
(1997) 09 AP CK 0068

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 1336 of 1995 and Batch

Bovaiah and Others

APPELLANT

Vs

District Cooperative Central Bank Ltd., Sangareddy and
Another

RESPONDENT

Date of Decision : 24-09-1997

Acts Referred:

Andhra Pradesh Co-operative Societies Act, 1964 — Section 116C
Andhra Pradesh Shops and Establishments Act, 1988 — Section 47
Constitution of India, 1950 — Article 12, 14, 16, 19(2), 226
Industrial Disputes Act, 1947 — Section 10A

Citation : (1998) 1 ALD 201 : (1997) 6 ALT 738

Hon'ble Judges : V. Bhaskara Rao, J;N.Y. Hanumanthappa, J

Bench : Division Bench

**Advocate : Mr. V.V.S. Rao, for the Appellant; Mr. T. Durga Reddy, for the
Respondent**

Judgement

N.Y. Hanumanthappa, J.—Since the question of law involved in all these petitions, the same are clubbed and disposed of by this Common Order.

2. The points for consideration in these writ petitions are, (i) whether the employees working in a Cooperative Bank on their termination or if their service conditions are in any way affected by the order passed by the Cooperative Bank (hereinafter referred to as "Bank"), to redress their grievances, are they have to raise a dispute as contemplated under the provisions of Cooperative Societies Act, 1964 or straightaway challenge the same before this Court under Article 226 of the Constitution of India ? (ii) whether placing an employee on higher pedestal by way of officiation will confer any right on him and asking him to go back to the original post will amount to termination ?

3. In order to answer the above questions, it is proper to narrate a few facts.

4. Respondents No.1, namely, the District Cooperative Central Bank Limited, constituted under the provisions of A.P. Cooperative Societies Act, 1964

hereinafter referred to as Employer. The petitioners herein are its employees. Prior to 9-1-1995 they were working in Category-VII. As on that day there were no rules and regulations regulating the service conditions of its employees relating recruitment, promotion etc. Their service conditions were governed only by the circulars issued by the Bank from time to time. While so, on 5-4-1994 the Medak District Cooperative Central Bank Employees Union gave a representation to the 2nd respondent herein mentioning that there were no posts of Sub-Assistants. On earlier occasions the Management had given promotions to the persons in Category-VII to Category-V, as such now also the staff of Category-VII may be considered to promotion for Category-V. This was followed by a reminder dated 10-10-1994. On 17-12-1994 the Managing Committee authorised the President to consider the case of the petitioners for promotion to Category-V. This was followed by an order dated 9-1-1995 issued by 1st respondent, placing the petitioners herein in Category-V on officiating basis and posting them to work in the branches shown therein. Subsequent to this the Bank had discussion with the office bearers of the A.P. Cooperative Societies Secretaries and Employees Union, accordingly it passed an order on 20-1-1995 keeping in abeyance the order dated 9-1-1995 with immediate effect with a further direction that the employees noted therein, who are the petitioners herein, shall attend the work as indicated by the concerned Manager. Aggrieved by the same, the present writ petitions have been filed by the petitioners.

5. Sri V.V.S. Rao, learned senior Counsel for the petitioners, contended that having once the petitioners were ordered to officiate in higher position, they should not have been reverted, as has been done by the order dated 20-1-1995. On earlier occasions, the employees placed on par with the petitioners were promoted. As such, a similar request was made by the petitioners and the same was considered in the meeting of the Managing Committee and found that it is just and proper to give promotions to the petitioners. Learned Counsel further submitted that instead of the word "Promoting", mischievously the word "Officiating" was used in the order dated 9-1-1995. Subsequently, the order was kept in abeyance yielding to some pressure from the Union. According to Sri V.V.S. Rao the Bank is an authority of instrumentality of the State while discharging its duties, which are public in nature, anything which affects the service conditions of its employees the same can be agitated under Article 226 of the Constitution of India. To support his contention, Mr. V.V.S. Rao, learned Counsel for the petitioners, firstly placed reliance on a full Bench decision of this Court in Sri Konaseema Co. op. Central Bank Limited v. N. Seetharama Raju, AIR 1990 AP 171 FB, wherein it is held as under :

"35. Thus, Bye-laws which merely constitute terms of contract between a Society and its employees do not have, or do not gain the force of law even where such society can be characterized as "State", within the meaning of Article 12. But this aspect is of mere academic importance, since we have held (see the undisputed proposition 1, above) that where a particular society can be characterized as "State", within the meaning of Article 12, the Court will compel

such society to follow its Bye-laws in the interest of fairness, i.e., Article 12."

Learned Counsel for the petitioners nextly placed reliance on a decision of this Court in *Rakesh Gupta v. Hyderabad Stock Exchange*, 1996 (2) ALD 1042 (DB), wherein it is held as follows :

"27. We have seen thus that even in respect of prerogative writ like Mandamus the Courts have found situations in which writs have been issued to private individuals like an arbitrator u/s 10A of the Industrial Disputes Act or interfered with the award which is in the nature of a document of settlement between the parties, found a school administered by a private trust amenable to writ jurisdiction in the case of its not obeying the commands of law to make payment of salary to the teachers in the school and carefully carved out the self-imposed restrictions upon the jurisdiction to point out that one who is obliged to act under the command of statute and has not acted as commanded by laws is amenable to writ jurisdiction, whether he is a private individual or a juristic person, but not a State under Article 12 of the Constitution.

28. Since we have seen in the scheme of the Securities Contracts (Regulation) Act incorporation of the rules of the association of the Exchange as statutes and the Bye-laws applicable to the Exchange being framed only with the approval of SEBI or as directed by it, it is not possible to hold that they (i.e. rules and Bye-laws) do not impose upon the Exchange a public duty. If the Exchange has failed to perform its public duty in the sense that it has gone beyond the mandates of the rules and the Bye-laws, or in performance of the same has violated any of the fundamental rights of the petitioners, they (the petitioners) can legitimately maintain petitions before this Court under Article 226 of the Constitution".

The learned Counsel also placed reliance on a decision of Supreme Court in *Air India Statutory Corporation, etc. Vs. United Labour Union and others* [overruled], wherein the Supreme Court has laid down the following principles:

"(1) The Constitution of the Corporation or instrumentality or agency or Corporation aggregate or Corporation sole is not of sole material relevance to decide whether it is by or under the Control of the appropriate Government under the Act.

(2) If it is a statutory Corporation, it is an instrumentality or agency of the State. If it is a company owned wholly or partially by a share capital, floated from public exchequer, it gives indicia that it is controlled by or under the authority of the appropriate Government.

(3) In commercial activities carried on by a Corporation established by or under the control of the appropriate Government having protection under Articles 14 and 19(2), it is an instrumentality or agency of the State.

(4) The State is a service Corporation. It acts through its instrumentalities, agencies or persons-natural or juridical.

(5) The governing power, wherever located, must be subject to the fundamental constitutional limitations and abide by the principles laid in the Directive Principles.

(6) The framework of service regulations made in the appropriate rules or regulations should be consistent with and subject to the same public law principles and limitations.

(7) Though an instrumentality, agency or person conducts commercial activities according to business principles and are separately accountable under their appropriate Bye-laws or Memorandum of Association, they become the arm of the Government.

(8) The existence of deep and pervasive State control depends upon the facts and circumstances in a given situation and in the altered situation it is not the sole criterion to decide whether the agency or instrumentality or persons is by or under the control of the appropriate Government.

(9) Functions of an instrumentality, agency or person are of public importance following public interest element.

(10) The instrumentality, agency or person must have an element of authority or ability to effect the relations with its employees or public by virtue of power vested in it by law, memorandum of association or Bye-laws or Articles of Association.

(11) The instrumentality, agency or person renders an element of public service and is accountable to health and strength of the workers, men and women, adequate means of livelihood, the security for payment of living wages, reasonable conditions of work, decent standard of life and opportunity to enjoy full leisure and social and cultural activities to the workmen.

(12) Every action of the public authority, agency or instrumentality or the person acting in public interest or any act that gives rise to public element should be guided by public interest in exercise of public power or action hedged with public element and is open to challenge. It must meet the test of reasonableness, fairness and justness.

(13) If the exercise of the power is arbitrary, unjust and unfair, the public authority, instrumentality, agency or the person acting in public interest, though in the field of private law, is not free to prescribe any unconstitutional conditions or limitations in their actions".

6. As an answer to the above contentions, Sri Durga Reddy, learned standing Counsel for the respondent Bank took us through the counter affidavit filed by the Bank, According to him, the writ petitions are not maintainable. The petitioners have chosen to challenge an order passed by the Cooperative Bank, which is not a State. Secondly, the petitioners have not shown how their service conditions are affected or met with evil consequences when they were just asked

to officiate and subsequently within 10 or 12 days asked to go back to their original posts, keeping the earlier orders in abeyance. According to the learned standing Counsel, that posting a person in an higher cadre either on ad hoc basis, temporarily or on officiating basis will not confer on him a right to continue in that capacity. Further, asking him to go back to the original post is not penal in nature. To support both these contentions, he firstly placed reliance on a full bench decision of this Court in *Sri Konaseema Co-op. Central Bank Ltd. v. N. Seetharama Raju* (supra), wherein it is held as follows :

"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.

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 an 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.

The Bye-laws made by a co-operative society registered under the A.P. Cooperative 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. However, in the matter of termination of service of the employees of a 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 this 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.

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 Article 226 of the Constitution."

Learned standing Counsel nextly relied on a decision of Supreme Court in Keshav Chandra Joshi and others etc. Vs. Union of India and others, , wherein it is held as follows :

"Once an incumbent is appointed to a post according to rules, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. Where the initial appointment is only ad hoc and not according to rules and is made as a stop-gap arrangement, the period of officiation in such post cannot be taken into account for reckoning seniority. The appointment to a post must be according to rules and not by way of ad hoc or stop-gap arrangement made due to administrative exigencies. If the initial appointment thus made was dehors the rules, the entire length of such service cannot be counted for seniority. In other words the appointee would become a member of the service in the substantive capacity from the date of his appointment only if the appointment was made according to rules and seniority would be counted only from that date"".

7. Having heard both sides and going through the entire material available on record, now we have to see (i) whether the writ petitions are maintainable since there is a challenge to the order passed by the Cooperative institution (ii) whether posting on officiating basis will confer any right. In other words, removing on official from officiation and sending him to the original posts will amount to reduction in rank ?

8. Since we can dispose of these writ petitions answering the second question, answering the first question for the present is not required.

9. It is not in dispute that the petitioners were working in Category-VII. They wanted to be placed in Category-V. Regarding this, there was correspondence between the Union, representing the petitioners, and the Management of the Bank. During the period in question, no rules and regulations and Bye-laws were framed by the respondent Bank regarding seniority, promotion, recruitment etc. Thus, the same are governed by some of the circulars issued by the Bank time and again in the matter. Apart from this, the Bank is governed by the provisions of A.P. Cooperative Societies Act, 1964. Section 116C of the Act deals with the staffing pattern of the Society, which is extracted hereunder :

"116C. Staffing pattern of societies:

(1) A society shall have power to fix the staffing pattern, qualification, pay scales and other allowances for its employees with the prior approval of the Registrar of

Cooperative Societies;

(2) No appointment or removal of a Chief Executive by whatever name called of any society, or class of societies as may be prescribed which are in receipt of financial aid from the Government, shall be made without the prior approval of the Registrar of Co-operative Societies".

10. As on 9-1-1995 no Bye-laws or regulations were in force dealing with the recruitment and promotion. On the repeated requests made by the Union, the Managing Committee of the Bank resolved to authorise the President of the Committee to consider the case of the officials to place the officials in Category-V from Category-VII. Accordingly, an order was made on 9-1-1995 placing the petitioners in Category-V, on officiating basis. Again there was representation and dialogue between the Union of the Society and the Bank which made the Bank to keep its order dated 9-1-1995 in abeyance with immediate effect, with a further direction that the persons shown therein shall go and work at the places to be indicated by the concerned Manager. Time and again, it is held that staffing pattern, pay fixation etc., are purely the concern of the Executive or the Employer concerned. It is not for the Court to suggest that what shall be the staffing pattern and the pay scales etc., as held by the Supreme Court in *State of Haryana and others Vs. Piara Singh and others etc. etc.*, .

"It is the Executive again that lays down the conditions of service subject, of course, to a law made by the appropriate Legislature. This power to prescribe the conditions of service can be exercised either by making rules under the proviso to Article 309 of the Constitution or (in the absence of such Rules) by issuing Rules/ instructions in exercise of its executive power. The Court comes into the picture only to ensure observance of fundamental rights, statutory provisions, Rules and other instructions, if any, governing the conditions of service. The main concern of the Court in such matters is to ensure the Rule of law and to see that the executive acts fairly and gives a fair deal to its employees consistent with requirements of Articles 14 and 16. It also means that the State should not exploit its employees nor should it seek to take advantage of the helplessness and misery of either the unemployed persons or the employees, as the case may be. As is often said, the State must be a model employer. It is for this reason, it is held that a person should not be kept in a temporary or ad hoc status for long. Where a temporary or ad hoc appointment is continued for long the Court presumes that there is need and warrant for a regular post and accordingly directs regularisation."

11. Regarding the effect of the officiation, ad hoc or temporary promotions, the same question fell for consideration before all the High Courts and the Supreme Court. In a famous case of *Parshotam Lal Dhingra Vs. Union of India (UOI)*, the Supreme Court dealt with the similar subject and observed that officiation, ad hoc or temporary promotions will not confer any right and an act of dislodging them from such an officiation, ad hoc or temporary promotion and sending them to the original posts will not amount to a reduction in rank or in any way penal in

nature. The same was reiterated in *State of Mysore and Others Vs. M.K. Gadgoli and Others*, , as follows:

"A person officiating in a post has no right to hold it for all times. Indeed, such a person is given a higher officiating post to test his suitability to be made permanent later and holds it on the implied terms that he would have to be averted if he was found unsuitable. The reversion in such a case on the ground of unsuitability is an action in accordance with the terms on which the officiating post was being held and is not a reduction in rank by way of punishment."

The above view of the Supreme Court in the decision (*Parshotam Lal Dhingra's case*) 6th cited supra was further reiterated in *Union of India v. P.S. Bhatt* AIR 1981 SC 957 and *Keshav Chandra Joshi v. Union of India* AIR 1991 SC 292.

12. Apart from the above decisions of the Supreme Court which are only a few, there is a full Bench judgment of this Court in *Sri Konaseema Co-op, Central Bank Ltd. v. N. Seetharama Raju* (supra), wherein this Court had an occasion to deal with the identical questions that are now raised by the learned senior advocate, Sri V.V.S. Rao, and all such contentions were negated.

13. Though the petitioners had represented to the Bank through their Union that their cases for promotion may be considered, when they were asked to officiate in Category-V by an order dated 9-1-1995 they simply accepted it instead of challenging the same on the ground that asking them to officiate in higher posts is not correct and they should be promoted. Further, the order dated 20-1-1995 is not a final one, all that it has been stated in the said order is that in view of the dialogue between the Managing Committee of the Bank and the Union, the Bank has decided to keep the order dated 9-1-1995 in abeyance with immediate effect. We are not informed that subsequent to the order dated 20-1-1995 what final decision the Bank has taken.

14. In view of the facts narrated and the law laid down on the effect of officiation we have to hold that any ad hoc appointment or officiation is purely a stop-gap arrangement made by placing an official in the post higher than which he is holding, in the absence of any rule or regulation it will not confer any benefit. Such an officiation also cannot be counted for seniority. Further earlier officiation order keeping in abeyance has not resulted in terminating the services of the petitioners. As such the grievance of the petitioners in view of their own conduct in accepting the officiation does not entitle them to contend that keeping them in abeyance by order dated 9-1-1995 is illegal. The authorities cited supra by the learned Counsel for the petitioners on facts have no application. On the other hand, the decision relied on by the learned Standing Counsel for the respondent-bank on facts are applicable to the case on hand. Hence, Point No.2 raised is ordered as above.

15. For the foregoing reasons, the only conclusion we can draw is that the writ petitions are devoid of merits. Accordingly, the writ petitions are dismissed, in the circumstances, there is no order as to costs.