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WP.No. 14478 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.02.2024

Pronounced on : 27.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE N. SENTHILKUMAR

W.P.No. 14478 of 2010

and

MP.Nos.1 and 2 of 2010

The Management

Coimbatore District Consumer

Co-operative Wholesale Stores Limited

Coimbatore - 641 002.

.. Petitioner

Versus

1.The Deputy Commissioner of Labour/

Appellate Authority under the

Tamilnadu Shops and Establishment Act

Coimbatore - 641 018.

2.K. Shanmugasundaram

.. Respondents

Writ Petition is filed under Article 226 of the Constitution of India, prays for issuance of Writ of Certiorari, calling for the records of the first respondent relating to his order No. TNSE2/2009, dated 21.05.2010 and quash the same.



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For Petitioner : Ms.M. Meenatchi
For Mr.P. Anbarasan

For R1 : Mr. M. Muthusamy
Government Advocate

For R2 : Mr.C.K. Chandrasekar

ORDER

This Writ Petition is filed by the petitioner for issuance of Writ of Certiorari to quash the order No. TNSE-2/2009, dated 21.05.2010 passed by the first respondent.

2. Brief facts of the case are as follows:-

According to the petitioner, the 2nd respondent was working as Salesman for the period from April 2006 to July 2006 in Solaiyar Dam, Power House, and Manapalli Ration Shops under the Establishment of Coimbatore District Consumers Cooperative Wholesale Stores Limited, Coimbatore. While he was working, the 2nd respondent had siphoned off the essential commodities meant



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for public distribution to the tune of Rs.1,37,090.30. Pursuant to the same,

charges were framed against him on 09.02.2006, domestic enquiry was conducted by the Enquiry Officer. During the enquiry, the deficit stock was reported by way of Ex.M5. The Head of the Society had arrived at the amount and reported it for recovery. Based on the above charges, the second respondent-workman was suspended from service on 25.11.2006

3. According to the petitioner, the 2nd respondent admitted during the enquiry that he had remitted a sum of Rs.15,000/- on 10.05.2006; Rs.7,000/- on 12.05.2006, and Rs.10,148.75 on 01.08.2006 by way of valid receipts. The second respondent during the domestic enquiry, stated that, he will remit another sum of Rs.27,276.20, but, he did not produce any receipt or he did not pay the said amount Rs.27,276.20, as assured by him before the domestic enquiry. The total outstanding siphoned amount was Rs.1,37,090.30.



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4. The 2nd respondent had participated in the domestic enquiry and he has not raised any dispute with regard to the employment of the Enquiry Officer or the procedures followed by the domestic enquiry. The second respondent had remitted a portion of money on different dates as stated *supra* and this fact is not in dispute by the petitioner/Management as well as the 2nd respondent herein.

5. According to the petitioner, the Enquiry Officer given a finding in favour of the second respondent by his report dated 18.07.2007 by not taking into consideration of the evidence adduced on behalf of the petitioner and the documents marked therein. The petitioner having not satisfied with the report of the Enquiry Officer, issued a show cause notice to the 2nd respondent vide its Memo dated 30.04.2008 and the second respondent did not sent any reply to the show cause notice dated 30.04.2008.

6. The petitioner once again, issued another show cause notice dated 21.05.2008 and the petitioner received a reply dated 22.05.2008 from the second



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respondent stating that he did not receive the enquiry report. Since the second respondent has made a specific demand of requesting to furnish the enquiry report. The petitioner forwarded the enquiry report through its Memo dated 29.05.2008. The second respondent vide its letter dated 17.06.2008 demanded the Document No. ME-1, which was marked before the Enquiry Officer and the said document was furnished to the second respondent on 25.06.2008. The second respondent did not offer his explanation and thereafter, the petitioner through its Memo dated 07.07.2008 directed the second respondent to appear before the domestic enquiry for personal hearing on 21.07.2008.

7. The second respondent submitted his explanation dated 01.07.2008 which was received by the petitioner on 10.07.2008. The petitioner once again given an opportunity for personal hearing to the second respondent on 21.07.2008 through its Memo dated 14.07.2008. The second respondent submitted his explanation on 21.07.2008.



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8. The petitioner after examining the explanation furnished by the second respondent and with all other connected documents, the Management of the Society passed the order of dismissal as against the second respondent on 07.08.2008.

9. Aggrieved by the said order dated 07.08.2008, the second respondent has preferred an appeal under Section 41(2) of the Tamil Nadu Shops and Establishments Act, before the first respondent.

10. According to the petitioner, the first respondent without affording an opportunity of personal hearing to the petitioner, had passed an order dated 21.05.2010 setting aside the order of dismissal as against the second respondent on 07.08.2008. Challenging the same, the writ petitioner has come forward with the present writ petition under Article 226 of the Constitution of India.



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11. Per contra, the second respondent-workman contended that the petitioner ought to have proved all the charges levelled against him and not even one single charge was proved. Since none of the charges were proved before the enquiry initiated by the Management, the Enquiry Officer given his finding that the charges levelled against the second respondent were not proved. The said finding was forwarded to the petitioner/Management herein.

12. Differing with the finding of the Enquiry Officer the petitioner Management issued a show cause notice to the second respondent dated 21.05.2008. The reply to the show cause notice was given by the petitioner/Management. The second respondent after giving his detailed reply to the second show cause notice dated 21.05.2008 and further sought the report of the Enquiry Officer and the second respondent also furnished the same.

13. The second respondent in his reply, had taken a stand that he has not siphoned the money and it is only a deficit of the stock. Therefore, the



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petitioner/Management has misconceived the difference of misappropriation and deficit of stock.

14. The learned counsel for the second respondent contends that, the order of removal passed by the petitioner/Management was rightly set aside by the first respondent by giving substantial reasons in consonance with the report of the Enquiry Officer.

15. Heard both sides and perused the materials available on record.

16. The first respondent had examined documents Ex.P1 to Ex.P9 marked on the side of the petitioner/Management and Ex.D1 to D24 marked on the side of the 2nd respondent. No witness was examined on either side. The first respondent on examination of the documents marked on either side and taking note of the finding of the Enquiry Officer's report and the show cause notice issued by the petitioner herein differing with the finding of the Enquiry



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Officer and the reply was given by the 2nd respondent, the first respondent has held that, none of the charges were proved as against the second respondent herein.

17. It is necessary to extract the charges levelled against the second respondent which are as follows:-

07.08.2008ல் புதிய பணிநீக்க உத்தரவில் (எம்சாஆ24) பின்வருமாறு தெரிவிக்கப்பட்டுள்ளது.

குற்றச்சாட்டு

வால்பாறை சோலையாள் டேம் பகுதி நியாய விலைக்கடைகளில் விற்பனையாளராக திரு.கே.சண்முகசுந்தரம் பணிபுரிந்து வந்தபோது 01.04.2006 முதல் 31.07.2006 வரையிலான காலத்தில் ரூ.1,37,090/- அளவிற்கு சரக்கு இருப்பு பொருட்கள் குறைவடை ஏற்படுத்தி முறைகேடுகள் புரிந்து பண்டகத்திற்கு நிதியிழப்பு ஏற்படுத்தியுள்ளார். 1/2

(1) 01.04.2006ல் ஆரம்ப குறைவடை நிலுவை	09,196.05
(2) ஸ்டேன்மோர் நியாயவிலைக்கடை	5,994.55
(3) நல்லகாத்து நியாயவிலைக்கடை	3,479.75
(4) மோனிக்கா நியாயவிலைக்கடை	3,908.10
(5) சோலையார் டேம்	1,15,578.75
(6) மானாம்பள்ளி	5,723.00

மொத்தம்

ரூ.1,32,880.20

செலுத்திய தொகை

பண்டக பணம் செலுத்துச்சீட்டு எண். 19/28.8.2006	ரூ.789.00
ஆகஸ்ட் 06 சம்பள பிடித்தம்	ரூ.3,000.00



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செப்டம்பர் 06 சம்பள பிடித்தம்

ரூ.3,000.00

ரூ.6,789.90

24.11.2006-ல் குறைவடை நிலுவை

ரூ.1,37,090.30

மேல்முறையிட்டாளர் 04.04.2006-ல் வால்பாறை கிளையில் விற்பனையாளராகப் பணியில் சேர்ந்துள்ளதாக தனது மேல்முறையிட்டில் தெரிவித்துள்ள நிலையில் 14.2006-ல் ஆரம்ப குறைவடை நிலுவை ரூ.9,196.05-க்கு மேல்முறையிட்டாளர் எங்கள் பொறுப்பாவார் என்றும், எ.ம.சா.ஆ.17-ல் மானாம்பள்ளி எஸ்டேட் மற்றும் சோலையார் டேம் ஆகிய திடலி கடைகளில் இருப்பு குறைவு ஏற்படுத்தியாகத் தெரிவிக்கப்பட்டுள்ள நிலையில், எஸ்டேன்மோர், நல்லகாத்து, மோனிக்கா ஆகிய நியாயவிலைக்கடைகளில் ஏற்பட்ட இருப்புக் குறைவுக்காக மேல்முறையிட்டாளர் எங்ஙனம் பொறுப்பாவார் என்றும் தெளிவுபடுத்தவில்லை. மேலும், எ.ம.சா.ஆ.24-ல் எ.ம.சா.ஆ.1ல் குறிப்பிடப்பட்டுள்ள விபரங்களுக்கு மாறாக குறைவடை ஏற்படுத்தியாகத் தெரிவிக்கப்பட்ட ஏப்ரல் 2006 முதல் ஜூலை 2006 வரையுள்ள காலத்தில் செலுத்தப்பட்ட தொகைகளையும் கணக்கில் கொள்ளாமல் மனுதாரர் ஏற்படுத்தியுள்ள இருப்பு குறைவடை ரூ.1,37,090.30 என்று முடிவு செய்துள்ளனர்.

18. As rightly contended by the learned counsel for the petitioner/Management herein, that the allegation is not a question of deficit, the allegations of siphoning. The materials submitted by the petitioner/Management before the Enquiry Officer as well as before the first respondent would clearly show that the second respondent, has employed and all the shops where he was serving, it is not the question of shortage alone, its clearly misappropriation of



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the funds due to the petitioner have in. It is the specific case of the petitioner,

that, such deficit of stock had occasion in one shop or one instance where he was employed then there is every possibility of this Court to come to a conclusion, that, it can be only a deficit, but the fact remains that, wherever the second respondent was an employed the deficit is continuing, in the given circumstances this cannot be ignored by this Court.

19. (i) The learned counsel for the petitioner has relied upon a judgment of the **High Court of Judicature at Bombay Throu v. Shashikant S, Patil and Anr.**, reported in **2000 (1) SCC 416**, wherein, the relevant portion of the order which is extracted hereunder:-

"The reasoning of the High Court that when the Disciplinary Committee differed from the finding of the Inquiry Officer it is imperative to discuss the materials in detail and contest the conclusion of the Inquiry Officer, is quite unsound and contrary to the established principles in administrative law. The Disciplinary Committee was neither an appellate nor a revisional body over the Inquiry Officer's report. It must be



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borne in mind that the inquiry is primarily intended to afford the delinquent officer a reasonable opportunity to meet the charges made against him and also to afford the punishing authority with the materials collected in such inquiry as well as the view expressed by the Inquiry Officer thereon. The findings of the Inquiry Officer are only his opinion on the materials, but such findings are not binding on the disciplinary authority as the decision making authority is the punishing authority and, therefore, that authority can come to its own conclusion, of course bearing in mind the views expressed by the Inquiry Officer. But it is not necessary that the disciplinary authority should "discuss materials in detail and contest the conclusions of the Inquiry Officer." Otherwise the position of the disciplinary authority would get relegated to a subordinate level.

(ii) The learned counsel for the petitioner has relied upon another judgment in **Tamil Nadu Handloom Weavers' Co-operative Society Limited v. Deputy Commissioner of Labour (Appeals) and Another**, reported in 1998 (1) LLN 774, wherein the relevant paragraph which is extracted hereunder:-

9.Sri Dwarakanathan, learned counsel for the petitioner, contends that when the second respondent had not



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only admitted in his explanation of the deficit of stocks, in other words it is a misappropriation but also admitted the same before the enquiry officer by filing a statement and as such, there was no requirement at all for the management of examine witnesses or to prove that imputations. Even in respect of the second charge, the second respondent had admitted that he had failed to submit the stock verification statement for the period ending with March 31, 1984, and he had also sought to cover up the shortage by his failure to submit the statement even on March 12, 1984, viz., till the date of inspection. As such, there is no necessity or occasion for the petitioner-management to examine witnesses or to prove the imputations. Learned counsel contended that when imputation has been admitted, there is no necessity or requirement to hold enquiry. Requirement of examining witnesses before the enquiry officer would arise only if the delinquent workman denies the imputations and denies the charges. In this case, the second respondent admitted the imputations and the charges and he had explained his conduct which explanation was not acceptable to the management and hence, the order of impugned dismissal has been imposed on the workman. It is further contended that the view of the first respondent appellate authority that no enquiry had been conducted is



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vitiated and the judgment of this Court relied upon by the first respondent, viz., 1987 (2) L.L.N. 154 (vide supra), clearly distinguishable on the facts and in support of his case, learned counsel for the petitioner relied upon the judgment in Disciplinary Authority-cum-Regional Manager v. Nikunja Bihari Patnaik, [1996 (2) L.L.N. 92]. Learned counsel contended that the second respondent had admitted not only the deficit stock but also the omission to submit a report. The action of the second respondent, viz., selling of Janatha items to third parties is totally an unauthorised one. According to learned counsel, the second respondent had committed an unauthorised and irregular sale in disregard of the norms, viz., he sold the various Janatha items to traders and that too without billing or without collecting the amount and his self-incriminating statement cannot be accepted at all. In other words, it is contended that the second respondent had acted unauthorisedly and in violation of norms and his explanation that his action was to improve the business cannot be accepted at all. Therefore, learned counsel contended that the act committed by the second respondent is only intentional and as such he is guilty of the charges. Learned counsel also relied upon the following passage of the judgment, in Para. 7, at page 96 of 1996 (2) L.L.N.:



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“...True, it is that in some cases, no loss has resulted from such acts. It is also true that in some other instances such acts have yielded profit to the bank but it is equally true that in some other instances, the funds of the bank have been placed in jeopardy, the advances have become sticky and irrecoverable. It is not a single act; it is a course of action spreading over a sufficiently long period and involving a large number of transactions. In the case of a bank — for that matter, in the case of any organisation — every officer/employee is supposed to act within the limits of his authority. If each officer/employee is allowed to act beyond his authority, the discipline of the organisation/bank will disappear; the functioning of the bank would become chaotic and unmanageable. Each officer of the bank cannot be allowed to carve out of his own little empire wherein he dispenses favours and largesse. No organisation, more particularly, a bank can function properly and effectively if its officers and employees do not observe the prescribed norms and discipline. Such indiscipline cannot be condoned on the spacious ground that it was not actuated by ulterior motive or by extraneous considerations. The very act of acting beyond authority — that too a course of conduct spread over a sufficiently long period and involving innumerable instances



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— is by itself a misconduct. Such acts, if permitted, may bring in profit in some cases but they may also lead to huge losses. Such adventures are not given to the employees of banks which deal with public funds”

12.This statement had not been challenged by the second respondent. That being the factual position, in my considered view, it is not open to the second respondent to contend for that matter, for the first respondent to hold that no enquiry had been conducted. Actually, charges have been framed, explanation has been called for an enquiry officer was appointed and before the enquiry officer, the second respondent had filed a statement admitting the imputations and the charges, while with ingenuity he tried to explain the charges as resorted to improve the sales turnover. In view of such admission of guilty, following the judgment of Shanmugham, J., in *State Bank of India v. K. Kannabiran*, [1986 (1) L.L.N. 462] (vide supra), this Court holds that there is no need to hold any enquiry. The decision relied upon by the first respondent is a case where the delinquent has not admitted the imputations and charges. In the present case, the second respondent had admitted the imputations and charges. In the circumstances, this Court holds that there has been a



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valid domestic enquiry on the facts of the present case, and the service of the second respondent had been validly terminated. The first respondent appellate authority has exceeded its jurisdiction, besides acted with material miscontradictions apart from that, the first respondent set aside the order on the ground that the stock deficit has been made good by subsequent remittances. This is my considered view, will not constitute a valid reason at all to exonerate. This approach suffers with error apparent on the face of the record. What has been charged against the second respondent is not only the stock deficit but also his conduct. Merely because of later he made good the loss will not justify his conduct. The second respondent acted contrary to the Standing Orders of the petitioner-management. The second respondent had admittedly parted with Janatha variety goods without billing, without collection of sale price and he does not know to whom he had handed over the same. This would demonstrate that the second respondent had parted with the valuable Janatha items which is meant for actual consumer. As such, the very action of the second respondent in parting with the Janatha varieties is very serious in nature. Therefore, as contended by learned counsel for the petitioner, the entire approach of the first respondent in this respect, is vitiated as the explanation submitted by the



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second respondent cannot be a ground to exonerate his commission and omissions. Further, merely because others have been allowed to make good the loss and against them no action has been taken cannot be a ground to exonerate the second respondent."

(iii) The learned counsel for the petitioner has relied upon another judgment in **A.N.D'Silva v. Union of India**, reported in AIR 1962 SCC 1130, wherein. the relevant paragraph which is extracted hereunder:-

"It is for the punishing authority to propose the punishment and not for the enquiring authority. The latter has, when so required, to appraise the evidence, to record its conclusion and if it thinks proper to suggest the appropriate punishment. But neither the conclusion on the evidence nor the punishment which the enquiring authority may regard as appropriate is binding upon the punishing authority. In the present case, after the report of the Enquiry Officer was received the appellant was called upon to show cause against his proposed dismissal from service."



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(iv) The learned counsel for the petitioner has relied upon another judgment in **State of Rajasthan v. M.C. Saxena** reported in **AIR 1998 SCC 1150**, wherein, the relevant paragraph which is extracted hereunder:-

"It is well settled that the disciplinary authority can disagree with the findings arrived at by the enquiring officer and act upon his own conclusion, but the only requirement is that the said disciplinary authority must record reasons for his disagreement with the findings of the enquiry officer. If the disciplinary authority gives reasons for disagreeing with the findings of enquiring officer then the Court cannot interfere with those findings unless it comes to the conclusion that no reasonable man can come to the said findings. In this view of the matter, the disciplinary authority was well within his powers to award punishment on the findings arrived at by him. We do not find any force in the submission of the learned counsel appearing for the delinquent government servant that before the disciplinary authority proceeds to award punishment, the delinquent government servant should have been afforded a further opportunity of hearing."

20. The forgoing citations referred by the learned counsel for the



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petitioner would clearly show that the second respondent was responsible for the shortage which has resulted in Revenue loss to the extent of Rs.1,37,090.30, the judgment cited by the learned counsel for the petitioner would squarely applicable to the facts of the present case. Following the dictum laid down of the above referred judgments

21. The petitioner/Management by placing all the relevant materials would show that the second respondent was responsible for the deficit, which results to a loss, to the extent of Rs.1,37,090/-. The petitioner/Management cannot close its eyes as against the second respondent passed on the proved evidence that the second respondent was responsible for all the deficit/siphoning.

22. Therefore, this Court is of the view that the show cause notice issued by the petitioner/Management differing with the Enquiry Officer and the subsequent order of removal from service dated 07.08.2008 as against the



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second respondent is wholly justified.

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23. For the foregoing reasons, the Writ Petition is allowed.

Consequently, the order passed by the first respondent vide No.TNSE2/2009, dated 21.05.2010 and the Enquiry Report filed by the Enquiry Officer, dated 18.07.2007 are hereby quashed. No costs. Consequently, connected miscellaneous petitions are closed.

27.03.2024

Index:Yes

Speaking order : Yes

Neutral Citation : Yes

MSM

To

The Deputy Commissioner of Labour/
Appellate Authority under the
Tamilnadu Shops and Establishment Act
Coimbatore - 641 018.



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N. SENTHILKUMAR, J

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