

(1995) 02 AP CK 0042

In the Andhra Pradesh High Court

Case No : Writ Petition No. 11236 of 1994

B. Veeraswamy

APPELLANT

Vs

Large Sized Co-operative Society and Others

RESPONDENT

Date of Decision : 16-02-1995

Acts Referred:

Andhra Pradesh Shops and Establishments Act, 1988 — Section 47, 47(6)
Constitution of India, 1950 — Article 226

Citation : (1995) 1 AnWR 237 : (1996) 2 LLJ 475

Hon'ble Judges : B.K. Somasekhara, J

Bench : Single Bench

Advocate : B.S.A. Swamy, for the Appellant; Govt. Pleader for Co-operation, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Somasekhara, J.—As desired by both the sides, the main writ petition is being disposed of along with the W.P.M.P. No. 13613/94 and W.V.M.P. No. 2154/94.

2. The order of suspension of petitioner, an employee of respondent No. 1, dated June 9, 1993 is assailed and sought to be quashed in this petition. Originally, he was appointed by Primary Agricultural Co-operative Society, Poth-unoor, Chintalapudi Mandal as a Paid Secretary on Decembers, 1977 and two years later, he was transferred to Primary Agricultural Co-operative Society (P.A.C.S.), Madhyanapuvarigudem. The common cadre of Secretaries were abolished with effect from April 22, 1994 and they were declared as Secretaries of the Society u/s 116-AA of the Co-operative Societies Act. The Collector was designated as the Registrar who was to allot them to various societies in the district as per the guidelines issued under Rule 72 of the A.P. Co-operative Society Rules. The petitioner claims that he was not allotted to any society and therefore, by virtue of proviso to Section 116-AA of the Act he continued to be the employee of the society where he was working at the relevant time. He was transferred by

respondent No. 4 to respondent No. 1 society during the year 1988 and since then, he was working therein. There was an inspection of the society in the year 1993 by respondent No. 3, the Deputy Registrar of Co-operative Societies, and opining that there were some irregularities and misappropriation of huge amounts of the society by the petitioner, respondent No. 1 was directed to suspend the petitioner. The Board of Directors of respondent in the meeting held on June 3, 1993, passed a resolution to place the petitioner under suspension with effect from the forenoon of the even date and accordingly issued the impugned order of suspension which was served on him on June 9, 1993. In the meanwhile respondent No.2 initiated surcharge proceedings against the petitioner and after completion of the enquiry, issued a show-cause notice to him in proceedings Rc.No.761/93/D dated October 29, 1993 u/s 60(1) of the Co-operative Societies Act as to why recovery of Rs.1,02,000/- together with interest at 18% per annum within 15 days from the date of receipt of the notice should not be made. Accordingly, he submitted his explanation and thereafter, respondent No.2 in his proceedings Rc.No. 761/93/D dated January 30, 1994 passed surcharge orders. Aggrieved by it, he preferred C.T.A.No. 1/94 before the Co-operative Tribunal (District Munsiff), Kovvur. On his application I.A.No. 5/94, the order of surcharge was stayed in the order dated January 17, 1994 of the District Munsiff, Kovvur. Since the period of suspension was coming to an end, the Administration of the Society extended it by two more months in the order dated November 26, 1993. The petitioner received the notice dated December 30, 1993 from the person-in-charge of respondent No. 1 straightaway directing him to submit his explanation as to why he should not be dismissed from service alleging that the charge of misappropriation had been established against him in the enquiry u/s 51 of the Cooperative Societies Act, (hereinafter called "the Act"). It was also notified to him that if he did not submit his explanation within 30 days of the date of receipt of charge memo, further action will be taken against him on the basis of the records. The petitioner submitted his explanation to the show-cause notice. In spite of his number of representations made to respondent No. 1 for reinstatement, no action was taken and therefore, he had to file the writ petition.

3. The petitioner has raised the following ground in the form of contentions challenging the impugned order of respondent No. 1 :

1) Since the petitioner is not allotted to any Society by the Collector as per Section 116-AA of the Act and Rule 73 of the Rules made thereunder, he was governed by the common cadre regulations and not the Bye-laws of the Society under which respondent No.4 the General Manager of District Co-operative Central Bank, West Godavari district was the competent authority to keep the petitioner under suspension and therefore, the impugned order of suspension passed by respondent No. 1 as per the directions of respondent No. 3 is ab initio void.

2) Since the impugned order of suspension was not preceded by initiation of any

disciplinary proceedings against the petitioner and issue of show-cause notice without charge sheet and enquiry and without opportunity to the petitioner it is illegal and on that ground, the impugned order of suspension is liable to be set aside.

3) Neither the period of suspension is mentioned in the impugned order nor it was extended in writing from time to time and therefore, it is liable to be set aside.

4) Respondent No. 1 is governed by the provisions of A.P.Shops and Establishments Act and since the departmental enquiry was not completed within one year from the date of suspension, he is deemed to have been reinstated into service and therefore, should have been reinstated into service on the expiry of such a period.

5) Even if the Bye-laws of respondent No. 1 are applicable to the petitioner, since no departmental enquiry was initiated nor the period of suspension was extended after the extension of the expiry period of two months from November 26, 1993, the petitioner is entitled to be reinstated into service.

4. Respondent No. 1 has filed a common counter affidavit both in the main writ petition and also in the miscellaneous petition.

5. After the de-caderisation of the Societies, the Paid Secretaries were allotted to the de-cad-erised Societies on the basis of seniority, qualification etc., as per Rule 72 of the A.P. Co-operative Societies Rules. Accordingly the petitioner was allotted to respondent No. 1 Society by the District Collector in the year 1988 according to the Rules and Regulations. Therefore, he was the employee of respondent No. 1 at the relevant time and thus respondent No. 1 was entitled to take appropriate action against him in accordance with the provisions of the Co-operative Society Act and the Rules and in accordance with law. He was found to have committed several irregularities and misappropriation of the funds of the society and therefore, the Board of Directors of respondent No. 1 passed a resolution resolving him to be placed under suspension and accordingly, he was suspended from service on June 3, 1993. Respondent No.2 issued a surcharge order to the petitioner to recover an amount of Rs. 1,02,878.64 after conducting a detailed enquiry. Since the allegations against the petitioner were proved during the enquiry, respondent No. 1 issued a show-cause notice to him as to why he should not be removed from service. The appeal preferred by him to the Cooperative Tribunal, Kovvur is pending decision. The period of suspension from June 3, 1993 which was for a period of six months was extended by two months by the order of respondent No. 1 dated November 26, 1993. In view of the enquiry and the surcharge order proceedings passed by respondents 1 and 2, the show-cause notice for termination of the services of the petitioner was issued and in view of the order of stay issued by the Co-operative Appellate Tribunal, no further action is taken by respondent No. 1 in pursuance of the notice. Consequently, the writ petition is sought to be dismissed on this ground.

6. The learned Advocates for the petitioner and the respondents have argued in

support of their respective contentions as above and in particular, the learned Advocate for the respondents has sought for the dismissal of the petition in addition to the above grounds, on the real ground of maintainability that the petitioner having chosen to enforce his rights under the bye-laws of a Cooperative Society, cannot get such a relief at the hands of this Court under Article 226 of the Constitution of India as per the settled law. The learned Advocate for the petitioner has contended to the contrary that this is not a case strictly to enforce the petitioner's rights under the bye-laws but it is under the provisions and in particular Section 47 of the A.P. Shops and Establishments Act, 1988 and therefore, the maintainability of the petition cannot be doubted.

7. The first contention becomes baseless since a copy of the proceedings of the Collector, Eluru in Rec. No. 4086/90 dated June 29, 1990 which is marked to the petitioner confirms that he is allotted to Gavaravaram Primary Agricultural Co-operative Society in pursuance of Section 116-A of the A.P. Co-operative Societies Act, 1964 (Act 7/64) and Rule 72 of the Rules framed under the Act. Therefore, respondent No. 1 of whom the petitioner was employed at the relevant time was entitled to pass the impugned suspension order. Thus, the legality of the impugned order or the jurisdiction to pass the order by respondent No. 1 cannot be challenged on such a ground. The petitioner has actually depended upon the Special Bye-laws of the first respondent to vindicate his stand to impeach the legality and the enforceability of the impugned order of suspension. Bye-law No. 12 contemplates that the President of the Society shall be competent to take disciplinary action against the employees of the Society for the lapses committed by them in the discharge of their duties, work and conduct. As per the tabular column therein dealing with the authority competent to inflict punishment on the employees, in regard to the Secretary the authority would be the President, Managing Committee in consultation with the District Level Committee for certain misconducts like censure, stoppage of increment, suspension, reversion etc. Even on that account the impugned order satisfies the tests of jurisdiction and legality. Admittedly, the impugned order of suspension was issued by respondent No. 1 by virtue of a resolution passed on the instructions of respondent No. 3 who opined that there were some irregularities and misappropriation of huge amounts of the Society by the petitioner. It is in the affidavit of respondent No. 1 that not only a disciplinary enquiry was held against the petitioner into the alleged misconduct, by respondent No. 1, but also surcharge proceedings were initiated and conducted by respondent No. 2 thereby issuing the show-cause-notice to him in the proceedings dated October 29, 1993 u/s 60(1) of the Co-operative Societies Act as to why Rs. 1,02,000/- together with interest should not be recovered from him. Although the petitioner has contended that no enquiry was held against him before issuing such show-cause notice etc., it is clear that the impugned order of suspension was issued to the petitioner contemplating an enquiry into the alleged misconduct as above. The law so far known is that whenever a departmental enquiry is contemplated or pending against an employee, he can be placed under suspension by the

disciplinary authority or the appointing authority. Such a power appears to be a right inherent in every master. Bye-law No. 12(3)(c) while contemplating the period of suspension of an employee of the Co-operative Society vests the power of suspension with the disciplinary authority to suspend the employee for a particular period. In other words, that should be understood as vesting the power in the disciplinary authority to suspend an employee of the Co-operative Society either at the stage of contemplating the enquiry and/or during the pendency of the enquiry proceedings subject to the limitations prescribed under the Bye-laws. Therefore, the second ground and the contention challenging the impugned order of suspension cannot be accepted.

8. The contention that an order of suspension should mention the period appears to have no force. In the impugned order of suspension, it is stated that the resolution passed on June 3, 1993 resolved to suspend the petitioner with effect from June 3, 1993. However no period of suspension is mentioned therein. Since the period of suspension is governed by Bye-law No. 12 (3)(c) viz., for six months pending the disciplinary proceedings and with further extension of two months, there was no need to mention the period of suspension in the order of suspension itself. Either an order of suspension should be read within the Bye-law No. 12(3)(c) or that it should be understood to be subject to the limitations of the period of suspension mentioned in the said Bye-law. Therefore, the mere failure to mention the period of suspension in the impugned order cannot by itself make it either improper, illegal or unenforceable. The third ground and the contention can therefore, be taken as rightly raised.

9. The contention in Ground No.5 concerning the implication of the Bye-laws regarding the impugned order of suspension can be dealt with at this stage. Bye-law No. 12 (3)(c) reads as follows:

"No employee shall ordinarily be kept under suspension for more than six months and the disciplinary case should be finalised and disposed of, within the said period.

The case of suspension should be reviewed periodically and only in special circumstances the period of suspension may be extended further by two months."

On the face of it, this Bye-law appears to be more in the regulatory nature than in the mandatory intent. The expression "ordinarily" used therein connotes a general rule that no employee of the Co-operative Society shall be kept under suspension for more than six months normally and the disciplinary proceedings should be finalised within such period. It is subject to review periodically and only in special circumstances the period of suspension may be extended further by two months. Therefore, the exception to the ordinary rule that the period of suspension should be for six months is that it is subject to review periodically meaning thereby it could be before six months or even later for the purpose of extension however, in special circumstances. What are the special circumstances which compel the authorities to extend the period of suspension should be within

their means or materials and the knowledge and may depend upon the facts and circumstances of each case and it is not for the Court or any other person to regulate the same. On the face of it, there appeared to be very serious allegations of irregularities and misappropriation of heavy amount on the part of the petitioner and if the order of suspension was not revoked even after the expiry of the period of six months from the date of order of suspension, respondent No. 1 appears to have some reason behind it. Admittedly, the petitioner did not make good the alleged amount misappropriated to the tune of Rs. 1,00,000.00 and more even after order of surcharge was issued and the justification to continue him under suspension must have had some bearing influencing the mind of the authorities concerned with respondent No. 1. Therefore under the circumstances, it is difficult to hold that by virtue of Bye-law No. 12(3) (c) the impugned order of suspension came to an end immediately on the expiry of six months from the date of the order much less immediately after two months. Thereafter, even assuming that the order of suspension had been extended respondent No. 1 has not raised any plea or contention that such a period of suspension was extended under the Bye-law. Therefore, on this count the petitioner cannot entitle himself, as a matter of right, to be reinstated into service as it was for respondent No. 1 to decide about it and not for the court to regulate their authority under the Bye-laws.

10. The stage is proper to deal with and consider the serious contention of the respondents that this petition is not maintainable to enforce the alleged right of the petitioner under the Bye-laws of respondent No. 1 Society. The law appears to have been settled in this regard in support of the contention.

11. In Sri Konaseema Co-operative Central Bank Ltd., Amalapuram and another Vs. N. Seetharama Raju, a Full bench of this Court has dealt with the question in detail and has laid down the law in clear terms in this regard. As regards the legal status of the Bye-laws, the law declared by the Full bench is that:

"..... The bye-laws made by a Co-operative society registered under the A.P. Co-operative Societies Act do not have the force of law. They are in the nature of contract, terms of contract, between the society and its employees, or between the Society and its members, as the case may be. Hence, where a Society cannot be characterised as a "State" the service conditions of its employees, governed by bye-laws, cannot be enforced through a writ petition...."

THE remedy by way of writ of mandamus, certiorari, prohibition etc., is available under Article 226 of the Constitution of India in such a case to an employee of a co-operative society, is made clear in the expressions of the Full Bench as follows:

"... Mandamus, certiorari and prohibition are public law remedies. They are not available to enforce private law rights. Every act of a society which may be a "State" within the meaning of Article 12, does not necessarily belong to public, law field. A society, which is a "State" may have its private law rights just like a Government. A contractual obligation which is not statutory, cannot be enforced

by way of a writ petition under Articles 226 of the Constitution...."

The petitioner has sought to enforce his legal right in regard to the period of suspension under Bye-law No. 12.3 of the Bye-laws of respondent No. 1 Society seeking the aid of this Court under Article 226 of the Constitution which is patently not available as per the authoritative pronouncement of the Full Bench of this Court *supra*. The learned Advocate for the respondents has relied upon the expressions of the Full Bench in its judgment in sub-paras (i) and (ii) of para 51 and has contended that in the light of Section 47 of the A.P. Shops and Establishments Act, the Court may examine whether respondent No. 1 has violated its own bye-laws and that it may be corrected. To read them carefully they are repeated as hereunder:

"..... If a particular co-operative society can be characterised as a "State" within the meaning of Article 12 of the Constitution (applying the tests evolved by the Supreme Court in that behalf), it would also be an "authority" within the meaning, and for the purpose of Article 226 of the Constitution. In such a situation, an order passed by a Society against its employee in violation of the bye-laws, can be corrected by way of a writ petition. This is not because the bye-laws have the force of law, but on the ground that having framed the bye-laws prescribing the service conditions of its employees, the Society must follow them, in the interest of fairness, If it is left to the sweet will and pleasure of the Society either to follow or not to follow the bye-laws, it would be inherently arbitrary and may very likely give rise to discriminatory treatment. A society, which is a "State" has to act in conformity with Article 14 and, for that reason, it will be made to follow the bye-laws."

(ii) Even if a Society cannot be characterised as a "State" within the meaning of Article 12, even so a writ would lie against it to enforce a statutory public duty which an employee is entitled to enforce against the society. In such a case, it is unnecessary to go into the question whether the society is being treated as a "person", or an "authority", within the meaning of Article 226 of the constitution, what is material is the nature of the statutory duty placed upon it, and the Court will enforce such statutory public duty."

Therefore, if the expressions of the Full Bench of this Court can be properly understood, normally speaking no writ would lie under Article 226 of the Constitution of India to enforce the rights of an employee of a Co-operative Society under the Bye-laws. But having due regard to the implications of Section 47 of A.P. Shops and Establishments Act and bearing in mind that a Co-operative Society as a "State" or an "authority" for the purpose of Articles 12 and 226 of the Constitution of India, the Court in a given case examine whether an order passed by a Society against the employee in violation of the bye-laws is justified and whether it requires correction and to see that a society as a "State" performs its statutory public duty for which an employee is entitled to enforce against the Society. The second part of sub-para(iii) of para 51 of the expressions of the Full Bench in the precedent *supra*, may support this

interpretation which is as follows:

"..... However, in the matter of termination of service of the employees of the co-operative society, Section 47 of the A.P. Shops and Establishments Act provides a certain protection, and since the said protection is based upon public policy, it will be enforced in an appropriate case by the court under

Article 226 of the Constitution. Ordinarily, of course, an employee has to follow the remedies provided by the A.P.Shops and Establishments Act; but in an appropriate case, this Court will interfere under Article 226, if the violation of a statutory public duty is established. It is immaterial which Act or Rule casts such a statutory public duty."

Therefore, for a limited purpose and object of the legal implications stated above, this court can really examine whether a co-operative Society has fulfilled its obligation of a statutory duty as a whole and whether it is by virtue of the service conditions in the bye-laws or a statutory provision like Section 47 of A.P.Shops and Establishments Act.

12. Therefore, now we can examine whether the statutory right of the petitioner read in the light of the bye-laws of respondent No. 1 and Section 47 of the A.P.Shops and Establishments Act is violated and whether it requires any correction. The implications of bye-law No. 12.1 to 12.3 are already examined to know that there is no such violation by respondent No. 1. To repeat in substance respondent No. 1 was empowered under the bye-laws to suspend the petitioner contemplating an enquiry into the alleged misconduct and could maintain the order of suspension ordinarily for a period of six months and extended by two months and in deserving cases can continue even beyond that period having due regard to the facts and circumstances of a particular case. That would be within the powers and the discretion of the 1st respondent and it would not be proper for the court to interfere with the same unless as per the law settled, it is assailed on the ground of malafides etc. Section 47(6) of the A.P. Shops and Establishments Act, 1988 is the relevant provision dealing with suspension of an employee who is governed by the provision and its implications. Nothing more than the repetition of the same would fulfill its correct understanding. To read it:

"Section 47(6). Where an employee is placed under suspension pending enquiry into grave misconduct the employer shall pay a subsistence allowance equivalent to fifty per cent of the last drawn wage for the first six months and at seventy five percent of the last drawn wage beyond six months during the period of suspension. The total period of suspension shall not however exceed one year in any case. If the misconduct is not established or the total period of suspension exceeds one year, the employee shall be entitled to full wages during suspension period and the period of suspension shall be treated as on duty.

Explanations: (1) to (2) xxx xxx xxx:"

With the aid of this provision, Mr. B.S.A. Swamy, the learned Advocate for the

petitioner has contended that there is a statutory bar to allow the suspension to remain for more than one year and therefore, respondent No. 1 has acted in violation of such a statutory provision and this court can interfere with the same and rectify it. A simple and proper reading of this provision, no doubt, contemplates that the total period of suspension should not exceed one year in any case as a matter of rule. But the real intent of this provision is not to regulate the period of suspension but the right of an employee to get subsistence allowance during the period of suspension at particular rate and to get full wages during the period of suspension if the misconduct is not established or the total period of suspension exceeds one year. In other words, this provision is intended to put an obligation on the employer like the Co-operative Society herein, that if an employee is suspended for any grave misconduct pending enquiry, he shall be paid subsistence allowance equivalent to 50% of the last drawn wage for the first six months and at the rate of 75% of the last drawn wage if the order of suspension exceeds beyond six months and full wages at the rate last drawn if the period of suspension exceeds one year and as a whole, such a period of suspension shall be treated as on duty. Therefore, now if we read Section 47(6) of the Shops and Establishments Act with bye-law No. 12.1 of respondent No. 1 the same meaning would flow. It is for the concerned authority of the co-operative society to take the risk of the consequences of such a provision not to allow any order of suspension to exceed beyond the period of one year as a whole or take the risk of paying the subsistence allowance at the rates stated above if the suspension exceeds for such periods as is mentioned in this provision. Except such an obligation for which respondent No. 1 is bound, this court cannot put it to any other obligation so as to revoke the order of suspension on the petitioner only on the ground that it has exceeded the period of suspension prescribed therein. Therefore, even on the contentions covered by grounds 4 and 5, the petitioner cannot succeed in this petition.

13. For the reasons afforded above, the consequence is that the petitioner failed in this writ petition and the writ petition is accordingly dismissed. However, the respondents are hereby directed to pay the subsistence allowance to the petitioner in the light of the observations made above. The parties shall bear their respective costs.