

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No. 28663 OF 2017

ORDER :

It is the case of the petitioner that he was appointed as Assistant Salesman in the 4th respondent society in the year 1982 and has rendered more than 20 years of service and subsequently he was promoted as Secretary of the said society in the year 2003 and discharging his functions as Secretary with sincerity and protecting the interest of the society. That originally the age of superannuation of the staff of the Society is 58 years, but the Government has taken a decision to increase the age of the superannuation of the Government employees from 58 to 60 years and that several representations were made for increasing the age of superannuation in respect of the employees of Cooperative societies also from 58 to 60 years. Subsequently, the Government issued Memo No.5823/Coop.III/2014-7, dated 23.05.2015 clarifying that the cooperative credit societies have autonomy and can exercise their discretion under Section 115 D(2)(iv) in respect of matter of personal policy, staffing etc. and that pursuant to the above Memo dated 23.05.2015, the District Cooperative Central Banks, West Godavari District and East Godavari District have passed resolutions increasing the age of superannuation from 58 to

60 years. The Managing Committee of the respondent society vide resolution No.74 dated 26.06.2015 taking into consideration of Section 115 D(2)(iv) and the Memo dated 23.05.2015 unanimously resolved and approved to increase the age of retirement of the employees of the society from 58 to 60 years. Subsequently, vide resolution dated 08.09.2015 the Managing Committee approved the resolutions passed between 01.06.2015 to 31.08.2015. The General Body has approved the resolution to increase the age of superannuation from 58 to 60 years in the meeting conducted on 26.09.2015. That in view of enhancement of age of superannuation from 58 to 60 years, the petitioner is entitled to continue in service till he attains the age of 60 years i.e., 30.06.2019. While so, in view of serious irregularities, the 2nd respondent submitted a report pursuant to which the District Cooperative Officer, Eluru ordered an enquiry under Section 51 of APCS Act. Pursuant to said report, the Managing Committee was superceded and by orders dated 26.08.2016, the 2nd respondent appointed a 3 men person-in-charge committee consisting of Sub-Divisional Cooperative officer, Chinthalapudi Branch Manager and Supervisor of DCCB, Kamavarapukota as Chairman and members respectively and since then, they have been managing the affairs of the society and that an enquiry was also initiated against the

petitioner under Section 51 of the Act. That due to health condition, the petitioner requested the society to permit him to work as Assistant Secretary. However, the petitioner received notice of superannuation on 21.06.2017 purportedly issued by the Secretary of the Society mentioning *interalia* that the Person In-charge Committee had passed a resolution dated 29.05.2017 resolving that the age of superannuation shall be 58 years only on the ground that the society is running in losses due to misappropriation of funds. That the petitioner made objections on 27.06.2017 stating that the alleged resolution dated 29.05.2017 is not valid and tenable. Though the petitioner joined the duties on 28.06.2017, he was not allowed to discharge his functions from 01.07.2017. Aggrieved by the same, present writ petition is filed.

2. Counter affidavit is filed by the respondents 4 and 5 denying the averments in the affidavit filed in support of the writ petition stating that enquiry was initiated under Section 51 of the Act and the petitioner is found guilty of misappropriation in the said inquiry and a notice dated 15.09.2016 under Section 60 of the Act was issued to the petitioner calling for his explanation. Aggrieved by the same, petitioner filed WP No.13874 of 2017 before this Court, wherein this Court granted interim stay of all further proceedings in April, 2017. That the petitioner obtained

medical leave from September, 2016 and requested the Society to permit him to work as Assistant Secretary instead of Secretary due to his ill-health and that he never attended Office till he was due to retire. He was issued notice dated 21.06.2017 informing that he is due to superannuation on 30.06.2017. That the Society sustained heavy loss due to misappropriation of fund to a tune of Rs.1,14,79,764.74 ps, as such it was decided to reduce the age of superannuation from 60 to 58 years. It is stated that Crime No.29 of 2017, dated 28.01.2017 was registered against the petitioner on the file of Tadikalapudi Police Station, West Godavari District for offences punishable under Sections 403, 408 read with Section 34 IPC and investigation is pending. It is stated that when the petitioner claimed ill-health and sought medical leave from September, 2016, he could not work efficiently for another 2 years. That the petitioner sought to work as Assistant Secretary, though it was acceded by the managing committee and directed him to continue as such till a new CEO is appointed, he did not come to the Society and did not join duty till date.

3. Reply affidavit is filed by the petitioner denying the averments in the counter affidavit stating that the PIC is not conferred with all the powers of the elected managing committee and in so far as policy decisions are concerned, it

has no role to play and that it is intended only to facilitate the day to day affairs of the society in the absence of an elected managing committee. That the resolution passed by the PIC is not valid in the eye of law as no directions were received from the Registrar or Government as required Section 32(7)(ii)(b) of Cooperative Societies Act. It is stated that the administrator/PIC can exercise powers as per the provisions of the Cooperative Societies Act, but not like elected managing committee, as the cooperative society is expected to function in a democratic manner through elected managing committee, and the managing committee is empowered to take all the decisions.

4. Heard Smt.G.Malathi, learned counsel for the petitioner and Smt.Bobba Vijayalakshmi, learned Standing Counsel for the respondents 3 to 5.

5. Learned counsel for the petitioner submits that the Managing Committee vide resolution No.74 dated 26.06.2015 approved to increase the age of retirement of the employees of the society from 58 to 60 years and the same is approved by the General Body in the meeting held on 26.09.2015, as such, the three men person-in-charge committee has no power to cancel the resolution passed by the Managing Committee, which was further approved by the General Body.

6. On the other hand, Smt. Bobba Vijayalakshmi, learned Standing Counsel for respondents 3 to 5 submits that because of heavy losses, the three men Person In-charge has passed resolution to reduce the age of superannuation from 60 to 58 years and same can be ratified by the General Body.

7. In this case, it is to be seen that the Managing Committee has approved the resolution to enhance the age of superannuation from 58 to 60 years and the said resolution is approved by the General Body of the society. The only ground on which the petitioner was retired from service is that the three men Person-In-Charge Committee had passed resolution reducing the age of superannuation from 60 to 58 years. Admittedly, when the Managing Committee and General Body approved the age of superannuation from 58 to 60 years, the three men Person-In-Charge Committee had no jurisdiction to oppose the same.

In view of the same, the impugned resolution passed by the three men Person-In-Charge Committee dated 29.05.2017 reducing the age of superannuation from 60 to 58 years is set aside. Since in the counter affidavit it is stated that the request of the petitioner to work as Assistant Secretary was acceded to, the petitioner shall be posted as Assistant Secretary till further decision taken by the

society. However, this will not preclude the society from taking appropriate action in accordance with the provisions of the Act and the Rules made thereunder.

Accordingly, this writ petition is allowed to the extent indicated above. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

15-09-2017
kvs

A.RAJASHEKER REDDY, J



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