

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.26433 OF 2000

ORDER:

The petitioner, who worked as Paid Secretary of the 5th respondent-Telladavarapalli PACS, filed this Writ Petition being aggrieved by the proceedings of the 4th respondent passed in Proceedings in P.S.No.41/97-A2 dated 01.07.1997 whereby the petitioner was dismissed from service with immediate effect, as being illegal and seeks reinstatement into service with full back wages and other benefits.

Brief facts of the case are that that the petitioner was appointed as Paid Secretary in the year 1974 and his service conditions were governed by Common Cadre Regulations framed under the provisions of A.P. Cooperative Societies Act, 1964 (for short 'Societies Act'). Later, he was allotted to Telladevarapalli PACS by the District Collector, Krishna, vide proceedings dated 15.08.1986. Thereafter, on 17.01.1994 he was transferred to Vissannapet PACS. Subsequently, the common cadre of Paid Secretaries was abolished w.e.f.22.04.1984. Section 116-AA was introduced in the Societies Act by Act 21/85 empowering the Registrar to allot the Secretaries as per Rule 72 of A.P. Co-operative Societies Rules (for short 'Societies Rules') by providing guidelines for appointment to the Societies by amending Societies Rules. While, the petitioner was working as such, a charge memo dated 06.02.1993 was issued to the petitioner framing the following nine (9) charges:

- (1) the petitioner misappropriated an amount of Rs.60,097-63 as per surcharge orders issued by the Deputy Registrar of Coop. Societies, Nuzvid;

(2) the petitioner misappropriated an amount of Rs.34,434-19 jointly with one Sri K.Venkateswara Rao, Ex.PPIC of the Society, as per surcharge order Rc.No.3401/87-CII dt.20.12.88 of the Deputy Registrar of Coop. Societies, Nuzvid.

(3) the individual was made responsible for an amount of Rs.490/- being the value of stock of chemical fertilisers of the Telladevarapalli PACS sold but not accounted for as per special report dt.7.9.1991 of the C.A.S.I., Kaikaluru and as communicated by the Dist. Coop. Audit Officer, Vijayawada through his letter Rc.No.1909/91-B2, dated 12.11.91.

(4) the petitioner while working as the Secretary of the Telladevarapalli PACS failed to handover charge of his post to the Bank supervisor concerned in pursuance of transfer orders P.S.C.No.1/91-A2 dt.22.11.91 of the General Manager transferring him from Telladevarapalli PACS and directing him to meet the General Manager for further posting and thereby disobeyed the orders and caused much inconvenience both to the Society and the Bank. Further the charge is that by the above acts, he showed scant regard to the orders of his superiors and thereby derelicted his duties.

(5) the petitioner failed to submit his explanation called for in this office show cause notice P.S.No.41/92-A2 dt.23.3.92 with regard his failure to handover charge of his post as per Pro.P.S.C.No.1/91-A2, dt.22.12.91 and subsequently as per this office telegram dt.18.2.92.

(6) the petitioner failed to handover charge of his post to the Bank supervisor concerned pursuant to this office transfer orders transferring him from Telladevarapalli PACS and that he failed to meet the General Manager for further postings. Further, he failed to vacate the quarters of the Secretary and report the same to the Central Officer through the President of the society. Vide this office letter P.S.No.41/92-A2, dt.12.6.92 and thereby he exhibited his careless attitude towards his superiors.

(7) the petitioner misappropriated a sum of Rs.750/- being the proceeds of receipts (4 Nos.) issued but not credited to the cash book.

(8) the petitioner misappropriated a sum of Rs.3272.10 by debiting towards stationery, Books & forms, T.A. contingencies etc., without vouchers.

(9) the petitioner misappropriated an amount of Rs.8720/- by debiting the cash book towards remittances in the Vissannapeta Branch without actually remitting in the Branch.

Having not satisfied with the explanation submitted by the petitioner on 31.08.1993, an Enquiry Officer was appointed. The Enquiry Officer issued notice to the petitioner. The petitioner, having received the notice, appeared before the Enquiry Officer and took adjournments from time to time. Finally, on 13.03.1995, he was set *ex parte*. Accordingly, the Enquiry Officer submitted Enquiry Report dated 22.02.1996 holding that except charge No.3, all other charges are proved. Based on the Enquiry Report, a show cause notice dated 10.02.1997 was issued to the petitioner asking his explanation as to why he should not be imposed with proposed punishment of dismissal from service. When the show cause notice was returned unserved, a publication was made in Eenadu Daily news paper, Krishna Edition, on 09.05.1997. In response to the same, petitioner attended the Central Office at Machilipatnam on 14.05.1997 and received the show cause notice and he submitted reply vide letter dated 21.05.1997. After considering the averments of the said letter and on perusal of the domestic enquiry report, the General Manager, Krishna District Co-operative Central Bank Ltd., Machilipatnam, i.e. the 4th respondent herein, ordered dismissal of petitioner from service vide proceedings dated 01.07.1997, against which the petitioner filed a revision under Section 77 r/w. Section 4 (2) of the Societies Act. The same was dismissed as not maintainable directing the petitioner to approach

the appropriate Forum for redressal of his grievance. Being aggrieved by the same, the present writ petition came to be filed.

Sri K.Chidambaram, learned counsel appearing for the petitioner, would contend that initially the petitioner was appointed as a Paid Secretary in the year 1974. On 10.09.1981, he was allotted to Telladevarapalli PACS. Thereafter, he was transferred to Visannapet PACS on 17.01.1994. The surcharge proceedings were issued under Section 60 of the Societies Act by the Divisional Co-operative Officer, the third respondent herein based on the inspection under Section 52 of the Societies Act. Against which, the petitioner preferred Appeals vide CTA Nos.1/1989, 3/1989 and 4/1989 before the Co-operative Appellate Tribunal-cum-District Munisiff, Tiruvur. The Tribunal, after elaborately considering the appeals, set aside the three surcharge orders passed by the third respondent. Criminal proceedings were also initiated against the petitioner for the self same allegations that the funds were misappropriated, in crime No.96/1998 for the offence punishable under Sections 408 and 409 read with 109 of India Penal Code on 11.11.1988 on the file of Visannapet Police Station. Ultimately, after completion of investigation, the case was taken on file as C.C.No.60/1991 on the file of the Judicial First Class Magistrate, Tiruvuru, Krishna District. After prolonged trial, the petitioner was acquitted under Section 248 (1) of the Code of Criminal Procedure for all the charges vide judgment dated 04.09.1996 in C.C.No.60/1991. As such, the charges levelled against the petitioner were proved to be false and fictitious. He would further contend that after abolition of common cadre of Secretaries on introduction of Section 116-AA

of the Societies Act, the petitioner was allotted to Visannapet PACS and continuing as the employee of the Society. The petitioner was asked for supply of provisions and rules governing the service conditions of the employees under which the show cause notice dated 10.02.1997 was issued to him. The common cadre for Paid Secretaries was abolished w.e.f.22.04.1998 and they were made permanent employees of the Society. For the purpose of allotting, Section 116-AA was introduced in the Societies Act empowering the Registrar to allot the Paid Secretaries as per Rule 72 of the Societies Rules by providing guidelines for appointment to the Societies by amending A.P. Co-operative Societies Rules. The power of Registrar for the purpose of allotment of de-caderised Secretaries to various Societies were conferred upon the concerned District Collector. The District Collector can exercise of power of Registrar under Section 116-AA to the Societies Act read with Rule 72 of the Societies Rules. Thus, the petitioner was allotted to Talladevarapalli PACS by the District Collector, Krishna, vide proceedings dated RC.No.1900/85/A dated 15.08.1986 and thereafter, the petitioner was transferred to Perakalapadu PACS vide proceedings dated 22.12.1999. Questioning the said order, petitioner filed W.P.No.416 of 1992 wherein initially this Court granted interim suspension vide order dated 28.10.1992 and subsequently the Writ Petition was disposed of on 27.08.1993 directing the respondent therein to give posting orders to the petitioner to Perakalapadu. *In spite* of the same, the petitioner was posted to Visannapet PACS on the ground that the posts of Secretaries both at Talladevarapalli and Perakalapadu are not vacant. However, in pursuance of the orders of this Court passed

in WPMP No.4547 of 1993, the third respondent by proceedings in RC.No.771/98-C dated 07.04.1998 directed the 5th respondent to pay arrears of Rs.44,673/- to the petitioner. Accordingly, the petitioner was paid. The 4th respondent has no power to take disciplinary action against the Paid Secretaries as the petitioner was allotted to the 5th respondent-Society by the District Collector, Krishna District, in exercise of the power under Section 116-AA and the same has become final. On such allotment, the petitioner has become the lifetime employee of the Society and he will be governed by the Service Regulations framed by the Registrar of the Co-operative Society under Rule 72 (4) of the A.P. Co-operative Societies Rules. He would further contend that under Regulation 12 of Service Regulations of the Society, the authority prescribed and empowered to take disciplinary action is specifically mentioned as per which it is the Managing Committee and further an appeal is provided to the District Collector. Hence, the order passed by the third respondent is illegal and arbitrary. The Enquiry Officer conducted *ex parte* domestic Enquiry and submitted a report without therebeing a proper enquiry. Hence, the petitioner was illegally removed by the incompetent authority based on the *ex parte* enquiry report.

Learned counsel for the petitioner relied on the decision reported in ***Akalakunnam Village Service Cooperative Bank Limited vs. Binu N.*¹** in support of his contention that when the duty owned by the Co-operative Society is of a public nature or when there is infringement of any statutory rules by the co-operative society, the writ is maintainable. He also relied on the

¹ (2014) 0 SCC 294

unreported common judgment delivered by a Division Bench of this Court dated 18.11.2002 in W.P.No.11049 of 2001 & W.A.No.343 of 2002, to contend that the District Collector alone is competent to take any action against the Secretary of the Society allotted by him and the dismissal of the petitioner is contrary to Rule 72 of the A.P. Cooperative Societies Rules and the same is liable to be set aside.

Per contra, the learned Government Pleader for Co-operative Societies appearing for respondents 1 to 3, while reiterating the averments of the counter, contended that the petitioner was appointed as a Paid Secretary in the year 1974 by which time his service conditions were governed by the Andhra Pradesh Agricultural Credit Societies Paid Secretaries Common Cadre Regulations framed under Section 116(A)(1) of the Societies Act. On introduction of Section 116-AA with modification of Section 116-A of the Act w.e.f.22.04.1985 due to abolition of the common cadre of the Secretaries all the Secretaries are to be allotted to PACS as per the provision of Rule 22 of APCS Rules 1964 by the District Collector. In Krishna District, the Secretaries were not allotted to the Society due to the stay orders of this Court dated 30.08.1996 in W.P.No.16558 of 1992 & batch. The Joint Registrar/District Cooperative Officer, Krishna, issued orders dated 12.11.2004 allotting Secretaries to PACS and they were given effect from the date of notification i.e. from 12.11.2004 by virtue of amendment to Rule 72 of the Societies Rules including Sub-rule (5). Till such time, the DCCB is competent to take disciplinary action. As such, the impugned order passed is within jurisdiction and competence. The three surcharge proceedings

were issued under Section 60 of the Societies Act by the Divisional Cooperative Officer, Nuzvid, based on the inspection report under Section 52 of the Societies Act. However, they were set aside by the Co-operative Tribunal. But, the 4th respondent initiated disciplinary proceedings against the petitioner and issued a charge memo. Not being satisfied with the petitioner's explanation, an Enquiry Officer was appointed. The Enquiry Officer conducted an enquiry and submitted a report holding that except charge No.3, all the charges are proved and the 4th respondent-disciplinary authority after issuing a show cause notice of dismissal, based on the Enquiry Officer's report and after considering the representation of the petitioner to the show cause notice, passed the order of removal from service. Therefore, the 4th respondent is a competent authority and there is no illegality or irregularity in passing the impugned order.

Sri V.Kishore, learned counsel appearing for Sri B.Adinarayana Rao, learned counsel for the 5th respondent, would contend that a charge memo was issued to the petitioner framing nine (9) charges and an Enquiry Officer was appointed to conduct enquiry against the petitioner in respect of the nine charges. The Enquiry Officer submitted *ex parte* enquiry when the petitioner failed to participate in the enquiry, *in spite* of notices served on him. Based on the Enquiry Officer's report, the petitioner was issued with a show cause notice of dismissal from service. As the said show cause notice was returned unserved, a paper publication was made in Eenadu Daily news paper, Krishna District Edition. In response to the same, petitioner submitted his representation. The 4th respondent after carefully considering the representation of

the petitioner and Enquiry Report, passed the impugned order of dismissal of the petitioner from service, which is in accordance with law. Learned counsel further contends that the writ petition is not maintainable before this Court in view of the decision reported in ***Sri Konaseema Co-operative Central Bank Ltd., Amalapuram vs. N.Seetharama Raju***² wherein this Court held that public law remedy is not available to enforce such statutory public duty. He also relied on the unreported decision of the Supreme Court in ***Chief Executive Officer, Krishna District Cooperative Central Bank Ltd., vs. K.Hanumantha Rao*** (Civil Appeal No.11975 of 2016 dated 09.12.2016 in support of his contention that no interference is called under the power of Judicial review when the charges are proved in departmental enquiry, based on the Enquiry Officer's report, the petitioner was rightly dismissed from service by the disciplinary authority.

In the facts and circumstances of the case and in considered view of this Court, the Divisional Co-operative Officer, Nuzivid, the third respondent, issued surcharge orders to the petitioner vide Rc.No.3401/87-CII dated 20.12.1988 for Rs.55,798.53/-, R.C.No.3401/87-CII dated 20.12.1988 for Rs.4,299.10/- and Rc.No.3401/87-CII for Rs.34,434.19/- for recovery of the amounts alleged to have been misappropriated. Petitioner preferred appeals to the Appellate Tribunal. The Tribunal allowed the appeals and set aside the surcharge proceedings. In Criminal Case initiated against the petitioner vide C.C.No.60/1991 on the file of the Judicial First Class Magistrate, Tiruvur, he was acquitted for the alleged charges of misappropriation. *In spite* of the stay orders

² AIR 1990 AP 171

granted by this Court, petitioner was transferred and such orders were not effected as per the orders of the Court. The respondents have initiated disciplinary proceedings against the petitioner without therebeing any legal evidence against him. A perusal of the Enquiry Report reveals that no reason was given in support of the finding of the Enquiry Officer based on legal evidence. The plea of the government that the 4th respondent is having power to initiate disciplinary proceedings against the petitioner is untenable for the reason that only the District Collector is the competent authority to do so pending final allocation of the common cadre Secretaries. The 4th respondent passed impugned order of dismissal of the petitioner from service without jurisdiction, contrary to Rule 72 of the Societies Rules, pending final allocation of Secretaries on decaderization of Paid Secretaries. In view of stay granted on 30.08.1996 by this Court in W.P.No.16558 of 1992 and batch, no permanent allotment was done as per Rule 72 of the Societies Rules as amended Section 116-AA of the amended Act 21/85, the District Collector, Krishna, alone is competent to pass order against the Common Cadre Secretaries of the Society. In view of the lack of jurisdiction to the 4th respondent to pass the impugned order, the same is liable to be set aside and accordingly set aside. The dismissal of the petitioner is in violation of the statutory Rule 72 of the Societies Rules as per Section 116-AA as amended by Act 21/85, by the 4th respondent, the writ petition is maintainable. The contrary contentions of the counsel for R-5, merit no consideration and the decision in **Sri Konaseema (2 supra)** has no application to the facts of the present case.

Learned counsel for the petitioner states that the petitioner has reached the age of superannuation during the pendency of the writ petition before this Court. Hence, in *lieu* of reinstatement with continuity of service and back wages, grant of a *lumpsum* amount to the petitioner is justified.

Taking into consideration of the said submission, this Court having set aside the impugned order, deem it appropriate in the interest of justice to direct the respondents to pay 50% of the back wages to the petitioner in *lieu* of his reinstatement with continuity of service and other attendant benefits with full back wages, as the dismissal of the petitioner is set aside as illegal. The respondents are further directed to settle the amounts to the petitioner, within a period of two months from the date of receipt of a copy of this order.

Accordingly, the Writ Petition is allowed by setting aside the impugned order.

Miscellaneous petitions pending in this petition, if any, shall stand closed. There shall be no order as to costs.

(M.GANGA RAO, J)

26.07.2018

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