

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.02.2017

CORAM :

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.3946 of 2011
and
M.P.Nos.1&2 of 2011

N.Elumalai

... Petitioner

.Vs.

1.The Joint Registrar of Coop. Societies,
Cuddalore Region, Cuddalore,
Cuddalore.

2.The Special Officer,
Melarungulam Primary Agricultural Coop. Credit Society,
Main Road, Ponnakuppam,
Natham Post, Anathur Via,
Panruti Taluk,
Cuddalore District.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, for issuance of writ of Certiorarified Mandamus, calling for the entire records relating to the order passed by the 2nd respondent in his proceedings No.Nil, dated 27.11.2009 whereby confirming the impugned order passed by the 1st respondent in his proceedings Na.Ka.No.1075/2010 Thu.Va.Tha, dated 10.12.2010 and quash the same and consequently direct the respondents to reinstate the petitioner into service with all backwages and other benefits.

For Petitioner : Mr.C.Prakasam

For Respondents: M/s.T.Girija (for R1)
Government Advocate
Mr.L.P.Shanmugasundaram (for R2)

ORDER

The instant Writ Petition is filed by the petitioner for writ of Certiorarified Mandamus calling for the records of the 2nd respondent in his proceedings No.Nill dated 27.11.2009 confirming the impugned order passed by the 1st respondent in his proceedings Na.Ka.No. 1075/2010 Thu.Va.Tha dated 10.12.2010 and

quash the same and consequently direct the respondents to reinstate the petitioner with all backwages and other benefits.

2.The case of the petitioner is that in the year 1987 he joined in the service of the 2nd respondent as Salesman in fair price shop under the control of Melarungulam Primary Agricultural Society, Panrutti Taluk. Later he was promoted as Attender on 01.07.1997 and further on 15.01.2008 the petitioner was allotted with additional charge of fair price shop at Mananthavinthaputhur. The petitioner was rendering his service with unblemished record. Originally the petitioner and one another person namely Muthukumarappan were appointed as in-charge of the fair price shop Mananthavinthaputhur on the very same date i.e. 15.01.2008, whereas the said Muthukumarappan refused to take charge of the said fair price shop and has joined in the office of the Society. Thereupon, the 2nd respondent deputed one another person namely Ramalingam along with the petitioner on 02.01.2009 for the said shop. However, the said Ramalingam also refused to take charge of the fair price shop. Therefore, with no other option, the petitioner was all along working solely and thus was over burdened.

3.The petitioner hence requested the 2nd respondent to relieve him from the fair price shop and assign him with work in their office itself. The petitioner was also assured with such arrangement of allotting him with office work. But in the meanwhile, upon the instruction and at the instigation of the 2nd respondent, the Secretary of the Society namely V.Arumugham inspected the fair price shop on 27.06.2009 and alleged some shortage in some ration items. In furtherance of the inspection report of Secretary, the petitioner was suspended from service on the very same day i.e on 27.06.2009.

4.Whereupon the 2nd respondent issued a Charge memo dated 22.07.2009 alleging that the petitioner have caused deficit of 50 gunny bags and deficit stock of some ration items. The petitioner submitted his explanation for the same on 31.07.2009 denying all the charges. Though, the petitioner have not committed any mistake, in the interest of the Society and based on the advice, besides with a bonafide view to safeguard his job has deposited the amount figured to be the deficit of ration items to the tune of Rs.15,620/-. In so far as the allegation pertaining to the deficit of Gunny bags it was reported by the petitioner that those gunny bags were issued only by the 2nd respondent to one of the members of the Board namely Dhamodharan.

5.It was further contended that the deficit figured out in the inspection report is also erroneous and the same is utter false. In fact the Secretary wantonly ignored the availability of about 100 kg of Black Dhal in the shop. The Secretary has purposefully ignored the availability of some ration items, since those items were found decayed and unfit for distribution. The said dhal weighing 100 kg remained unsold by the erstwhile Salesman and thus it became stock, whereas the petitioner has nothing to do with the same. The said stock was not taken into account and was wantonly ignored by the Secretary as well as the 2nd respondent, so as to escape from their liability for the fault and loss incurred due to their erstwhile Salesmen from the year 2006 to 2009 i.e prior to joining of duty by this petitioner.

6.But the above said facts were not at all considered by the 2nd respondent. Whereas a Domestic Enquiry was ordered, wherein during the course of enquiry the petitioner paid the entire deficit amount as alleged by the 2nd respondent, having basis upon the assurance given by the 2nd respondent that if the deficit amount is once paid then the petitioner's suspension will stand immediately and automatically revoked. However, during the Domestic Enquiry, the 2nd respondent stating that since the entire amount is paid by the petitioner it amounts to admission and thereby managed to receive a report dated 28.08.2009 as if concluding that the charges of deficit of stock and gunny bags stand proved. Based on the same the 2nd respondent herein with a malice thought of escaping himself from the above illegality committed by the erstwhile Salesman, but has passed an order of Termination of petitioner from service, on 27.11.2009. Aggrieved against the same the petitioner filed a Revision Petition under Section 153 of Tamil Nadu Co-operative Societies Act, 1983, however, erroneously the same came to be dismissed by the Joint Registrar of Co-operative Societies, Cuddalore Region, Cuddalore District on 10.12.2010 without proper appreciation of facts and law. Challenging the same, the petitioner filed this writ petition.

7.I heard Mr.C.Prakasam, learned counsel appearing for the petitioner and M/s.T.Girija, learned Government Advocate appearing for the 1st respondent and Mr.L.P.Shanmugasundaram, learned counsel appearing for the 2nd respondent and perused all the records.

8.The learned counsel appearing for the petitioner submitted that the petitioner is an innocent and he was victimized by the 2nd respondent for the ill deeds of the erstwhile Salesman. The petitioner was constrained and forced to pay the deficit amount as alleged by the 2nd respondent, having basis upon the word given by the 2nd respondent that if the amount is once paid then the petitioner's suspension will be immediately and automatically revoked. However, the 2nd respondent acted as if such payment amounts to admission of charges against the petitioner. Further the alleged gunny bags were issued only by the 2nd respondent to one of the members of the Board namely Dhamodharan. Moreover the deficit figured out in the inspection report is erroneous, since the Secretary wantonly ignored the availability of about 100 kg of Black Dhal. It was purposefully ignored since the Dhal was found decayed and unfit for distribution, as it remained unsold by the erstwhile Salesman. The said stock was not taken into account, so as to escape from their liability for the fault of their erstwhile Salesman from the year 2006 to 2009. In fact the petitioner was transferred and when he was about to relieve and to take charge on 01.07.2009, such malice intended the inspection was conducted on 27.06.2009 and was maliciously charged with allegations. Therefore, the order is unsustainable and liable to be set aside.

9.The respondents filed counter and contended that during the course of enquiry the petitioner admitting the stock deficit has paid the entire deficit amount. It is equally not correct to state that the Special Officer has handed over the empty gunny bags to the said Dhamodharan. It was further contended that keeping over the gunny bags under the custody of the sales person is one of the duties assigned to him and it is his own responsibility. Further the petitioner failed to produce Dhamodharan the Member of the Board as evidence, so as to prove that the gunny bags are supplied by the 2nd respondent. The inspection report of the Secretary is correct. Only observing due process of law and based on the evidence and the report of the enquiry, the petitioner was rightly terminated from service. Therefore, the order of the 2nd respondent confirming the impugned order passed by the 1st respondent is fair, lawful and hence the writ petition is liable to be dismissed.

10.This Court on perusal of the records finds that the sole conclusion arrived at by the respondents, in regard to the charges against the petitioner is that since the petitioner has paid the deficit amount the charges against him remain proven. Even the finding in the enquiry report reads as such vide page-18 of the report. At this juncture, it is noticed by this Court,

vide page-16 of the enquiry report, that a stock of 100 Kg of Black dhal was received by the erstwhile Salesman Muthukaruppan on 14.10.2008 while assuming charge from his predecessor namely Rajendran. The enquiry report reads that the only fault of the petitioner herein in respect of the charge No.1 is not making an endorsement in stock book that the gram is "unfit" for distribution, further in page-17 it is held that those erstwhile persons in charge of the fair price shop is to be identified and action is to be taken in this regard.

11.At this juncture, this Court finds that the petitioner however has paid an amount of Rs.3,600/- on 10.10.2009 towards the above decayed dhal, as calculated to be the Loss caused by the petitioner. It is needless to say that the petitioner herein was compelled to pay an amount of Rs.3,600/- towards loss incurred by the Society, for which he is not responsible. But the enquiry report and the impugned order proceeds that since certain amount was paid by the petitioner towards the alleged loss as indicated in the charge memo, all the charges remain proved. Such mechanical approach is neither appreciable nor is credible.

12.Furthermore, this Court is not pleased with the contention of the respondents that the petitioner herein has failed to produce the said Dhamodharan as evidence before the Disciplinary proceedings, so as to prove his case. In fact it is admitted by either side that the said Dhamodharan is none other than but one amongst the Managing Board Members of the concerned Society. Therefore, in the interest of justice, this Court feels that minimum effort ought to have been taken by the respondents to enquire over the allegations pertaining to gunny bags, whereas the respondents failed to do so, despite that both the respondents and the said Dhamodharan are duty bound for proper functioning and responsible for day to day of activities of the Society.

13.Further, it is seen that the 1st respondent vide para-3, page No.10 of the impugned order has held that since the entire deficit amount was paid by the petitioner, the same is amounts to admission of the charges by the petitioner. Furthermore vide page-12, para-7 the 1st respondent has held that such payment by the petitioner shall be deemed to be conclusive of the charges leveled against him.

14.It is needless to say that such a mechanical and straight jacket formula can never be adopted in cases of disciplinary proceedings. Therefore, this Court is of the considered opinion that the impugned order serves to be a classic example of non application of mind and thus entire disciplinary proceedings stands vitiated.

15.In view of the factual and legal discussion made above, this Court is of the considered opinion that the impugned orders of the respondents 1 and 2 herein are liable to be quashed and accordingly it is quashed.

16.In the result:

a) this writ petition is allowed by setting aside the order passed by the 2nd respondent in his proceedings No.Nil, dated 27.11.2009, whereby confirming the impugned order passed by the 1st respondent in his proceedings Na.Ka.No.1075/2010 Thu.Va.Thu, dated 10.12.2010;

b) the respondents are hereby directed to reinstate the petitioner into service from 27.11.2009 with all service and monetary benefits;

c) the said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

सत्यमेव जयते

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vs

To

1.The Joint Registrar of Coop. Societies,
Cuddalore Region, Cuddalore,
Cuddalore.

2.The Special Officer,
Melarungunam Primary Agricultural Coop. Credit Society,
Main Road, Ponnakuppam,
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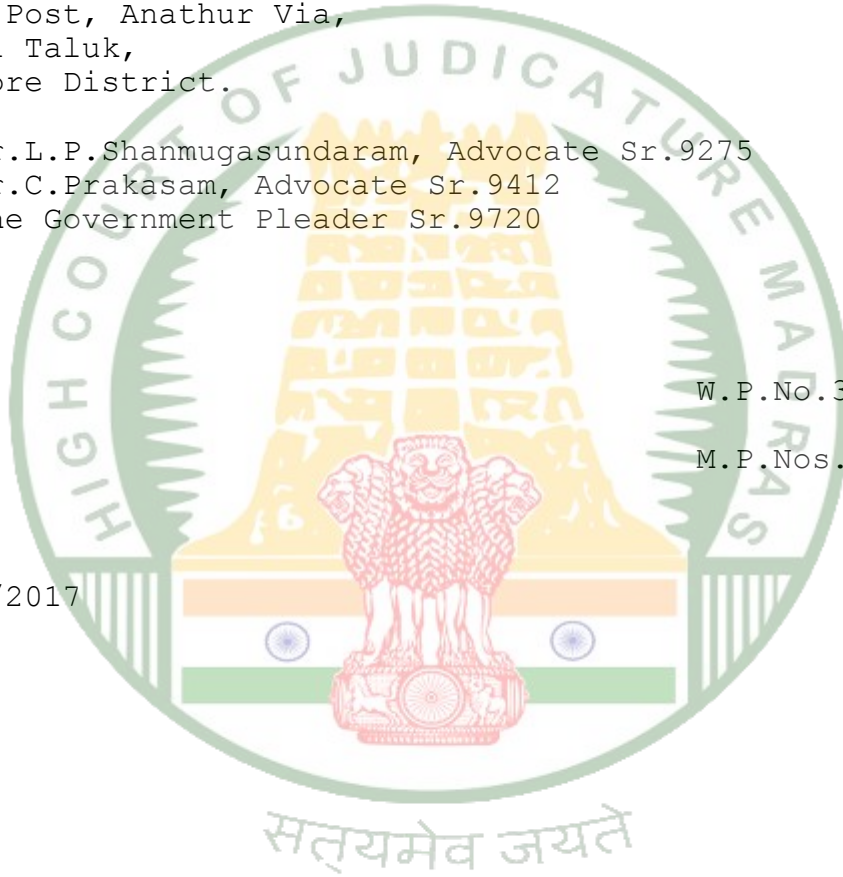
+1cc to Mr.L.P.Shanmugasundaram, Advocate Sr.9275

+1cc to Mr.C.Prakasam, Advocate Sr.9412

+1cc to the Government Pleader Sr.9720

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and
M.P.Nos.1&2 of 2011

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