

(1997) 11 AP CK 0088

In the Andhra Pradesh High Court

Case No : WA No. 1289 of 1997 and Batch

M. Ramakrishna

APPELLANT

Vs

Nayudu Suryanarayana and others

RESPONDENT

Date of Decision : 25-11-1997

Acts Referred:

Andhra Pradesh Shops and Establishments Act, 1988 — Section 47(6)
Constitution of India, 1950 — Article 14, 226

Citation : (1998) 2 ALD 1 : (1998) 2 ALT 561

Hon'ble Judges : Syed Shah Mohammed Quadri, Acting C.J.; B.V. Ranga Raju, J

Bench : Division Bench

Advocate : M/s. A. Satya Prasad, for the Appellant; Mr. D. Krishna Murthy and Government Pleader for Corporation, for the Respondent

Judgement

Syed Shah Mohammed Qquadri, , A.C.J.

1. These three cases raise a common question; so they are heard together and are being disposed of by a common judgment.

2. The petitioner in WP No.198355 of 1995 is the petitioner in WP No.25360 of 1997. The first named writ petition was disposed of by a learned single Judge on July 28, 1997. Assailing the validity of the said order, the second respondent-the Gorinta Primary Agrl. Co-operative Society, Gorinta, Peddapuram Mandalam, East Godavari District filed the writ appeal. The petitioner in WP No.25333 of 1997 is also an employee of the appellant-society in WA No. 1289 of 1997. The proceedings which gave rise to these cases are the orders of suspension passed by the appellant-society against the employees pending enquiry. While allowing WP No.19835 of 1995, the learned single Judge, by order referred to above, inter alia directed that the suspension orders be kept in abeyance and that the respondent-society would be at liberty to initiate departmental enquiry against the petitioners expeditiously and to complete the same in accordance with law. The learned single Judge directed three months time for completing the enquiry. It was also made clear that subsistence allowance be paid to the employees in

accordance with the rules of the society.

3. In WP Nos.25360 and 25333 of 1997, the complaint is that the orders of suspension passed subsequent to the orders dated 28-7-1997 in WP No.19835 of 1996 are in violation of the directives contained therein. Sri Satya Prasad, the learned Standing Counsel for the appellant-society and respondent in the other writ petitions, contends that against the Co-operative Society, no writ is maintainable, so the order of the learned single Judge has to be quashed. It is his further contention that after the order of termination is passed by the society, the writ petition had become infructuous, but the learned single Judge issued direction by the order under appeal, which is unsustainable in law.

4. Sri D. V. Bhadram, the learned Counsel for the petitioners in the writ petitions, contends that the employees are seeking enforcement of a statutory duty cast on the employer u/s 47(6) of the A.P. Shops and Establishments Act, therefore, the writ is maintainable. He further contends that without complying with the orders of this Court, the subsequent suspension orders have been issued.

5. On the above contentions, two questions arise for consideration; (1) whether the writ petition is maintainable against the appellant-society and (2) whether the directions issued by the learned single Judge are sustainable in law.

6. Insofar as the first point is concerned, it is squarely covered by the observations of a Full Bench of this Court of which one of us Syed Shah Mohammed Quadri, J was a member in *Konaseema Cooperative Central Bank Ltd v. N. Seethamma Raju*, AIR 1990 AP 171, wherein the Full Bench observed as under :

"If a particular cooperative 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 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 in the nature of the statutory duty placed upon it, and the

Court will enforce such statutory public duty."

7. The question whether a writ would lie against the Cooperative Society cannot be answered in abstract. It has to be answered with reference to the facts of each case and the relief claimed. From the observations of the Full Bench, it is clear that a writ would lie against the Cooperative Society to enforce a statutory obligation. Here what is sought to be enforced is the mandate of the Legislature contained in Section 47(6) of the Act which reads thus:

"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 per cent 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."

A plain reading of the provision extracted above shows that an employer is under an obligation to pay subsistence allowance equal to 50% of the last drawn wage for the first six months and at 75 per cent of the last drawn wage beyond six months, but if the suspension continued beyond one year which ordinarily should not, the full salary shall be paid as subsistence allowance. For enforcing this obligation, in our view, the writ petition is maintainable and the learned Judge has not committed any illegality in hearing the writ petition on merits and disposing it of.

8. The direction that the learned single Judge granted was assailed on the main ground that after the orders of suspension, the services of the employees were terminated by order dated 12th August, 1995. The learned single Judge noticed that the actual resolution of the general body approving the action of the Managing Committee in terminating the services was approved on 29-9-1995. Even so, the order of termination was not communicated to the employees. If the order remains uncommunicated, the employees cannot be attributed the notice of the order and the learned Judge, in our view, was right in ignoring such an order which was passed and was kept in its file by the society. If that order is ignored from consideration, what should follow is a direction to the Society to complete the enquiry and a further direction to comply with the requirements of Section 47(6) of the Act, namely to pay the subsistence allowance. That is only what the learned single Judge has done. We therefore find no ground to take an exception to the said order. Accordingly, we hold that the writ appeal is devoid of any merit. It is, therefore, dismissed.

9. For the aforementioned reasons, the writ petitions have to be allowed to the extent of issuing direction to the respondent-society to pay subsistence allowance to the employees; the Society shall complete the enquiry after complying with the principles of natural justice as well as the rules, if any, on the

point expeditiously, in any event within a period of three months.

10. In the result, the writ appeal is dismissed, and die writ petitions are allowed. Having regard to the circumstances of the case, we make no order as to costs.