



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.10.2016

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THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P(MD).No.2338 of 2011 and
M.P(MD).No.1 of 2011 and
M.P(MD).No.1 of 2012

R.Vijaya

... Petitioner

Vs.

1. The Regional Joint Registrar
of Co-operative Societies,
Trichirappalli - 20.

2. No.4268 Manapparai Agriculture
Producers Sales Co-operative Society,
Rep. by its Special Officer,
No.44, Kovilpatti Road,
Manapparai,
Trichy District.

3. R.Rajaram,
Domestic Enquiry Officer,
No.4268 Manapparai Agriculture
Producers Sales Co-operative Society,
No.44, Kovilpatti Road,
Manapparai, Trichy District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent pertaining to Revision Petition No.3074/10/Sapa, dated 14.09.2010 and quash the same and direct the respondents 1 and 2 to reinstate the petitioner with back wages and all attendant benefits.

For Petitioner : Mr.R.Subramanian

For Respondents : Mr.Aayiram K.Selvakumar (for R1)

Government Advocate

Mr.K.M.Vijayakumar (for R2)

**ORDER**

The petitioner has filed the instant Writ Petition for Certiorarified Mandamus to call for the records of the 1st respondent pertaining to the Revision Petition No.3074/10/SAPA dated 14.09.2010 and quash the same with a direction to the 1st and 2nd respondents to reinstate the petitioner with back wages along with attendant benefits.

2.The short facts of the case of the writ petitioner are that on 05.10.1998 the petitioner joined as Saleswoman in the 2nd respondent Co-Operative Society. For his better service, she was awarded the best Sales Women award. Further, there was no sufficient place to keep the empty Gunny bags at the Fair Price Shop No.1. So, the Gunny bags were handed over by the petitioner to another employee namely A.Ammasi at Vidathalampatti Fair Price Shop as per the instructions of the Special Officer. However, due to personal enmity between the petitioner and said Ammasi, he removed some gunny bags but alleged that the petitioner only took out the gunny bags. Though the petitioner did not commit any mistake she deposited the amount for the deficit of gunny bags as per the oral instructions of her higher officials. Thereafter on 15.02.2010 the 2nd respondent issued a charge memo alleged that the petitioner caused deficit of gunny bags and stocks. However, the petitioner gave her detailed reply but without giving any sufficient opportunity the 2nd respondent proceeded with the enquiry and found that the petitioner was guilty and terminated her service. Against the order of termination the petitioner preferred revision before the 1st respondent, but the 1st respondent dismissed the Revision Petition; therefore, by challenging the same the petitioner preferred the instant petition.

3.Per contra, the 2nd respondent filed counter affidavit and the learned Counsel for the 2nd respondent would contend that the Junior Co-operative Audit Officer, Manaparai Circle during his statutory stock verification for the period ended on 31.03.2009 in the Public Distribution Shop No.1 and Vedathalampatti part time shop found stock deficit to the tune of Rs.7445.40/- in the above shop No.1 and a sum of Rs.11,976/- in the part time shop. Since the petitioner was the Saleswomen in the above 2 shops, she must be responsible for the deficit. Hence she was placed under suspension by the 2nd respondent with effect from 27.05.2009. In continuation of the same disciplinary proceedings was initiated and charges were framed on 17.06.2009. Though the petitioner submitted her explanation on 30.06.2009 and denied all the charges the Domestic Enquiry Officer found the petitioner guilty.



Subsequently, on 27.10.2009 show cause notice was issued to the petitioner, but the explanation given by her on 20.01.2010 was not satisfied. Further it is the contention of the 2nd respondent that the full bench of this court in the case reported in **2007 (4) LLN 868** held that every case of termination will not entitle the employee to move the court. Therefore he prays for the dismissal of the Writ Petition.

4.I heard Mr.R.Subramanian, learned counsel appearing for the petitioner and Mr.Aayiram K.Selvakumar, learned Government Advocate appearing for the 1st respondent and Mr.K.M.Vijayakumar, learned counsel appearing for the 2nd respondent and all the materials available on record are perused.

5.According to the learned Counsel for the petitioner that as per the proceedings of the Special Officer 3 charges have been laid against the petitioner and they are as follows:

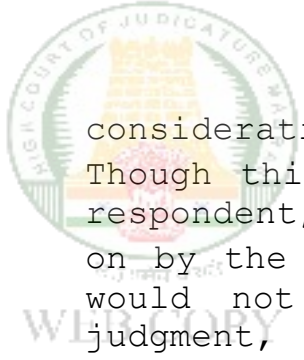
(i) the 1st charge is that the petitioner caused stock deficit to the tune of Rs.7,445.40/- in shop No.1 and Rs.11,976/- in part time shop.

(ii) charge No.2 is that the petitioner remitted lesser amount against the actual sale amount and took the original sale receipts outside the society and fabricated cash receipts.

(iii) Charge No.3 is that the petitioner acted against the instructions of Joint Registrar of Public Distribution System.

6.According to the Enquiry Officer, the 1st and 3rd charges were proved and the part of 2nd charge was also proved. So, as the Management lost trust over the petitioner decided that the dismissal of the petitioner from service would be proportionate in the case of the petitioner.

7.The learned counsel for the petitioner has further contended that the punishment of the dismissal imposed upon the petitioner is totally disproportionate and the charge of alleged fabrication of sale receipts is not proved. At the same time, as far as charge No.3 is concerned the Enquiry Officer has not given categorical finding with supporting evidence. Though the petitioner remitted back a sum of Rs.20,143/- as against the deficit of Rs.30,280.90/-, it is against the report of the Junior Co-operative Audit Officer. Because even in the counter statement it is contended by the 2nd respondent that a sum of Rs.7,445.40/- and another sum of Rs.11,976/- were figured as stock deficit. So, the amount arrived at a sum of Rs.30,280.90/- is against the amount arrived at a sum of Rs.7445.40/- and Rs.11,976/- according to the Junior Co-operative Audit Officer. This has not been taken into



consideration by the 1st respondent in his revision proceedings. Though this would enough to intervene in the findings of the 1st respondent, it is also pointed out here that the ratio as relied on by the 2nd respondent in the reported case in **2007(4) LLN 868** would not be applicable to the case on hand. Even in that judgment, it is classified that every case of termination of service will not make entitle the employee of the Co-operative Society to move the writ court, but the term used in the judgment of the Hon'ble Full Bench of this court was not at "all" cases. So, this court is having jurisdiction to entertain the writ Petition. Further, in the considered opinion of this court, there are reasons to interfere in the findings of the enquiry officer, disciplinary authority and in the findings of the revision.

8. In the result:

(a) the writ petition is allowed with the following directions that the impugned order of the 1st respondent is set-aside;

(b) the petitioner is ordered to reinstate into service without back wages for the period of suspension;

(c) the said exercise is to be completed by the respondent within a period of 4 weeks from the date of receipt of copy of this order;

(d) further it is made clear that the petitioner is entitled to continuity of service for the purpose of pension alone. With this direction the writ petition is ordered accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To

The Regional Joint Registrar
of Co-operative Societies,
Trichirappalli - 20.

+ 1 CC TO Mr.K.M.VIJAYAKUMAR, ADVOCATE IN SR No. 60017
+ 1 CC TO Mr.R.SUBRAMANIAN, ADVOCATE IN SR No. 60322

VS/SKN

TE/RSK/SAR-IV : 05/05/2017 : 4P/4C (IT)

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