

HON'BLE SRI JUSTICE M.GANGA RAO

W.P.Nos.24830 OF 2000 & 22558 OF 2001

COMMON ORDER

Since the issue involved in both the writ petitions is one and the same, they are being disposed of by this common order.

Both the writ petitions are filed challenging the order dated 19.6.2000 passed by the Deputy Commissioner of Labour, Zone-II, Eluru & Appellate Authority under Section 48(3) of A.P. Shops and Establishment Act, 1988 (for short 'the Act').

W.P.No.24830 of 2000 is filed by the Girijan Co-op Corporation Limited, whereas the 1st respondent therein filed W.P.No.22558 of 2001, seeking for grant of back wages, which are denied by the Deputy Commissioner of Labour under the impugned order dated 19.6.2000.

It is the case of the petitioner-workman (W.P.No.22558 of 2001) is that while working as Junior Assistant in Girijan Co-op Marketing Society Limited, he was placed under suspension by the 3rd respondent on the ground that he has misappropriated the Corporation funds to a tune of Rs.23,296.25 ps. The 2nd respondent was appointed as Enquiry Officer. Being not satisfied with the explanation submitted by

the petitioner, the Enquiry Officer submitted the enquiry report stating that charges 1 and 3 are proved and charge No.2 is dropped and recommended for imposition of punishment of stoppage of one increment with cumulative effect for a period of two years. But the Vice Chairman & Managing Director of Girijan Co.op Corporation Limited-who is the 1st petitioner in W.P.No.24830 of 2000, had issued a notice to the workman as to why the punishment of dismissal from service should not be imposed against him. On being considered the explanation submitted by the workman, the Vice Chairman & Managing Director dismissed him from service *vide* order dated 20.11.1996 holding that the workman had misappropriated the Corporation funds to a tune of Rs.23,296.25 ps. Aggrieved by the said order, the petitioner-workman preferred an appeal before the Board of Directors, Girijan Co.op Corporation Limited along with a petition to condone the delay, but the Board rejected the appeal on 20.03.1997, against which, the petitioner-workman preferred appeal before the Assistant Commissioner of Labour and the same was numbered as A.P.S.E.Case No.2 of 1997. The Assistant Commissioner of Labour passed order on 31.07.1999 while upholding the order of dismissal, directed the disciplinary authority to pay full wages during the period of suspension till the date of

termination. Aggrieved by the said order, the disciplinary authority filed appeal before the Deputy Commissioner of Labour under Section 48 (3) of the Act, to set aside the payment of back wages and the same was numbered as A.P.S.E.Case No.10 of 1999. The petitioner-workman also filed appeal before the Deputy Commissioner of Labour and the same was numbered as A.P.S.A.Case No.3 of 1999. The Deputy Commissioner of Labour disposed of the appeal by holding that there was negligence on the part of the workman while discharging his duties and even if the amount of Rs.23,296.26 ps was temporarily misappropriated for a period of six months, the same was re-deposited into the account. The Deputy Commissioner of Labour directed the disciplinary authority to reinstate the petitioner-workman into service without back wages and without continuity of service, *vide* order 19.6.2000. Challenging the said order, the Girijan Co.op Corporation Limited filed W.P.No.24830 of 2000 and the workman filed W.P.No.22558 of 2001.

Sri P.V.V.Satyanarayana, learned Standing Counsel appearing for the Girijan Co.op Corporation Limited would submit that the provisions of the A.P.Shops and Establishments Act, 1988 are not applicable as the Corporation is under the control of the State Government as

contemplated under Section 11-B of the Act and therefore, the action of the Assistant Commissioner of Labour as well as Deputy Commissioner of Labour in entertaining the appeals against the order of dismissal of the workman is illegal. He would further submit that charge Nos.1 and 3 are proved and charge No.2 is dropped and that the disciplinary authority after considering the explanation submitted by the workman to the show cause notice, passed the dismissal order and there is no irregularity and illegality and the disciplinary authority passed the dismissal order dismissing the workman strictly in adherence to the rules and hence the impugned order is liable to be set aside.

Sri Ch.Dhanamjaya, learned counsel appearing for the workman would contend that the charges are not proved. He further contends that the enquiry officer in his report had found that the charges 1 and 3 are proved, charge No.2 is dropped and based on mere surmises and conjectures recommended for stoppage of increment with cumulative effect for a period of two years. But the disciplinary authority without properly considering the explanation submitted by the workman dismissed him from service, which is disproportionate to the alleged misconduct. Aggrieved by the same, the workman filed appeal before the Assistant

Commissioner of Labour being A.P.S.E.Case No.2 of 1997, who in turn, upheld the order of dismissal, *vide* order dated 31.7.1999. The appellate authority while rejecting the objection raised by the disciplinary authority held that Girijan Co-operative Corporation Limited was not fully under the control of Government of Andhra Pradesh. Hence, it is not excluded from the provisions of A.P.Shops and Establishment Act, 1988. The appellate authority after considering the enquiry officer's report directed the disciplinary authority to pay full wages for the period of suspension till the date of dismissal from service. Being aggrieved by the same, the workman filed appeal before the Second Appellate Authority-Deputy Commissioner of Labour, which in turn, after considering the evidence on record and enquiry officer's report held that there was negligence on the part of the workman in discharging his duties and even if the amount of Rs.23,296.26 ps. was temporarily misappropriated for a period of six months, punishment of dismissal is grossly disproportionate. Learned counsel further submits that admittedly, the said amount was repaid. The enquiry officer in his report has stated that charge Nos.1 and 3 are proved charge No.2 is dropped and recommended for stoppage of increment for a period of two years. But the disciplinary

authority has imposed the punishment of dismissal from service. Against the said order, the petitioner preferred appeal before the Assistant Commissioner of Labour, who, vide order dated 31.7.1999 held that the misappropriation by the petitioner was proved in the enquiry and that the termination was valid, but directed the Corporation to pay full wages to the petitioner from the date of suspension till the date of termination. Challenging the same, the petitioner filed appeal before the Deputy Commissioner of Police, who, in turn, vide order dated 19.6.2000 while observing that the workman was negligent in discharging his duties, directed the Corporation to reinstate the workman with immediate effect but without back wages and without continuity of service. Seeking reinstatement with back wages and with continuity of service, the workman filed W.P.No.22558 of 2001.

In the facts and circumstances of the case, this Court is of the considered view that the second appellate authority has not committed any error either on facts or law and therefore, the order impugned dated 19.6.2000 does not warrant interference by this Court. Further, the contention of the counsel for management that the petitioner in W.P.No.24830 of 2000 viz., Girijan Co.op Corporation Limited is fully under the control of the State Government, as contemplated in

Section 73 (11) (b) of the Act, is untenable as the petitioner-Corporation is registered under the Societies Act and comes within the definition of Establishment as defined under Section 2 (5) of the Act.

Accordingly, both the Writ Petitions are dismissed. No costs.

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

13th June, 2018
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JUSTICE M.GANGA RAO