

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.35087 OF 2014

ORDER:

Heard the learned counsel for the petitioner, the learned Government Pleader for Co-operation appearing for respondents 1 to 3 and Sri N.Ravindra Nath, learned counsel, appearing for respondents 4 and 5.

2. In this writ petition, petitioner assails proceedings dated 25.10.2014 of the 4th respondent suspending the petitioner pending enquiry.

3. Learned counsel for the petitioner contends that respondent No.4 has not followed the provision of sub-Section (6) of Section 47 of the Andhra Pradesh Shops Establishments Act, 1988 (for short, 'the Act'). Learned counsel further submits that the petitioner has been placed under suspension pending enquiry for the sole reason of accommodating respondent No.5 as Chief Executive Officer of the 4th respondent – Society and that no consultation with District Level Committee as mandated by No.7 of the service bye-laws of the society has been done by the 4th respondent.

4. In the counter affidavit filed by respondent No.5 on behalf of himself and respondent No.4, an objection is raised that the writ petition is not maintainable against respondent No.4.

5. This contention is without any merit since a Full Bench of this Court in *Sri Konaseema Cooperative Central Bank v. N.Seetharama Raju*¹ has held that even if a Society cannot be characterised as a 'State' within the meaning of Art. 12, a writ would lie against it to enforce a statutory public duty which an employee is entitled to enforce against the Society. This judgment has been approved by the Hon'ble Supreme Court in *UP State Co-operative Land Development Bank Ltd. V. Chandra Bhan Dubey*².

6. Learned counsel for respondents 4 and 5 does not dispute that the provisions of the Act would apply to the employees of respondent No.4-society. Even the Full Bench of this Court in *Sri Konaseema Cooperative Central Bank* (1 supra), has held that in the matter of termination of service of the employees of a co-operative society, Section 47 of the Act provides certain protection, and since the said protection is based upon public policy, it will be enforced, in an appropriate case, by this Court under Article 226 of the Constitution of India.

7. Sub Section (6) of Section 47 of the Act imposes a statutory public duty on respondent No.4 to pay subsistence allowance to an employee like petitioner, who is placed under suspension, pending and also mandates that the period of suspension shall not exceed one year. It further provides that if the period of suspension exceeds one year, the employee shall be entitled to full wages

¹ AIR 1990 AP 171 (FB)

² (1999) 1 SCC 741

during the period of suspension and the period of suspension shall be treated as on duty. This statutory public duty cast on respondent No.4 by sub section (6) of Section 47 of the Act is admittedly violated by respondent No.4. Therefore, the contention of the learned counsel for respondents 4 and 5 that the writ petition does not lie against respondent No.4 is misconceived and it is declared that the writ petition is maintainable against respondent No.4 for violation of sub Section (6) of Section 47 of the Act.

8. Once it is clear that subsistence allowance has not been paid to the petitioner as mandated by the above provision of law. The enquiry proceedings including the enquiry report dated 28.05.2015 have to be declared as null and void for non-payment of subsistence allowance, since it would be a case of employee being deprived of sustenance during the disciplinary proceedings as held by the Hon'ble Supreme Court in Jagdamba Prasad Shukla v. State of U.P³.

9. Therefore, the Writ Petition is allowed and the order dated 25.10.2014 suspending the petitioner from service is set aside and disciplinary proceedings initiated against the petitioner by respondent No.4 including enquiry report dated 28.05.2015 are set aside. Respondent No.4 is directed to reinstate the petitioner as Chief Executive Officer forthwith. Respondent No.4 shall also pay full salary to the petitioner from the date of his suspension within a

³ (2000)7 SCC 90

period of four (04) weeks from the date of receipt of a copy of this order. Respondent No.4 shall also pay costs of Rs.3,000/- to the petitioner.

Consequently, Miscellaneous Petitions, if any, pending in this writ petition shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date:19.07.2017
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