

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.11439 OF 2002

ORDER:

The petitioner, who is working as Attender in the respondent-District Co-operative Marketing Society Limited, filed this writ petition, being aggrieved by the order dated 14.03.2002 passed in M.P.No.16 of 2000 by the Labour Court-III, Hyderabad, whereby, his claim for payment of difference of wages for the period from 01.07.1986 to 31.08.2000 amounting to Rs.2,50,452/- with interest thereon @ 12% per annum, was dismissed.

The case of the petitioner is that he was appointed as Attender in the District Co-operative Marketing Society *vide* proceedings dated 30.07.1981. The Deputy Tahsildar Co-operative Societies-cum-Chairman, Co-operative Society Limited, Achampet, issued proceedings on 15.04.1986 stating that the petitioner along with two others, who were working on consolidated salaries, were appointed in the time scale of Rs.165-4-250/- along with usual allowances as per the special bye-laws relating to the service conditions of the employees of the Co-Operative Marketing Society Limited, Achampet, with effect from 01.07.1986. The petitioner was paid consolidated pay @ Rs.500/- per month from 01.07.1986 to 30.11.1994, and from 01.12.1994, the petitioner was paid Rs.1,083/- per month till the date of filing of the petition. But the petitioner claimed wages on par with the regular employees from 01.07.1986 with D.A., H.R.A. etc. He claimed arrears from 1.7.1986 to 31.08.2000. When he was not paid the difference of wages for the said period, he filed

M.P.No.16 of 2000 under Section 33-C (2) of the Industrial Disputes Act, 1947 (for short 'the Act of 1947'), before the Labour Court-III, Hyderabad, which in turn, *vide* order dated 14.03.2002, dismissed the same by observing that the Society where the petitioner is working is governed by the provisions of A.P. Co-Operative Societies Act, 1964 (for short 'the Act of 1964') and as per Section 116-C of the Act, 1964 Society shall have the same powers to fix the staffing pattern, qualification, pay scales and other allowances to its employees with the prior approval of the Registrar of Co-operative Societies; that the Society has not obtained any prior approval from the Registrar of Co-operative Societies before granting time scale of pay to the petitioner vide proceedings dated 15.4.1986; that the provisions of the Act of 1947, in particular Section 33-C (2) thereof, have no application to the petitioner as he is working in the 2nd respondent society, which is registered under the provisions of the Act of 1964 and under the provisions of A.P. Shops and Establishment Act; that the dispute regarding the payment of wages or any sum due to the employees under law is a dispute touching Constitution, Management or the Business of a society and hence, such dispute can be referred to the Registrar of the Co-operative Societies; that the petitioner did not raise a dispute with the society and refer the dispute to the Registrar of Co-operative Societies; that nowhere the nature of activities of the respondent society and nature of duties of the petitioner were stated; that in the absence of such details, it cannot be decided whether the respondent society comes under the definition of an 'Industry' and whether the petitioner comes under the definition of 'workman' under the Act of

1947; that the proceedings dated 15.04.1986 on the basis of which the petitioner is claiming wages was never given effect to and the wages were not paid as per those proceedings even for a single month; that the 1st respondent has no power to convert a consolidated payment worker to a regular employees without prior approval of the Registrar of Co-operative Societies; that as the Registrar of Co-operative Societies did not give approval for such conversion, it was not implemented and hence, the question of payment of wages and adjudication of the dispute under Section 33-C of the Act of 1947 does not arise and as such the petitioner is not entitled to any relief under Section 33-C (2) of the Act of 1947. Being aggrieved by the same, the present writ petition is filed.

Smt.K.Udaya Sri, learned counsel appearing for the petitioner, submits that the petitioner was appointed as Attender in the District Co-operative Marketing Society Godown at Achampet on 30.7.1981. The petitioner along with two others, who were working on consolidated salaries, were granted time scale of pay of Rs.165-4-250/- along with usual allowances with effect from 1.7.1986 *vide* proceedings of the then Deputy Tahsildar, Co-operative Societies-cum-Chairman, Co-operative Society Limited, Achampet, dated 15.4.1986. But the petitioner was not paid the salaries as per the said order. In those circumstances, the petitioner filed M.P.No.16 of 2000 before the Labour Court-III, Hyderabad, under Section 33-C (2) of the Act of 1947 for payment of difference of wages @ Rs.2,50,452/- for the period from 1.7.1986 to 31.8.2000 with interest at 12% p.a. Learned counsel further submits that the Labour Court, without appreciation of facts, erroneously held that the provisions of the Industrial Disputes Act

are not applicable to the case of the petitioner and thereby dismissed the petition *vide* order dated 14.3.2002, which is arbitrary and illegal.

The grievance of the petitioner is that he was not paid the salary as per the time scale viz., 165-4-250/- granted *vide* proceedings dated 15.04.1986. The dispute is with regard to payment of wages is not a dispute touching Constitution, Management and business of the society and therefore, it is referable to Registrar of Co-operative Societies under the Act of 1964. The Labour Court erred in holding that the petitioner has to seek remedy under Section 77 of the A.P. Shops and Establishment Act, 1988. In support of her contention, the learned counsel relied on the Full Bench judgment of this Court in ***A.P. Steel Wool Industries Co-operative Society Limited vs. Labour Court***¹, wherein it was held as under:

“On a harmonious construction of the provisions, we consider, it would accord with the intention of the legislature if we hold that the object behind the provisions made in Secs.40 and 41 of the Shops Act was not to deprive the shop employee of a right or remedy available to him, but only to provide an additional forum for seeking speedy solution to the problems arising out of the termination of his service. We have not been shown any authority or constitutional bar against the State Legislature providing such an additional remedy in favour of the employee. The option is left with the shop employee who is aggrieved by the termination of his service. He may, at this choice and convenience, either pursue the remedy invoking Sec.2-A of the I.D.Act, or approach the appellate authority (in case of necessity, the Labour Court also in Second Appeal). The apprehension that the availability of two forums for the employee to seek redressal of his grievance would lead to conflict of decisions is quite unwarranted. It is needless to say that the principles

¹ 1987 (1) ALT F.B 98

of constructive *res judicata* would operate in these fields also. Once on the culmination of the proceedings in one of the channels the decision becomes final under either of the enactments, that binds both the parties and the issue could not be allowed to be re-agitated in the proceedings in the other channel. To say that once any proceedings under Sect.2-A of the I.D.Act is set in motion the employee would forfeit the right to pursue his remedy under Sec.41 of the Shops Act also would be unjust and unwarranted, for the conciliation may fail and the Government may decline to refer the matter for adjudication to the Labour Court; and the employee would be left high and dry without having a door at which he could knock for justice. The fact that it is one and the same authority, the Labour Court, on a reference under Section 10(1) of the I.D Act, to adjudicate the matter; and also to dispose of the appeal filed under Sec.41 (3) of the Shops Act, would not also be a justification for taking away one of the remedies provided by the statute, for the reasons already stated.”

Learned counsel appearing for the petitioner further contends that while appointing the petitioner in the time scale of Rs.165-4-250/- vide proceedings dated 15.04.1986, the 2nd respondent has not got approval as required under the provisions of Section 116-C of the Act of 1964. She placed reliance on the judgment rendered in **A.Rangareddy v. Co-operative Electric Supply Society, Karimnagar Dist and ors²**, wherein it was held as under:

“The dictionary meaning of the word staff is ‘a body of persons employed in an establishment on management or administration or clerical side’. Thus, staffing pattern means a body of persons for the employment in an establishment on management or administration or clerical side, that is to say in a particular cadre. As noted above, the special bye-laws of CESS had already provided for the appointment by promotion to the post of Assistant Divisional Engineer and the qualification had been prescribed and the pay scale had also been fixed. It is not disputed before me that from before

² 1997(2) ALD 582

the year 1988, there was three posts of Assistant Divisional Engineers in CESS and in which other persons were appointed on promotion. Once after the approval of the Registrar of Societies under the Act 7 of 64 post in a particular cadre is created, it does not appear necessary for obtaining the approval of the Registrar every time when the Board sanctions new posts by virtue of its power under bye-law No.13(iv) of CESS. Merely because the term of the Managing Committee of the 1st respondent was to expire on 16.10.1988, it cannot be said that it was not competent to sanction posts before the expire of the term and its act cannot be said to be mala fide particularly when there is no material on record to infer that. It is not disputed before me that the petitioner was not qualified at the relevant time because he had not passed the qualifying test in accountancy for being considered for the post of Assistant Divisional Engineer. He might have passed the test in the month of December, 1988, but it cannot be said that the Managing Committee was wrong in not waiting upto December, 1988 anticipating his passing the test.

None appeared for the respondents.

As can be seen from the record, the petitioner was appointed as Attender in the time scale of Rs.165-4-250/- vide proceedings dated 15.4.1986, for which there is no necessity to obtain approval of the Registrar of Cooperative Society under Section 116-C of the Act of 1964 as held by this Court, in **C.Vidyalankar and Ors v. Government of A.P., Education Department, Hyd and Ors**³ and as the post and time scale were already approved by the Registrar of Co-Operative Societies under the provisions of Co-operative Societies Act. Therefore, the petitioner is entitled to file an application for payment of difference of wages as per the time scale either under the provisions of the Industrial Disputes Act or the provisions under the A.P. Shops and Establishment Act. The application filed under Section 33-C of the Act of 1947 is

³ 1997(2) ALD 586 (DB)

maintainable for recovery of arrears of payment of salary as held by this Court in ***A.P.Steel Wool Industries Co-operative Society Limited (1 supra)***.

The Labour Court, on erroneous appreciation of fact and law, had dismissed MP No.16 of 2000, which was filed under Section 33-C (2) of the Act of 1947 for recovery of Rs.2,50,452/- towards the difference of wages for the period from 1.7.1986 to 31.08.2000 with interest at 12%, *vide* order dated 14.3.2002.

At the time of filing the writ petition, the petitioner was aged about 42 years, and as of now, he might have reached the age of superannuation. At this length of time, the matter could not be remanded to the Labour Court for fresh consideration. The Labour Court held that though the petitioner was appointed in the time scale of Rs.165-4-250/- vide proceedings dated 15.4.1986, he was not paid the salaries on the ground that the time scale was given without prior approval of the competent authority i.e. Registrar of Co-operative Societies, based on the evidence of WW1, MW1 and Exs.W1 and W2. The claim of the petitioner for payment of Rs.2,50,452/- could be adjudicated either under the provisions of A.P. Shops & Establishment Act or under the provisions of the Act of 1947 towards difference of wages. Hence, in considered view of this Court the petitioner is entitled for recovery of Rs.2,50,452/-, towards difference of wages from 1.7.1986 to 31.08.2000.

Accordingly, the Writ Petition is allowed and the impugned order is set aside directing the respondents to pay an amount of Rs.2,50,452/- to the petitioner with interest at 12% p.a.

Miscellaneous petitions pending in this petition, if any, shall stand closed.

(M.GANGA RAO, J)

8th August, 2018
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