

**HON'BLE SRI JUSTICE B.KRISHNA MOHAN**

**WRIT PETITION No.520 OF 2020**

**ORDER :**

Heard the learned counsel for the petitioner, the learned Government Pleader for the respondents No.1 to 3 and the learned counsel for the 4<sup>th</sup> and 5<sup>th</sup> respondents.

2. This Writ Petition is filed questioning the action of the 5<sup>th</sup> respondent in reverting the petitioner from the post of CEO/Secretary to the post of accountant vide Resolution No.4 dated 16.09.2019 and placing him under suspension with effect from 16.09.2019.

3. The learned counsel for the petitioner submitted that the petitioner was appointed as a clerk in the 4<sup>th</sup> respondent society and promoted as Secretary/CEO of the said society on 04.03.2010. Since the term of the elected managing committee was over and no election took place, the Deputy Registrar of Societies vide proceedings in Rc.No.128/2018/C dt.31.07.2019 appointed the 5<sup>th</sup> respondent to manage the affairs of the 4<sup>th</sup> respondent society. It has to function as per the provisions of the A.P. Cooperative Societies Act and Bye-laws of the society. While so, the 5<sup>th</sup> respondent passed the Resolution No.4 dated 16.08.2019 reverting the petitioner from the post of CEO/Secretary to the post of accountant by appointing another person by name Mr.Banda

Kaliprasad as CEO/Secretary on the ground of non-exercise of duties and responsibilities in a proper way by the petitioner herein while working as CEO/Secretary. The said resolution was passed without any authority of law, contrary to the Bye-laws and violating the principles of natural justice. The 5<sup>th</sup> respondent further issued the proceedings dated 16.09.2019 suspending the petitioner pending enquiry on the grounds of alleged corruption and financial irregularities. For which the petitioner submitted a detailed explanation dated 25.09.2019 which has not been considered so far. The learned counsel for the petitioner referred to the above said proceedings dated 16.08.2019 and 16.09.2019 of the 5<sup>th</sup> respondent and the Bye-laws of the Primary Agricultural Cooperative Societies for the purpose of showing the service conditions of the employees of the 4<sup>th</sup> respondent society.

*The Bye-laws No.5 deals with Punishments for Major Misconduct which reads as follows:*

*“Any one of the following punishments may be imposed for duly established major misconduct.*

- a) Reduction in pay.*
- b) Withholding of promotion.*
- c) Reversion to the lower category of posts.*
- d) Removal/dismissal.”*

*The Bye-laws No.7 deals with Procedure for Disciplinary Action:-*

*“The following procedure shall be followed for initiating disciplinary action.*

*The employee shall be issued a memo in writing of the allegations levelled against him, providing him an opportunity to submit his explanation within the prescribed time. When the explanation offered is not found satisfactory he shall be served with a charge-sheet along with statement of allegations indicating the gravity of the misconduct. In case sufficient prima-facie evidence/material is available to proceed against the employee, the charge-sheet may also be issued directly. The process of appointment of Enquiry Officer shall necessarily be followed in respect of major misconduct. The Managing committee shall appoint an Inquiry Officer.*

*Authorities to inflict punishments.*

<i>Sl. No.</i>	<i>Class of employees</i>	<i>Censure/stoppage</i>	<i>Suspension/Reversion</i>	<i>Removal of dismissal</i>
<i>01.</i>	<i>Secretary</i>	<i>President</i>	<i>Managing Committee in consultation with the District Level Committee</i>	<i>Managing Committee in consultation with the District Level Committee</i>

*And the Bye-laws No.6 deals with Suspension:-*

- i) An employee of the Society may be placed or kept under suspension pending inquiry by the competent authority, if*
  - a) He is found to have prima-facie involved in misappropriation or otherwise responsible for it or breach of trust.*
  - b) He is engaging/has engaged himself in any activities prejudicial to the interest of the society.*
  - c) A case against him in respect of any criminal offence is under investigation, enquiry or trial.*
  - d) An employee is detained under Police custody/Judicial whether on criminal charge or otherwise for a period exceeding 48 hours.*

- ii) a) *The suspension shall ordinarily be for a period of six months and in special circumstances the period may be extended beyond 6 months with the prior approval of the Committee recording the reasons after review. Provided an employee suspended U/s 59 of Act shall be reinstated with the previous sanction of Registrar.*

4. On the other hand, the learned Government Pleader for the respondents 1 to 3 refers to the counter affidavit filed by them at para 5 relating to the procedure to be followed while initiating the disciplinary action against the employees of Primary Agricultural Cooperative Societies which reads as under:-

*a. It is submitted that the employee shall be issued a memo in writing of the allegations levelled against him. Providing him an opportunity to submit his explanation within the prescribed time. When the explanation offered is not found satisfactory he shall be served with a charge-sheet along with statement of allegations indicating the gravity of the misconduct. In case, sufficient prima-facie evidence/material is available to proceed against the employee, the charge sheet may also be issued directly. The process of appointment of Enquiry officer shall necessarily be followed in respect of major misconduct.*

*b. The managing committee shall appoint an enquiry Officer. During the enquiry process, the employee shall be permitted to verify and take extracts from relevant records as required by him. The enquiry Officer may however refuse such permission if in his opinion such records are not relevant to the enquiry by recording reasons in writing. The enquiry officer shall submit his detailed enquiry report within reasonable time i.e. within a period of 2 months.*

*c. The competent authority shall consider the report and impose suitable punishment. A show cause notice shall be served on the employee giving an opportunity to make further representation. The competent authority shall consider the representation and pass final punishment order to secretary for suspension or reversion of the managing committee, in consultation with the District level committee.*

5. Whereas the counsel for the 4<sup>th</sup> and 5<sup>th</sup> respondents submitted that it is the case of misappropriation and swindling of huge amounts by the petitioner herein while he was working as CEO/Secretary between the periods from 04.03.2010 to 16.08.2019 till the date of reversion and as such, the above said impugned suspension orders dated 16.09.2019 were also given as Section 51 Enquiry Proceedings of the A.P. Cooperative Societies Act, 1964 are pending. The learned counsel for the 4<sup>th</sup> and 5<sup>th</sup> respondents submitted that a complaint said to have been given by one Mr. P. V. Nageswara Rao dated 03.09.2019 addressed to the Chief Executive Officer, District Cooperative Central Bank Limited, Eluru, West Godavari District alleging some financial irregularities against the petitioner and the other person by name Mr. Bantumilli Vijaya Kumar, who is the Ex-President of the said society and sought for an appropriate disciplinary action against them. But, insofar as the procedure followed by the 5<sup>th</sup> respondent while issuing the above said impugned proceedings dated 16.08.2019 and 16.09.2019 respectively are concerned there is no answer for the counsel for the 4<sup>th</sup> and 5<sup>th</sup> respondents that they have followed the prescribed procedure contemplated under the Bye-laws of the society as mentioned above with regard to the reversion and suspension of an employee of the society much less in the case of the petitioner herein. The record on hand does not disclose any valid procedure that has been followed as contemplated under

Bye-laws Nos.5, 7 and 6 of the said Bye-laws of the Primary Agricultural Cooperative Societies before passing the impugned proceedings.

6. In the result, the impugned proceedings are set aside and the 4<sup>th</sup> and 5<sup>th</sup> respondents are directed to reinstate the petitioner as CEO/Secretary of the 4<sup>th</sup> respondent society within two (02) weeks from the date of receipt of copy of this order. However the liberty is given to proceed with any “disciplinary enquiry” that may be warranted against the petitioner strictly in accordance with law. In such view of the matter it is open for the 4<sup>th</sup> and 5<sup>th</sup> respondents either to assign or not to assign any financial powers and other powers that may be regulated time to time after such reinstatement pending such disciplinary enquiry if any till it’s disposal as per law.

7. Accordingly, the Writ Petition is disposed of. There shall be no order as to costs.

As a sequel, miscellaneous petitions, if any pending in this case, shall stand closed.

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**JUSTICE B. KRISHNA MOHAN**

Dt.31-01-2022

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