

(2001) 06 AP CK 0093

In the Andhra Pradesh High Court

Case No : Writ Petition No. 6053 of 1990

D. Nageswara Rao

APPELLANT

Vs

Guntur District Milk Procedures, Co-op. Union Ltd.,
Vadlamudi, Tenali, Guntur District and another

RESPONDENT

Date of Decision : 29-06-2001

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 27(2),
28, 3
Constitution of India, 1950 — Article 12, 226

Citation : (2001) 5 ALD 139 : (2001) 5 ALT 347

Hon'ble Judges : S.R. Nayak, J;S. Ananda Reddy, J

Bench : Division Bench

Advocate : M/s. Prabhunath and Vasi Reddy, for the Appellant; Mr. V.V. Prabhakar Rao and Mr. N. Rajeswara Rao, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Nayak, J.—On an earlier occasion, a Division Bench of this Court by its judgment and order dated 17-2-1999 had partly allowed the writ petition and remanded the disciplinary proceedings initiated against the petitioner, to the disciplinary authority with a direction to dispose of the proceedings afresh after giving opportunity of being heard to the writ petitioner on the ground that the enquiry against the petitioner-delinquent was conducted without notice to the petitioner. In Civil Appeal No.3186 of 2000 preferred against the said judgment of the Division Bench by the respondent-Union, the Supreme Court found that the allegation that the enquiry was conducted without notice to the petitioner is factually incorrect. The Supreme Court also found that though the 1st respondent has taken a plea that the writ petition is not maintainable against it, and this Court did not deal with that question. In that view of the matter, the order of the Division Bench was set aside by the Supreme Court and proceedings are remanded to this Court to dispose of the same after dealing with all the contentions raised by both the delinquent as well as the employer. That is how

this writ petition is placed before this Bench as directed by the Hon"ble the Chief Justice.

2. We heard the learned Counsel for the parties and perused the records of the disciplinary proceedings. As regards the maintainability question raised by the 1st respondent herein, suffice it to state that there are already number of decisions wherein this Court has opined that the District Milk Producers" Co-operative Union is not a "State" within the meaning of Article 12 of the Constitution and therefore, no writ could lie against it. At the time of hearing, the learned Standing Counsel appearing for the 1st respondent placed before us three unreported judgments of the Division Bench of this Court. They are judgments in WA No.96 of 1998 dated 30-3-1998; WA No.28 of 1990 dated 8-11-1994; and WA No.1498 of 1995 and WP No.3906 of 1992 dated 8-12-1995. In the first case, the Division-Bench has held that the writ is not maintainable against the 2nd respondent therein i.e., Milk Producers" Co-operative Union (wrongly mentioned as Factory in the cause title of the writ appeal). In the second case, the Division Bench has opined that the writ petition is not maintainable against the Guntur District Milk Producers" Co-operative Union Limited, the very 1st respondent herein. Similarly, in WA No.1498 of 1995 the Division Bench has opined that the Prakasham District Cooperative Milk Producers" Union, Ongole is not a "State" and, therefore, no writ could lie against it.

3. Learned Counsel for the petitioner, however, would place strong reliance on the judgment of a learned single Judge of this Court in Andhra Pradesh Dairy Development Co-operative Federation Ltd, Workers Union represented by its General Secretary, Sangam Dairy, Vadlamudi, Guntur District v. The General Manager, The Guntur District Milk Producers Co-operative Union Ltd., Sangam Dairy, Vadlamudi, Guntur District 1989 (3) ALT 649, in support of the contention that the 1st respondent-Union is a "State" within the meaning of Article 12 and an "authority" within the meaning of Article 226 of the Constitution and, therefore, writ petition is maintainable. It is true that in the above judgment the learned single Judge of this Court (M.N. Rao, J) has opined that a writ is maintainable against the Guntur District Milk Producers" Co-operative Union Limited. However, it is relevant to note that the correctness of the ratio of this very judgment fell for consideration before the Full Bench of this Court in Sri Konaseema Co-operative Central Bank Ltd., Amalapuram and another Vs. N. Seetharama Raju, The above judgment of Sri M.N. Rao, J., was referred to, considered and overruled by the Full Bench. There cannot be any doubt in this regard because a Division Bench consisting of M.N. Rao, J., himself and Sri T.N.C. Rangarajan, J., in WA No.1498 of 1995 specifically dealt with the question whether the judgment (supra) was overruled by a Full Bench of this Court (supra) or not, and the Division Bench recorded its finding as follows:

"It is also interesting to note that one of us (M.N. Rao, J) had held in APDD Coop. Federation v. Milk Producers" Co-op Union Limited (supra) that a co-operative

society was amenable to writ jurisdiction. That judgment was specifically overruled by the Full Bench."

4. The resultant position as settled by several pronouncements of the Division Bench as well as that of the Full Bench is that writ petition is not maintainable against the 1st respondent-Union. However, there was a strenuous attempt on the part of the learned Counsel for the petitioner to persuade us to re-examine the question de novo stating that the Division Bench of this Court in the three unreported judgments, referred to above, has not taken into account all the relevant material and circumstances in recording the finding. We do not think this is a fit case where we should permit the Counsel to venture in that direction. We say so because after hearing the learned Counsel for the parties and perusing the evidence on record and after necessary reflection, we do not find any case for the petitioner on merit also. Even in the event of holding that a writ lies against the 1st respondent-Union, the petitioner is not entitled to any relief. We, therefore, proceed to consider the case of the petitioner on merits.

5. The petitioner was appointed as Officer (Artificial Insemination) in the 1st respondent-organisation and subsequently his designation was changed to Manager (Artificial Insemination) with effect from 30-4-1983. The petitioner, while working as Manager (Artificial Insemination), has applied for half pay leave with effect from 19-7-1988 to 18-10-1988 for a period of 92 days on personal ground and the same was sanctioned. Again, on 18-10-1988, he applied for extension of leave for three months beyond 18-10-1988. The petitioner was informed by the respondent-employer that he was sanctioned earned leave for a period of only one month i.e., from 19-10-1988 to 17-11-1988 in proceedings dated 17-10-1988 and he should, therefore, report for duty on 18-11-1988 without fail. The petitioner again represented in his letter dated 23-11-1988 that he could not join duty on 18-11-1988 due to "unavoidable problems", and prayed for extension of leave for three more months w.e.f. 18-11-1988 to 18-2-1989. When the matter stood thus, the employer by his proceedings dated 6-12-1988 informed the petitioner in categorical terms that further extension of leave would not be granted under any circumstance and that his services were very much required in the Artificial Insemination Centre and that the petitioner should report for duty immediately without any further loss of time. The petitioner did not obey the office direction even after the expiry of the sanctioned leave. After three months from the date of expiry of the sanctioned leave, the petitioner reported for duty on 20-2-1989. The respondent-employer, however, taking a lenient view, regularised the absence of the petitioner by granting leave from 18-11-1988 to 20-2-1989 without taking any disciplinary action against the petitioner. The petitioner worked from 20-2-1989 and he again applied for casual leave from 7-3-1989 to 12-3-1989. While availing casual leave, the petitioner prayed for extension of leave for three more months under the pretext of settling his "personal problems". In response to this request, the employer sent a telegram dated 17-3-1989 informing the petitioner that his request for leave was refused and he should report for duty immediately. The petitioner again sent a

letter dated 28-4-1989 stating that he was not yet settled his "personal problems" and reiterated his request for leave for three more months. Under those circumstances, the employer, left with no alternative, thought of initiating disciplinary action against the petitioner, and accordingly, the charge memo dated 24-6-1989 was issued to the petitioner incorporating the chronology of instances of unauthorised absence leading to initiation of disciplinary proceedings against him. The petitioner, in response to the charge memo, by his letter dated 4-7-1989, requested for leave for six more months with effect from 7-3-1989 onwards. The disciplinary authority by his proceedings dated 20-7-1989 appointed one Sri Raja Ram Mohan Rao, Quality Control Officer (Inspection) as Enquiry Officer to conduct enquiry against the petitioner. By a telegram dated 28-8-1989, the petitioner was also informed that his reply dated 4-7-1989 was not found satisfactory and that he may attend the enquiry fixed on 31-8-1989 at 11.00 a.m. along with a co-employee for assistance, failing which, the enquiry would be conducted in his absence. The petitioner, by telegram addressed to the Enquiry Officer, requested for adjournment of enquiry to September, 1989 on the ground that he was suffering from influenza. The Enquiry Officer sent a telegram dated 20-8-1989 informing the petitioner that the enquiry was adjourned to 7-9-1989 and made it very clear that no further adjournment would be granted to the petitioner. Then, again on 6-9-1989 the petitioner sent a telegram to the Enquiry Officer requesting for further adjournment upto the last week of October on the ground that he was suffering from typhoid and that he was advised complete bed rest for two months. At this stage, it is relevant to note that though the petitioner took the plea of ill-health, at no point of time, he enclosed any medical certificate in support of his plea. When the matter stood thus, the petitioner, by a further letter dated 5-9-1989, again requested the employer for sanction of two months leave from 7-9-1989 as he was suffering from enteric fever. This time also no medical certificate was produced. Understandably, the Enquiry Officer proceeded to conduct the enquiry ex parte on 7-9-1989 and submitted report to the disciplinary authority recording finding that the charge framed against the petitioner is satisfactorily proved on the basis of the evidence let in by the management. After receipt of the enquiry report, a show-cause notice dated 18-9-1989 was issued to the petitioner proposing to terminate his services as a disciplinary measure and giving him opportunity to submit his reply, if any. To the said show-cause notice, the petitioner sent a telegram dated 25-9-1989 requesting for extension of time till last week of October, 1989 to submit his explanation. The request was refused. Ultimately, the Board of Directors of the 1st respondent Union met on 9-10-1989 and passed resolution No.17 resolving unanimously to terminate the services of the petitioner as a disciplinary measure for the proven misconduct. In pursuance of the resolution of the Board of Directors, the impugned proceedings dated 21-10-1989 were issued communicating the orders of the Board terminating the services of the petitioner.

6. The facts narrated supra are not in controversy. The facts speak for themselves and also volumes about the conduct of the petitioner. Although

intermittently, during his long unauthorised absence, the petitioner took the plea of his ill-health as a ground not to report for duty and not to participate in the enquiry, at no point of time he produced any proof in support of his so-called illness. The petitioner has virtually abandoned the job without any justification and in flagrant violation of the duty owed by him to his employer.

7. However, the learned Counsel for the petitioner would contend that the 1st respondent is not the competent authority to terminate the services of the petitioner because the petitioner was Manager Grade I belonging to common cadre created by the Registrar of Co-operative Societies u/s 116-A of the A.P. Co-operative Societies Act, 1964 (for short "the Act"). The learned Counsel would maintain that under that section, the Registrar alone is the competent authority to create the common cadre and deal with the terms and conditions of the employees borne on the said cadre. The second contention of the teamed Counsel for the petitioner is that the Enquiry Officer appointed by the disciplinary authority is junior to the petitioner in the cadre of Manager Grade I and, therefore, there is a breach of Rule 27(2) of the CCCA Rules according to which, either the disciplinary authority or any other officer or authority superior to the delinquent can alone conduct enquiry and not a junior or subordinate authority. Lastly and alternatively, the learned Counsel would contend that the penalty of removal imposed by the disciplinary authority in the fact-situation of the case is totally disproportionate to the gravity of the misconduct committed by the petitioner. The learned Counsel would also submit that the CCCA Rules have the statutory force because they are framed by the Federation, the 2nd respondent herein and they have been approved by the Registrar of Co-operative Societies. Therefore, those rules should be treated to be the rules framed by the Registrar himself by virtue of the power conferred upon him under sub-section (2) of Section 116-A of the Act.

8. Let us first dispose of the argument relating to the appointment of the Enquiry Officer. It is true that the petitioner has placed some material before us to show that the Enquiry Officer was, at the relevant point of time, placed at serial No.51 whereas the petitioner was placed at serial No.2 in the common cadre seniority list of Managers Grade I. It is also true that Rule 27(2) provides that departmental enquiry be held either by the disciplinary authority himself or by an officer or authority superior to the delinquent in question authorised by the disciplinary authority. Undoubtedly, in appointing the Enquiry Officer, the disciplinary authority has committed an irregularity. But, the question for us to consider is whether on that count, we should nullify the disciplinary action taken by the disciplinary authority. After necessary reflection and thought, we are not persuaded to interfere with the disciplinary action only on that ground. We say this because the petitioner did not raise this plea at all at any point of time nor the contention that on account of this irregularity he suffered any prejudice. He slept over the matter. As already pointed out supra, he did not participate in the enquiry also. Therefore, at this belated stage, the petitioner cannot be permitted to advance this technical plea while assailing the impugned disciplinary action.

9. This takes us to the other contentions of the learned Counsel for the petitioner. Admittedly, the CCCA Rules are framed by the 2nd respondent-Federation. This position was made clear to us by the learned Counsel for the petitioner at the time of hearing. Nothing is placed before us to satisfy ourselves that these CCCA Rules were sent to the Registrar of Cooperative Societies and he accorded his approval for the rules. Even assuming that the rules framed by the Federation were sent to the Registrar of Co-operative Societies and the Registrar has accorded his approval to them, that fact itself will not make them statutory rules, and they cannot be equated to the rules that may be framed by the Registrar of Co-operative Societies by virtue of the rule-making power conferred under sub-section (2) of Section 116-A of the Act. Sub-section (2) of Section 116-A reads as under:

"The classification and methods of recruitment, conditions of service, pay and allowances and discipline and conduct of the officers specified in subsection (1) shall be such as may be provided by regulations to be framed by the Registrar."

10. The language used in subsection (2) makes it abundantly clear that the Registrar of the Co-operative Societies is alone competent to frame regulations governing the methods of recruitment, conditions of service, pay and allowances and discipline and conduct of the officers. There is no enabling provision in the Act to sub-delegate this power in favour of any one. In that view of the matter, there is no force in the contention of the learned Counsel for the petitioner that rules framed by the Federation have statutory force.

11. The other contention of the learned Counsel for the petitioner is that the 1st respondent is not the competent authority to terminate the services of the petitioner based on Rule 3(e) read with Rule 28, and the relevant entry in the annexure appended to the rules. Should it be noticed at the threshold that this contention is solely based on the CCCA Rules framed in the year 1989 which came, into force with effect from 1-8-1989. It is trite to state that the disciplinary proceedings begin with the issuance of the charge memo and they end with the final order that may be passed by the disciplinary authority. In the instant case, admittedly, the charge memo was issued to the petitioner on 29-6-1989 well before the 1989 CCCA Rules were framed by the Federation and they were brought into force with effect from 1-7-1989. It is also not in dispute that at the relevant point of time, when the disciplinary proceedings were initiated against the petitioner, the CCCA Rules of 1983 framed by the 1st respondent were holding the field. There is also no controversy that under the rules framed by the 1st respondent in 1983, the Board of Directors of the 1st respondent was the competent authority to impose major penalty on the delinquent officers. As pointed out supra, in the instant case, the Board of Directors of the 1st respondent had passed resolution No. 17 dated 9-10-1989 resolving to terminate the services of the petitioner as a disciplinary measure for the proven misconduct. Since the very basis of the argument that the 1st respondent is not the competent authority is grounded on 1989 rules, that

contention is liable to be rejected in limine.

12. This takes us to the contention regarding the disproportionality of the punishment imposed on the petitioner. The misconduct committed by the petitioner cannot be taken lightly. It is pertinent to notice that despite the fact that the management indulged in granting leave liberally to the petitioner for months together and despite several reminders to the petitioner to return to duty in the interests of administration, the petitioner refused to obey the directions of the employer with impunity, and went on availing unauthorised leave. As pointed out supra, though the petitioner took the plea that he was ill, being inflicted by influenza, enteric fever and typhoid, he did not produce any medical certificate to support that he was actually ill. Unauthorised absence, that too for a long period, subjecting the public interest to peril, cannot be treated as a minor lapse on the part of the delinquent employee. Be that as it may, it is well settled that the High Court, in exercising power of judicial review under Article 226, cannot sit as an appellate authority and interfere with the disciplinary action taken by the authorities lightly and reduce or modify the quantum of punishment imposed by the disciplinary authority, unless, in a given case, the penalty so imposed shocks the conscience of the Court. This is not one such case. Therefore, we do not find any weighty or substantive ground to interfere with the quantum of punishment also.

13. No other point urged before us.

14. In the result, the writ petition is dismissed. No order as to costs.