

(1994) 10 AP CK 0037

In the Andhra Pradesh High Court

Case No : Writ Petition No"s. 15762 of 1987 and 9821 of 1989

N. Raji Reddy

APPELLANT

Vs

The Warangal District Co-op. Central Bank Ltd. and Others

RESPONDENT

Date of Decision : 17-10-1994

Acts Referred:

Andhra Pradesh Shops and Establishments Rules, 1968 — Rule 19(1)

Citation : (1994) 3 ALT 431 : (1995) 1 APLJ 93 : (1996) 1 LLJ 492

Hon'ble Judges : B. Subhashan Reddy, J

Bench : Single Bench

Advocate : L. Narasimha Reddy, for the Appellant; P.V. Narayana Rao, for the Respondent

Judgement

B. Subhashan Reddy, J.—Writ Petition No. 15762 of 1987 is filed against an order of removal of the petitioner, which was notified in a local news paper "Warangal Vani" dated February 13, 1987. The petitioner was appointed as a Paid Secretary in the Warangal District Co-operative Central Bank Limited on June 8, 1977. On January 4, 1986 a person - incharge was appointed as the term of the elected Managing Committee had expired. Disciplinary action was initiated against the petitioner on the ground that he was a habitual absentee. On September 29, 1986, a charge memo was issued calling upon the petitioner to answer the same. But the same was not addressed to him personally and it is admitted by the respondents that the same has not been served on the petitioner. The only mode of communication was displaying the said charge memo on the notice board of the office of the above Bank as also on the notice board of the concerned Gram Panchayat; in consequence, the petitioner could not present himself and could not participate in the enquiry. Ex parte enquiry was conducted by the disciplinary authority and orders of removal were passed on November 18, 1986. The same was sent by registered post on three different addresses to the petitioner and in addition was also published in the local news paper "Warangal Vani" dated February 13, 1987. The petitioner on coming to know of the same, preferred an appeal before the Collector, but thereto it was confirmed by orders dated

September 15, 1987. The result is this writ petition.

2. While Mr. L. Narasimha Reddy, the learned Counsel for the petitioner, complains that there is a violation of principles of natural justice as the show cause notice containing charges were not at all communicated to the petitioner and that entire proceedings are vitiated because of the violation of the principles of natural justice, Mr. P.V. Narayana Rao, the learned Counsel for the respondents defends the impugned orders citing Rule 19 of A.P. Shops and Establishments Rules. Rule 19(1)(f) of the said Rules states that habitual absence without leave is a misconduct and under Rule 19(2) of the said Rules, every employer has to display or cause to be displayed near the entrance or at the conspicuous place of establishment, a copy of the list of acts and omissions specified under Sub-rule (1) of Rule 19 of the said Rules. So far as this aspect is concerned, there is a compliance by the disciplinary authority in displaying the alleged misconduct of the petitioner on the notice board of the above Bank and also the Gram Panchayat. But, this alone cannot be treated as sufficient as the disciplinary enquiry leading to the removal of the petitioner resulted in civil consequences, therefore, a personal notice and also enquiry was necessary. If the delinquent is served with a personal notice and he chooses not to reply or not to participate in the enquiry, then the disciplinary authority cannot be found fault with. But, here is a case where, admittedly, no personal notice was issued to the petitioner and as it resulted in civil consequences, there is a glaring violation of principles of natural justice. I cannot accept the argument of Mr. P.V.Narayana Rao, the learned Counsel for the respondents that under the Rules, which have been cited and stated supra, personal notice is not required. Even if the Rules are silent with regard to personal notice, in a case of this nature, a personal notice is a must and if the same has not been issued and served, there will be infraction of principles of natural justice. For that reason, the orders of the 3rd respondent dated November 18, 1986 and confirmed in Appeal No. 1875/87-D, dated September 15, 1987 by the District Collector, Warangal are set aside. This order shall not preclude the authorities concerned from initiating the enquiry afresh. Inasmuch as the petitioner had been continuing, even though as a fresh appointee, it shall be deemed that he had been continuing in service without any break as if the order of removal has not been passed for the reasons mentioned above. It is needless to mention that the petitioner shall be entitled to all the attendant benefits.

3. Coming to Writ Petition No. 9821 of 1989, I do not concur with the argument of Mr. L.Narasimha Reddy, the learned Counsel for the petitioner, that the 1st respondent is not the authority for appointment, that the 2nd respondent is the authority for appointment and that re-appointment of the petitioner made on October 1, 1988 cannot be a matter of scrutiny by the 1st respondent. Bye-law 3 of the Special Bye-laws relating to Service Conditions of Employees of Primary Agriculture Credit Societies, makes it very clear that a panel has to be sent by the District level Committee and out of the said panel only the Primary Agriculture Credit Society can select and appoint one of the candidates.

Indisputably, the said procedure has not been followed in the instant case. As such, I cannot take cognizance of the re- appointment of the petitioner by the 2nd respondent with effect from October 1, 1988. In any event, in view of the relief granted in Writ Petition No. 15762 of 1987 and as the order of removal has become non est, there is no significance attached to the reappointment of the petitioner on October 1, 1988.

4. These two Writ Petitions are disposed of accordingly. No order as to costs.