

K. Sudheera and ors. Vs. Management and Staff Committee of the Kurnool Urban Development Credit Bank Limited, Rep. by the Member-secretary, Sri B. Sreerama Reddy

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Court : Andhra Pradesh

Decided On : Jun-16-1992

Reported in : 1992(3)ALT60

Judge : D.J. Jagannadha Raju, J.

Acts : Andhra Pradesh Co-operative Societies Act, 1964 - Sections 32(7) and 116C; [Constitution of India](#) - Article 226; Andhra Pradesh Shops and Establishments Act - Sections 47; Employment Exchanges (Compulsory Notification of Vacancies) Act - Sections 4(1) and 4(2)

Appeal No. : Writ Petition No. 6983 of 1991

Appellant : K. Sudheera and ors.

Respondent : Management and Staff Committee of the Kurnool Urban Development Credit Bank Limited, Rep. by the Mem

Advocate for Def. : G. Veera Reddy and ;K. Janikirami Reddy, Advs.

Advocate for Pet/Ap. : E. Manohar and ;M.P. Chandra Mouli, Advs.

Disposition : Petition dismissed

Judgement :

ORDER

D.J. Jagannadha Raju, J.

1. This writ petition is filed by five ex-employees of the Kurnool Urban Development Credit Bank Ltd. They pray for a writ of mandamus or any other appropriate direction declaring the orders dated 27-4-1991 passed by the respondent terminating the services of the petitioners as null and void.

2. The facts in brief are as follows: The five petitioners were appointed by the President of the respondent-society on the following dates: Petitioners 1,4 and 5 were appointed as at tenders on 26-3-1987. The second petitioner was appointed as L.D. Clerk on 27-3-1987. The third petitioner was appointed on 26-3-1979 as Bill-Collector. Along with the petitioners, one Butchanna was appointed as Attender and C.V. Raghavulu, S. Subrahmanyam and G.Hari Rao were appointed as Bill-Collectors and Abdul Khan was appointed as L.D.C. Bye-Law No. 26 deals with the service conditions of employees. Special Bye-law No. I contemplates that the appointments shall be made by the President or the Board of Directors as the case may be in accordance with the subsidiary rules framed for the purpose. For this Society, the term of the Board of Directors expired on 9-7-1987. Elections could not be held before the term expired, the District Collector appointed Persons-in-Charge and they were continued from time to time. Under Section 32(7)(a) of the Co-operative Societies Act (hereinafter called 'the Act'), the aggregate period of the Persons-in-charge shall not exceed three years. As the Persons-in-Charge have taken charge on 23-4-1988, the maximum period up to which they can hold office extends to 23-4-1991. Their continuation in office after 23-4-1991 is illegal. The Government has not exempted the Society from the provisions of Section 31 and Section 32(7)(a) of the Act. In 1991 January, the permanent Secretary of the Society opted for reversion. Subsequently Sri B. Sreerami Reddy, Co-operative Sub-Registrar/Superintendent of the Office of the Divisional Co-operative Officer, Kurnool, was brought in as Secretary under Foreign Service terms at a huge cost of Rs. 4,000/- towards his Salary. Neither the District Co-operative Officer nor the then Additional Registrar had jurisdiction to

make such an appointment. Such an appointment is against the interests of the Co-operative Society. The non-est committee passed stereotyped orders on 27-1-1991 terminating the services of the petitioners. Those orders were served on 3-5-1991. In those orders, the services of the petitioners were terminated with effect from 30th April, 1991, The petitioners were given compensation in lieu of notice. But they have not encashed the cheques. The orders terminating services are liable to be set aside for various reasons. The order is null and void as it is passed by a committee which has no legal existence from 22-4-1991, The reasons given for terminating the services of the petitioners are unsustainable. Para. 1 of the order mentions that petitioners were appointed in violation of the mandatory requirements of the bye-laws. But the order does not mention which of the bye-laws and which of the rules were violated. It also mentions that audit report and the inspection report of the Reserve Bank of India indicated that the staff is surplus and hence they are terminated. There is every need for the existing staff and more staff for an effective collection drive. The total wage bill of the five petitioners comes to Rs. 3,537-75 only. If the ground of economy and the ground that the establishment charges exceed 2% of the total working capital is correct, there is no necessity for appointing B. Sreerami Reddy as Secretary with a total salary of Rs. 4,400/- per month when the earlier Secretary was being paid only Rs. 2,000/- per month. The termination of the petitioners, services casts a stigma. It is more in the nature of a penal order. It is passed in violation of the principles of natural justice as no opportunity was given to the petitioners to show cause against it. The order violates Section 116C of the Act. Any revision of the staffing pattern will have to be done only in accordance with that Section and it should be done with the previous approval of the Registrar of the Co-operative Societies. It would take effect only after it is approved by the general body. The orders of termination are liable to be set aside on the ground that the persons who were appointed along with the petitioners, who are younger in age and who are juniors have been retained in service. The first petitioner is entitled to be continued in service by virtue of 30% of the posts being reserved for women. The petitioners have put in several years of service in the Bank and it is not open to the respondent to claim that the appointment is in violation of the rules and that they are over-aged. The orders of termination may be set aside.

3. The writ petition is resisted on several grounds. It is claimed that the appointment of the petitioners was highly irregular and in contravention of the staffing pattern envisaged under Section 116-C of the Act. Under the amended bye-laws, the appointing authority is the Staff Committee. The President of the Society has no powers for appointing any persons in the Bank. The management has to take into consideration the financial position of the Bank and also the guidelines laid down by the District Co-operative Officer before making appointments. The appointments are not only illegal but they are against the interests of the Co-operative bank. The general rule is persons should be sponsored by the Employment Exchange and after interview and selection, they should be placed on probation for one year and only after completion of one year probation, they can be confirmed in the posts. G. Butchanna, Subrahmanyarn, Hari Rao and Abdul Khan were originally appointed on daily wage basis and subsequently they were regularised after they have put in a lot of temporary service. The term of the elected Board of Directors expired on 9-7-1987. The Collector appointed persons-in-Charge for a period of six months from 9-7-1987. Then one of the elected members of the Board filed a writ petition-W.P. No. 9154 of 1987 and the High Court directed continuance of the members of the Board, by order dated 8-7-1987. The High Court was pleased to vacate the interim direction and hence the Persons-in-charge assumed office on 24-4-1988. From time to time, the term of the persons-in-charge was extended. On 9-2-1991, the Collector appointed Project Director, D.R.D. A., and Divisional Co-operative Officer, Kurnool, as Persons-in-Charge for a period of six months from the date of assuming charge or till the elections are held to the Managing Committee of the Bank. The elections could not be held for the Kumool Urban Co-operative Credit Bank in view of C.B.C.I.D. enquiry regarding certain misappropriations. By letter dated 11-1-1991, the District Co-operative Officer submitted proposals for relaxation of the three years limit and the matter was under consideration. Pending the orders of the Government, there was no alternative except to direct the Persons-in-Charge to manage the affairs of the committee. Hence, awaiting orders of the Government, the Persons-in-Charge continued in Office.

4. The P.I.C. Committee passed a resolution on 2-4-1991 retrenching the petitioners. The staff committee, on the very same day, agreed with the resolution.

The staff committee was constituted as per Bye-law No. 35. The staff committee communicated the orders on 24-4-1991. The orders are valid and legal. Though the term of the Persons-in-Charge expired on 24-4-1991, the impugned order cannot be said to be illegal because the Persons-in-Charge are a de facto committee functioning at the relevant time under the authority of law. Their actions are valid in law. The actions of the de facto committee cannot be questioned on the ground of want of legal authority. The actions of a de facto committee cannot be questioned in collateral proceedings. Under the Cooperative Societies Act, the Registrar of the Co-operative Societies Act has got powers to give necessary directions and passed orders in the public interest. During the tenure of the elected committee, there was a huge fraud and Rs. 12.50 lakhs was disbursed as benami surety loans and cash credit loans. The then Secretary was placed under suspension in November, 1987. The Accountant, who is not qualified to hold the post of Secretary, was promoted as Secretary. In the light of the observations made in the inspection report of the Reserve Bank of India, he had to be reverted and a Co-operative Sub-Registrar was brought in on loan of services as Secretary. It was found that the services of a departmental personnel is necessary because of the C.B.C.I.D. enquiry against the members of the staff and also in view of the preparations to be made for conducting elections. The orders terminating the services of these petitioners are neither illegal nor void. The orders will not become illegal on the ground that the term of the P.I.C. expired. It should be noted that the resolution for retrenching these persons was passed on 2-4-1991. The impugned order is only communication of resolution and implementation of the resolution. The petitioners were originally appointed in violation of the mandatory requirements of the bye-laws. P. Burden Sab was not sponsored by the Employment Exchange. C.V.Raghavulu was appointed without observing the rule of reservation. Sardar Maih was over-aged and not eligible for appointment. P.Mohiuddin and Mohd. Ismail were not sponsored by the Employment Exchange. Kum. K. Sudheera was appointed without observing the rule of reservation. Reserve Bank inspection report found that the staff is surplus and that the staff strength should be reduced from 26 members to 18 members. Under the rules the staffing pattern has to be approved by the Registrar. The inspection report also mentioned that the Bank should maintain the ration of establishment cost to the

working capital. There was no system of forecasting the staff requirements and ten persons were appointed by the president just before the expiry of his term at a time when there was no need or justification for their appointment. The committee of Persons-in-Charge was directed to retrench these persons. Staffing pattern reducing the strength to 18 was submitted for approval and action to retrench the surplus staff will be taken. Huge losses were incurred by the Bank. On this ground also, the Reserve Bank directed that the Bank should try to reduce the establishment expenses. The bank informed the Reserve Bank that it would comply with the directions in the inspection report and reduce the staff from 26 to 18. Even on 7-2-1991, the Reserve Bank enquired whether the staff strength has been reduced. The audit report also indicated that the Bank incurred losses due to fictitious loans and due to increase in establishment charges. The audit report further indicated that there are irregular appointments and that the Employment Exchange Notification and Rules were not followed. Similarly Reservation Rules and bye-laws were not followed. In view of the above circumstances, the staff were retrenched in the interests of the Bank. The provisions of the Shops and Establishments Act apply to the Bank. Those provisions were followed while making the retrenchment. The D.C.C., Kurnool in R.C. No. 311/91 dated 18-2-1991 directed to retrench all the employees who are irregularly appointed during 1987. The retrenchment was made on the basis of 'last come first go'. The first petitioner never worked as Bill Collector or daily wages prior to her irregular appointment as Attender. The provisions of the Shops and Establishments Act were strictly followed while retrenching the petitioners. There is no denial of natural justice. Their appointments are ab initio illegal and irregular. They cannot claim any rights by virtue of such illegal appointments. The writ petition is not maintainable as the petitioners have not made out a case for infringement of any statutory provisions. Violation of byelaws cannot be a ground for issue of a writ under Article 226 of the Constitution. As the retrenchment was done following the provisions of the Shops and Establishments Act and the provisions of the Industrial Disputes Act, if they have any grievance, they should approach the authorities under those Acts. The Bank does not satisfy the requirements of Article 12 of the Constitution. It is not an authority coming under Article 12 of the Constitution. It is a bank whose capital is contributed by private individuals. The

Government has no share capital. A writ petition does not lie against the Bank. The writ petition may be dismissed as not maintainable.

5. Mr. E. Manohar, appearing for the petitioners, contends that the order of termination is not preceded by any notice and retrenchment cannot be done unless prior sanction of the Deputy Registrar is obtained under Section 116-C of the Act. The Persons-in-Charge could legally hold office for a maximum period of three years from 23-4-1988 to 23-4-1991. Under no circumstances can they continue in office after 23-4-1991. The orders of termination passed subsequent to 23-4-1991. The orders of termination passed subsequent to 23-4-1991 are ab initio void. Even if the Government wants to continue the Persons-in-Charge in office, there is no provision under the law to enable the Government to continue them in office. Section 123 of the Act has no application to the facts of this case. The G.O. No. 1606 dated 31-7-1991 extending the term up to 17-8-1991 is an order passed after the orders of termination were issued by an illegal body. The termination orders were not issued by a body which had legal competence and legal existence. 2-4-1991 resolution of the staff committee cannot be questioned by the petitioners. The petitioners can only question the orders that were communicated to them. Mr. Manohar contends that the term of committee of the P.I.C. expired on 2-4-1991, it is an intruder and it was in existence illegally. The de facto doctrine would not apply to orders passed by such a body.

6. On behalf of the respondents Sri G.Veera Reddy contends that the petitioners are not entitled to question the constitution and legality of the Persons-in-Charge of the Society; that too, in a collateral proceedings challenging the termination orders, they cannot raise the question of validity of the existence of the Society. He further contends that this is not a case of any mala fide retrenchment or termination. Implementing the inspection report of the R.B.I. and the audit objections, the staff strength was reduced and the junior most people's services were terminated. He contends that the de facto doctrine applies to actions of the Persons-in-Charge. He also contends that the Society involved in the writ petition is not a 'State' or an authority as contemplated by Article 12 of the Constitution. It does not have any public duty. The termination has been made in accordance with the provisions of the Shops and Establishments Act and the Industrial Disputes

Act. If they have any grievance, they should approach the authorities under those Acts. He contends that the appointments were terminated for very valid reasons as indicated in the counter. The petitioners are not entitled to any relief. As a last argument, Mr. Veera Reddy contends that as the appointments were made illegally and irregularly, even if there is any irregularity in the process of terminating the appointments to comply with the directives of the Reserve Bank of India, the court should not exercise its extraordinary jurisdiction under Article 226 of the Constitution for granting relief to the petitioners.

7. On the basis of the pleadings and the arguments, the points that arise for determination in this writ petition are:

(1) Whether the petitioners are entitled to question the orders of termination dated 27-4-1991 on the ground that the orders are issued by an authority which is non-est in the eye of law?

(2) Whether the writ petition is maintainable in this case.

(3) Whether the petitioners are entitled to any relief in this writ petition?

8. Point No. 1: The petitioners were appointed in March, 1987. Their termination orders were issued on 27-4-1991. It is claimed by the petitioners that they were appointed on a permanent basis, and that by the date the termination orders were passed, there was no legally constituted authority which was entitled to function on behalf of the respondent. It is an admitted fact that the term of elected Board of Directors expired on 9-7-1987. It is also an admitted fact that the persons-in-charge appointed took charge on 23-4-1989. Under Section 32(7)(a), the maximum period for which person or persons to manage the affairs of the Society could be appointed is a period of six months and the Government is entitled to extend from time to time such period beyond six months so that the aggregate period shall not exceed three years. If Section 32(7)(a) is to be applied, there is no legal authority for the persons-in-charge to continue in office after 23-4-1991. It is now claimed that the Government issued G.O. No. 1606 dated 31-7-1991 by which the Government Andhra Pradesh ratified the action of the Commissioner for Co-operation and the Registrar of the Co-operative Societies in having instructed

the District Co-operative officer, Kurnool, to extend the term is extended for one year and four months from 21-4-1990 or till the conduct of elections whichever is earlier. It is interesting to see that this G.O. is passed in violation of Section 32(7)(a) of the Act. At any rate, the subsequent extension cannot come to the rescue of the respondent if the order passed on 27-4-1991 is invalid. It is argued on behalf of the respondent by virtue of the de facto doctrine the orders passed on 27-4-1991 should be upheld. Reading of the affidavit and counter clearly indicates that in this case the Registrar of the Cooperative Societies and the Government were at fault in not conducting the elections before the three years period expired from 23-4-1988. The authorities do not appear to have bestowed any attention to the fact that under the law, the maximum period for which the Persons-in-Charge could be in office is only three years. The fact remains that the Persons-in-Charge continued to hold office though under law their term expired. At that time, after their term expired, the termination orders were passed. We have to see whether such orders are valid in the eye of law.

9. Mr. Manohar contends that even if the Government wanted to extend the term beyond 23-4-1991, there is no statutory provision to do it. It should be considered that the Persons-in-Charge are defunct and non-existent after 23-4-1991. The G.O. dated 1606 dated 31-7-1991 is wholly illegal and it is against the statutory provisions. On behalf of the respondent, it is contended that applying the de facto doctrine, the orders passed by the respondent should be upheld as they are not, in any way, intruders, but they were de facto authority controlling the Society's affairs.

10. In this context, the following decisions have to be seen. In *I.R. Sons v. State*, : AIR 1976 AP193 a Division Bench of the Andhra Pradesh High Court had to deal with a case where a market committee nominated by the Government was subsequently declared illegal by the High Court and when the committee did various acts including the declaration of market area and issuing notifications etc. before it was set aside. In such a context, the Division Bench held where under Section 5(1)(i) of A.P. Agricultural Produce and Livestock Markets Act the Government nominated certain persons to constitute the Market Committee and subsequently the nomination of the members of the committee was declared

illegal by the High Court, the acts done by the de facto-committee including the declaration of market area under Section 4(3)(c) in the interregnum prior to its declaration as illegally constituted, have to be upheld as valid in law. The Court traced the history of the law relating to the de facto-doctrine and then observed that the de facto-doctrine is a doctrine of general applicability which may properly be invoked to validate acts of de facto public officers.

11. In *Gokaraju Rangaraju v. State of A.P.*, : 1981 CriLJ876 the Supreme Court had to deal with a case of defective appointment of District Judges, which were later set aside by a judgment of the Supreme Court. The Court dealing with the legal effect of the judgments pronounced by such judges, observed in paragraph 4 as follows:

'The doctrine is now well established that 'the acts of the Officers de facto performed by them within the scope of their assumed official authority, in the interest of the public or third persons and not for their own benefit, are generally valid and binding, as if they were the acts of officers de jure.'

The Supreme Court referred to the decision in *I.R.Sons v. State*, : AIR 1976 AP193 and various other decisions. In paragraph 15, the Supreme Court stated as follows:

'A Judge, de facto, therefore, is one who is not a mere intruder or usurper but one who holds office, under colour of lawful authority, though his appointment is defective and may later be found to be defective. Whatever be the defect of his title to the office, judgments pronounced by him and acts done by him when he was clothed with the powers and functions of the office, albeit unlawfully, have the same efficacy as judgments pronounced and acts done by a Judge de jure. Such is the de facto doctrine, born of necessity and public policy to prevent needless confusion and endless mischief..... The defective appointment of a de facto Judge may be questioned directly in a proceeding to which he may be a party but it cannot be permitted to be questioned in a litigation between two private litigants, a litigation which is of no concern or consequence to the Judge except as a Judge. Two litigants litigating their private titles cannot be permitted to bring in issue and litigate upon the title of a Judge to his office. Otherwise so soon as a Judge

pronounces a judgment a litigation may be commenced for a declaration that the judgment is void because the Judge is no Judge. A Judge's title to his office cannot be brought into jeopardy in that fashion. Hence the rule against collateral attack on validity of judicial appointments. To question a Judge's appointment in an appeal against his judgment is, of course, such a collateral attack.'

The Court further observed in paragraph 16 as follows:

'The contravention of a constitutional provision may invalidate an appointment but we are not concerned with that. We are concerned with the effect of the invalidation upon the acts done by the Judge whose appointment has been invalidated. The de facto doctrine saves such acts. The de facto doctrine is not a stranger to the Constitution or to the Parliament and the Legislatures of the States.'

The Court further observed in paragraph 17 as follows:

'So long as the office was validly created, it matters not that the incumbent was not validly appointed. A person appointed as a Sessions Judge, Additional Sessions Judge or Assistant Sessions Judge, would be exercising jurisdiction in the Court of Session and his judgments and orders would be those of the Court of Session. They would continue to be valid as the judgments and orders of the Court of Session, notwithstanding that his appointment to such Court might be declared invalid. On that account alone, it can never be said that the procedure prescribed by law has not been followed. It would be a different matter if the constitution of the Court itself is under challenge. We are not concerned with such a situation in the instant cases.'

The Supreme Court in *Central Bank of India v. C. Bernard*, 1990 (4) Judgments Today 142 referred to these two judgments and various other judgments relating to the de facto doctrine and observed in paragraph 6 that this doctrine dates back to the case of *Abbe De Fontaine* decided way back in 1431 to which reference was made by Sir Asutosh Mookerjee, J. in *Pulin Behari Das v. King Emperor* (1911-12)16 Calcutta Weekly Notes 1105 and then observed in paragraph 7 at page 147 as follows:

'The de facto doctrine, as explained earlier, envisages that acts performed de facto by officers within the scope of their assumed official authority are to be regarded as binding as if they were performed by officers de jure. While the de facto doctrine saves official acts done by an officer whose appointment is found to be defective the private parties to a litigation are precluded from challenging the appointment in any collateral proceedings. But the doctrine does not come to the rescue of an intruder or usurper or a total stranger to the office.'

12. In view of these weighty pronouncements, it is quite clear that the committee of the Persons-in-Charge which were appointed earlier with the State and the Registrar of the Co-operative Societies having the power to appoint and to extend from time to time, entered into office legally, but they continued to discharge the functions as de facto committee after their legal term expired on 23-4-1991. The de facto doctrine would certainly apply to the acts done by such a body and it cannot be said that the orders passed by them are illegal.

13. It should also be remembered that in this case the petitioners have not challenged the constitution of the committee or its continuance in office. They are only challenging the orders of termination issued by the committee on the ground that those orders are issued after 23-4-1991. It is not open to the present petitioners in collateral proceedings to challenge the legality of the actions. As laid down in the Supreme Court decisions, they are precluded from challenging those acts, in this writ petition. I hold point No. 1 against the petitioners.

14. Point No. 2: It is argued for the respondent that a writ petition is not maintainable in this case as there is only violation of bye-laws and no statutory provision or statutory law is violated. It is also contended that the respondent does not come within the ambit of 'State' or 'authority' contemplated in Article 12 of the [Constitution of India](#). It is further argued that the termination orders were issued in compliance with the provisions of the Shops and Establishments Act and the Industrial Disputes Act and hence if they have any grievance, the petitioners should have approached the authorities under those Acts. Mr. Manohar placed reliance upon the following two decisions of the Andhra Pradesh High Court. P.R. Venkaiah v. A.P. Co-operative Central Agricultural Bank, 1990 (1) APLJ 109 lays

down the principle that though the provisions of the A.P. Shops and Establishments Act applied to disciplinary proceedings against an employee of the Co-operative Society, where the principles of natural justice are violated and the past conduct is not taken into account as per Rule 20, relief can be sought under Article 226 of the Constitution. In paragraph 5, the Court observed as follows:

'Regulation 114(a) which is in the nature of a bye-law, deals with the procedure to be followed by the Enquiry Officer and the Enquiry Officer is bound to follow the principles of natural justice. If the bye-laws stood alone it could be said that the petitioner was claiming only a breach of bye-laws. But when as pointed out below there are statutory rules applicable to the Society under the Shops Act, the above said bye-laws must be treated as being merely supplementary to the statutory rules and as providing further details for the proper implementation of the statutory rules.'

Then, dealing with the scope of the Shops and Establishments Act provisions and their effect on the Co-operative Societies Act provisions and the bye-laws, the Court held that though the provisions of the Shops and Establishments Act apply, the relief under Article 226 can be invoked where there is violation of principles of natural justice.

15. The decision in *Sri Konaseema Co-op. Central Bank Ltd. v. M. Seetharama Raju*, AIR 1990 A.P. 171 also lays down that a writ petition is maintainable against a Co-operative Society. The Full Bench in paragraph 51 at page 198 gave the summary of its conclusions. The court observed as the second proposition that 'Even if a Society cannot be characterised as a 'State' within the meaning of Article 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 Article 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.' In proposition No. 3, the Court observed that 'The byelaws 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 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, Section 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 Article 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 Article 226, if the violation of a statutory public duty is established. It is immaterial which Act or Rule casts such a statutory public duty.'

16. Thus it is clear from the above two decisions of the Andhra Pradesh High Court that in appropriate cases, a writ petition does lie in regard to termination of the services of employees. I hold point No. 2 in favour of the petitioners.

17. Point No. 3: The next question is whether the petitioners are entitled to any relief in this Writ Petition. It is clear from a reading of the writ petition affidavit and the counter that the present writ petitioners were appointed in violation of the rules and when the term of Board of Directors was expiring on 9-7-1987, these petitioners were appointed on 26-3-1987. The normal rule of sending notification to the Employment Exchange was not followed. The procedure contemplated under the bye-laws was not followed. The usual procedure of appointing persons and keep them first on probation was not followed. They were straightaway appointed as permanent employees. This is something opposed to accepted notions of service law. Obviously the President of the Board of Directors was acting for extraneous considerations in making these appointments. We also find that while the Bank was incurring heavy losses and while the Bank was overstaffed, these petitioners and several others were appointed. Obviously the Board of Directors and the President were acting against the interests of the Society.

18. It is clear from the audit report and the inspection report of the Reserve Bank that when the Society was over-staffed, these people were appointed in gross

violation of all rules and bye-laws. When the initial appointment itself is highly irregular and illegal, such employees cannot seek the relief of a writ under Article 226 which is an extraordinary remedy. It is an admitted fact that no notification was sent to the Employment Exchange before these persons were recruited and appointed. No concurrence of the Deputy Registrar was taken before making the appointments. It is true, as rightly contended by the petitioners' counsel that an appointment made in violation of Section 4(1) of the Employment Exchanges (Compulsory Notification of Vacancies) Act is not invalid. *Narasimha Murthy v. Director of College Education*, 1967(2)LLJ 606 clearly lays down that there is no provision in the Act for rendering invalid any appointments made without complying with the requirements of Sections 4(1) and 4(2). The Court observed that the object of the Act is not to prohibit the appointment being made to fill up vacancies in their establishments. This decision rendered in 1967 cannot be considered as holding the field after the decision of the Supreme Court in 1987 April wherein the Court held that though Sections 4(1) and 4(2) are not mandatory, Governmental agencies and departments of the Government and public bodies should invariably make the appointments after notifying the vacancies to the Employment Exchange. *Jogindra Jha v. College Service Commission*, 1983(3)SLJ 4 held that Section 4(1) of the Act is directory and not mandatory and that an appointment made without compliance with the provisions of Section 4(1) is certainly valid. Though the appointments in this case cannot be declared as invalid on the ground that the vacancies were not notified to the Employment Exchange, I find that the appointments are highly irregular and illegal because they were made in gross violation of the bye-laws and they were made against the interests of the Bank. Under Section 116-C of the Co-operative Societies Act, the staffing pattern of the Societies has to be followed. When the authorities have approached the Registrar of Co-operative Societies for reducing the strength from 28 to 18, the respondent is certainly entitled to terminate the services of the persons whose appointments were irregularly made. The audit report as well as the inspection report of the Reserve Bank clearly pointed out that the Bank should take steps to ensure that the banks adhere to the norms and restrain themselves from practising indiscriminate recruitment of staff irrespective of the need in relation to work-load. As early as 18-2-1991, the Districtive Co-operative Officer, Kurnool, directed the

Society to retrench all the employees who were irregularly appointed during 1987. This clearly indicates that the D.C.O. has approved the change of the staffing pattern as contemplated under Section 116-C of the Act.

19. Considering the entire facts of the case, I feel that in this case, the petitioners are not entitled to any discretionary relief under Article 226 of the Constitution. It should be remembered that the relief under Article 226 is extraordinary remedy and in view of the fact that the original appointments were made irregularly and against the interests of the Bank, the petitioners should not be granted any relief, even if there is some irregularity in the termination of their appointments. I find in this case that by applying the doctrine of de facto validation, the termination orders dated 27-4-1991 are perfectly valid. In the result, I hold that the petitioners are not entitled to any relief in this writ petition.

20. In view of my findings recorded above, I dismiss the writ petition as devoid of merits.

21. In the peculiar circumstances of the case, each party is directed to bear its own costs. Advocate's fees is fixed at Rs. 350/-

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