

HON'BLE MRS JUSTICE SUREPALLI NANDA

WRIT PETITION No.23860 OF 2020

ORDER:

Heard the learned counsel for the petitioner and learned Government Pleader for Services III.

2. This writ petition is filed to issue an appropriate writ, order or direction, particularly one in the nature of Writ of Mandamus, declare the action of the 4th respondent in not permitting the petitioner to join into duty as Secretary in the 3rd respondent Society pursuant to the repatriation orders passed by the 5th respondent as well as not implementing the orders of the 2nd respondent dated 15.09.2020 and 17.11.2020 as arbitrary, unreasonable and consequently, direct the 4th respondent to permit the petitioner to join into the duties in the post of Secretary in the 3rd respondent Society and to pay the salaries from the month of July, 2020 till date.

3. The case of the petitioner, in brief, is as follows:

a) The petitioner was appointed as clerk on 25.04.1999 as per the resolution passed by the Managing Committee of

Rebbena P.A.C.S and he joined duty on the same day itself. The petitioner passed Junior Diploma in co-operation in the year 2008 and thereafter, promoted to the post of Secretary.

b) After conducting elections to all PACS in the State, new body under the 4th respondent came to power. The 2nd respondent passed orders on 01.11.2019 transferring the petitioner from Bejjur PACS to the 5th respondent Rebbena PACS. The 3rd respondent society passed resolution on 30.11.2019 relieving the petitioner.

c) The petitioner requested the 5th respondent society on 01.12.2019 to permit him to join duty and petitioner joined duty as Secretary. After conducting election, the new body came into power and accordingly on 31.07.2020 a resolution was passed that there is surplus staff in the society and that there is no sufficient work and to repatriate the petitioner to the 3rd respondent and to relieve him.

d) On 01.08.2020, the petitioner made a representation to permit him to join duty as he was repatriated from the 5th respondent. As the petitioner did not receive any information, he made a representation to the 2nd respondent to take necessary action, but in vain. Subsequently, on 14.09.2020,

the petitioner made representation to the District Collector, Komaram Bheem, Asifabad that the 4th respondent did not take any action on his representation dated 01.08.2020.

e) The 2nd respondent as per his proceedings dated 15.09.2020 directed the 4th respondent to submit explanation for causing delay in joining the petitioner to his duties and also directed the 4th respondent to take action immediately by joining him into duties as the same has to be intimated to the District Collector, but the 4th respondent did not take any action. The petitioner made another representation on 04.11.2020 to the 2nd respondent reiterating the above said request. Based on the said representation, the 2nd respondent again issued proceedings on 17.11.2020 to permit the petitioner to join duty and sanction arrears of salary. Therefore, this writ petition is filed.

4. The counter affidavit filed by the 2nd respondent, in brief, is as follows:

a) The petitioner was transferred from the 3rd respondent society to the 5th respondent on the basis of resolution, which was contrary to Statutory Rule 28 of the Telangana Cooperative Societies Act and Rules, 1964. The 3rd and 4th

respondents failed to follow the orders of the DCO and that DCO has not given any transfer orders in order to transfer the petitioner. The 4th respondent stated that the petitioner has not performed his duty properly, so he is not permitting him to be reinstated into his earlier post and also stated that the petitioner committed several irregularities during his service in the 4th respondent society. Therefore, the writ petition is liable to be dismissed.

PERUSED THE RECORD

5. Two Resolutions dated 27.11.2019 read as under:

“Primary Agricultural Cooperative society, Bejjur, Bejjur Mandal, Komaram BheemAsifabad.

On 27-11-2019 urgent meeting was convened under the Chairmanship of Sri BhimkariHanmanthu, PIC, Chairman at about 11.00 A.M. and the following issues were discussed and resolution passed unanimously.

Issue No. 1

As per the orders of the D.C.O. With regard to transfer and relieve of J. Satyanarayana, working as Secretary in the society accordingly we are passing a resolution unanimously relieving him from our society.

Resolution No. 1

As per the orders of the D.C.O. Asifabad, J. Satyanarayana Goud who is working in our society was transferred to Rebbenna PACS.

Proceedings of the Meeting

On 27-11-2019 under the Chairmanship of Sri Gajula Ravinder, PIC/Chairman urgent meeting was convened at about 11.A.M. The below mentioned matters have been discussed and passed resolution.

Issue No. 1

Regarding to join in our Society as Secretary as per the orders of DCO

Resolution No.1

Working in our society

It is unanimously resolved to admit and join J. Satyanarayana Goud transferred from Bejjur Mandal to our society as Secretary of Rebbena PACS

6. **Letter No.39/Reli order/2019 dated 30.11.2019 of the 3rd respondent read as under:**

In the above cited subject, as per the resolutions of PACS, Bejjur and PACS Rebbana, on 30-11-2019, J. Satyanarayana Goud Secretary was relieved from our society.

Therefore it is requested to inform to the PIC/Chairman, Rebbana after joining him.

7. **Minutes Book dated 31.07.2020 reads as under:**

Executive Committee Meeting

On 31-07-2020 at about 11.A.M in the premises of Rebbena P.A.C.S, Ltd., under the Chairmanship of Sri Karnatham Sanjeev Kumar urgent meeting was convened. The below mentioned matters have been discussed and passed resolution.

Agenda

Sending back Sri J. Satyanarayana Goud from our society to the erstwhile P.A.C.S Rebbena society

Resolution

On temporary basis Sri J. Satyanarayana Goud came to our society from Bejjur Society and worked upto 31-07-2020. But as there is no much work in our society and accordingly it is unanimously resolved to send back to the erstwhile Society i.e., PACS Bejjur.

FACTS NOT IN DISPUTE:

8. Facts not in dispute are that the 3rd respondent vide its resolution dated 27.11.2019 transferred the petitioner to the 5th respondent society vide resolution dated 27.11.2019 of the 5th respondent society, the 5th respondent unanimously resolved to admit and join the petitioner transferred from the 3rd respondent society as Secretary of the 5th respondent society. Vide Resolution of the Executive Committee dated 31.07.2020 of the 5th respondent society it was resolved to send back the petitioner to the petitioner's erstwhile society i.e PACS, Bejjur.

9. A bare perusal of the letter No.39/Reli order/2019 dated 30.11.2019 of the 3rd respondent herein i.e. Chief

Executive Officer P.A.C.S, Bejjur, Kumrambheem, Asifabad District, clearly indicates that the petitioner had been relieved from the 3rd respondent society w.e.f. 30.11.2019 unilaterally, without providing any notice or opportunity to the petitioner in clear violation of principles of natural justice.

10. The proceedings R.C.No. 47/2020-C dated 15.09.2020 of the District Cooperative Officer, Kumrambheem Asifabad addressed to the President, PACS Ltd., Bejjur, reads as under:

“The immediate attention to the subject and reference cited wherein Sri. Satyanarayana Goud S/o Shankar Goud, R/o Salgupally has submitted a petition to the District Collector, Kumrambheem Asifabad for delaying his joining in PACS Ltd., Bejjur.

As per grounds of Telangana State Cooperative Societies Act 1964 & PACS Bye laws you should allow him to join in his duty as he previously worked in PACS Ltd., Bejjur.

Therefore you are instructed to submit explanation for delaying his joining and allow him to join in his duty. Action must be intimated to the individual and District Collector, Kumrambheem Asifabad immediately.”

11. Proceedings in Rc.No.311/2020-C, dated 17.11.2020 of the District Cooperative Officer,

Kumarambeem Asifabad District addressed to the President PACS, Bejjur reads as under:

“It is to inform you that as per the reference 6th cited, he intimated that he worked in the PACS, Bejjur from 25.04.1999 to November, 2019 (20) years in the PACS Bejjur. Further he also discharged duties from December, 2019 to July, 2020 in the Rebbena PACS and again the Managing Committee of Rebbena PACS passed resolution on 31.07.2020 as there is no sufficient work in the society and sent back to the erstwhile society and accordingly, I have given joining report on 01.08.2020.

On this as per ref.5, J.Satyanarayana Goud submitted representation to the Hon'ble Minister for Forest & Environment, Science & Technology Law & Environment informed that on 01.08.2020 submitted report joining into duties and requested to take necessary action. As J.Satyanarayana Gound, Clerk, PACS, Bejjur given joining report on 01.08.2020 and therefore, you should take necessary action and also for payment of salaries.”

12. The counter affidavit is filed by respondent No.2, and in particular, paras 7 and 8 read as under:

“7. In reply to Para No.7, it is submitted that, the petitioner has given another representation to the District Co-operative Officer, Kumram Bheem Asifabad dated 04.11.2020 duly requesting to issue necessary directions to the 4th respondent by permitting him into his services, the District Co-operative Officer, Kumram Bhem Asifabad District has issued letter to 4th respondent on 17.11.2020 duly directing 4th respondent to take appropriate action by joining petitioner into his original post and sanction arrears of salary payable to the petitioner.

8. In reply to para No.8, it is true that, the 3rd and 4th respondents failed to follow the orders of the DCO. It is to further inform you that the DCO has not given any transfer orders in order to transfer the petitioner. The 4th respondent has stated that the petitioner has not performed his duty properly, so he is not permitting him to reinstate into his earlier post. The 4th respondent has also stated that the petitioner has committed several irregularities during his service in 4th respondent society.

Further it is to submit that, the PIC Committees of 3rd and 5th respondents societies passed resolution for transferring the petitioner from 3rd respondent society to 5th respondent society without giving any intimation to the District Cooperative Officer, Kumrambheem Asifabad District which is contrary to Section 116 C(2) and Rule 28 of Telangana Co-operative Societies Act and Rules, 1964 and the 4th and 3rd respondents has failed to follow the procedure for disciplinary action against the Employees of the PACS as per Service Regulations relating to Service conditions of the Employees of Primary Agriculture Co-operative Societies and Telangana Cooperative Societies Act and Rules, 1964.

13. A bare perusal of the contents in the proceedings R.C.No.47/2020-C, dated 15.09.2020 and the contents of the letter R.C.No.311/2020-C, dated 17.11.2020 clearly indicate that inspite of clear specific directions to respondent No.3 herein i.e. The Managing Committee, Bejjur PACS Limited, Bejjur, the petitioner had not been permitted to duty into his original post.

14. The Apex Court in its judgment dated 7th May, 1993 in D.K. Yadav vs J.M.A. Industries Ltd, reported in 1993 (3) SCC Page No.259 observed as under:

"It is thus well settled law that right to life enshrined under Art. 21 of the Constitution would include right to livelihood. The order of termination of the service of an employee/workman visits with civil consequences of jeopardising not only his/her livelihood but also career and livelihood of dependents. Therefore, before taking any action putting an end to the tenure of an employee/workman fair play requires that a reasonable opportunity to put forth his case is given and domestic enquiry conducted complying with the principles of natural justice. In D. 7. C. v. D. T.C. Mazdoor Congress and Ors. (supra) the constitution bench, per majority, held that termination of the service of a workman giving one month's notice or pay in lieu thereof without enquiry offended Art. 14. The order terminating the service of the employees was set aside. In this case admittedly no opportunity was given to the appellant and no enquiry was held. The appellant's plea put forth at the earliest was that despite his reporting to duty on December 3, 1980 and on all subsequent days and readiness to join duty he was prevented to report to duty, nor he be permitted to sign the attendance register. The Tribunal did not record any conclusive finding in this behalf. It concluded that the management had power under Cl. 13 of the certified Standing Orders to terminate with the service of the appellant. Therefore, we hold that the principles of natural justice must be read into the standing order No. 13 (2) (iv). Otherwise it would become arbitrary. unjust and unfair violating Arts. 14. When so read the impugned action is violative of the principles of natural justice. This conclusion

leads us to the question as to what relief the appellant is entitled to. The management did not conduct any domestic enquiry nor given the appellant any opportunity to put forth his case. Equally the appellant is to blame himself for the impugned action. Under those circumstances 50 per cent of the back wages would meet the ends of justice. The appeal is accordingly allowed. The award of the Labour Court is set aside and the letter dated December 12, 1980 of the management is quashed. There shall be a direction to the respondent to reinstate the appellant forthwith and pay him back wages within a period of three months from the date of the receipt of this order. The appeal is allowed accordingly. The parties would bear their own costs.

15. This Court opines that inspite of clear proceedings dated 15.09.2020 and 17.11.2020 of the 2nd respondent issued in favour of the petitioner, the 4th respondent did not take any required action. This Court further opines that the petitioner is an employee of the 3rd respondent society and worked for the 3rd respondent for more than two decades, but he was however, transferred to the 5th respondent i.e. Rebbena Society and when repatriated by the 5th respondent to the 3rd respondent society, the petitioner was prevented to join duty in the 3rd respondent society for no reason.

16. Taking into consideration the above referred facts and circumstances of the case and the averments made in paras 7 and 8 of the counter affidavit filed by respondent No.2 and also the principle laid down in the Apex Court judgment dated 07.05.1993 in D.K.Yadav v J.M.A. Industries Ltd reported in 1993(3)SLC page No.259, the writ petition is allowed directing the 4th respondent to permit the petitioner to join duty forthwith as Secretary of the 3rd respondent society pursuant to the repatriation order passed by respondent No.5 vide its resolution dated 31.07.2020 duly implementing the orders of respondent No.2 vide RC.No.47/2020-C, dated 15.09.2020 and RC.No.311/2020-C, dated 17.11.2020, within a period of two weeks from the date of receipt of copy of the order and further consider the case of the petitioner in accordance to law for release of the salaries due to the petitioner from the month of July, 2020, till as on date within a period of one month thereafter, and pass appropriate orders duly communicating the decision to

the petitioner. However, there shall be no order as to costs.

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

MRS JUSTICE SUREPALLI NANDA

25.11.2022
VSU/LK