

(2003) 11 AP CK 0031

In the Andhra Pradesh High Court

Case No : Writ Petition No. 7198 of 2003

V. Suresh Babu

APPELLANT

Vs

District Co-operative Officer and Others

RESPONDENT

Date of Decision : 06-11-2003

Acts Referred:

Andhra Pradesh (Regulation of Appointments to Public Services and Rationalisation of Staff Pattern and Pay Structure) Act, 1994 — Section 1

Citation : (2004) 1 ALD 358 : (2004) 2 ALT 128

Hon'ble Judges : C.V. Ramulu, J

Bench : Single Bench

Advocate : D.V. Bhadram, V.V.N. Narayana Rao, S.M. Subhan, A. Satya Prasad, Nandigam Krishna rao, A.V. Sesha Sai, Ineni Venkata Prasad, G. Vishweswar Reddy, G.V. Shivaji, C.B. Ram Mohan Reddy, Sanka Narasimha Rao, A. Ananda Rao, G. Sekhar Reddy, Kilam Khader Baba, M. Jagapathi Rao, S. Rama Moorthy Reddy and S. Siva Prasad, P.M. Gopala Rao, Government Pleader for Agriculture and Co-operation and Government Pleader for Irrigation and Command Area Development, for the Appellant; Posani Venkateswarlu, D. Radha Krishna, K. Chidambaram, SC, T.V.S. Prabhakara Rao, SC and M.S. Ramachandra Rao, SC for DCCB, N. Vasudeva Reddy, R.V. Subba Rao, C.V. Mohan Reddy, C.V.R. Rudra Prasad, A. Malathi and Kavitha Gotapathi, for the Respondent

Final Decision : Allowed

Judgement

C.V. Ramulu, J.—In all these writ petitions, a common question of law arises for consideration since the services of all the petitioners are sought to be terminated by invoking inter alia the provisions of the Andhra Pradesh (Regulation of Appointments to Public Services and Rationalisation of Staff Pattern and Pay Structure) Act, 1994 (Act 2 of 1994), which has come into force with effect from 25-11-1993.

2. According to the petitioners, Act 2 of 1994 has no application to the societies constituted and registered under the Andhra Pradesh Co-operative Societies Act, 1964 (for short "APCS Act"). Thus, the only question that arises for consideration

of this Court is :

Whether Act 2 of 1994 is applicable to the Co-operative institutions registered under the Andhra Pradesh Co-operative Societies Act, 1964 or not ?

3. The petitioners, in all these cases, have been working in various capacities in the Primary Agricultural Co-operative Societies/Primary Agricultural Co-operative Credit Societies having been appointed by the respective societies. While so, their services were sought to be terminated by invoking Act 2 of 1994. According to the petitioners, Act 2 of 1994 has been enacted to regulate appointments and prohibit irregular appointments in offices and establishments under the control of the State Government and local authorities among others. Act 2 of 1994 has no application to the institutions in which they are working since it is neither a State Government Department nor a local authority as defined under the Act.

4. Leading the batch of writ petitions, Sri D. V. Bhadram, learned Counsel for some of the petitioners, submitted that the institutions in question are not receiving any grant towards salaries of their employees as contemplated under proviso to Section 2(vi)(e) of Act 2 of 1994 and as such, Act 2 of 1994 itself has no application. Therefore, the termination of services of the petitioners sought to be made by invoking Act 2 of 1994 itself is without jurisdiction. Learned Counsel drawn the attention of this Court to the Statement of Objects and Reasons in the Schedule of Act 2 of 1994 and various other provisions.

5. Section 2(iii), (iv) and (vi) of Act 2 of 1994 reads as under:

"(iii) "Government" means the State Government;

(iv) "Local authority" means-

(a) a Gram Panchayat established under the Andhra Pradesh Gram Panchayats Act, 1964 (Act 2 of 1964);

(b) a Mandal Praja Parishad or a Zilla Praja Parishad established under the Andhra Pradesh Mandala Praja Parishads, Zilla Praja Parishads and Zilla Pranalika and Abhivrudhi Sameeksha Mandals Act, 1986 (Act 31 of 1986)

(c) a Municipality constituted under the Andhra Pradesh Municipalities Act, 1965 (Act VI of 1965); and

(d) a Municipal Corporation established under the relevant law, for the time being in force, relating to Municipal Corporations;

(vi) "Public Service" means, services in any office or establishment

(a) the Government,

(b) a Local authority,

(c) a Corporation or undertaking wholly owned or controlled by the State Government;

(d) a body established under any law made by the Legislature of the State whether incorporated or not, including a University, and

(e) any other body established by the State Government or by a Society registered under any law relating to the registration of societies for the time being in force, and receiving funds from the State Government either fully or partly for its maintenance or any educational institution whether registered or not but receiving aid from the Government:

Provided that the services in any such body or society as specified in Sub-clause (e) which is not receiving any funds or grants towards salaries of its employees from the State Government shall not be deemed to be "public service" for the purposes of this Act.

6. Sri A. Satya Prasad, learned Counsel appearing for some of the petitioners, contended that A.P.C.S. Act is a complete and comprehensive enactment. It deals with all spheres of co-operative movement and it is a full-fledged and self-contained Act. On registration, the societies emerge as a body corporate u/s 9 of APCS Act, which reads as under;

"P. Society to be a body corporate :--The registration of a society shall render it a body corporate by the name under which it is registered having perpetual succession and a common seal. The society is entitled to acquire, hold and dispose of property, to enter into contracts on its behalf, to institute and defend suits and other legal proceedings and to do all other things necessary for the purposes for which it was constituted."

7. Sri Satya Prasad also submitted that the power of the State Government is only to regulate and issue instructions for the development of the co-operative movement. Section 19 of APCS Act deals with eligibility and disqualification of a member of society. Section 34 deals with supersession of the committee, Section 50 with Audit, Section 51 with Inquiry, Section 52 with Inspection and Section 60 with surcharge etc. Apart from them, Section 116-C itself takes care of a situation, which is akin to and contemplated under Act 2 of 1994. Section 116-C reads as under:

"116-C. Staffing pattern of societies:--(1) A society shall have power to fix the staffing pattern, qualifications, pay scales and other allowances for its employees with the prior approval of the Registrar of Co-operative Societies subject to the condition that expenditure towards pay and allowances of the employees shall not exceed two percent of the working capital or thirty per cent of the Gross Profit, in terms of actuals in a year whichever is less.

(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."

8. Sri Satya Prasad submits that a reading of the above provisions along with the

preamble of Act 2 of 1994 makes it abundantly clear that the situation contemplated in these cases has already been taken care of by the APCS Act as early as in 1985. This is the reason why under Act 2 of 1994 while defining the "local authority", the Co-operative Societies of this nature are not included. What all included under the definition "local authority" are Gram Panchayat, Mandal Praja Parishad, Zilla Praja Parishad, Municipality, Municipal Corporation and not the institutions under the APCS Act. Further, u/s 2(vi) of Act 2 of 1994 "public service" is defined as a service in any office or establishment of the Government, a local authority, a Corporation or Undertaking wholly owned or controlled by the State Government, a body established under any law made by the Legislature of the State, whether incorporated or not, including a University and any other body established by the State Government or by a Society registered under any law relating to the registration of societies for the time being in force, and receiving funds from the State Government either fully or partly for its maintenance etc. Thus, the Co-operative Societies registered under APCS Act are not covered by Act 2 of 1994. The proviso to Section 2(vi)(e) of Act 2 of 1994, which was introduced by way of amendment in the year 1998, contemplates that unless and until such body or society receiving any funds or grants towards salaries of its employees from the State Government, Act 2 of 1994 cannot be applied.

9. Sri G.V. Sivaji, learned Counsel appearing for some of the petitioners, contended that the petitioners are appointed by the respective societies and not by the Government. Petitioners are governed by Special Bye-laws of the respective societies. In this regard, he had drawn the attention of this Court to one such model bye-law, which is invariably adopted by all the societies. He submitted that Act 2 of 1994 came into force on 25-11-1993 and was applied in respect of the Governmental organizations or local authorities, where the public servants were receiving salaries from the Government. It was never applied against any of the co-operative societies in the State. Act 2 of 1994 is sought to be applied for the first time under the impugned proceedings as per the instructions received from the authorities under the APCS Act. Bye-law No. 2 of the said Special Bye-laws, which is relevant, reads as under:

"Authority to create post:

(a) Subject to the budget allotment sanctioned by the General Body, it shall be competent for the Managing Committee to prescribe from time to time the strength of the establishment of the society and the scale of pay for each employee. Except the Secretary allotted by the Registrar u/s 116AA of APCS Act, the employees of the society shall be appointed by the Managing Committee.

(b)"

10. Learned Government Pleader appearing for the respondents asserted that Act 2 of 1994 is applicable to the societies in which the petitioners are working, since u/s 2(p) of APCS Act, the "society" means a Co-operative Society registered or deemed to be registered under that Act. Thus, a reading Section 2(p) of APCS

Act coupled with Section 2(vi)(e) of Act 2 of 1994, makes it clear that the services of the petitioners can be treated as a public service, since Section 2(vi)(e) of Act 2 of 1994 also contemplates that any other body established by the State Government or by a society registered under any law relating to the registration of societies for the time being in force. All the societies in which the petitioners are working were registered under APCS Act as required u/s 5 thereof. Further, the learned Government Pleader asserts that the societies are being funded indirectly by the Government-State. According to the learned Government Pleader, NABARD gives funds to APCOB (Andhra Pradesh Co-operative Bank) and in turn the APCOB allocates funds to the societies. The societies, in fact, thrive on the 2% of interest accrued on the loan amount, towards the salaries of their employees and they have no other independent funds. Chapter XIII of APCS Act deals with the Financing Banks/Primary Agricultural Co-operative Societies wherein it is contemplated that the provisions of the said Chapter shall apply to the Financing Bank/Primary Agricultural Co-operative Society advancing loans for the purposes enumerated therein. The finances advanced by NABARD are percolated to the Primary Agricultural Co-operative Societies in the shape of debentures for a fixed term and from 2% of the interest accrued on the loans advanced by the society, the society has to meet its salaries and other sundry expenses. Thus, it must be construed that the institutions in question are receiving grants towards salaries of their employees and as such, Act 2 of 1994 is squarely applicable to the petitioners. Learned Government Pleader further contended that Section 116C of APCS act does not preclude the applicability of Act 2 of 1994.

11. Sri P. Srinivas appearing for impleaded party petitioners (societies) sought to strengthen the argument of the learned Government Pleader by stating that by invoking Act 2 of 1994 the services of the petitioners can be dispensed with and even without a notice, since the very appointment of the petitioners was irregular and not in consonance with the provisions of the APCS Act. Further, he had drawn the attention of this Court to Section 116-B of the APCS Act and submitted that in all the appointments, the reservation as required for Scheduled Castes, Scheduled Tribes and Backward Classes were not properly followed and the Governmental instructions issued in this regard were not adhered to by the societies while making the appointments to various cadre employees and under those circumstances, it must be deemed that the appointment of the petitioners is nothing but irregular and once the petitioners are appointed irregularly, they can be thrown out even without any notice. In support of his contention, he relied upon a judgment of the apex Court in Nazira Begum Lashkar and Ors. v. State of Assam and Ors. AIR 2001 SC 102. Further, he relied upon Section 7 of Act 2 of 1994, which reads as under.

"Section 7. Bar for regularization of services :--No person who is a daily wage employee and no person who is appointed on a temporary basis u/s 3 and no person who is continuing as such at the commencement of this act shall have or shall be deemed ever to have a right to claim for regularization of services on

any ground whatsoever and the services of such person shall be liable to be terminated at any time without any notice and without assigning any reasons."

and submitted that the services of the petitioners are sought to be terminated by invoking the above provision and as such, it cannot be faulted with.

12. Since the question that falls for consideration in this batch of writ petitions is only as to the applicability of Act 2 of 1994, all other aspects need not be gone into.

13. For the purpose of answering the said question, the preamble of Act 2 of 1994 and the relevant portion of Statement and Objects of the said Act need to be extracted:

"Preamble :--An Act to regulate appointments and prohibit irregular appointments in Offices and Establishments under the control of the State Government, Local Authorities, Corporations owned and controlled by the State Government and other bodies established under a law made by the Legislature of the State to rationalize the staff pattern and pay structure of employees therein and for matters connected therewith or incidental thereto.

Statement of Objects and Reasons

It has accordingly been decided to enact a law to achieve the following objects, namely:--

- (a) totally banning such appointments in the institutions covered by legislation;
- (b) imposing stringent penalties for making appointments by public servants on violation of the law;
- (c) to protect public servants from being held for contempt for non-compliance of the orders of Tribunal or High Court and also for abatement of pending cases claiming regularization of services which are already filed before the Courts of law by making a suitable provision therefor; and
- (d) to protect the interests of candidates registered with Employment Exchange, the reservation rights of Scheduled Castes, Scheduled Tribes and Backward Classes, the rights of the existing employees, who are recruited through proper channel and the functions of Andhra Pradesh Public Service Commission, District Selection Committees and other Selection Committees constituted by the Government.
- (e) provision therefor; and
- (f) to protect the interests of candidates registered with Employment Exchange, the reservation rights of Scheduled Castes, Scheduled Tribes and Backward Classes, the rights of the existing employees, who are recruited through proper channel and the functions of Andhra Pradesh Public Service Commission, District Selection Committees and other Selection Committees constituted by the Government.

The legislation will prevent further deterioration of finances of the State and at the same time conserve the resources for the welfare and developmental activities."

14. A reading of the above preamble and the Statement of Objects and Reasons along with the definitions of "local authority" and "public service" u/s 2 (iv) and (vi) of Act 2 of 1994 would crystal clear that Act 2 of 1994 has no application to the co-operative institutions of the nature in which the petitioners are working. Further, learned Government Pleader could not demonstrate from the provisions of the Act that the petitioners, who are the employees of the primary societies are paid their salaries from the grants received from the Government. The contention of the learned Government Pleader that NABARD - a nationwide organization - funds to APCOB, which in turn allocates the same to the primary societies and the primary societies thrive only on the interest earned from the loans advanced to them by NABARD/ APCOB; as such, it must be deemed that they are receiving grant towards salaries of its employees and as such, Act 2 of 1994 is applicable, cannot be accepted. Except referring to Chapter XIII, no other provision of law either under Act 2 of 1994 or APCS Act was brought to the notice of this Court to show that the primary societies are receiving grants from the Government towards the salaries of its employees (petitioners). Further, the submission of the learned Government Pleader that the APCS Act as submitted by Sri Satya Prasad, learned Counsel for some of the petitioners, is not a comprehensive Act and further Section 116-C of APCS Act does not exclude the applicability of Act 2 of 1994 cannot be accepted, since APCS Act is a comprehensive Act as submitted by Sri Satya Prasad and precisely u/s 116-C it takes care of the situation as contemplated under Act 2 of 1994. At the cost of repetition, the preamble of Act 2 of 1994 and Section 116-C may be necessary to be reproduced and examined.

"116-C. Staffing pattern of societies :--(1) A society shall have power to fix the staffing pattern, qualifications, pay scales and other allowances for its employees with the prior approval of the Registrar of Co-operative Societies subject to the condition that expenditure towards pay and allowances of the employees shall not exceed two per cent of the working capital or thirty per cent of the Gross Profit, in terms of actuals in a year whichever is less.

(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."

"Preamble:--An Act to regulate appointments and prohibit irregular appointments in Offices and Establishments under the control of the State Government, Local Authorities, Corporations owned and controlled by the State Government and other bodies established under a law made by the Legislature of the State to rationalize the staff pattern and pay structure of employees therein and for matters connected therewith or incidental thereto."

15. The Preamble of Act 2 of 1994 and the above provisions contemplate the rationalization of staffing pattern and the pay scale structure and the matters related thereto of the employees of the Co-operative Societies. Insofar as the societies in which the petitioners are working is concerned, they are also governed by the instructions issued by the Registrar of Co-operative Societies in this regard and any other instructions issued by the Government under the APCS Act from time to time. In a given case, may be where a society registered under the Societies Registration Act including a society registered under the APCS Act may receive grant directly from the Government for the salaries of its employees and it could definitely fall into Section 2(vi)(e) read with the proviso thereof. In these cases, the institutions neither satisfy the definition of "local authority" nor "public service" and receiving grant towards the salaries of its employees. Under those circumstances, the applicability of Act 2 of 1994 does not arise.

16. Further, Act 2 of 1994 itself provided a mechanism for interpretation and implementation of the Act by way of providing a schedule to the Act. The following reasons, which are mentioned in the Schedule, may be necessary for answering the question raised in this batch of cases.

"The expenditure particulars show that the amount spent on the salaries, allowances and pension of Government employees, Panchayat Raj employees, employees paid out of the Grant-in-Aid, amounts to a figure of Rs. 4,277 crores in 1993-94 salaries on the due dates, Government considers that it is not fair that people's interest should be neglected and even sacrificed by not taking up schemes just to pay salaries to its employees.

In addition to the salary and pension commitment there is a heavy debt servicing burden on the Government. The debt also has been increasing from year to year. In 1983 the total outstanding debt was Rs. 2,543 crores. It has now reached Rs. 10970 crores for payment of interest and Rs. 330 crores for repayment of principal amount every year. The total amount of non-plan items of expenditure in 1993-94 is amount to Rs. 6222 crores, which cannot be avoided. The Government are not able to complete a number of Irrigation Projects and Power Projects because of lack of funds....

The irregular appointments are adversely affecting the interest of several thousands of unemployed persons who have registered in the Employment Exchange and awaiting their turn for orders. It is also adversely affecting the interests of Scheduled Castes, Scheduled Tribes and Backward Classes who have reservation in employment since the NMR appointments are not taking care of the reservation for these categories. Government have constituted District Selection Committees and some ad hoc Selection Committees besides the Andhra Pradesh Public Service Commission to take up recruitment in accordance with law in Government Departments..... The Act will, therefore, protect the interests of candidates in Employment Exchanges, reserved categories, the existing employees who were recruited through proper channels and the legitimate function of the recruiting agencies.

From the above, it can be seen that the financial position of the State arising out of excessive expenditure on staff is so alarming that it cannot be tackled by ordinary administrative actions and instructions. It is, therefore, thought that a time has come when we have to provide for deterrent action for illegal and irregular appointments by enacting a law. It has accordingly been decided to enact a law to achieve the following objects, namely:

- (g) totally banning such appointments in the institutions covered by legislation;
- (h) imposing stringent penalties for making appointments by public servants on violation of the law;
- (i) to protect public servants from being held for contempt for non-compliance of the orders of Tribunal or High Court and also for abatement of pending cases claiming regularization of services which are already filed before the Courts of law by making a suitable provision therefor; and
- (j) to protect the interests of candidates registered with Employment Exchange, the reservation rights of Scheduled Castes, Scheduled Tribes and Backward Classes, the rights of the existing employees, who are recruited through proper channel and the functions of Andhra Pradesh Public Service Commission, District Selection Committees and other Selection Committees constituted by the Government.

The legislation will prevent further deterioration of finances of the State and at the same time conserve the resources for the welfare and developmental activities."

17. From the above, it is clear that Act 2 of 1994 came into being for curbing irregular appointments made through backdoor methods and protect the interest of the persons, who are waiting for jobs having been registered their names in the Employment Exchanges and also following reservation for SC, ST and BCs. The main reason seems to be that the salaries, allowances and pension of the Government employees and the employees of Panchayat Raj bodies paid out of grant-in-aid have enormously increased, which are, in fact has become a hurdle in the other welfare measures taken up by the State. Ultimately, it takes care of curbing such appointments in the institutions covered by Act 2 of 1994. This Act does not affect the co-operative institutions either expressly or impliedly, in which the petitioners are working since they are not receiving any funds or grants towards the salaries of their employees from the State Government,

18. For all the above reasons, this Court is of the considered opinion that Act 2 of 1994 has no application for the institutions in which the petitioners are working, since these institutions are not receiving any grant from the Government towards salaries of its employees. Therefore, by invoking Act 2 of 1994, the respondents cannot terminate the services of the petitioners.

19. Accordingly, the writ petitions are allowed. No order as to costs.