

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

WRIT PETITION No. 3073 of 2006

ORDER:

The unsuccessful appellant, Prakasam District Cooperative Central Bank Limited, Ongole, filed this writ petition, under Article 226 of the Constitution of India, assailing the order, dated 13.12.2005, of the learned Appellate Authority under the A.P. Shops and Establishments Act, 1988, and Assistant Commissioner of Labour, Ongole, (hereinafter, 'appellate authority') passed in appeal SA-03 of 2004.

2. I have heard the submissions of *Sri R.V.Nagabushanam Rao*, learned counsel appearing for the appellant/writ petitioner and of *Sri L.J.Veera Reddy*, learned counsel appearing for the respondents 4 to 7, who are the legal heirs of the deceased 3rd respondent. I have perused the material record.

3. At the outset, it is to be noted that by the orders impugned in the writ petition, the appellate authority, while dismissing the appeal of the writ petitioner, confirmed the orders, dated 31.01.2004, in case No. SE-01/01 passed by the learned Authority under Section 50 of the A.P. Shops and Establishments Act and Labour Officer, Chirala, (hereinafter, 'primary authority'), whereby the learned primary authority directed the writ petitioner herein to pay Rs. 1,32,267/- by means of Demand Draft to the four applicants, i.e., respondents 4 to 7 herein, they being the legal representatives of the deceased 3rd respondent herein, the said sum being the salary payable to the deceased 3rd respondent for the period from 25.02.2000 to 04.02.2002.

4. The short question that falls for determination in the writ petition is as to whether the writ petitioner (1st opposite party) has no liability to pay the amount to the legal representatives of the deceased 3rd respondent as directed in the order of the primary authority and confirmed by the appellate authority.

5. The learned counsel for the writ petitioner would submit as follows:

The writ petitioner is only a disciplinary authority and hence, the writ petitioner is not a necessary party to the proceedings. The General Manager of the writ petitioner has got disciplinary control and power to regulate the functioning of the Secretaries of the Primary Agricultural Cooperative Societies. The 3rd respondent was a Secretary of the 8th respondent herein viz., Annambotlavaripalem Primary Agricultural Cooperative Society (PACS). As the deceased 3rd respondent misappropriated the funds of the said PACS to an extent of Rs.3,06,217.05 paise, an enquiry was conducted. And, pursuant to the findings of the enquiry officer, by an order dated 20.04.1998, the deceased 3rd respondent was dismissed from service. The said order was challenged by the 3rd respondent by filing a petition in S.E. Case No.2 of 1999 under Section 51 of the A.P. Shops and Establishments Act, 1988, (hereinafter, 'the Act'). The said case was allowed and the 3rd respondent was directed to be reinstated without back wages, but with continuity of service. As a sequel, the writ petitioner, by order dated 25.02.2000 reinstated the 3rd respondent in Annambotlavaripalem PACS, i.e., the 8th respondent PACS. The writ petitioner being the appointing authority originally exercised its power of dismissal of the 3rd respondent,

but, later reinstated the applicant/ 3rd respondent duly complying with the orders of the Authority concerned under the Act and issued proceedings dated 25.02.2000 posting the 3rd respondent as Additional Secretary of the 8th respondent/ PACS. Though the 3rd respondent submitted a joining report to the 8th respondent/ PACS, the 8th respondent/ PACS refused to receive the joining report and did not admit the applicant to duty and did not allow him to function. Hence, the 3rd respondent once again approached the Authority under the Act and filed an application in S.E. Case No.1 of 2001 claiming salary. Being the pay and disbursing officer of the 3rd respondent, the 8th respondent/ PACS alone will be having information in regard to payment of wages etcetera, if any, payable to the 3rd respondent. Subsequently, the posts of Paid secretaries were de-caderized in the year 1987; and, de-caderization was not completed in the Prakasam District. When the Chairman of the writ petitioner-Bank gave an order posting the 3rd respondent as Additional Secretary of the 8th respondent/ PACS, he is deemed to be the employee of the 8th respondent/ PACS. Therefore, the 8th respondent PACS, the 2nd Opposite Party in the case, is only liable to pay the salaries, but not the writ petitioner, which is only an appointing and Disciplinary Authority. As per the cadre regulations, the salaries of paid secretaries have to be paid from Cadre Fund created for the purpose and contributed by the PACS, DCCB and Government. However, when the posts were de-caderized the fund ceased to exist. The 8th respondent/ PACS being the financing bank is competent to fix the staffing pattern and also the service rules. The 3rd respondent having been appointed as Additional Secretary of the 8th respondent/ PACS is the employee of the 8th respondent/ PACS and for non-compliance of the appointment orders

issued by the writ petitioner by the 8th respondent/ PACS, the 8th respondent PACS is alone liable to pay the amount awarded by the primary authority to the legal representatives of the deceased 3rd respondent. But, erroneously, the primary authority as well as the appellate authority held that the writ petitioner is liable to pay the arrears of wages/ salary of the deceased 3rd respondent. Hence, the writ petition may be allowed and the orders of the primary authority as confirmed by the appellate authority fastening the liability on the writ petitioner may be set aside directing the 8th respondent/ PACS to pay the amounts due and payable to the respondents 4 to 7, who are the legal representatives of the deceased 3rd respondent.

6. *Per contra*, the learned counsel for the respondents 4 to 7 while supporting the orders of the primary authority and appellate authority would submit as follows: “As per the Cooperative Societies Act, the Secretary or the President is the competent person to fix up the staffing pattern and determine their pay scales and that all the expenditure towards their wages are to be borne out by the society itself from the funds available with it is not a correct argument. In the instant case, the primary authority specifically framed the issue No.3 as under: ‘which of the opposite parties are responsible to pay the wages? After, considering the facts and contentions elaborately, the said issue was answered by giving detailed reasons. It was held that the writ petitioner/ Opposite Party No.1 is liable. The said orders were confirmed by the appellate authority. In the facts and circumstances, while exercising the jurisdiction under Article 226 of the Constitution of India, normally, this Court would not interfere with such concurrent findings of

facts, more particularly when there is no illegality, irregularity or impropriety in the orders. No valid grounds were urged by the writ petitioner. There are no grounds calling for interference with the well-considered orders of the primary and appellate authorities.

7. I have bestowed my attention to the facts and given earnest consideration to the submissions.

8. To begin with, it is to be noted that the deceased 3rd respondent worked as Paid Secretary of the 8th respondent PACS. The Chairman of the Writ Petitioner-bank, by orders dated 20.04.1998, dismissed him from service. The said order was assailed by the 3rd respondent. The Assistant Commissioner of Labour, who is the competent authority under Section 48 (a) of the Act quashed the order of dismissal and directed reinstatement of the 3rd respondent without back wages and with continuity of service. Therefore, the General Manager of the writ petitioner bank reinstated the 3rd respondent into service and issued orders, vide proceedings dated 25.02.2000, posting him as Additional Secretary of the 8th respondent/ PACS. Accordingly, the 3rd respondent submitted a joining report and reported to duty; but, the 8th respondent/ PACS refused to receive his joining report and admit him to duty and thus did not allow him to function. The 3rd respondent reported the facts to the writ petitioner-bank. The 3rd respondent filed W.P.No.22636 of 2000 before this Court. This Court, by order dated 27.02.2001 in WPMP No.28761 of 2000 granted an interim direction. But the said orders were not given effect to. Eventually, the 3rd respondent filed an application in S.E 01 of 2001 before the primary authority under Section 51 of the Act claiming wages from February 2000 onwards. As

already noted, the primary authority allowed the petition of the 3rd respondent. Since the 3rd respondent died during the pendency of the proceedings, the said authority directed the writ petitioner-bank to pay the salary to the respondents 4 to 7, who are the legal representatives of the deceased 3rd respondent. The said orders were confirmed by the appellate authority. Now, the writ petitioner bank would contend that it is only the 8th respondent that is liable to pay the salary but not the writ petitioner bank.

9. From the facts and submissions, which are admitted and undisputed the following aspects emerge for consideration:

After the orders dismissing the 3rd respondent issued by the Chairman of the writ petitioner-bank were set aside, orders were issued reinstating and posting the 3rd respondent as Additional Secretary of 8th respondent PACS. Despite the 3rd respondent submitting a joining report and reporting to duty, the 8th respondent/ PACS refused to receive the joining report and admit him to duty and did not allow him to function. The writ petitioner-bank is the financing bank and is vested with the power of disciplinary control. And, the Chairman of the writ petitioner bank, being also the Chairman of the appointment committee, made the initial orders of dismissal, which were quashed. Later, the writ petitioner bank issued reinstatement orders posting the 3rd respondent as the Additional Secretary of the 8th respondent/ PACS. When the 8th respondent/ PACS refused to receive the joining report and admit the 3rd respondent to duty, the order of the writ petitioner-bank remained unimplemented and the writ petitioner-bank failed to see that its order is implemented by the 8th respondent/ PACS. Despite the interim orders of

this Court in the aforesaid writ petition, the 3rd respondent was left to the mercy of the 8th respondent/ PACS and even his wages/ salaries were not paid. The posts of Paid Secretary were de-caderized in the year 1987 is not in dispute; but, the de-categorization was not completed in the District is also not in dispute. Though it is represented that as per the cadre fund regulation, the salaries have to be paid from the cadre fund created for the purpose and contributed by the PACS, DCCB and the Government and that the fund ceased to exist when the posts were de-caderized, it is not the ground to deny payment of amount due towards salaries to the legal representatives of the deceased 3rd respondent, as directed in the orders of the primary authority and the appellate authority. The writ petitioner is the appointing authority as well as the disciplinary authority and hence, it has a duty to implement the orders of reinstatement. Therefore, it cannot escape from its liability, more particularly when it had failed to see that its orders are implemented by the 8th respondent/ PACS. In the facts and circumstances, its contentions that it is not liable to pay the wages or salaries to the 3rd respondent or his legal heirs and that it is the liability of the 8th respondent/ PACS to pay the same are devoid of merit and are hence, liable for rejection. The contentions of the writ petitioner are accordingly rejected.

10. On the above analysis, this Court finds that there is no illegality or irregularity or impropriety in the orders impugned and that the said orders do not call for interference and that the appellate authority is justified in passing the orders impugned and in confirming the orders of the primary authority.

11. In the result, the Writ Petition is dismissed.

There shall be no order as to costs.

Pending miscellaneous petition, if any, shall also stand dismissed.

M. SEETHARAMA MURTI, J

25th January, 2017
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