

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.836 OF 2003

ORDER:

This writ petition is filed for a writ of *Mandamus* declaring the impugned action of the respondents in not paying salaries to the petitioner from the month of February, 2001 to October, 2001 and again after repatriation, from March, 2002 till date and the further action of the respondents in initiating proceedings for terminating or retrenching the service of the petitioner without considering for absorption as an alternative method inspite of report given by the District Collector, Chittoor vide report Roc.No.A7/3021/01, dated 03.11.2001 as illegal and arbitrary and contrary to the Judgment of the Supreme Court reported in AIR 1994 SC 216.

The case of the petitioner is that he was appointed as Compressor Assistant in view of his technical qualification of Diploma in Mechanical Engineering and apart Diploma in Dairy Engineering, on 15.06.1985 in A.P.Dairy Development Cooperative Federation Limited-2nd respondent and thereafter he was selected to the post of Plant Mechanic through direct recruitment and appointed as such in the said post and deputed to work in the Milk Products Factory, Chittoor-3rd respondent. While so, he was sent on deputation to A.P.Tourism Development Corporation Limited-5th respondent in the month

of October, 2001. In fact, the petitioner was not paid salaries from February, 2001 onwards by the respondents 2 and 3 and due to this difficulty, the petitioner went on deputation to the other department with a hope of getting salary. While the things stood thus, he was called back and repatriated to the 3rd respondent in the month of March, 2002 and then onwards the petitioner has remained without any salaries by the 2nd respondent. It is submitted that the 4th respondent issued G.O.Ms.No.16, dated 22.03.2001 initiating proceedings for introducing VRS in all public sector undertakings and other Cooperative Institutions. Thereafter, the 4th respondent again issued Memo No.2262/P.E.I/2002-2, dated 29.08.2002 dealing with the cases of 387 employees of the 3rd respondent Union who opt for VRS and in the said proceedings it has been stated that the management may take decision to retrench the surplus employees who have not opted for VRS, as per rules. But, straight away contrary to their own proceedings now, the respondents 2 and 3 have been initiating proceedings for retrenching all the employees except those allowed for VRS and thereby proceeding to throw the petty employees i.e., petitioner on the roads. Aggrieved by the action of the respondents in not paying salaries and also initiating proceedings for terminating or retrenching the services of the petitioner without considering for absorption as an alternative method inspite of report given

by the District Collector, Chittoor dated 03.11.2001, present writ petition is filed.

Counter is filed by the 2nd respondent stating that the petitioner was initially appointed in the 2nd respondent and on formation of the 3rd respondent society the petitioner was absorbed in the 3rd respondent; that the Government under G.O.Ms.No.1080, dated 01.06.1988 had constituted the Board of Directors for the 3rd respondent Union and the 2nd respondent has handedover the management of the dairy units of the Chittoor District along with all the employees on 01.10.1988 to the 3rd respondent; that by the transfer of management of dairy units in the Chittoor District to 3rd respondent the 3rd respondent got the control over the operations related to the milk activities etc., along with the employees who were working under the 2nd respondent. It is further submitted that the Government vide G.O.Ms.No.69, dated 07.04.1994 had ratified the action of the 2nd respondent in having handed over the management to the 3rd respondent. Further the 2nd respondent by its proceedings dated 20.12.1988 issued orders with effect from 01.01.1989 that services with full and administrative disciplinary control of all the employees, staff and officers of all categories, except the General Manager, shall stand transferred to the respective District Union, viz, 3rd respondent. The petitioner was one such employee transferred

to the 3rd respondent on permanent basis. Ever since, the petitioner became an employee of the 3rd respondent for all purposes. It is therefore submitted that the petitioner is the employee of the 3rd respondent and as such, the 3rd respondent alone is responsible for payment of salaries etc. It is further submitted that the contention of the petitioner that if decision is taken for retrenchment of the employees of the 3rd respondent, the 4th respondent-Government shall initiate action for absorbing these employees in other Public Sector undertakings or Government Departments is not correct; that with regard to absorption in other organizations, the Government vide Lr.No.4036/Dairy.II(1)/2001, dated 24.01.2002 has informed that Act 14/1997 prohibits absorption of sick institutions surplus staff in Government Departments. It is submitted that the 2nd respondent has no control or jurisdiction on the aspect of absorption in government Departments/Organizations. As already submitted, the petitioner being the employee of the 3rd respondent Union, the Chittoor union alone is responsible for payment of salaries etc. and that so far as the 2nd respondent is concerned, the writ petition is liable to be dismissed against the federation and finally sought for dismissal of the writ petition.

Though, counter is filed by the 3rd respondent, since the writ petition is discharged against the 3rd respondent by order

dated 13.11.2015 passed in WP.MP.No.6525/2015, there is no need to consider the counter of the 3rd respondent.

Heard learned counsel for the petitioner who submits that without following procedure under Section 25(O) of the Industrial Disputes Act, 1947, straightaway, the respondents are trying to retrench the petitioner. He also submits that in similar circumstances, some employees approached this Court by filing WP.Nos.874/2003 and 3492/2007, this Court disposed of the writ petitions on 25.04.2008. Challenging the said order WA.No.552/2008 was filed. The petitioner further submits that the petitioner cannot be retrenched by virtue of G.O.Ms.No.134, dated 23.03.1981.

On the other hand, Sri N.Rajeswar Rao, learned counsel for the 2nd respondent submits that when the 3rd respondent was wound up on September-2002, 140 employees including the petitioner refused to go on VRS and those 140 employees who refused to go on VRS questioned the action of the respondents in WP.No.874/2003, but, no relief was granted by this Court; and that the said Judgment was confirmed in WA.No.552/2008. He also submits that when once the petitioner was absorbed in 3rd respondent Union, he cannot claim relief against the 2nd respondent.

The matter was heard at length. A reading of the order in WP.No.874/2003 goes to show that the petitioners therein were also the employees of the 3rd respondent who questioned the action of the respondents in initiating proceedings for retrenching them vide impugned Memo No.2262/P.E.1/2002-2, dated 29.08.2002 and G.O.Ms.No.3, dated 05.01.2007 and also questioned the action of the 3rd respondent in not paying salaries. Learned Single Judge of this Court considered the said issue, but no relief was granted. The learned Single Judge disposed of the said writ petition directing that no cause of action had accrued to the petitioners, on account of the impugned memo, however, granted liberty to the petitioners to work out their remedies as and when the situation arises as well as to claim the emoluments, which they are entitled to in law. Challenging the said order, WA.No.552 of 2008 was filed and Division Bench of this Court disposed of the same by observing as follows;

“In pursuance of the order of winding up passed under Section 64 of the A.P.Cooperative Societies Act, 1964, in our opinion, relief prayed for cannot be granted as the respondent-society has already been ordered to be wound up. We are sure that if any amount is payable to the appellants-employees, the liquidator would make payment as soon as possible and the liquidator shall also see that the assets are liquidated as soon as possible so that the liquidation

proceedings can be brought to an end at any early date.”

When, similar issue was arose in WP.No.23748 of 2002 and 7196 of 2007 against the same respondents, this Court dismissed the writ petition by observing that once the petitioner is a member of the 3rd respondent-Union, when the 3rd respondent-Union has become defunct having been closed, G.O.Ms.No.3 dated 05.01.2007, cannot be questioned as violative of Section 25-N of the Act. The said Judgment was confirmed in WA.No.649 of 2014 on 9.06.2014 by the Division Bench of this Court holding as follows;

“The contentions that were urged before the learned Single Judge are repeated before us. It is, no doubt, true that the appellant was, initially, an employee in the 2nd respondent Federation as a Senior Assistant. However, he does not dispute the fact that initially, he was sent on deputation to the Union, and thereafter, he became a permanent employee of the Union, with effect from 01.10.1988. In case the appellant had any objection about his being sent to the Union, he ought to have raised an objection, at that time itself. The very fact that when option was given for VRS, the appellant has chosen not to avail it, discloses that he treated himself to be an employee of the Union, but wanted to continue in the service. Once the Union was liquidated, in accordance with law, the appellant cannot insist that he be continued in service, that too, as a employee of the 2nd respondent Federation.

Therefore, the plea of the appellant that he continued to be the employee of the 2nd respondent Federation cannot be accepted.

The 2nd limb of the grievance of the appellant is about the recall of the deputation to the Society. He does not dispute that he is not a permanent employee of the Society and he was sent to it, only on deputation. Though he made an attempt to convince this Court that the deputation was by the 2nd respondent Federation, the record discloses that the deputation, if at all, can be only from the Union. The District Collector was in-charge of the Union in the year 2000 and it was through the proceedings, dated 19.01.2000, that the appellant was sent on deputation to the Society. It is axiomatic that the services of an employee on deputation would be coextensive with his services in the parent organization. The agency, to which an employee was deputed, cannot continue him, once he ceases to be on the rolls of the parent organization. That is what exactly, has happened in the instant case. If the appellant had the grievance about the legality of the retrenchment, he has to work out his remedies, under the relevant provisions of the Industrial Disputes Act.

We do not find any basis to interfere with the order passed by the learned Single Judge.”

Though petitioner is an employee of respondent No.3, he filed petition seeking discharge of 3rd respondent from writ petition which was allowed on 13.11.2015 vide

WP.MP.No.6525/2015. Moreso, the 3rd respondent is already wound up.

In view of the above facts and circumstances, I find that the present issue against the same society is squarely covered by the orders passed in the aforesaid writ petitions which were confirmed in Writ Appeals. As such, no relief can be granted to the petitioner. However, it is left open to the petitioner to work out his remedies before appropriate forum, in accordance with law.

Accordingly, the writ petition is dismissed. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition, shall stand closed.

07.06.2017
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A.RAJASHEKER REDDY, J