

***HIGH COURT OF ANDHRA PRADESH :: AMARAVATI**
+WRIT PETITION Nos.7248, 20068 and 20745 of 2020

WRIT PETITION No.7248 of 2020

Between:

Pothuri Subba Raju, S/o Satyanarayana Raju

... Petitioner

And

\$ The State of A.P., rep. by its Principal Secretary,
Cooperative Department, Secretariat Building,
Velagapudi, Amaravati and 6 others.

.... Respondents

JUDGMENT PRONOUNCED ON **30.08.2024**

THE HON'BLE DR.JUSTICE K. MANMADHA RAO

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments?
- Yes -
2. Whether the copies of judgment may be marked to Law
Reporters/Journals
- Yes -
3. Whether Their Ladyship/Lordship wish to see the fair
copy of the Judgment?
- Yes -

DR.JUSTICE K. MANMADHA RAO

*** THE HON'BLE DR.JUSTICE K. MANMADHA RAO**

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.... Respondents

! Counsel for the Petitioner : Sri Bokka Satyanarayana Kamla

Counsel for Respondents: AGP for Co-operation
Sri G. Rama Gopal

<Gist :

>Head Note:

? Cases referred: 1. AIR 1990 ANDHRA ORADESG 171
2. (2003) 10 Supreme Court Cases 733

APHC010117832020



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3310]

FRIDAY ,THE THIRTIETH DAY OF AUGUST
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE DR JUSTICE K MANMADHA RAO

WRIT PETITION NO: 7248, 20068 and 20745/2020

WP No.7248 of 2020 :

Between:

Pothuri Subba Raju

...PETITIONER

AND

The State Of Andhra Pradesh and Others

...RESPONDENT(S)

Counsel for the Petitioner:

1.BOKKA SATYANARAYANA KAMLA

Counsel for the Respondent(S):

1.GP FOR COOPERATION (AP)

2.G V SHIVAJI

3.G RAMA GOPAL

The Court made the following:

COMMON ORDER :

WP No.7248 of 2020 is filed under Article 226 of Constitution of India for the following relief:

"....to issue a Writ Order or direction more particularly one in the nature of Writ of Mandamus to declaring the proceeding in RC No 1/2019 dated 04 09 2019 suspended the petitioner by the 6th respondent and appointed the enquiry officer dated 14.10.2019 including consequential orders if any

with out jurisdiction and contrary to the section 59 of Andhra Pradesh Cooperative Societies Act 1954 and chapter 7 of Primary Agricultural Society Service Rules a part from the principles of natural Justice as illegal arbitrary and violative of article 14, 16, 21 and 311 Constitution of India and set a side the same and consequentially direct the respondents to reinstate him in to service as chief Executive officer by paying salary with all consequential benefits and pass...”

WP No.20068 of 2020 is filed under Article 226 of Constitution of India for the following relief:

“....to to issue a Writ Order or direction more particularly one in the nature of Writ of Mandamus to declaring the impugned notice seems to be the order dated 13.10.2020 of the 5th respondent directed the petitioner to try to join to some other society within 30 days otherwise he may removed from the duties in the 4th respondent society with out any jurisdiction and Power and contrary to the proceedings of the 2nd respondent dated 28 08 2019 including Andhra Pradesh Cooperative Societies Act 1954 and Primary Agricultural Society Service Rules and also a part from the principles of natural Justice as illegal arbitrary and violative of article 14, 16, 21 and 311 Constitution of India and set a side the same and consequentially to suspend the impugned notice seems to be the order dated 13.10.2020 of the 5th respondent/ Chairperson of Three men Person In-charge Committee and pass...”

WP No.20745 of 2020 is filed under Article 226 of Constitution of India for the following relief:

“....to issue a Writ Order or direction more particularly one in the nature of Writ of Mandamus to declaring the in action on the part of the respondents herein not paying salaries with all consequential benefits since 04.09.2019 even though he was reinstate into service dated 30.06.2020 as per the orders in W P No 7248/2020 dated 16 03 2020 as illegal arbitrary and violative of the article 14, 16, 21 and 311 of constitution of India and consequentially direct the respondents to pay the salaries with all consequential benefits since 04.09.2019 forthwith in spite of the interim orders granted by the Hon’ble Court in W P No 7248/2020 dated 16.06.2020 and pass....”

2. As the issue involved in all these writ petitions is one and the same, they are being taken up for hearing as well as disposed of by way of this Common Order.

3. Since the facts in all the writ petitions are similar and identical, therefore WP No.7248 of 2020 is taken as lead case, and the facts therein hereinafter will be referred to for convenience.

4. The grievance of the petitioner is that, initially, the he was appointed as a salesman, later, he was promoted as a clerk and subsequently, he was promoted as Chief Executive Officer in the No.B708, Sri Raja Gopala Primary Agricultural Cooperative Society Limited, Kothalanka, Mummidiavaram Mandal, East Godavari District. Since the date of appointment, the petitioner was discharging his duties with utmost satisfaction of the superior authorities and he never committed any mistakes and dereliction of duties in his tenure and he is obeying the orders of superior every time. But, surprisingly, the petitioner was suspended on 04.09.2019 on certain allegations made under APCS Act Section 59 and service Rule chapter 4 by the 6th respondent without Jurisdiction and contrary to the proceedings of the 3rd respondent-District Cooperative Officer, Kakinada, dated 28.08.2019 and also stated in the suspension proceedings after two months the same may be reviewed by the committee to permit him to join the duties. However, even then, four (4) months are elapsed, there is no response, but the Society paying subsistence allowance through bank. It is also stated that as per show cause notice of the 6th respondent, without any jurisdiction and contrary to the circular of the 3rd respondent dated 28.08.2019, the petitioner has submitted a detailed explanation on 31.08.2019 and also 03.09.2019 within time. But the respondents refused to receive the same. Even though as per Section 59 of Cooperative Society Act as per the circular of the 2nd respondent District Cooperative officer dated 28.8.2019 specially stated that the 6th respondent has no jurisdiction and authority to take decision by individual and also has no jurisdiction to appoint the enquiry officer to conduct an enquiry against the petitioner and moreover without issuance of articles of charges as per rules,

enquiry officer cannot be appointed and continuation of suspension is highly illegal and arbitrary. Hence, the present writ petition.

5. This Court vide order dated 16.03.2020 in WP No.7248 of 2020 has granted interim direction that *the impugned order dated 4.9.2019 shall stand suspended.*

6. The counter affidavits are filed in all three matters, for convenience, the averments in counter in W.P.No.7248 of 2020 are stated as under:

7. The counter affidavit is filed by the respondents No.1 to 5, while denying all the allegations made in the petition, inter alia contended that, the President of the society is the competent authority and as such he has got the power to suspend the petitioner pending inquiry. The contention of the petitioner that the impugned proceedings is contrary to Section 59 of the APCS Act, 1964 is not correct. It is submitted that Section 59 of the APCS Act deals with suspension of officer or servant of society by the Registrar when it is brought to the notice of the Registrar that a paid officer or a servant of a society has committed or has been otherwise responsible for misappropriation, breach of trust or other offence, in relation to the society. In the present case the impugned order has been issued by the competent authority as per the service regulations of the society, therefore, the contention of the petitioner is not legal and valid. It is further stated in the counter affidavit that the 6th respondent society have issued suspension order dated. 4.09.2019 and the petitioner has not submitted any explanation on

dereliction of duties and then the 6th respondent society appointed as domestic inquiry officer to enquire and examine to in the allegations framed against the petitioner. Thereafter, the domestic inquiry officer has submitted domestic inquiry report on 25.11.2019 stating that the allegations framed against the petitioner are proved and then the 6th respondent has issued removal order on 02.03.2020. The Managing committee represented by 6th respondent is competent authority for initiating disciplinary action against earring employees. It is mainly stated that the 6th respondent is competent authority for initiating any disciplinary action against the earring employees of 6th respondent. Therefore, prayed to dismiss the writ petition as there are no merits.

8. The counter affidavit has been filed by the respondents No.6 and 7. While reiterating the contents in the counter affidavit and denied all the allegations made in the petition. It is stated that It is contended that the present writ petition is not at all maintainable either in law or in facts. The cause exposed in the present writ petition does not involve any statutory public duty and the entire grievance of the writ petitioner is about suspension of his services, that too due to financial irregularity. As such the present writ petition is not maintainable. Therefore, the present writ petition is liable to be dismissed in limini.

9. Reply affidavit has been filed by the petitioner in WP No.7248 of 2020 to the counter affidavits filed by the respondents, wherein, while reiterating the averments made in the writ petition, denied all the allegations

made in the counter affidavits. It is stated that except obeying the orders of the Hon'ble Court, there is no way to the 6th respondent to reinstate into the petitioner as a C.E.O. and without Jurisdiction and power he cannot move any application before the Hon'ble Court, hence delay of taking steps under the lockdown does not arise. It is further stated that the writ petition is maintainable under the law and moreover the 6th and 7th respondents acted upon contrary to the proceedings dated 28.08.2019 and also order of the Hon'ble Court dated 16.03.2020 and also dismissed the writ appeal No. 244/2020 dated 15.07.220 specifically stated the 6th respondent is not entitled to file the writ appeal and more over the petitioner is reinstate into service, hence the 6th respondent is not entitled to file the vacate petition himself, including 7th respondent also. It is further stated that the Writ Petition is maintainable under statutory rules of the society and moreover the 6th respondent committee action is under control of the Co operative Act 1964 section 32(7)(a)(i) Primary Agriculture Co operative Society, hence the committee cannot take any decision without permission from the Government or registrar according to section 32(7)(b) of the AP Co operative Act 1964, hence the petitioner is entitled to file the writ petition under statutory rules as per the proceedings of the 3rd respondent and service rules of the society. Therefore, the allegations against the petitioner is without any proof and baseless hence the above allegations are not at all applicable to the petitioner and that the writ petitioner shown all the relevant valid grounds by prosecuting the case, hence the Writ Petition is maintainable.

10. Heard Sri Bokka Satyanarayana, learned counsel appearing for the petitioners; learned Assistant Government Pleader for Co-operation and Sri G. Rama Gopal, learned counsel appearing for the respondents.

11. On hearing, learned counsel appearing for the petitioners has reiterated the averments made in the petitions.

12. Whereas, learned Assistant Government Pleader and learned counsel appearing for the respondents also while reiterating the contents made in the counter affidavits, have relied upon a decision of the High Court of Andhra Pradesh reported in **Sri Konaseema Co-operative Central Bank Ltd., Amalapuram and another v. N.Seetharama Raju**¹, wherein it was held that

From the above discussion the following proposition's emerge :--

(i) If a particular co-operative 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 [Art. 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 [Art. 14](#) and, for that reason, it will be made to follow the bye-laws.

(ii) Even if a Society cannot be characterised as a 'State' within the meaning of [Art. 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 [Art. 226](#) of the Constitution. What is material is the nature of the statutory duty placed upon it, and the Court will enforce such, statutory public duty.

(iii) The bye-laws made by a co-operative society registered under the [A. P. Co-operative Societies Act](#) do not have the force of law. They are in the nature of contract, terms of contract, between the Society and its employees, or between the Society and its members, as

¹ AIR 1990 ANDHRA PRADESH 171

the case may be. Hence, where a Society cannot be characterised as a 'State', the service conditions of its employees, governed by bye-laws, cannot be enforced through a writ petition. However, in the matter of termination of service of the employees of a co-operative society, S. 47 of the A. P. Shops and Establishments Act provides a certain protection, and since the said protection is based upon public policy, it will be enforced, in an appropriate case, by this Court under [Art. 226](#) of the Constitution.

Ordinarily, of course, an employee has to follow the remedies provided by the A. P. Shops and Establishments Act; but, in an appropriate case, this Court will interfere under [Art. 226](#), if the violation of a statutory public duty is established. It is immaterial which Act or Rule casts such a statutory public duty.

(iv) Mandamus, certiorari, and prohibition are public law remedies. They are not available to enforce private law rights. Every act of a society which may be a 'State' within the meaning of [Art. 12](#), does not necessarily belong to public, law field. A society, which is a 'State', may have its private law rights just like a Government. A contractual obligations, which is not statutory, cannot be enforced by way of a writ petition under [Art. 226](#) of the Constitution. Prior to entering into contract, however, [Art. 14](#) operates, as explained by the Supreme Court in *E.E. & C. Ltd. v. State of West Bengal*,² and *Ramana Dayaram Shetty*, .

Applying the above principles, let us now examine the facts in these cases.

54. This writ petition is filed by the Secretary of Nellore Co-operative House Building Society, against the order dt. 30-1-1989 made by the President of the Society, placing him under suspension pending enquiry into his conduct and behaviour. The -allegation is that he had furnished false information with respect to the conduct of the General Body Meeting, which false information had resulted in action being taken against the Committee of the Society by the Co-operative authorities. In the writ petition it is not stated as to why the respondent-Society ought to be treated as 'State' within the meaning of [Art. 12](#), nor is it stated as to how a writ petition is maintainable against the respondent. It is also not brought to our notice that the [A.P. Shops and Establishments Act](#) provides any protection in the matter of suspension pending enquiry. In the circumstances, no interference is possible by this Court with the order of suspension pending enquiry. It is, however, open to the writ petitioner to approach the Co-operative authorities against the order of suspension. Under sub-rules (3) and (4) of Rule 72 of the A.P. Co-operative Societies Rules, 1964, the Registrar has got the overall supervisory jurisdiction and Control over the service conditions of the Secretaries. Even otherwise, under [S. 4\(2\)](#) of the Act, the Registrar has got power to give appropriate directions in the interest of co-operative movement, public interest, or in order to prevent the affairs, of the society from being conducted in a manner detrimental to the interest of the members, depositors, and creditors. This power is wide enough to give appropriate directions even in a service matter, if such course is found expedient in the interest of factors mentioned in [S.4\(2\)](#). The enquiry, however, shall be concluded expeditiously.

55. The writ petition is, accordingly, dismissed with the above observations. No costs.

13. Also relied upon a decision of Hon'ble Supreme Court reported in **Federal Bank Ltd., versus Sagar Thomas and others**², wherein it was held that :

The six factors which have been enumerated in the case of *Ajay Hasia* (supra) and approved in the later decisions in the case of *Ramana* (supra) and the seven Judges Bench in

² (2003) 10 Supreme Court Cases 733

the case of [Pradeep Kumar Biswas](#) (supra) may be applied to the facts of the present case and see as to those tests apply to the appellant bank or not. As indicated earlier, share capital of the appellant bank is not held at all by the government nor any financial assistance is provided by the State, nothing to say which may meet almost the entire expenditure of the company. The third factor is also not answered since the appellant bank does not enjoy any monopoly status nor it can be said to be an institution having State protection. So far control over the affairs of the appellant bank is concerned, they are managed by the Board of Directors elected by its shareholders. No governmental agency or officer is connected with the affairs of the appellant bank nor anyone of them is a member of the Board of Directors. In the normal functioning of the private banking company there is no participation or interference of the State or its authorities. The statutes have been framed regulating the financial and commercial activities so that fiscal equilibrium may be kept maintained and not get disturbed by the mal-functioning of such companies or institutions involved in the business of banking. These are regulatory measures for the purposes of maintaining the healthy economic atmosphere in the country. Such regulatory measures are provided for other companies also as well as industries manufacturing goods of importance. Otherwise these are purely private commercial activities. It deserves to be noted that it hardly makes any difference that such supervisory vigilance is kept by the Reserve Bank of India under a Statute or the Central Government. Even if it was with the Central Government in place of the Reserve Bank of India it would not have made any difference, therefore, the argument based on the decision of [All India Bank Employees' Association](#) (supra) does not advance the case of the respondent. It is only in case of mal-functioning of the company that occasion to exercise such powers arises to protect the interest of the depositors, shareholders or the company itself or to help the company to be out of the woods. In the times of normal functioning such occasions do not arise except for routine inspections etc. with a view to see that things are moved smoothly in keeping with fiscal policies in general.

Merely because the Reserve Bank of India lays the banking policy in the interest of the banking system or in the interest of monetary stability or sound economic growth having due regard to the interests of the depositors etc. as provided under [Section 5\(c\)\(a\)](#) of the Banking Regulation Act does not mean that the private companies carrying on the business of or commercial activity of banking, discharge any public function or public duty. These are all regulatory measures applicable to those carrying on commercial activity in banking and these companies are to act according to these provisions failing which certain consequences follow as indicated in the Act itself. Provision regarding acquisition of a banking company by the Government, it may be pointed out that any private property can be acquired by the Government in public interest. It is now judicially accepted norm that private interest has to give way to the public interest. If a private property is acquired in public interest it does not mean that the party whose property is acquired is performing or discharging any function or duty of public character though it would be so for acquiring authority.

14. On a perusal of the same, the facts of the case are not applicable to the present set of facts of the case.

15. As seen from the material on record, in all the writ petitions, impugned show cause notices were issued calling for explanations from the petitioners as to why they have mis-utilized the society funds on fertilizers sale.

Thereafter, the petitioners submitted their explanations. But, without considering the same, enquiry officers were appointed.

16. It is the contention of the petitioners that as per Section 59 of the Cooperative Society Act, as per the circular of the 2nd respondent-District Cooperative Officer dated 28.08.2019 specifically stated that the 6th respondent has no jurisdiction and authority to take decision by individual and also has no jurisdiction to appoint the enquiry officer to conduct an enquiry against the petitioners certain irrelevant allegations and moreover without issuance of articles of charges as per rules, enquiry officer cannot be appointed and continuation of suspension is highly illegal and arbitrary.

17. As seen from the Service Regulations relating to Service conditions of the employees of Primary Agricultural Cooperative Society, wherein, in Chapter –V at Sl.No.7, **THE PROCEDURE FOR DISCIPLINARY ACTION**, reads as under:

The following procedure shall be followed for initiating disciplinary action:

The employee shall be issued a memo in writing of the allegations leveled 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.

During the enquiry process, the employees 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 a reasonable time i.e., within a period of 2 months. “

18. On a perusal of the above, this Court observed that, 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. But in the present case, no charge sheet has been issued to the petitioners. Simply they issued show cause notice and suspended the petitioners. Therefore, this Court is inclined to dispose of the writ petitions with certain directions.

- (i) The impugned notices in all the writ petitions are hereby set aside.
- (ii) The concerned respondent authorities are directed to reinstate the petitioners into service with immediate effect;
- (iii) Further, the respondents are directed to pay all the consequential benefits since the date of their suspension period.
- (iv) The entire exercise shall be completed within three (03) months from the date of receipt of a copy of this order.

19. With the above observations, all the Writ Petitions are disposed of. There shall be no order as to costs. As a sequel, all the pending miscellaneous applications shall stand closed.

DR. K. MANMADHA RAO, J.

Date : 30 -08-2024

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HON'BLE DR. JUSTICE K. MANMADHA RAO

WRIT PETITION Nos. 7248, 20068 and 20745 of 2020

Date : 30.08.2024

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