
(2002) 04 AP CK 0046

In the Andhra Pradesh High Court

Case No : Writ Appeal No's. 115 and 366 of 1998

The Krishna District Cooperative Central Bank Ltd.

APPELLANT

Vs

M. Veeraswamy and Others

RESPONDENT

Date of Decision : 08-04-2002

Acts Referred:

Andhra Pradesh Co-operative Societies Act, 1964 — Section 110A, 116AA, 116C(2)

Citation : (2002) 04 AP CK 0046

Hon'ble Judges : S.R.K. Prasad, J;S.R. Nayak, J

Bench : Division Bench

Advocate : B. Adinarayana Rao and Government Pleader, for the Appellant; G. Krishna Murthy, for the Respondent

Final Decision : Allowed

Judgement

S.R. Nayak, J.—Against the same judgment of the learned single judge dated 10.12.1997 in W.P.23890 of 1996, these two Writ Appeals are filed. Writ Appeal No. 115 of 1998 is filed by the Krishna District Co-operative Central Bank Limited, the 1st respondent in the writ petition, whereas Writ Appeal 366 of 1998 is filed by the Deputy Registrar of Co-operative Societies, Gudivada, and the District Collector, Krishna District the 2nd and 3rd respondents respectively in the Writ Petition. The 1st respondent in the Appeals, M. Veera Swamy filed the above writ petition assailing the order of transfer passed by the General Manager of the Krishna District Co-operative Central Bank Limited in P.S.C. No. 1/96-A2 dated 2.11.1996. According to the petitioner, he was appointed as Secretary of Mothuru Primary Agricultural Credit Society (for short "Mothuru PACS") in 1987 by the then Managing Committee of the Society consequent upon bifurcation of the said Society and formation of the 4th respondent-Society and his appointment was also approved by the 2nd and 3rd respondents. The petitioner contends that since common cadre of Secretaries in the Co-operative Societies was abolished with effect from 25.4.1985 by insertion of Section 116AA of the A.P. Cooperative Societies Act, 1964 (for short "the Act"), the General Manager of the 1st

respondent-Bank did not have the power to transfer the 5th respondent.

2. Opposing the Writ Petition, the 1st respondent as well as 2nd and 3rd respondents in the writ petition, have filed counter-affidavits. In the counter-affidavit filed by the 1st respondent, it was contended that though the common cadre Secretaries was abolished with effect from 22.4.1985, as the decaderisation of the Secretaries could not be completed on account of stay orders passed by this Court in writ petitions, under Rule 72 (5) of the A.P. Co-operative Societies Rules (for short "the rules"), the General Manager of the 1st respondent had authority and competence to pass the impugned order transferring the 5th respondent. The 2nd and 3rd respondents have also supported the stand taken by the 1st respondent. In the counter-affidavit filed by the 2nd respondent it is also contended that the approval accorded by the previous Deputy Registrar, Co-operative Societies to the appointment of the petitioner was one without authority of law and unauthorised.

3. The learned single Judge, having noticed that the approval accorded by the Deputy Registrar, Co-operative Societies, Gudivada on 22.6.1993 to the appointment of the petitioner as Secretary stands and that is not quashed by any Court, was of the opinion that the stand taken by the respondents defending the impugned action cannot be sustained. So opining, the learned Judge allowed the Writ Petition and quashed the impugned order of the 1st respondent dated 2.11.1996. Hence these appeals assailing the validity of the order of the learned single Judge.

4. We have heard Shri B. Adinarayana Rao, the learned counsel appearing in Writ Appeal No. 115 of 1998 and the learned Government Pleader for Agriculture and Co-operation appearing for the appellant-authorities in W.A. No. 366 of 1998 and the learned counsel appearing for the writ petitioner.

5. It is true that the writ petitioner was appointed as Secretary of Mothuru P.A.C.S. in the year 1987 by the Managing Committee of the Society consequent upon bifurcation of the said Society and formation of the 4th respondent Society. It is also true that the said appointment of the Writ Petitioner was approved by the 2nd and 3rd respondents. Simply because his appointment was accorded approval by the 2nd and 3rd respondents, could it be said that that circumstance itself is a justification for quashing the impugned action of the 1st respondent.

6. The issue brought before the Court in the Writ Petition relates to the power of the 1st respondent to effect transfer. Therefore the first question to be considered is whether the 1st respondent had legal authority to transfer the 5th respondent by the impugned proceedings. In answering this question, the factual and legal background of the case is to be noticed briefly as under.

7. Under Half-A-Million Job Programme, Paid Secretaries were recruited by the Appointment Committees constituted u/s 110-A of the Act to work as Secretaries/ Chief Executives of the Primary Agricultural Cooperative Societies in the State of Andhra Pradesh. u/s 116-A of the Act, the Registrar of Co-operative Societies,

A.P., Hyderabad in his proceedings No. 32054/74-CIB, dated 29.4.1978 ordered creation of common cadre for the Paid Secretaries. As per common cadre Regulations issued by the Registrar of Co-operative Societies, the General Manager of the Krishna District Co-operative Central Bank Limited, Machilipatnam - 1st respondent is vested with the power of transfer and posting of the common cadre Paid Secretaries from one Society to another Society and it was directed that all the paid Secretaries should work under the administrative control of the General Manager.

8. When matters stood thus, Guntakoduru P.A.C.S. was registered during 1996 pursuant to bifurcation of the Mothuru P.A.C.S. With the registration of the above Society, according to the 1st respondent, there arose a vacancy of Paid Secretary. At that relevant point of time, undoubtedly, the petitioner was already appointed as Secretary and he was an employee of the Society. But the hard fact is that he was not appointed as a cadre Paid Secretary because such a power was not vested in the Managing Committee of the Society and, therefore, filling up of the vacancy of Paid Secretary by the Society by appointment of the petitioner would not arise. In other words, when the vacancy arose in the post of paid Secretary, the petitioner was not working as Cadre Secretary. It is true that the common cadre of Secretaries was subsequently abolished with effect from 22.4.1985 by insertion of 116-AA of the Act. However, Sub-rule (5) of Rule 72 of the Rules, added by G.O.Ms. No. 704, dated 4.12.1987 provides that:

Notwithstanding anything contained in sub-rule (4), until the allotments of the Secretaries is made to the Primary Agricultural Co-operative Societies as per the guidelines laid down in sub-rules (1) and (2), the Secretaries, for the purpose of disciplinary control, shall be governed by the Common Cadre Regulations existing prior to the abolition of the common cadre of Secretaries of Primary Agricultural Co-Operative Societies and the General Managers of the Co-operative Central Banks on a decision by the Registrar shall initiate action against the said Secretaries for lapses committed by them in the Societies they are working after decaderisation.

9. It is stated in the counter-affidavit filed by the 1st respondent that though the common cadre of the Secretaries was abolished with effect from 22.4.1985, on account of the interim orders granted by this Court, decaderisation of the Secretaries consequent upon the abolition of the cadre of Secretaries could not be implemented. It is also stated in paragraph 5 that after the abolition of the cadre of Secretaries by insertion of Section 116-AA of the Act, no allotment was made to the Societies in the Krishna District. The above statements made by the 1st respondent on oath are not denied by the Writ Petitioner. A careful perusal of the provision of sub-rule (5) of Rule 72 of the Rules makes it very clear that notwithstanding abolition of the common cadre of Paid Secretaries the Common Cadre Regulations existing prior to the abolition of the common cadre of Secretaries would govern transfer of paid secretaries till decaderisation is completed.

10. The primary question that arises for our consideration and decision in these two appeals is whether Krishna District Cooperative Central Bank Limited, Machilipatnam, Krishna district represented by its General Manager had legal authority to issue the proceedings dated 2.11.1996 in transferring the 5th respondent P. Harigopala Rao, ex-Secretary of the Tamarukollu PACS to Guntakoduru PACS as its Secretary. In deciding this legal question it becomes necessary to refer to certain statutory provisions which have a bearing on the decision making.

11. Section 116AA of the A.P. Cooperative Societies Act (for short "the Act") reads as follows:

The common cadre for all categories of employees other than those specified in Section 116-A, constituted before the commencement of the Andhra Pradesh Co-operative Societies (Amendment) Act, 1985 and existing at such commencement shall stand abolished with effect on and from the commencement, and upon such abolition, it shall be lawful for the Registrar, to allot, subject to such rules as may be made in this behalf, the employees included in the cadre so abolished to such Primary Agricultural Credit Societies as he may deem fit:

Provided that until they are allotted as aforesaid they shall continue in the posts in which they are working at the commencement of the said Act.

12. Section 116C of the Act reads thus:

(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 Co-operative 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.

Rule 73 (vii) of the Rules reads as follows:

Disciplinary Control:- The Managing Committee of the District Cooperative Central Bank or the officer authorized by it, shall have power over the employees of erstwhile Primary Agricultural Development Banks transferred to the service of the District Cooperative Central Banks in respect of disciplinary action, transfers, promotions, sanction of leave, etc., as per District Cooperative Central Bank Employees Service Regulations.

13. Sri B. Adinarayana Rao, the learned counsel for the appellant in writ appeal No. 115 of 1998 and the learned Government Pleader for Cooperation would contend that the proviso to Section 116AA of the Act read with Rule 73 (v) of the Rules undoubtedly grants power to the General Manager to transfer the 5th respondent from Tamarukollu PACS to Guntakoduru PACS before decaderisation was complete consequent upon abolition of the cadre of paid secretaries with

effect from 22.4.1985. The learned counsel would also contend that the writ petition itself is ex facie not maintainable inasmuch as the writ petitioner cannot be said to be an aggrieved party in the eye of law and in fact his very appointment by the Managing Committee of Mothuru PACS is illegal being violative of the provisions of sub-section (1) of Section 116C of the Act. Elaborating this contention the learned Government Pleader would point out that the power of the Registrar of Cooperative Societies under sub-section (1) of Section 116C has been delegated to the District Cooperative Officer vide G.O.Ms. No. 34, dated 18.7.1989 whereas the appointment made by the Managing Committee was approved by an incompetent authority like the 2nd respondent and, therefore, the appointment of the writ petitioner is totally an infraction of statutory mandate. The learned counsel for the writ petitioner, on the other hand, would contend that as rightly pointed out by the learned single Judge in his order, the General Manager has not produced common cadre regulations to prove that under the common cadre regulations he had the authority and competence to pass the impugned transfer order. The learned counsel would also contend that rule 72 (5) is of no help for the General Manager to contend that under the said provision he had the authority to pass the impugned order. The learned counsel would highlight that sub-rule (5) of rule 72 speaks about only a disciplinary control and the power to transfer a paid secretary from one cooperative society to the other cannot be equated to the General Manager exercising the disciplinary control or power.

14. A careful reading of the provisions of Section 116AA of the Act clearly shows two stages: (i) abolition of the cadre of paid secretaries; and (ii) allotment of the personnel of the abolished cadre to primary agricultural credit societies. The proviso to Section 116AA in unmistakable terms mandates that the paid secretaries despite abolition of the cadre shall continue to be in the posts in which they were working at the commencement of the amendment act till the allotment envisaged under the said section is given effect to. In other words, unless decaderisation is complete consequent upon the abolition of the cadre thereby meaning that the paid secretaries working in the abolished cadre are allotted to the primary agricultural credit societies by the Registrar as empowered under the said section, all those paid secretaries would continue to be in the posts in which they were working at the commencement of the Act. The specific case of the General Manager which is not seriously disputed is that despite abolition of the cadre of paid secretaries with effect from 22-4-1985, decaderisation was not complete due to certain stay orders granted by this Court in writ proceedings and, therefore, he had the authority and competence to transfer the 5th respondent (P. Harigopala Rao) as the Secretary of Guntakoduru PACS. By virtue of the proviso to Section 116AA if the 5th respondent continued to be in the post of paid secretary, it goes without saying that so long he continued to be paid secretary he was under the administrative control of the General Manager, and therefore, the General Manager could exercise administrative powers which are otherwise available to him against such paid

secretaries. In our considered opinion, de hors the provisions of sub-rule (5) of rule 72 of the Rules the proviso to Section 116AA of the Act itself grants power to the General Manager to exercise administrative control and power over paid secretaries despite the abolition of the cadre of paid secretaries till the decaderisation upon such abolition is complete. As a matter of fact it is found that despite the abolition of the cadre the decaderisation was not complete due to certain stay orders granted by this Court and, therefore, it was legally permissible for the General Manager of the 1st respondent to exercise the implied power flowing from the proviso to Section 116AA of the Act.

15. Be that as it may, we do not find any necessity to dilate further, particularly at the behest of the writ petitioner. The appointment of the writ petitioner as secretary by the 4th respondent-cooperative society is ex facie illegal and in infraction of the statutory mandate. Sub-section (2) of Section 116C of the Act mandates that no appointment or removal of a chief executive of the society can be made without the prior approval of the Registrar of Cooperative Societies. It is not the case of the writ petitioner that he was appointed by the 4th respondent-cooperative society after obtaining prior approval of the Registrar of Cooperative Societies or the delegate by virtue of G.O.Ms. No. 34, dated 18.1.1989. The language employed under sub-section (2) of Section 116C of the Act does not leave any doubt in anybody's mind that the prescription is mandatory and infraction thereof would make the appointment ex facie illegal. If the appointment of the writ petitioner-1st respondent herein is ex facie illegal and in infraction of mandatory provisions of sub-section (2) of Section 116C, he cannot have any grievance in law against the action of the General Manager in transferring the 5th respondent from Tamarukollu PACS to Guntakoduru PACS as paid secretary pending completion of the decaderisation of the paid secretaries.

16. However, the learned counsel for the writ petitioner-1st respondent herein placing reliance on the judgment of a learned single Judge of this court in A.P.S.C.C.S.S. & EMPLOYEES UNION v COMMISSIONER, 2000 (6) ALD 165 would highlight that as per that judgment the General Manager would not have exercised the purported power of transfer under rule 72 (5) of the Rules. We do not find any necessity to deal with this question because, in our considered opinion, as held above, the proviso to Section 116AA of the Act itself grants such power to the General Manager to effect transfer before decaderisation arising out of abolition of cadre of paid secretaries is completed. On the other hand, another learned single Judge of this Court in writ petition No. 15845 of 1992, dated 12-2-1993, interpreting the provisions of Section 116AA of the Act has opined.

17. From a perusal of the aforesaid section the provision in particular, it is clear that what the proviso aimed at is that the employees, whose posts were abolished in the Common Cadre, shall be continued in the posts in which they are working at the commencement of the said Act till they are allotted to the Primary Agricultural Credit Societies. It only means that the status or the designation of such employees should not be altered till they are allotted to the

equivalent posts in the Primary Agricultural Credit Societies and it cannot be taken to mean that they should be continued in the same places where they are working at the commencement of the said Act till they are allotted to the Primary Agricultural Credit Societies. Further, Section 116A of the Act which deals with the power of the Registrar to constitute the common cadre, uses the word "post" to mean "designation" but not the place of posting. I, therefore, agree with the contention of the learned counsel for the respondents that the word "post" occurring in the proviso to Section 116AA should be taken to mean "designation" but not the "place of posting". Merely because the petitioner was served with the order of transfer, it does not mean that there is a change in the designation held by him. I, therefore, see no error of law or jurisdiction in the impugned order. The impugned order is only a simple order of transfer effected on administrative grounds and I see no grounds to interfere with the same.

18. We are in respectful agreement with the view of the learned single Judge.

19. In the result and for the foregoing reasons we allow both the writ appeals and set aside the order of the learned single Judge and dismiss the writ petition.