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W.P No.20301 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30.06.2023

Pronounced on : 03.08.2023

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.20301 of 2010 and

M.P. No.1 of 2010

B.Prabakaran

... Petitioner

v.

1.The Additional Registrar of Co-operative Societies,
Chennai Region,
No.91, St.Mary's Road,
Chennai 600 018.

2.The Special Officer,
Sri Karneeswarar Co-operative Stores Limited,
No.111/37, K.P.Koil Street,
Saidapet,
Chennai 600 015.

...Respondents

*[Dismissed vide Court order
dated 11.01.2012 by MJJ]*

Prayer: The writ petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records of the 1st respondent in his proceedings in Rc.No.10266/2009/C2 dated 28.05.2010 and quash the same and also direct the respondents to reinstate the petitioner into service with all consequential, monetary and terminal benefits within a time frame.



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For Petitioner : Mr.G.Ilamurugu

WEB COPY For Respondents : Mrs.Geetha Thamaraiselvan,
Special Government Pleader for R1

R2- Dismissed

ORDER

The writ petition has been filed challenging the proceeding of the 1st respondent in Rc.No.10266/2009/C2 dated 28.05.2010 and also direct the respondent to reinstate the petitioner into service with all consequential, monetary and terminal benefits.

2. The petitioner was appointed as Bill Clerk in the Fair Price Shop-2 (hereinafter referred to as “FPS-2”) of Sree Karneeswarar Cooperative Stores Limited (LG008) of the 2nd respondent from 09.08.2008. The petitioner took charge on 09.08.2008 from Mr.Elumalai. There was an inspection by the Special Inspection Squad of the Deputy Registrar (Distribution). The Inspection Squad examined the account of FPS-2 for the period 01.08.2008 to 25.08.2008. Pursuant to such inspection, the Inspection Squad reported that there was deficit in stock to the extent of Rs.14,492.30/-. It also found that there was discrepancy between total value of bills and entries in the cash chitta to an extent of Rs.2075.70/-.

3. Pursuant to the above inspection, charge memo dated 28.01.2009 was



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issued framing the following charges and calling for explanation from the petitioner viz.,

- a. There was a deficit stock to the extent of R.14,492.30/-
- b. There was discrepancy between value of bills and entries in the cash chitta to the extent of Rs.2075.70/-
- c. That the petitioner had brought disrepute to the respondent society and Government Public Scheme which is framed within the object of making goods available at affordable price.

3.1.The petitioner submitted his explanation in response to the above charge memo submitting *inter alia* the following:

- a. That the petitioner had joined duty only on 09.08.2008 whereas the charge memo is with reference to the alleged discrepancy for the period 01.08.2008 to 25.08.2008, thus the charge memo also includes the period prior to the petitioner joining duty.
- b. The stock variation was only in view of the fact that the building housing the respondent society was in a dilapidated condition and the bags in which palm oil, rice and other goods packed were destroyed by rodents nibbling the same, resulting in spillage which resulted in the discrepancy / stock variation.



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c. That there were no instance where family card holders had been denied or refused supply of any of the items on account of shortage of any items and thus the allegation that the petitioner had brought dis-repute to the respondent society and defeated the object of the Government Scheme was unjustified.

d. Importantly, in the enquiry report it was found that the 3rd charge cannot be sustained. However, the 1st two charges viz., i. There was a deficit stock to the extent of Rs.14,492.30/- ii. Discrepancy between value of bills and entries in the cash chitta to the extent of Rs.2075.70/- were sustained. Importantly, after finding that the explanation offered by the petitioner viz., building being in dilapidated condition and rat menace were plausible reason for stock variation proceeded to reject the said contention on the premise that the pilferage and wastage due to the above factors cannot be to the extent of the discrepancy found. An inference was drawn that the petitioner had after remitting the amount for the stock deficit had sold material meant to be distributed to the FPS-2 in the open market. The relevant portion is extracted hereunder:

“Ma;T Fwpg;gpy; tpw;gid nra;jij fhl;bYk; mjpgf msT
tpw;giznra;jjhTfTk; nrYj;jpajhfTk; tpw;gid nra;ahj nghUl;fs;
tpw;gid nra;jjhTf gzk; nrYj;Jk; urPJ g+h;jjp nra;J tpw;gid
njhif mjpgfkhf nrYj;jpajhf njhptpj;Js;isij Nehf;Fk; NghJ
Fw;wk; rhl;lg;gl;lth; fil kpfTk; g0jile;Js;sjhy; vyps; fbj;J

<https://www.mhc.tn.gov.in/judis>



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tpLtjhy; rpe;jg;gLfpwJ ghkhapy; fbj;J fPNo Cw;wg;gLfpwJ
.jdhy; Vw;gLk; ,Ug;Gf;Fiwtpw;f;F Nrh;j;J tpw;giz njhifAld;
mjpfkhd nrYj;jpAs;Nsd; vd;gJld; xg;G Nehf;Fk; NghJ epaha
tpiyf;filapy; rpe;jpajhy; Vw;gl;lJ vd;W vLj;Jnfhs;s rhj;jpak;
cs;sJ. Mjpf msT %l;ilfs; Xl;il tp0e;J mhprp fPNo
nfhl;bapUe;jJ vd;W Ma;T Fwpg;gpYk; \$wg;gl;bUe;jJ mNj
Ma;T Fwpg;gpy; ,Ug;Gf;FiwT kpf FiwthfNt cs;sJhy; jpdKk;
ngUksT rpe;jpajhy; ,Ug;Gf;FiwT Vw;gl;Ls;sJ vd;gijAk;
Vw;Wf;nfhs;s ,ayhj epiy cs;sJ. vdNt Fw;wk; rhl;lg;gl;lth;
filapy; nghUl;fs; XusT rpe;jg;gLtij jdf;F rhjfkf;fp nfhz;L
ngUksT ntspre;ij tpw;gid nra;jpUg;gh; vd;w KbTf;F
tUfpNwd; ”

4. Insofar as the 2nd charge is concerned, proposal was confirmed after finding that the variation between bills and the chitta entries was a clerical error. The relevant extract is here under:

“5. Fw;wk; rhl;lg;gl;lth; FLk;g ml;iljhuh;fspd; FLk;g
ml;ilf;F mj;ahtrpag; nghUl;fs; chpa Kiwapy; toq;fpAs;shh;.
.jpy; vt;tpj ,lh; ghLk; gz;lfrhiyapd; ngah; nLl;fspd;w tifapy;
nray;gltpy;iy. FLk;g ml;iljhuh;fSf;F tpw;gid nra;J gpy;
jahhpj;J njhifia rpt;lhtpy; vLj;J v0Jk; NghJ Fiwj;Jf;
fhl;bAs;shh; vd;gJ Kw;wpYk; v0j;jh; Fiw (clerical error)
ahfNt Njhd;WfpwJ. ”

5. Thereafter, show cause notice dated 22.07.2009 was issued calling for explanation from the petitioner. The petitioner reiterated his explanation. However, rejecting the same, the 2nd respondent had passed the order of terminating the service of the petitioner. The relevant portion is extracted hereunder:



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“jpU.g;gp.gpughfud;> gl;bay; v0j;jh; (jw;fhypf gzp
ePf;fk;) kPJ Rkj;jg;gl;Ls;s Fw;wr;rhl;Lfs; ep&gzkh
epiyapy; ,th; jUk; tpsf;fq;fs; Vw;Wf; nfhs;Sk; tifapy; ,y;iy.
,th; kPJ Fw;wtpay; eltb;f;f epYitapy; cs;sJ. jkpo; ehL
Fbikg;nghUs; toq;fy; jpl;l;jpw;F vjpuhf nray;gLk; ,th;
gz;lfrhiy gzpapy;Ue;J 14.09.2009 Kjy; epue;ju gzp ePf;fk;
nra;ag;gLfpwhh;. ,jidg; ngw;Wf; nfhz;likf;F xg;Gjy;
rkh;g;gpf;f mwpTWj;jg;gLfpwhh;. ”

6. Aggrieved, the petitioner preferred a Revision application under Section 153 of the Tamil Nadu Cooperative Societies Act, 1983. The Revisional Authority confirmed the order of termination passed by the 2nd respondent. The present writ petition is filed challenging the above order of the 1st respondent / Revisional Authority inter alia on the following grounds:

a. That disciplinary authority as well as the Revisional Authority ought to have seen that enquiry report clearly disclosed / revealed that the building housing the respondent society was in a dilapidated condition and admitted that there was rat menace which could have resulted in pilferage / wastage. It was however only found that extent of pilferage / damages was unacceptable.

b. That the submission of the petitioner that he had taken charge only from 09.08.2008 whereas the alleged discrepancy was for the period 01.08.2008 to 25.08.2008 and thus for almost 1/3 of the period, the petitioner was not rather cannot be held responsible was not taken into account.

c. That in the impugned order respondent failed to note that the



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petitioner took charge of the office only on 09.08.2008 and there was a deficit stock of 100 litres of Palm Oil even at the time of taking charge of the office.

Hence, the deficit occurred while the previous employee was in service.

d. The discrepancy between value of the invoice / bills and the chitta was only clerical error was not considered.

e. Further, the impugned proceeding suffers from violation of principles of natural justice inasmuch as the Disciplinary Authority had not rendered any finding with regard to the explanation offered by the petitioner and had merely confirmed the charges and the Revisional Authority has also not applied its mind nor rendered any finding on the explanation offered by the petitioner. The petitioner has reached the age of superannuation. In any view, it was stated that punishment of termination from service was excessive, harsh and dis-proportionate.

7. To the contrary, it was submitted by the learned counsel for the respondent that the impugned proceeding does not warrant interference inasmuch though it was found that there could be shortage due to pilferage and damage, however, the damage / pilferage / spillages cannot be to the extent found by the inspection squad. It was further submitted that the petitioner in his explanation dated 04.08.2010 accepted irregularities during the course of



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his deposition before the enquiry officer and thus the writ petition is liable to be dismissed.

8. Heard both sides. Perused the material on record.

9. This Court finds that the only question that may arise for consideration against the factual backdrop is as to whether the punishment of termination is excessive and disproportionate. It was submitted by the learned counsel for the petitioner that the order of termination is shockingly disproportionate and submitted that the Court may consider reducing the punishment. This Court finds that there is merit in the request of the petitioner as the punishment of termination is excessive, harsh and disproportionate if we bear in mind the following aspects:

a. Firstly, the explanation that the stock discrepancy was due to condition of the building which is admittedly dilapidated and menace of rodents nibbling the bags leading to spilling / pilferage has not been rejected, however, it was found that it would not have resulted in stock variation to the extent found.

b. Secondly, the finding that the petitioner must have sold the goods meant for FPS-2 must have been distributed in the open market is an inference drawn on the basis of alleged stock variation. The above inference is not supported by any evidence such as details of the dealer/entity to which such



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material was sold. It is a mere assertion based on suspicion. Suspicion cannot take the place of proof.

c. Thirdly, the fact that the alleged stock variation is made on the basis of examination of books and stock position for the period 01.08.2008 to 25.08.2008 without even considering the petitioner's explanation that he had taken charge only with effect from 09.08.2008 is unjustified.

d. That in the impugned order respondent failed to note that the petitioner took charge of the office only on 09.08.2008 and there was a deficit in stock of 100 litres of Palm Oil even at the time of taking charge of the office. Thus, the deficit occurred during the service of the previous employee.

e. Finally, there is also merit in the submission of the petitioner that both Disciplinary Authority as well as Revisional Authority had merely affirmed the charges framed without applying their mind and the orders are non speaking.

10. Taking into account all the attendant circumstances and the gravity of offence, this Court is of the view that punishment of termination is excessive and harsh, warranting application of doctrine of proportionality. In the present case, the circumstances mentioned above when considered as a whole would indicate that the impugned proceedings suffers from more than one infirmity.



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Further, it has been more than 10 years since the occurrence of the alleged act resulting in termination of service. In the circumstances, this Court is of the opinion that it is only appropriate having found that the impugned proceeding suffers from more than one infirmity, the punishment of termination is excessive and harsh, thus, warranting application of the doctrine of proportionality.

11. In view of the above, this Court is of the view that punishment of termination is excessive and disproportionate and the ends of justice would meet if the same is reduced to one of compulsory retirement with consequential benefits. The writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

03.08.2023

Index: Yes/ No
Internet: Yes/No
Speaking / non speaking order
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To:
The Additional Registrar of Co-operative Societies,
Chennai Region,
No.91, St.Mary's Road,
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Pre-delivery order in
W.P. No.20301 of 2010 and
M.P. No.1 of 2010

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