinent to note that the amended regulation came into operation by 28.04.2005 and the earlier writ petition was disposed on 25.07.2005. Therefore, the amended regulation was in force even by the date the earlier writ petition was disposed of; but, this amended regulation was not brought to the notice of this Court by either of the parties by the time the writ petition was disposed of.

9. Be that as it may, it is necessary to further refer to certain definitions and regulations of common cadre regulations.

'Cadre Committee' means the Committee which may be constituted by the Registrar for exercise of such powers as specified in these Regulations.

'Member Secretary' means the Managing Director, A.P. State Coop.Bank who shall function as Ex-Officio Member Secretary of the Cadre Committee.

'Managing Director' means the Managing Director of the A.P. State Coop.Bank Ltd., Hyderabad.

'Regulations' means the Common Cadre Regulations as approved by Registrar of Coop. Societies under Section 116-A of the A.P.C.S. Act.

Cadre Committee:

3.1 The Registrar shall constitute from time to time a Cadre Committee, which shall exercise such powers as may be specified in these regulations.

3.2 The Cadre Committee shall meet as frequently as required for attending to such functions as prescribed in these regulations.

3.3 The Member Secretary shall convene meeting of the Cadre Committee as frequently as needed and as and when required by Registrar or by Government.

> 3.4 Atleast 7 days notice will be given to call the meeting of the Cadre Committee. In case of emergent meeting, the Chairman of Cadre Committee can convene the meeting after issuing 3 days notice.
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> 3.5 The quorum for the Cadre Committee shall be majority of members nominated by the Commissioner for Cooperation and Registrar of Coop. Societies.
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> 3.6 Registrar may issue such directions, as may be considered necessary to the Cadre Committee which shall be binding on it.

10. It is apposite to note that the cadre committee regulations deal with punishments, procedures, minor penalties & major penalties and other relevant provisions including right of appeal. The cadre committee shall make appointments to the cadre posts from out of the panel selected by the selection committee and the said committee is also competent to decide the seniority of such employees appointed as well as *interse* seniority among cadre employees. Admittedly, at the inception, a charge memo, dated 09.01.2003, was issued to the petitioner by the Member Secretary formulating various charges constituting misconduct. However, the petitioner challenged the validity of the said charge memo by filing WP.no.16370 of 2003. This court having found that the Member Secretary is not competent to issue a charge memo and that the charge memo issued by the Member secretary is without jurisdiction has set aside the charge memo, dated 09.01.2003, impugned in the said writ petition; but, held that the said order does not preclude the respondents to take appropriate action against the petitioner herein in accordance with the provisions and as per law. Pursuant to the said orders of this court, the cadre committee has reviewed the entire disciplinary case against the petitioner with particular reference to the orders of this court in the said writ petition and passed a resolution, dated 19.09.2005, and authorised Managing Director/Member secretary to issue fresh charge memo to the petitioner and take further disciplinary action as per cadre regulation no.28(c). Pursuant to the said resolution, the Managing Director/Member Secretary issued the present charge memo, dated 18.10.2005. The said charge memo, dated 18.10.2005, is now impugned in this writ petition mainly on two

grounds. One contention is bar of limitation; the other set of contentions is that despite the orders of this Court that the Member Secretary is not competent to issue the charge memo yet again the present charge memo is issued by the same Member Secretary by circumventing the procedure by way of resolution, dated 19.09.2005. In the second set of contentions it is, *inter alia*, urged that the Cadre authority has no authority and jurisdiction to take action against retired employees and that cadre authority being a delegate cannot further delegate its authority to the Member Secretary and that, therefore, the second charge memo is invalid and is vitiated and is liable to be set aside.

11. The relevant regulation no.28(C) prior to the amendment and as it stands now after the amendment is already extracted supra.

12. The petitioner has admittedly given an undertaking is not in dispute. At the inception the disciplinary action was initiated within the period of one year is not in dispute. As per the undertaking given the petitioner, the petitioner undertook for subjection to disciplinary action that may be initiated during one year period subsequent to his retirement; however since the action which was initiated by issuance of charge memo, dated 09.01.2003, was set aside by an order of this Court subject to the observations that the said order shall not preclude the respondents from initiating fresh disciplinary action, the subsequent charge memo, dated 18.10.2005, was issued to the petitioner. As rightly contended by the learned Standing Counsel, the present action is a continuation of the earlier action, which was initiated within a period of one year time even as per the old regulation 28(C). In that view of the matter, the plea of bar of limitation urged by the petitioner cannot be countenanced. Nonetheless, the amended regulation prescribes a period of four years limitation and states that it shall be competent for the Member Secretary to insist and that it shall be the duty of the cadre officer to submit an undertaking

subjecting himself for any disciplinary action that may be initiated during four years period subsequent to his retirement. Further, regulation 28(C)(iii) read as under:

> However, the disciplinary proceedings if not instituted while the Cadre Officer was in service, whether before his/her retirement or afterwards shall not be in respect of any event which took place more than 4 years before such institution. In other words no disciplinary proceedings shall be instituted in respect of a stale cause of action which arose more than 4 years before such institution after the Cadre Officer has retired from service.

It is not the case of the petitioner that the present disciplinary action relates to cause of action which took place more than four years before the initiation of the action by the first charge memo, dated 09.01.2003. Further, admittedly, the second charge memo which is dated 18.10.2005 is within four years from the date of petitioner's retirement, 30.06.2002. In the case on hand, in view of the amended regulation also, which was adverted to supra, the first contention that the present charge memo is barred by limitation as per regulation cannot be countenanced. Thus, judged from any angle, the contention of the petitioner that the initiation of the disciplinary action is barred by limitation is devoid of merit. The contention of the petitioner that the amended regulation cannot be now relied upon by the respondents since the amended regulation was not brought to the notice of this Court when the earlier order was passed by this Court in the earlier writ petition also requires to be stated only to be rejected.

13. Dealing with the second set of contentions, it is to be noted first that it is one of the contentions of the petitioner that the earlier charge memo was issued by the Member Secretary and that it was set aside by this Court holding that he has no jurisdiction and that yet again the present charge memo was issued by the same Member Secretary taking recourse to a resolution, dated 19.09.2005, said to have been passed by the cadre committee. Be it noted that this Court has already noticed that 'Cadre Committee' means committee

which may be constituted by the Registrar for exercise of such powers as specified in the regulation. Further, Cadre authority is a statutory body comprising of cadre committee, selection committee and cadre secretariat. Cadre secretariat consists of Secretary (cadre committee) (general manager of Co-op. Central Banks or Dy.General Manager of A.P. State Co-op.Bank) besides other officers and staff. Cadre committee is the appointing authority of the petitioner and that of the officers of the same class of the petitioner, is not in dispute. The Cadre committee, being a constituted body, having reviewed the entire disciplinary case of the petitioner pursuant to the orders of this court passed the resolution, dated 19.09.2005, authorising the Managing Director/Member Secretary to issue fresh charge memo to the petitioner and take further disciplinary action as per cadre regulation no.28(C). Therefore, in the considered view of this Court, the cadre committee is the competent authority and the contention that it has no authority and jurisdiction to pass a resolution and delegate its authority to the Member Secretary/Managing Director cannot be countenanced. The Cadre committee is itself the competent authority and not a delegated authority. Therefore, its resolution authorising the Member Secretary/Managing Director to issue a charge memo and take further disciplinary action against the petitioner cannot be termed as a delegation by a delegated authority. Therefore, the principle of a delegate further delegating the authority does not arise in this case. It is no doubt true that unless there is a specific authorisation, a delegate cannot further delegate to a sub-delegate, but, in the case on hand there is no delegation by a delegated authority to a sub-delegate. Hence the ratio of the decision of the Supreme Court in Sahni Silk Mills (P) Ltd., and another v. Employees' State Insurance Corporation [(1994) 5 SCC 346] relied upon by the petitioner has no application to the facts of the present case.

13.1 Coming to the contention that the same Member Secretary has again issued the charge memo though earlier a memo issued by him, on 09.01.2003, was set aside by this Court, it is to be noted that the earlier charge memo was issued in his capacity as a Member secretary whereas the present charge memo was issued in his capacity as Managing Director/Member Secretary having been duly authorised by a resolution of the cadre committee, which is the competent authority. Hence, the Managing Director/Member Secretary cannot be faulted for issuing the fresh charge memo and that on the ground that he is also the Member Secretary, his authority to issue the fresh charge memo pursuant to the resolution authorising him to do so cannot be termed as an action contrary to regulations and law.

14. Viewed thus, this Court finds that none of the contentions raised in the writ petition merit consideration.

15. On the above analysis, this Court holds that no case is made out for granting the declaration and consequential relief sought for in the writ petition.

16. Resultantly, the Writ Petition is dismissed. Since this Court by interim order, dated 16.02.2006, directed that the enquiry may be proceeded, however, final orders shall not be passed, the enquiry officer may now pass final orders, if the enquiry has already been proceeded with and reached the stage of passing final orders. However, if the enquiry has not yet been proceeded with and/or completed, he may proceed with and complete the enquiry and pass final orders, as expeditiously as possible, however, in strict accordance with the prescribed procedure.

Miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

JUSTICE M. SEETHARAMA MURTI

27.02.2017
Vjl