(2002) 03 AP CK 0120

In the Andhra Pradesh High Court

Case No : Writ Petition No. 17030 of 1993

A.P. State Co-operative Societies Secretaries and Employees Union, Hyd. — APPELLANT

Vs

Government of Andhra Pradesh and Others — RESPONDENT

Date of Decision : 15-03-2002

Acts Referred:
Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 18

Citation : (2002) 4 ALD 256 : (2002) 3 ALT 728

Hon'ble Judges : V. Eswaraiah, J;B. Sudershan Reddy, J

Bench : Division Bench

Advocate : A. Satya Prasad, for the Appellant; P.M. Gopala Rao, for Respondent No. 3, Badana Bhaskara Rao, for Respondent No. 5, B. Adinarayana Rao, for Respondent No. 9, T. Amaranath Goud, for Respondent No. 14, R.N. Subba Rao, for Respondent No. 20 and Government Pleader for Co-operation for Respondent Nos. 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

B. Sudershan Reddy, J.—The petitioner-Unit claims to represent the interest of the Paid Secretaries of Primary Agricultural Co-operative Societies (PACS) in the State of Andhra Pradesh. It invokes the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India challenging G.O. Ms. No.52I Agriculture and Co-operation (Co-op.III) Department, dated 28.9.1993 issued by the 1st respondent-Government whereunder the Government changed the existing recruitment policy with regard to Category-V posts in the Co-operative Central Banks in the State by altering the ratio of recruitment from 9:1 to 5:4:1 in respect of all the posts in Category-V i.e., to say Supervisors, Clerks etc., and directing the recruitment to be made in the said ratio, five by direct recruitment from open market, four from the Paid Secretaries of the PACS and one from in-service candidate of the Bank through selection respectively.

2. Before adverting to the question as to whether the impugned G.O. suffers

from any legal or constitutional infirmities, it may be necessary to briefly notice the relevant facts leading to the filing of the writ petition.

3. The posts of Paid Secretary in the PACS functioning in the State were created in the year 1973 under half a million job scheme. Initially, there were no pay scales as such fixed and all of them were appointed on consolidated wages. Thereafter, the Registrar of Co-operative Societies constituted a common cadre for the Paid Secretaries working in the PACS and regulations were accordingly framed in purported exercise of the power u/s 116-A of the Andhra Pradesh Co-operative Societies Act, 1964 (for short ''the Act'').

4. There were some disputes raised by the Paid Secretaries working in the PACS about their service conditions even after constituting the common cadre for them. We are not concerned in the instant case with the details of those disputes and resolution of the said disputes through the intervention of the 1st respondent-Government. The fact remains that the 1st respondent-Government issued G.O. Ms. No.391 Food and Agriculture (Co-op.III) Department, dated 9.9.1981 directing the reservation in favour of Paid Secretaries of PACS to be increased from that of 60% of the vacancies in Category-V of the Co-operative Central Banks to that of 100% and the recruitment to be on selection basis. By the said policy decision, the Government, revised its earlier policy decision and made 100% reservation in favour of the Paid Secretaries for filling up the vacancies in Category-V posts in the Co-operative Central Banks. The Government virtually put an embargo on the direct recruitment into Category-V posts in the Co-operative Central Banks and also put an end to the right of such of those employees who were working in the Co-operative Central Banks from making any claim for their promotion or selection into Category-V of the service in the banks.

5. It is the case of the petitioner and about which there is no dispute that the said G.O. remained unimplemented. The Paid Secretaries raised their demand for implementation of the scheme leading to an agreement between the Union of the Paid Secretaries and the Government whereunder the Government agreed to fill up Category-V posts in the ratio of 9:1 between Paid Secretaries and the eligible in-service employees of the concerned Banks. The Government issued G.O. Rt. No. 1271, Food and Agriculture (Co-op.III) Department, dated 8.8.1986 and accordingly issued orders approving the guidelines proposed by the Commissioner for Cooperation and Registrar of Co-operative Societies to fill up the vacancies in Category-V posts in the Co-operative Central Banks in the ratio of 9:1 between the paid Secretaries and the eligible in-service employees of the Co-operative Central Banks through selection. It may be noticed that the earlier order issued by the 1st respondent-Government in G.O. Ms. No. 391, dated 9.9.1981 providing 100% reservation in favour of the Paid Secretaries remained unimplemented .

6. It is also required to notice that in the meanwhile, amendments were made to the provisions of the Act by incorporating Section 116-AA providing for abolition

of centralised services for certain categories of employees with effect from 25.4.1985. Consequently, the common cadre for the Paid Secretaries stood abolished with effect from the said date. Necessary rules were framed for allotting decaderised Paid Secretaries into the PACS. Rule 72 of the Andhra Pradesh Co-operative Societies Rules provide that the Paid Secretaries on allotment to a society by the Registrar shall be deemed to be the employee of that society and shall be entitled to receive pay and allowance as may be fixed from the funds of the said society. The said rule further provides that the service conditions of the Secretaries working in the societies shall be governed by such service regulations as may be framed by the Registrar for adoption by the societies. The disciplinary control over the Paid Secretaries vests in the society itself. On and after allotment of the Paid Secretaries into the concerned society they were declared to be the employees of that society and entitled to receive pay and allowance as may be fixed from the funds of the said society. It clearly means that for all purposes, the Paid Secretaries were made the employees of the concerned PACS.

7. However, for whatever reason, the Government issued G.O. Rt. No. 1271, dated 8.8.1986 referred to hereinabove even after the abolition of the common cadre constituted for the Paid Secretaries making provision for selection of Paid Secretaries into the service of the Co-operative Central Banks. The Government issued directions to all the concerned including the Co-operative Central Banks in the State to select and fill the vacancies in Category-V posts in the Co-operative Central Banks with that of Paid Secretaries and the employees already working in the bank in the ratio of 9:1.

8. Thereafter, the Government having reconsidered its policy issued the impugned G.O. making the necessary changes with regard to the ratio of recruitment from 9:1 to 5:4:1 in respect of all the posts in Category-V. The Government''s decision revising the recruitment policy for filling up the vacancies in Category-V posts, according to the petitioners, is illegal. It is challenged on various grounds.

9. It is contended that the action of the 1st respondent is not only illegal but also a mala fide one and intended to confer undue favour upon the employees working in the District Co-operative Central Banks. It is also the case of the petitioner that the Government issued orders from time to time on the basis of settlement entered into by the common cadre authority with the Union representing the Paid Secretaries u/s 18(1) of the Industrial Disputes Act, 1947 and such binding settlement cannot be given a go bye by the Government unilaterally. It is contended that the 1st respondent-Government simply yielded to the pressures brought on it by the Chairmen of the District Co-operative Central Banks in order to get their own people recruited into Category-V posts in the District Cooperative Central Banks.

10. In the counter-affidavit filed by the 1st respondent-State, it is clearly explained that after reorganization of the PACS through merger of potentially

viable societies and liquidation of nonviable societies, common cadre for the Paid Secretaries was created in order to enable the reorganized PACS to develop business to meet the expenditure required for the post of Secretary from its own resources within a phased programme. But this did not materialize. Most of the societies continued to be nonviable and were unable to meet the expenditure of Paid Secretaries. It is brought to the notice of the Court that 85% of the PACS were having loan business of less than Rupees Five Lakhs and were not in a position to sustain the lost of Paid Secretaries from their own resources.

11. The Reserve Bank of India which is the country''s apex financial agency made certain suggestions to the State Government to reorganise the staffing pattern of the District Co-operative Central Banks and accordingly issued certain guidelines making recommendations regarding staffing pattern. The Reserve Bank of India is stated to have suggested direct recruitment to Category-V i.e., to say for the post of Supervisor/Clerk/ Typists/Cashiers in view of the need for infusion of new blood and recruitment of people with suitable caliber and aptitude with minimum, graduation as the educational qualification.

12. It is explained that in G.O. Ms. No.391, dated 9.9.1981 cent percentage posts were reserved for Paid Secretaries in view of the settlement entered with the Union of the Paid Secretaries on 25.3.1981. But, however, it was specified that the recruitment to be on selection basis. The Paid Secretaries did not accept for the recruitment by selection. The Paid Secretaries went on strike leading to another settlement between the Chairman of the State Cadre Authority and the representatives of the Paid Secretaries to the effect that all the existing vacancies in Category-V of the Co-operative Central Banks shall be filled up in the ratio of 9:1 (nine Paid Secretaries and one in-service candidate). All the Co-operative Central Banks were accordingly permitted to fill up the vacancies in Category-V posts in accordance with the revised policy of the Government and instructions were accordingly issued prescribing the norms for such selection. The Government accordingly relaxed the ban earlier imposed prohibiting recruitment into Category-V posts on the Co-operative Central Banks.

13. The Paid Secretaries as usual went on making further representations for revision of the norms prescribed by the Registrar of Co-operative Societies for selection to Category-V posts. They have requested, the authorities to change the norms so that the recruitment is made only in accordance with the seniority into Category -V posts of the Co-operative Central Banks. It is not necessary to notice further details leading to the change of the policy by the 1st respondent-Government varying the percentage of proportion for filling up the posts of Supervisors and Clerks in the Cooperative Central Banks.

14. It is evident from the averments made in the counter-affidavit that the Government appointed a Committee of experts to study the work of the single window co-operative credit system in the State. The Committee having considered the entire issue recommended for the infusion of fresh blood through direct recruitment at various levels and felt that it is essential for the continuance

and survival of the District Co-operative Central Banks. The Committee expressed its opinion that such direct recruitment should not be less than l/3rd of the number of posts at each level in the cadre. The Committee further recommended for the change of the service rules suitably in order to provide for direct recruitment at every level. In the light of the recommendations made by the Expert Committee, the Andhra Pradesh State Co-operative Bank Limited, Hyderabad and some of the District Co-operative Central Banks in the State requested the Government to provide for direct recruitment into Category-V posts of the District Co-operative Central Banks.

15. It is explained that the Government after taking various factors into consideration and having carefully considered the merits and demerits of the proposals and the recommendations of the Committee felts that it is desirable to bring deserving youngsters by way of direct recruitment into banks services and accordingly, issued the impugned G.O. providing 5:4:1 ratio in order to enable the banks to recruit freshers, the Secretaries and in-service candidates in the banks respectively in the said proportion. In nutshell, it is the case of the 1st respondent-Government that the decision of the Government revising its earlier view in the matter is in the nature of policy decision.

16. It is contended that the Government is entitled to change its policy decision depending upon not only its experience but various relevant considerations and the said policy decision hs been taken in the best interest of not only PACS but also the interest of the District Co-operative Central Banks. The Government as a measure of policy thought it fit to provide an opportunity to the youngsters for their recruitment and accordingly decided to have direct recruitment of atleast 50% of the total recruitment in Category-V posts of the District Co-operative Central Banks in the State. It is however submitted that the interests of the Paid Secretaries working in the PACS and as well as the employees already working in the District Co-operative Central Banks were also taken into consideration in fixing the ratio of 5:4:1.

17. Learned Counsel for the petitioner contends that the revised policy decision of the Government notified in the impugned G.O. is arbitrary as it virtually takes away the rights of the Paid Secretaries for being appointed into Category-V posts in the District Co-operative Central Banks. The decision, according to the learned Counsel for the petitioner is totally arbitrary and unreasonable.

18. Learned Government Pleader, however, submits that none of the Paid Secretaries have any vested right or any statutory right as such for their recruitment and appointment into Category-V posts in the District Co-operative Central Banks. The policy decision of the Government in no manner affects any of the rights of the Paid Secretaries for their continuance in the PACS.

19. The question that falls for consideration is as to whether the impugned G.O. suffers from any legal infirmity and whether it violates any of the statutory rights of the Paid Secretaries working in the PACS?

20. We have already noticed that after the abolition of the common cadre for the Paid Secretaries and on their allotment into respective societies, each one of them have become an employee of the concerned society. Their pay and allowances are to be paid from out of the funds of the society concerned. It is also required to notice that Section 116-C of the Act provides and empowers the society to fix the staffing pattern, qualification, pay scale and other allowances for its employees with the prior approval of the Registrar of Co-operative Societies. Section 116-C (1) of the Act is further amended by the Andhra Pradesh Co-operative Societies Second Amendment Act, 2001 and as on today it reads:

"A society shall have power to fix the staffing pattern, qualifications, pay scales and other allowances for its employees with (lie prior approval of the Registrar of Co-operative Societies subject to the condition that expenditure towards pay and allowances of the employees shall not exceed two per cent of the working capital or thirty per cent of the gross profit, in terms of actuals in a year whichever is less."

21. It is thus clear that each of the Society is entitled to fix the staffing pattern, qualifications, pay scales and other allowances of its employees with the prior approval of the Registrar of Co-operative Societies. The power of the society and even that of the Registrar in this regard itself is restricted by Section 116-C of the Act to the effect that under no circumstances, the expenditure towards pay and allowances of the employees shall exceed 2% of the working capital or 30% of the gross profit in terms of actuals in a year whichever is less. Obviously, there is a laudable purpose behind the incorporation of such a provision in the Act. The main object sought to be achieved is clear as it intends to prohibit the societies from squandering away their valuable financial resources in order to maintain their establishments. The societies do not exist for themselves. They are not organised to provide any employment to the unemployed. They are formed and organised to provide financial aid and assistance to agriculturists in order to protect them from the clutches of unscrupulous money lenders. They are neither Governmental nor semi-Governmental bodies. They are formed by individual members mainly on the principle that "all for one and one for all". It is a collective effort by members for their own welfare. They cannot be permitted to be hijacked by any organised and articulate section for their own benefit.

22. It is required to notice that even a District Co-operative Central Bank is also a society within the meaning of the provisions of the Act. Section 2(p) of the Act defines society meaning a co-operative society registered or deemed to be registered under this Act. It is thus clear that each of the District Co-operative Central Banks in the State being a society is entitled to decide and fix the staffing pattern, pay scales and other allowances for itself. What is required is the prior approval of the Registrar of the Co-operative Societies. There is no provision in the Act which would enable either the Registrar of Cooperative Societies or for that matter the Government to interfere in the internal management of the affairs of any society which includes a Co-operative Central Bank in order to

direct it to fix its staffing pattern, pay scales and other allowances in any particular manner. It is the duty of the society concerned to fix such staffing pattern, qualifications, pay scale and other allowances for its employees. Each of the society registered under the provisions of the Act is an autonomous body and entitled to manage its own affairs in accordance with law. Each of the society is a body incorporated having perpetual succession and a common seal. Each of the society is entitled to acquire, hold and dispose of the property, to enter into contracts on its behalf and to do all other things necessary for the purpose for which it was constituted. No outside agency including the Government and Registrar can interfere in day-to-day management of affairs of any society.

23. No doubt, the Registrar of Cooperative Societies is entitled to issue such lawful directions as he may consider necessary from time to time but only in the interest of the co-operative movement or in the public interest or in order to prevent the affairs of the society from being conducted in a manner detrimental to the interest of the members or of the depositors or creditors thereof and the society is bound to comply only with such directions. There is no doubt whatsoever that the Registrar of Co-operative Societies can certainly prohibit a society from spending its valuable financial resources in order to pay salaries and other allowances for its employees exceeding 2% of the working capital or 30% of the gross profit in terms of actuals in a year, as the case may be. But even the Registrar of Co-operative Societies cannot compel any society in the State to spend its valuable financial resources contrary to the legislative amendment enshrined in Section 116-C of the Act.

24. However, learned Counsel for the petitioner Sri A. Satya Prasad relies upon Section 131 of the Act in support of his contention that the Government is entitled to issue directions which the Government may consider necessary and every society and the Registrar is bound by the said directions. Learned Counsel obviously refers to the said provision in order to support the Government''s decision reflected in G.O. Ms. No. 391 dated 9.9.1981. A plain reading of Section 131 of the Act would make it clear that the Government is no doubt entitled to issue orders and directions as it may consider necessary to the Registrar of Co-operative Societies but not to any individual society as such. Even such directions, in our considered opinion, by the Government can be issued only in public interest and in the interests of the co-operative movement and in order to prevent affairs of any society from being conducted in a manner detrimental to the interest of its members. In our considered opinion, even the Government in purported exercise of the power u/s 131 of the Act cannot issue any directions to individual societies interfering in its day-today management of the affairs of the society. Even the Government has no unlimited power as such to issue directions to the Registrar compelling him or directing him to interfere in the day-to-day affairs of the society. Can any directions be issued by the Government in purported exercise of the power u/s 131 of the Act compelling the societies to act contrary to Section 116-C of the Act? Certainly not.

25. The preceding discussion would make it clear that neither the society registered under the provisions of the Act nor the Registrar nor the Government exercising the power u/s 131 of the Act can direct any society to spend or waste its valuable financial resources and compel the societies to run its affairs only to provide employment or cater the needs of its employees.

26. The question then that falls for consideration is as to how the Government could have issued such directions compelling the District Co-operative Central Banks to make recruitment into Category-V in a particular manner. We have a serious doubt about the same. But we do not want to make any pronouncement as such about the very validity of the earlier G.Os. issued by the Government since the same are not questioned either by the District Co-operative Central Banks or by any one of its employees.

27. But we have no doubt whatsoever to hold that the Government failed to take into consideration the interest of the District Co-operative Central Banks before issuing various orders from time to time putting an embargo on the right of the banks in the matter of recruitment of employees into Category-V posts in the banks. The Government in its anxiety to resolve the perpetual crisis into which it had placed itself and in order to enter into settlement with the striking Paid Secretaries went on issuing instructions after instructions by treating the District Co-operative Central Banks as if they were part of the Government itself. A Division Bench of this Court in WA Nos.424 of 2001 and Batch dated 16.10.2001 observed thus:

"The Registrar of Co-operative Societies must act in terms of the provisions of the statute and not in terms of the agreement. It may have some say as regards framing of byelaws but even such byelaws must be commensurate with the provisions of the Act and the rules made thereunder. Byelaws, even if they have received the sanction of the Registrar of Co-operative Societies, would be ultra vires if the same are inconsistent with the provisions of Sections 116-AA and 116-C of the Act. Furthermore, the contention of the writ petitioners to treat all co-operative societies equally could not be accepted inasmuch the size and the financial resources of the societies vary from society to society. If the spending of the societies or salaries of their employees are to be the same for all the societies irrespective of their resources, the society in smaller size would wound up early as their expenses would eat away their capital. Only the bigger societies might be capable of paying higher salaries to its employees.

By reason of Section 116-AA and 116-C, the service conditions of all the Paid Secretaries are affected. Expressly, or, by necessary implication, the conditions of service of the existing Paid Secretaries are also effected. It will, therefore, not be correct to contend that the said provisions would only apply to the Paid Secretaries, who were to be appointed in future. It is not that the societies cannot appoint the Paid Secretaries, but the matters relating to fixation of staffing pattern of the society, prescription of qualifications and determination of pay scales and other allowances for its employees have to be left to the concerned society itself inasmuch as it is the society which, keeping in view its size, volume of work and its resources, could pragmatically manage its affairs".

28. We are of the considered opinion that the Paid Secretaries working in the PACS in the State do not have any independent legal right to insist for their selection/appointment into Category-V posts of the District Co-operative Central Banks. They are the employees of the concerned societies and in law they are not entitled to move out from the service of one society into the service of another society. The right, if any is conferred upon them by the Government when it had issued the G.O. Ms. No.391, dated 9.9.1981. The Government that had conferred that right and benefit upon the Paid Secretaries, undoubtedly has a right either to take away that right or impose such further conditions and restrictions, as it may consider necessary in public interest. By the impugned G.O., the Government has merely changed its policy and accordingly revised the same restricting the recruitment of the Paid Secretaries into Category-V employment in the District Co-operative Central Banks to that of five out of ten. Such policy decisions, in our considered opinion, do not require any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. Mere change in the policy decision itself would not give rise to a cause to challenge the same, unless it is pleaded and established that the revised policy decision had adversely affected any of the statutory or vested rights of the Paid Secretaries.

29. For the aforesaid reasons, we are not inclined to agree with the submissions made by the learned Counsel for the petitioner.

30. We are not impressed by the allegations of mala fides levelled against the Elected Committees of the District Co-operative Central Banks. The decision of the Government does not reflect as if the same has been taken under the pressure of any of the managements of the District Co-operative Central Banks. The Government having studied the advise and proposals of the Reserve Bank of India and various committees constituted by the Government itself and after taking variety of relevant factors into consideration decided to revise its earlier policy decision. The Governments cannot be prohibited from revising their policy decisions. At any rate, there is no foundation as such laid in the affidavit filed in support of the writ petition in order to make any further probe of allegations of mala fides made against the managements of the banks. It is very easy to level such allegations but difficult to prove the same. Learned Counsel for the petitioner also and in our considered opinion, rightly did not seriously press the allegations of mala fides.

31. The only question that remains to be considered is as to whether the impugned G.O. is violative of Section 18 of the Industrial Disputes Act, 1947 as is sought to be contended by the petitioner?

32. The submission in our considered opinion is totally misconceived. Section 18 of the Industrial Disputes Act, 1947 has no application whatsoever to the fact

situation on hand. It is evident that there is no settlement as such between the Paid Secretaries and the District Cooperative Central Banks as such. By no stretch of imagination the settlement between the Paid Secretaries Union and the Government could be treated as a settlement between the workmen and their management, in the circumstances, we do not find any merit whatsoever in the submission made by the learned Counsel for the petitioner.

33. For the aforesaid reasons, we do not find any merit whatsoever in this writ petition and the same deserves dismissal.

34. However, learned Counsel for the petitioner brings to our notice that only four of the District Co-operative Central Banks viz., Krishna, Guntur, Visakhapatnam and West Godavari alone made certain appointments of the Paid Secretaries into Category-V in 9:1 proportion pursuant to G.O. Ms. No. 391, dated 9.9.1981 issued by the Government and all of them are working in their respective capacities in those banks and the interests of justice requires their continuance in the same capacity.

35. Having regard to the facts and circumstances of the case and having regard to the fact that there has been no opposition as such from those banks for the continuance of those Paid Secretaries already selected and appointed into Category-V, we consider it appropriate to direct the respondents not to disturb such of those Paid Secretaries who were already selected and appointed in Category-V of the respective Central Banks.

36. With the limited relief, this writ petition is disposed of. It is declared that the impugned G.O. does not suffer from any legal infirmity requiring any interference as such by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. There shall be no order as to costs.