

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)**

THURSDAY, THE TWENTY THIRD DAY OF NOVEMBER
TWO THOUSAND AND TWENTY THREE

PRESENT

THE HONOURABLE SRI JUSTICE NAGESH BHEEMAPAKA

WRIT PETITION NO: 12318 OF 2012

Between:

K. Sarva Reddy, S/o. K. Veera Reddy, Aged 47 years, Occ; Additional Secretary, The Bethampudi Primary Agricultural Co-operative Society Lim R/o. 5-70, Koyagudem Post and Village, Tekulapally Mandal, Khammam District.**PETITIONER**

AND

1. The Government of Telangana, Co-operative Department, Rep. by its District Co-operative Officer, Khammam, Khammam District.
2. The Divisional Co-operative Officer, Kothagudem, Khammam District.
3. The Bethampudi Primary Agricultural Co-operative Society, Limited, Tekulapally Mandal, Khammam District Rep by its President.
(R1 C.T. is amended as per Court Order dated 18/07/2023 in I.A.No.01/2023)

.....RESPONDENTS

Petition Under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a Writ, Order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the 3rd Respondent in issuing orders in Rc.No Nil dated 23-11-2011 removing the petitioner from the services of the 3rd respondent society as illegal, arbitrary and violative of Article 14 of the Constitution of India and violative of Principles of Natural Justice and contrary to the provisions of the A.P. Co-operative Societies Act, 1964 and Rules made there under and also contrary to the service regulations of the Primary Agricultural Co-operative Societies and consequently set-aside the removal order in Rc.No Nil dated 23-11-2011 and pay the petitioner all incidental and consequential benefits.

Counsel for the Petitioner : SRI L.V.S.NAGARAJU

Counsel for the Respondent Nos.1 & 2 : GP FOR COOPERATION

Counsel for the Respondent No.3 : SRI G.SUDERSHAN

The Court made the following ORDER

HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA

WRIT PETITION No. 12318 OF 2012

ORDER:

The 3rd respondent Agricultural Cooperative Society issued order dated 23.11.2011 removing petitioner from the services of the Society. The said order is questioned in this Writ Petition seeking a consequential direction to pay petitioner all incidental and consequential benefits.

2. The case of petitioner, who is Secretary of the 3rd respondent society is that the Managing Committee passed Resolution on 11.08.2009 and submitted proposals to the 1st respondent under re-deployment of staff under NABARD guidelines, as per which, he was shown as excess staff to be re-deployed to other PACS. Later, on 24.08.2009, another Resolution was passed to re-deploy all the staff members to the other PACS and some other may be re-deployed in their places. Subsequently, the Managing Committee passed another Resolution dated 14.10.2009 through which he was shown as excess staff to be re-deployed. Immediately, petitioner is stated to have made representation on 17.12.2009 stating that President of the Society is neither allowing him to discharge his

duties nor allowing signing in the Attendance Register on the ground that he was surrendered to the 1st respondent for further posting without giving any written orders.

While the things stood thus, the 1st respondent issued notice dated 16.01.2010, wherein it was brought to the notice of the 3rd respondent that as per the guidelines, three staff members or less than three have to be retained in the Society duly retaining the senior most employee and re-deployment of juniors to other societies under re-deployment, if the society is unable to afford three staff members, the 2nd respondent will take final decision; until then, the staff will continue in the same society. The grievance of petitioner is that he is the senior-most employee of the society, hence, he has to be retained and junior-most K. Venkateswarlu, Clerk has to be re-deployed to other society and there is no provision in the AP Cooperative Societies Act, 1964 and byelaws of the Society to surrender the staff to the District Cooperative Office. Hence, petitioner made representation on 19.02.2010 requesting the 1st respondent to direct the Society to allow him discharge duties. The 1st respondent vide letter dated 22.02.2010 directed the 3rd respondent to permit petitioner, however, he was not permitted

to discharge his duties, which attracts disqualification of Managing Committed under Section 34 of the Act.

Aggrieved by the same, petitioner filed Writ Petition No. 10621 of 2010, wherein this Court granted interim direction dated 30.04.2010. Petitioner submits that he was issued notice on 03.04.2010 alleging irregularities in sale of fertilizers and requested to recover Rs.22,712/- from him as the same was found in final audit for 2008-09, and the 2nd respondent without considering his explanation, issued surcharge proceedings dated 12.08.2008. Questioning the same, petitioner filed CTA No. 968 of 2008 before the Cooperative Tribunal at Warangal. According to petitioner, after two years, the 3rd respondent placed him under suspension on 26.04.2010 with regard to the same dispute for which, CTA is pending adjudication. Challenging the above-said order, petitioner filed Writ Petition No. 14893 of 2010, wherein this Court granted interim suspension. Since the said order was not complied with, petitioner filed Contempt Case No. 1522 of 2010, in which, this Court issued non-bailable warrant and the 3rd respondent filed recall petitioner and reinstated him into service, accordingly, the Contempt Case was closed.

It is stated that the 1st respondent ordered to conduct enquiry under Section 51 of the Act into the affairs of the PACS with special reference to the irregularities committed by Sri A. Koteswara Rao, President of the Society to a tune of Rs.40 lacs and against him. President of the Society filed Writ Petition No. 12488 of 2010 and got suspended the proceedings of the 1st respondent. It is submitted that the Enquiry Officer conducted Section 51 enquiry with particular reference to the allegations levelled against him and submitted his report in two spells on 31.12.2010 and 12.02.2011 and recommended recovery of Rs.1,29,446/- and disciplinary action against him. Subsequently, the 3rd respondent without conducting any enquiry straight away issued order of removal on 05.03.2011 based on the proceedings dated 12.01.2011 issued by the 1st respondent and letter dated 07.02.2011 recommending initiation of disciplinary action.

Aggrieved by the order of removal, petitioner filed Writ Petition No. 10251 of 2011 and this Court allowed the said Writ Petition setting aside the order of removal dated 05.03.2011 with an observation that this order will not preclude the 3rd respondent from initiating departmental proceedings, pursuant to the enquiry report under Section 51 of the Act.

It is stated that the 3rd respondent without reinstating him into service said to have appointed one domestic enquiry officer who is the Managing Committee Member and got issued notice dated 01.08.2011 directing him to submit explanation. Accordingly, he submitted explanation to the notice issued by the Enquiry Officer and the 3rd respondent. Without considering the same, the impugned proceedings were issued confirming the earlier order of removal.

3. President of the Society filed counter-affidavit stating that issue of re-deployment of staff and surrender of petitioner is a matter pending before the District Collector and that issue is not relevant for the present Writ Petition. There were serious allegations against petitioner and findings were given after due enquiry. Subsequent to surcharge proceedings, petitioner paid some amount and based on the reports, the competent authorities made recommendation for recovery of Rs.1,29,446/-. It is stated that as he failed to take notice dated 08.02.2011, he was removed from service on 05.03.2011. This Court set aside the order of removal on the ground that there was no domestic enquiry and no finding was given on merits. The 3rd respondent filed Review Petition and after that, notices for domestic enquiry were served on petitioner and he appeared

before the Enquiry Officer on 13.08.2011. This Court passed order dated 14.09.2011 in the Review Petition. It is not true to say that no enquiry was conducted and in fact, petitioner submitted explanation to the Enquiry Officer on 30.08.2011. Earlier petitioner appeared before Enquiry Officer on 13.08.2011 and answered each of the allegations and suppressed all the above facts. Hence, final order was passed on 23.11.2011. According to this respondent, after having participated in the enquiry and submitting explanation, petitioner cannot say that no enquiry was conducted. In fact, he gave detailed explanation regarding erasing of some words with white fluid. If he has not perused the records, he could not have given such explanation and he is raising all the issues now at this stage to prejudice this Court. A full-fledged meeting of the Managing Committee took place on 23.11.2011 and then removal order was passed, hence, he has to approach the proper forum under APSE Act. Hence, prays this Court to dismiss the Writ Petition.

4. Petitioner has come up with reply-affidavit. It is denied that any inquiry was conducted and except taking representation from him, the Enquiry Officer has not examined any witnesses, much less any witness in front of him so as to

afford the opportunity of cross-examination. It is relevant to state that the Enquiry Officer is none other than the close relative of the 3rd respondent, hence, the procedure adopted by the 3rd respondent society is not only contrary to law, but also violative of principles of natural justice. Hence, the remedy of appeal is not a bar to avail the extraordinary jurisdiction of this Court. The 3rd respondent society is discharging public functions, as such, amenable to jurisdiction of this Court. It is stated that that the then incumbent of the Society unilaterally declared him as surplus staff and hence, due to *mala fide* intention to regain his choice of employees, the entire issue was started and the same culminated into illegal removal. It is stated that recommendation for recovery of Rs.1,29,456/- was dropped by the Deputy Registrar at Kothagudem as he paid part of the amount *vide* proceedings dated 25.11.2011, even before that, in a hurried manner, he was removed from service on 05.03.2011 which does not speak issuance of prior notice, hence, the contention of the 3rd respondent that he refused to take notice amounts to perjury. It is stated that the Enquiry Officer had concluded that enquiry was conducted without affording any opportunity and the same is evident from the report dated 20.08.2021, hence, the contention of the 3rd respondent in the

counter is contrary to the impugned proceedings. In fact, the representation dated 30.08.2011 was filed by him before the then incumbent of the 3rd respondent society and the said explanation was not considered before passing the impugned proceedings. If the Enquiry Officer, assuming that he has power to inquire, has examined witnesses or any sort of procedure is followed, there is an occasion for him to cross-examine or ask for documents. It is stated that by an order dated 21.09.2022, the Tribunal allowed CTA No. 7 of 2009, hence, the incumbent of the 3rd respondent society tried to implicate him in one or other problems.

5. Heard learned counsel for petitioner Sri L.V.S. Nagaraju as well as Sri G. Sudarshan, learned Standing Counsel for respondents.

6. Respondents rest their case on the ground that petitioner gave a detailed explanation on 30.08.2011 regarding erasing of some words with white fluid, if he had not perused the records, he could not have given such explanation. In this context, a perusal of the said explanation shows that at the request of bank authorities, petitioner and other members in the Society adjusted the principal amount of approximately 700

to 800 members, at that time, by mistake, receipts of three farmers were not prepared, and during audit, they were not detected and later, three accounts were overwritten, but at that time, he was not present. It is stated that he was falsely implicated and as notice was issued under Section 51 of the Act, not to cause any loss to the farmers, he paid the amount and he never misappropriated the amounts. Hence, it cannot be said that he perused the records of the Society.

7. The other contention is that petitioner was given a charge memo giving details of allegations on 15.06.2011 and 22.06.2011; final notice was given on 01.08.2011; he appeared on 13.08.2011 and gave statement but did not raise any objection nor sought other documents or issue of perusal of records was not raised; he appeared before the Enquiry Officer and gave version; report dated 20.08.2011 of the Enquiry Officer was sent to him; petitioner gave explanation on 30.08.2011 and he never complained of not giving any opportunity or lacuna in the inquiry. But the impugned order does not reflect any of the above-said proceedings. It simply stated that 'in pursuance of the same, the managing committee appointed one domestic enquiry officer and he issued notice giving opportunity and directing to submit report. The domestic enquiry officer issued

summons and taken the depositions and the enquiry officer resolved to accept the orders dated 05.03.2011 in removing the secretary from the services of the society and submitted report. Subsequently, the President issued another opportunity by issuing notice and President also issued summons to Sri K. Sarva Reddy and enquired him, in that also, he submitted explanation to the domestic enquiry officer. Therefore, orders were issued confirming earlier order of removal dated 05.03.2011.' Here, order dated 15.06.2011 in Writ Petition No. 10251 of 2011 which was filed questioning the order dated 05.03.2011 removing petitioner has to be seen. In the said order, the learned Judge observed that 'admittedly, no enquiry with regard to misconduct of petitioner has been conducted and no charges have been framed and no departmental proceedings are initiated. The removal order was passed solely basing on the proceedings of the District Cooperative Officer, Khammam. There cannot be any dispute that enquiry, if any to be conducted under Section 51 of the Act is only with reference to the affairs of the society. That cannot be a basis for removal or dismissal of an employee from service. That may be a basis for initiation of disciplinary proceedings. Therefore, without conducting any enquiry, removal order was passed and hence, it

is liable to be set aside. Accordingly, Writ Petition is allowed setting aside the impugned order. However, this order will not preclude the 3rd respondent to initiate departmental proceedings in pursuance of Enquiry Report under Section 51 of the Act.' However, the impugned order does not reflect any departmental proceedings being conducted. Failure to follow the procedure, undoubtedly, favours petitioner.

8. Petitioner also filed Writ Petition No.14893 of 2010 questioning the order of suspension, wherein this Court observed that 'on a perusal of the impugned order, *prima facie*, it appears that petitioner was kept under suspension since he approached Cooperative Tribunal against surcharge order and obtained stay orders which is unreasonable. Therefore, there shall be interim suspension as prayed for.' He also filed Writ Petition No. 10621 of 2010, wherein this Court, by order dated 13.04.2010, directed the 3rd respondent to permit petitioner to discharge the duties as Secretary of the Society. In view of the above factual backdrop as also the averments made by petitioner attributing *mala fides* on the part of the 3rd respondent, this Court is inclined to set aside the impugned order.

9. Further, along with reply, petitioner filed a copy of order dated 21.09.2022 in CTA No. 7 of 2009, whereunder, the Tribunal set aside the surcharge proceedings dated 12.08.2008. When surcharge proceedings itself are set side, all other contentions of parties pale into insignificance. In the light of the same, this Court is of the opinion that impugned proceedings are liable to set aside.

10. The Writ Petition is accordingly, allowed setting aside the proceedings dated 23.11.2011. The respondents are directed to pay all incidental and consequential benefits to petitioner. No costs.

11. Consequently, the miscellaneous Applications, if any shall stand closed.

**SD/-K. SREERAMA MURTHY
ASSISTANT REGISTRAR**

//TRUE COPY//

SECTION OFFICER

To

1. The District Cooperative Officer, Government of Telangana, Co-operative Department, Khammam, Khammam District.
2. The Divisional Co-operative Officer, Kothagudem, Khammam District.
3. The President, Bethampudi Primary Agricultural Co-operative Society, Limited, Tekulapally Mandal, Khammam District.
4. Two CCs to GP For Cooperation, High Court for the State of Telangana at Hyderabad. [OUT]
5. One CC to Sri L.V.S.Nagaraju, Advocate [OPUC]
6. One CC to Sri G.Sudershan, Advocate [OPUC]
7. Two CD Copies

SA
BS



HIGH COURT

DATED:23/11/2023

ORDER

WP.No.12318 of 2012



ALLOWING THE W.P

WITHOUT COSTS.

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~~_____~~
2014/12/2023