

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION Nos.15534, 15563 & 15566 of 2011

DATED : 17.07.2017

W.P.No.15534 of 2011 :

Between :

Sri Nageswara Swamy Primary Agricultural
Co.operative Credit Society, (No.Y357),
Nemmaluru Village, Pamarru Mandal,
Krishna District,
Rep., by its C.E.O, M.Anji Babu.

.. Petitioner

And

T.Venkateswar Rao S/o.Venkata Krishnaiah,
Aged about 69 yrs, D.No.16-490/9,
Valandapalem, Opp : Zilla Parishad,
Machilipatnam, Krishna District & others.

.. Respondents



This court made the following :

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COMMON ORDER :

The 1st respondent worked as paid Secretary in the Petitioner-Society and he retired from service on attaining the age of superannuation. While he was working in the petitioner-Society, he had grievance with regard to settlement of financial benefits to him. The 1st respondent was entitled to encashment of earned leave for eight months, but the same was not granted; that he was entitled to service compensation for the service rendered by him and that was not granted; and that erroneously part of the salary for eleven months i.e., @ Rs.3997/- per month was recovered from him by the petitioner-society illegally and the same should be paid. Accordingly, he filed three complaints before the Assistant Commissioner of Labour, Machilipatnam, who is the competent authority to adjudicate the grievances arising out of Andhra Pradesh Shops and Establishments Act, 1988 (for short 'the Act, 1988') and the Rules made thereunder.

2. The authority has dismissed the claim of the 1st respondent with reference to encashment of earned leave taking note of his own deposition that he did not have any earned leaves to his credit. This decision of the original authority was contested by the 1st respondent in APSE A.No.2 of 2007 before the appellate authority. The original authority granted smaller amount of service compensation than what was claimed by the 1st respondent. Aggrieved thereby he filed APSE A. No.3 of 2007. The original authority denied payment of amount deducted from the salary of 1st respondent for eleven months as excess salary drawn.

Aggrieved thereby he filed APSE A. No.1 of 2007. All these appeals were heard by the appellate authority and the appellate authority granted reliefs in all the appeals.

3. In APSE A.No.1 of 2007 the appellate authority held that deduction of salary @ Rs.3997/- was illegal and directed payment of Rs.43,967/-. The appellate authority held that the 1st respondent is entitled to service compensation and determined the total amount payable to him as Rs.1,34,955/-, but ordered deduction of Rs.3000/- as the same was already paid. The appellate authority held that the 1st respondent is entitled to earned leave for 60 days. All these orders passed by the appellate authority are challenged in these writ petitions.

4. Heard learned counsel for the petitioner, learned counsel for the 1st respondent and learned Standing counsel for the 4th respondent in all the writ petitions.

5. The first and foremost submission made by the learned counsel for the petitioner is that the 1st respondent was a paid Secretary and is a cadre employee. Therefore, he is not an employee of petitioner-Society. The cadre employees are the employees of District Co-operative Central Bank. As an employee of District Co-operative Central Bank, the 1st respondent was posted as paid Secretary in the petitioner-Society on transfer and thus at the relevant point of time, he was working in the petitioner-Society on transfer but is not a regular employee. Thus, all the service conditions and claims as set out before the Authority under the Act, 1988 have to be answered by the 4th respondent-The Krishna District Co-operative Central Bank Ltd., and is alone responsible for the payments as ordered. While so, in the order

passed by the appellate authority erroneously joint liability is fixed on the petitioner as well as the 4th respondent.

6. By referring to the provisions of Section 116 (AA) of the Andhra Pradesh Co-operative Societies Act, (for short 'the Societies Act') as it was applicable at the relevant point of time, learned counsel for the petitioner contended that the entire liability vests only in the Co-operative Central Bank, as a cadre controlling authority and since the 1st respondent was not an employee of the petitioner-Society, there was no justification by the appellate authority under the Act, 1988, to fix the responsibility on the petitioner-Society. No permanent allotment was made allotting the 1st respondent to petitioner-Society and therefore he continued to be treated as an employee of the 4th respondent-Bank.

7. He further contends that there is limitation on incurring of expenditure for establishment and penal consequences would follow if the 2% limitation prescribed by the Rules made under the Societies Act, is violated. The orders passed by the appellate authority under the Act, 1988, if implemented, would attract penal consequences as the Society does not have funds to meet the expenditure. He further submits that the Society has incurred losses and cannot honour the liability fixed by the appellate authority under the Act, 1988.

8. Learned counsel for 1st respondent supported the decisions of appellate authority under the Act, 1988. According to learned counsel there is no error, much less patent error warranting exercise of power of judicial review and upset the findings of appellate authority.

9. On the issue that the 1st respondent is a cadre secretary and the District Co-operative Central Bank is employer is not disputed by the learned counsel for the 1st respondent as well as the learned standing counsel appearing for the 4th respondent.

10. A bare perusal of provision under Section 116 (AA) of the Societies Act, as it was in force at the relevant point of time, makes it clear that for a cadre employee, the cadre controlling authority is the District Co-operative Central Bank. Thus, the 1st respondent being a cadre employee merely because he was working at the relevant point of time in the petitioner-Society cannot make him an employee of petitioner-Society to fix the liabilities flowing out of the claims made by the 1st respondent before the authority under the Act, 1988.

11. Having regard to these undisputed facts and as admitted by all the counsel, the directions issued by the appellate authority in the appeals filed by the 1st respondent impugned in W.P.Nos.15534 and 15563 of 2011 are liable to be set aside to the extent of fixing the liability on the petitioner and both the writ petitions are allowed to that extent. It is made clear that the orders passed by the appellate authority under the A.P.Shops and Establishments Act, 1988, impugned in these writ petitions are not disturbed and therefore, the 4th respondent is liable to comply with the said orders.

12. With reference to W.P.No.15566 of 2011, it is seen that the 1st respondent was claiming salary of Rs.8997/- per month. According to the petitioner-Society, a Secretary working in the petitioner-Society is entitled to only Rs.5000/- per month as

salary. Alleging that the 1st respondent had drawn more salary than he was entitled, the excess amount was recovered.

13. When once petitioner contends that the 1st respondent was a paid Secretary and the District Co-operative Central Bank, is the cadre controlling authority, it has no role in regulating his service conditions, and it is not permissible for it, to contend that it would pay only Rs.5000/- as salary, payable to the Secretary working in the petitioner-Society.

14. Learned counsel for the petitioner does not dispute the fact that as per the Pay revision, paid secretary/cadre secretary whose conditions of service are regulated by the District Co-operative Central Bank, was entitled to monthly salary of Rs.8997/-. If that is so, the petitioner-Society cannot find fault with the 1st respondent drawing salary as per his entitlement. Though conditions of service of 1st respondent were regulated by the District Co-operative Central Bank, as long as he worked in the petitioner-Society, petitioner-Society was liable to pay the pay and allowances applicable to the post occupied by him. Therefore, recovery affected against him was illegal. I therefore, see no illegality in the decision of the appellate authority under the Act, 1988 impugned in this writ petition and the same is liable to be dismissed.

15. Accordingly, W.P.Nos.15534 of 2011 & 15563 of 2011 are allowed to the extent indicated above and W.P.No.15566 of 2011 is dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in these writ petitions shall stand closed.

17th July, 2017
Rds

P.NAVEEN RAO,J

