

THE HON'BLE THE ACTING CHIEF JUSTICE
RAMESH RANGANATHAN

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THE HON'BLE SMT JUSTICE T. RAJANI

WRIT APPEAL No.1710 of 2013

JUDGMENT: (Per Hon'ble Smt Justice T. Rajani)

This appeal, under clause 15 of the Letters Patent, is filed, assailing the order of the single judge in WP.No.31003 of 2011 dated 13.08.2003. The writ petition was filed by the appellant-writ petitioner, questioning the action of the respondents in not allowing him to attend the duties and in not allowing him to sign the attendance register and for a declaration that he is entitled to continue in service.

The facts, to the extent relevant, are that the writ petitioner was appointed as a Clerk in the first respondent society on 28.08.1989. He was suspended on 08.03.1999, according to him, without any reason. An appeal was preferred before the third respondent, who is the District Co-operative Officer, Vizianagaram and the same was allowed directing the first respondent to reinstate the writ petitioner. The writ petitioner submitted several representations for implementation of the orders of the third respondent for his reinstatement. Later, he approached this Court by way of WP.No.2378 of 2002 and an order was passed by this Court on 24.06.2002 directing the first respondent to implement the orders of the third respondent, within eight weeks from the date of receipt of the order. After the said order, the second respondent issued letter to the writ petitioner on 02.11.2002 requesting him to join in service and also

directed him to submit his joining report to respondents 2 and 3. The petitioner joined the service on 11.11.20002 by submitting joining report to respondents 1 to 3. The petitioner joined the service, as per the orders of this Court, but the respondent society did not pay his salary from 01.02.1997 onwards.

The petitioner preferred an appeal before the Labour Court, Vizianagaram and the Court, in FA.No.7 of 20002 dated 11.11.1998, directed the respondents to pay Rs.14,000/- but the respondents did not obey the said orders. However, the respondents paid Rs.14,000/- in MP.No.6741 of 2009 in FA.No.7 of 2009 on 30.09.2011 before the Additional Judicial First Class Magistrate, Bobbili. The petitioner submitted a representation to the District Collector on 13.12.2004 submitting that as per the orders of this Court, though the petitioner joined into service, the first respondent is not allotting any work and that he is not allowed to sign the attendance register till 05.06.2004. Later, the petitioner submitted a leave letter from 27.05.2004 to 05.06.2004. Thereafter, the petitioner made several representations before the first respondent, for payment of salary, stating that he is not allowed to sign the register. The petitioner made representation to the third respondent on 13.02.2008 requesting the authority to transfer him to another society. Petitioner gave a representation to the first respondent requesting to send service records to the authorities and also made representation to all the respondents for preparing his service register but the respondents did not respond to any of the representations made by the petitioner. Finally, the petitioner made representation in Rachha Banda Programme. The act of the

respondents in not allowing the petitioner to attend his duties; not permitting him to sign the attendance register and not paying the salaries is termed as illegal, arbitrary and unconstitutional.

The first respondent filed a counter affidavit refuting the contentions made in the affidavit filed by the petitioner and further stating that the petitioner was appointed as a Clerk on 28.08.1989 in Galivilla Primary Agricultural Cooperative Society and went for training in the year 1995 and was paid Rs.700/- during the training period. After completing the training, the petitioner neglected his duties and without obtaining prior permission, he joined in M. R. College, Vizianagaram in B.Com Degree Course for the academic year 1997-2000 and regularly appeared as day-scholar. On enquiry, the respondent learnt that the petitioner suppressed his studying degree as day-scholar and thereby, he was continuously absent and did not attend his duties. Thereafter, the petitioner was suspended from service on 08.03.1999, subsequently he obtained an order of reinstatement and later he was reinstated on 11.11.2002 on humanitarian grounds. The petitioner obtained loan through his father on 27.03.1997 from the respondent society and refused to pay the loan after the demise of his father. Notices were issued to the petitioner but as he did not pay the same, the respondent initiated legal proceedings for recovery of dues. The petitioner always made complaints against the other staff members and he was a trouble maker. A report was lodged against the petitioner on 16.12.2004 before the Police Station Balijipeta for quarrelling with the paid secretary and refusing to assist other staff members, who were

entrusted with the duty of collection of agricultural loan amounts. The petitioner never applied for leave from 27.05.2004 to 05.06.2004, as alleged and he was never obstructed from signing the register and attending to his work. As per the attendance register the petitioner absented to his duty from 01.08.2003 to 12.12.2003 and further, the attendance register of 2004 was stolen by the petitioner, along with six members, on 16.12.2004 in order to conceal the evidence of his absence. The petitioner was absent continuously from the year 2004 to February 2005. Thereafter, he attended to his services from March 2005 to November 2005 and thereafter, he never attended his service.

The petitioner never made a representation dated 13.02.2008 to the respondent society seeking transfer to another society. He was wilfully absent from December 2005 onwards. The respondent society had sent a notice to the residence of the petitioner on 21.04.2008 through an attender, Sri Vadapalli Lakshman, but the same was refused by the petitioner and his family members and when a copy of the same was sought to be affixed at the residence of the petitioner, the petitioner and his family members opposed the same vehemently and the said written notice was affixed at the office notice board. Thereafter, the respondent society conducted a general body meeting on 30.04.2008 and passed a resolution to the effect that the petitioner was continuously absent from duties from 01.01.2006 for a period of three years and called for explanation for his wilful absenteeism. The subject matter of the resolution was conveyed at the petitioner's house through the society's attender, but the writ petitioner wilfully

avoided taking the order of termination in spite of the attender continuously going to petitioner's house for five times in a week. The petitioner refused to receive the notice in spite of him being available in the house. The respondent society, having given reasonable opportunity to the petitioner, got vexed with the attitude of the petitioner and passed a resolution removing the petitioner from service on 18.05.2008. The petitioner kept quiet for three years, though he was aware of this removal and suddenly, he opened his eyes and came before this Court by way of the writ petition.

Learned single Judge, considering the counter affidavit filed by respondent No.1 and considering that the petitioner did file any rejoinder, upheld the contentions made by respondent No.1 and dismissed the writ petition by observing that the petitioner approached this Court with unclean hands and exemplary costs were also awarded by the learned single Judge.

Apart from the petitioner filing his affidavit, he also filed documents evidencing his reinstatement and submitting the joining report to the respondents. The joining report given by the appellant is in pursuance of a notice issued to him on 02.11.2002 reminding him about the decision taken by the society to reinstate him and observing that the petitioner did not join in spite of the said decision. The appellant was called upon to join his duty. The appellant joined by giving his joining report, dated 11.11.2002.

Though filing rejoinder to the counter affidavit is not mandatory, considering the nature of the contentions made in the counter

affidavit, the appellant is expected to refute the said contentions by way of a rejoinder. The respondents did not file any documents in support of the contentions. Hence, we are forced to gather the truth of the allegations made by the appellant, from the material available on record.

The contention of the petitioner is that he was allowed to join the duty but was not permitted to sign the attendance register, whereas the stand of the respondents is that the petitioner himself absented from duty from 01.08.2003 to 12.12.2003 and thereafter from November 2005. If the contention of the petitioner has to be accepted, the stand of the respondents should be that the petitioner did not attend to duty right from the date on which he gave the joining report. But the respondents fairly admit that the petitioner attended duties after giving the joining report. The contention of the respondents is only that he absented himself for a particular period and after November 2005. Hence, from the said fact, the contention of the petitioner that he was not allowed to work and was not permitted to sign the attendance register gets diluted and doubtful. The respondents could have as well taken a stand that the appellant did not attend his duties at all, as it is the stand of the appellant too, so that any claim for his pay for that period also could have been ended.

The efforts to serve the termination order on the petitioner and the offered resistance by the appellant and his family members are also reflected in the counter affidavit. The *laches* on the part of the petitioner in approaching the Court have also to be counted,

to appreciate the conduct of the petitioner. He chose to redress his grievance not earlier than three years.

The interference with the impugned order, in an intra-court appeal, is called for, under clause 15 of the Letters patent, only when a patent illegality is perceived. No such illegality is evident in the impugned order.

The appeal fails and is, accordingly, dismissed. Consequently, pending miscellaneous applications, if any, shall stand closed. Needless to state that the appellant can pursue his remedies as available under law. There shall be no order as to costs.

June 29, 2017
DSK



RAMESH RANGANATHAN, HACJ

T. RAJANI, J