

THE HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION Nos.27825 and 28218 of 2011

COMMON ORDER:

Heard Sri N.Sva Reddy for petitioners and Sri M.V. Raja Ram for 2nd respondent in these two writ petitions.

Korukonda Primary Agricultural Co-operative Society Limited through its President and Secretary in these two writ petitions challenges the orders of the 1st respondent in Case Nos.1 of 2010 and 2 of 2010, dated 21.09.2011.

The orders impugned in the writ petitions are passed by 1st respondent under Section 48 of the A.P.Shops and Establishments Act, 1988 (for short 'the APSE Act')

Guggilam Ravi Kumar (2nd respondent in W.P.No.27825 of 2011) and Si Chundru Surya Chandram (2nd respondent in W.P.No.28218 of 2011) were working as Clerks in the petitioner Society.

The undisputed circumstances are that the Society was not running on sound lines and unable to meet the requirements of Section 116-C of the A.P.Co-operative Societies Act, 1964 (for short 'the Act') and hence, the Society terminated the services of Guggilam Ravi Kumar and Si Chundru Surya Chandram.

The terminated employees, no doubt, after waiting for considerably long time filed applications before the 1st

respondent and the applications were taken on file as Case Nos.1 of 2010 and 2 of 2010.

The 1st respondent, after issuing notices to Society, allowed applications directing reinstatement of the terminated employees within thirty days and treated the period from the date of termination till reinstatement as continuous of service.

Mr.Siva Reddy challenges the orders primarily on two grounds viz., that the 1st respondent ought not to have entertained the applications after five years from the date of termination and consequently, even assuming without admitting that the termination of employees does not conform to the requirements of Section 47 of the APSE Act, awarding full back wages from the date of termination till reinstatement is *ex-facie* illegal. The relief does not conform to the minimum requirements of pleading and proving that the employees were not gainfully employed during the interregnum, and further without examining the financial position of Society, if all benefits are granted, the position which is otherwise improving now will be worsened and more number of employees will lose employment. Therefore, the counsel for Society concentrates the challenge more on the consequential benefits granted by the 1st respondent.

On the other hand, Sri Raja Ram by strongly relying on the findings recorded by the 1st respondent tries to sustain the orders

impugned as it is. For convenience, the findings recorded in Case No.1 of 2010 are excerpted below.

“Whether the termination is illegal? If so, what is the relief that the applicant is entitled to?

The above issue is answered as follows:

As seen from the material on record and the evidences put-forth and arguments submitted before this authority, there is no dispute in respect of the employment of the applicant on compassionate grounds under the opposite party society and no dispute in the length of service of applicant and the only dispute is with regard to the termination of service of the applicant by the opposite party is proper or not. The applicant submitted his argument that he was terminated illegally without following the procedure established under the provisions of A.P.S.E Act, 1988 and without observing the principles of natural justice and no domestic enquiry was conducted and all of sudden he was terminated by the opposite party for no fault of him.

On the other hand the opposite party contended that the applicant was terminated in view of implementation of Section 116-C of APCS Act, 1964. As seen from the evidence on record and arguments heard it is clear that the service condition of the employee is covered by APSE Act, 1988 as well as APCS Act because APSE Act is applicable to all the Societies. The provisions of APSE Act specify the procedure about termination of employees.

As per Section 47 of APSE Act, 1988 conditions for terminating the services of an employee as follows :

“No employer shall, without a reasonable cause, terminate the service of an employee who has been in his employment continuously for a period of not less than 6 months and every termination shall be made by the employer in writing and a copy of such termination order shall be furnished to the Inspector having jurisdiction over the area within three days of such termination.”

But the opposite party has not followed the procedure laid down in the APSE Act 1988 for the termination of the service of applicant. As per the APSE Act the statutory requirements for valid termination of service of an employee as follows :

1. Reasonable cause for termination.
2. One month's prior notice in writing or payment of one month wage or salary in lieu of notice.
3. A copy of the termination to be furnished to the concerned Labour Inspector of the Area within 3 days.
4. Payment of service compensation.

The above requirements are condition precedent for valid termination.

In the present case, the opposite party failed to follow the above procedure before terminating the service of applicant and not followed the principles of natural justice and failed to conduct domestic enquiry. The applicant's termination is taken place by one sided decision of the opposite party without following the provisions of Section 47 of APSE Act i.e. the opposite party failed to furnish the copy of termination order to the concerned Labour Inspector of the area within 3 days from the date of termination and the opposite party totally failed to get intimation about the termination of the applicant.

Hence, I hold the termination of the applicant is illegal and contrary to the provisions of Section 47 of APSE Act 1988 and the applicant is eligible for re-instatement and other benefits as he was appointed on compassionate grounds and no reasonable cause for his termination was proved.

In the result, the opposite parties are hereby directed to reinstate the applicant within 30 days from the receipt of this order with full back wages from the date of his termination and treated as continuity of service from 01.08.2003 till his reinstatement and this order is come into force with immediate effect from today."

According to him, as no exception is pointed out to these findings, the petitioners have no option except to reinstate the terminated employees into service. On the consequential benefits granted by the 1st respondent, Mr.Raja Ram having regard to the pleas taken by employees before the 1st respondent and the issue on which the 1st respondent recorded findings, tries to persuade this Court not to deny back wages in its entirety and prays for maintaining the orders of the 1st respondent granting continuity of service from the date of termination till the date of reinstatement and submits that this Court having regard to peculiar fact situation moulds the relief.

The above submissions narrowed down the area of controversy whether the terminated employees, even if are entitled for reinstatement, are as matter of course, entitled for continuity of service together with back wages?

Before proceeding further in this behalf, I would like to record that the petitioners have failed to make out a ground vis-à-vis the findings of the 1st respondent on failure to adhere to the requirements of Sections 47 of the APSE Act. Therefore, Guggilam Ravi Kumar and Sri Chundru Surya Chandram are entitled for reinstatement as Clerks.

In the case on hand, the termination of service was on account of Society passing through bad patch and unable to

meet the requirements of Section 116-C of the Act. The services of respondents were terminated with effect from 01.08.2003 and 27.07.2004 respectively. The terminated employees filed applications under Section 48 of the APSE Act along with applications to condone delay. The delay has been admittedly condoned and thereafter, the cases were heard on merits. Therefore, the ground of delay, which is put against the 2nd respondent to challenge the final order, may not be available to petitioners herein at this stage.

This Court, after perusing the record and the directions issued by the 1st respondent, is of the view that the 1st respondent while moulding the relief has not objectively and judiciously exercised the discretion vested in him. Further, Mr. Rajaram in his submissions has left to this Court for moulding the relief keeping in view both the positions. Therefore, this Court, after taking note of submissions made by the counsel for parties, order the writ petitions as follows.

(a) The order of reinstatement of Sri Guggilam Ravi Kumar and Sri Chundru Surya Chandram into service is upheld.

(b) Sri Guggilam Ravi Kumar and Sri Chundru Surya Chandram are entitled for

continuity of service from 01.08.2003 and 27.07.2004 respectively till the date of reinstatement.

(c) Sri Guggilam Ravi Kumar and Sri Chundru Surya Chandram are entitled to 50% of back wages from 01.01.2015 till the date of reinstatement. The petitioners reinstate Guggilam Ravi Kumar and Sri Chundru Surya Chandram within four weeks from the date of receipt of a copy of this order.

(d) The petitioners if do not reinstate and pay back wages to Guggilam Ravi Kumar and Sri Chundru Surya Chandram within four weeks as directed by this order, liberty is given to Guggilam Ravi Kumar and Sri Chundru Surya Chandram for recovering the same with interest.

The writ petitions are ordered as indicated above. No order as to costs.

Miscellaneous petitions, if any, pending, shall stand closed.

S. V. BHATT, J

Date: 23.08.2017
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THE HON'BLE SRI JUSTICE S.V.BHATT



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23-08-2017

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