

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.17646 of 2005

ORDER:

This writ petition is filed seeking to issue a Writ of Certiorari calling for the records related to and connected with the orders passed by the Authorities under the Shops and Establishments Act, whereby, the Authorities under Shops and Establishments Act have directed the petitioner-Society to reinstate the 1st respondent.

Heard Ms.Bobba Vijaya Lakshmi, counsel for petitioner and Sri V.Sudhakar Reddy, learned counsel for the 1st respondent-workman.

It has been contended by the petitioner that the petitioner is a Primary Agricultural Co-operative Society and the 1st respondent was appointed on compassionate ground on 01.08.1997 as an Attender and he was continued upto 01.02.2003. The petitioner further contend that the Commissioner of Co-operative Societies has issued instructions vide proceedings dated 10.08.2002 directing all the Primary Agricultural Co-operative Societies to fix the staffing pattern and pay-scales of the employees of Primary Agricultural Co-operative Societies, strictly in terms of Section 116 (C) of the A.P. Co-operative Societies Act, 1964. The Commissioner of Co-operative Societies has further directed all the Primary Agricultural Co-operative Societies to submit proposals of the above staff within 45 days. The petitioner, having realised that the 1st respondent was not fitting into the scheme of Section 116 (C) of the A.P. Co-operative Societies Act, has terminated the services of 1st respondent by paying one month salary in lieu of notice. Challenging the same, the

1st respondent-workman approached the 1st Appellate Authority under the Shops and Establishments Act by filing A.P.S.E. Case No.11 of 2004. The 1st Appellate Authority, vide orders dated 22.02.2005, set aside the orders of termination and directed that the 1st respondent be reinstated into service with 50% back wages. Aggrieved by the same, petitioner has carried the matter in appeal before the 2nd Appellate Authority by filing A.P.S.A. Case No.5 of 2005. The 2nd Appellate Authority, vide orders dated 12.07.2005, had confirmed the orders of reinstatement passed by the 1st Appellate Authority, however, granted relief in favour of the petitioner by directing the petitioner to reinstate the 1st respondent-workman without back wages. Challenging the same, the present writ petition is filed.

Counsel appearing for the petitioner contend that the Authorities under the Shops and Establishments Act have failed to appreciate that the petitioner had to terminate the services of 1st respondent consequent upon the instructions issued by the Commissioner of Co-operative Societies, as the 1st respondent was not fitting into the scheme of Section 116 (C) of the A.P. Co-operative Societies Act, and no illegality has been committed by the petitioner. In view of the same, the petitioner has no other option except to terminate the services of the 1st respondent and contend that appropriate orders be passed by setting aside the orders passed by both the Authorities under the Shops and Establishments Act.

Counsel appearing for the 1st respondent-workman has contended that the Authorities under the Shops and Establishments Act have rightly passed orders in favour of the 1st respondent after examining the case of

the 1st respondent and the petitioner has not carried out any exercise whether the post of 1st respondent is within the permissible limits of staffing pattern of the Society under Section 116 (C) of the A.P. Co-operative Societies Act, and without submitting the proposals to the Commissioner of Co-operative Societies, the petitioner-Society has straightaway terminated the services of the 1st respondent, which is nothing but arbitrary exercise of power. It is contended that since no grave irregularity or illegality has been pointed out by the petitioner in the orders passed by the Authorities under the Shops and Establishments Act, in the absence of which, this Court should normally not interfere with such orders and the writ petition is liable to be dismissed.

This Court, having considered the rival submissions of the parties, is of the considered view that the Authorities under the Shops and Establishments Act have rightly passed orders in favour of the 1st respondent-workman and a specific finding has been recorded by the 1st Appellate Authority under the Shops and Establishments Act that the petitioner has not submitted proposals to the Commissioner of Co-operative Societies and no attempt was made to find out as to whether the 1st respondent is forming part of the staffing pattern in terms of Section 116 (C) of the A.P. Co-operative Societies Act. Without examining the case of the 1st respondent, the petitioner has mechanically terminated the services of 1st respondent-workman. Cogent reasons were given by both the Authorities while passing orders in favour of the 1st respondent. Apart from that, no material is placed by the petitioner before this Court to come to the conclusion that if the 1st respondent-

workman is continued, it will be in violation of Section 116 (C) of the A.P. Co-operative Societies Act. Except making a bald statement, no material is placed before this Court.

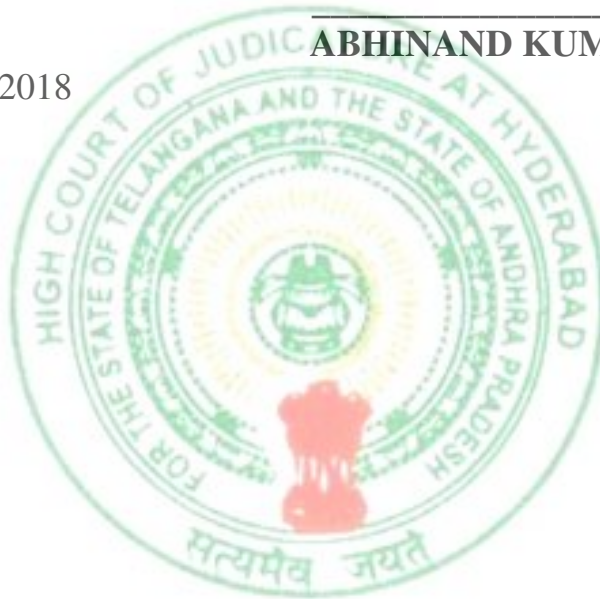
In view of the above observations, this Court is not inclined to interfere with the orders passed by the Authorities under the Shops and Establishments Act.

The writ petition is accordingly dismissed. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

28th December 2018

ajr



ABHINAND KUMAR SHAVILI, J