

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 06.02.2017

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Writ Petition No.11271 of 2003

The Management of Minjur
Co-operative Agricultural
Co-operative Bank Ltd.,
rep. by its Special Officer,
Minjur,
Thiruvallur District. ... Petitioner

Vs.

1.The Assistant Commissioner,
Labour/The Appellate Authority,
Tamil Nadu Shops & Establishments,
Chennai.

2.P.Subramanian ... Respondents

Prayer: Writ Petition filed under Article 226 of the
Constitution of India, praying for a writ of Certiorari,
calling for the records of the first respondent made in
T.S.E2.31 of 2001 dated 21.02.2003 and to quash the same.

For Petitioner : Mr.M.S.Palaniswamy

For Respondent-2 : M/s.Balan Haridoss

O R D E R

The second respondent/Subramanian joined as a Clerk in
Minjur Agricultural Co-operative Bank Ltd., (herein after
would be referred to as Bank) some times in the year 1972 and
later from 25.04.1988, he was working as Secretary of the
Bank. He was placed under suspension on 24.06.1993 and served
with charge memo for alleged misappropriation of Rs.2.08
lakhs.

2.According to the Bank, the second respondent accepted
the allegations. Later, the additional charge memo for
misappropriation of Rs.14.58 lakhs was served on the second
respondent, for which, he gave an explanation dated
18.03.1995, in which, he had pleaded that he was not only the
person involved in the misappropriation but there were others
also. The Bank appointed one Mr.Selvam, Advocate as an Enquiry

Officer to enquire into the charges. The Enquiry Officer gave sufficient opportunities to the second respondent to appear before him. Despite which, the second respondent did not participate in the enquiry. The Enquiry Officer by report dated 18.11.1995 held the charges as proved. Pursuant to which, the second respondent was dismissed from service on 28.02.1996.

3.The second respondent filed an appeal under Section 41 (2) of the Tamil Nadu Shops and Establishments Act with delay. The Appellate Authority condoned the delay and took the appeal on file as T.S.E.2. 31/2001 and after hearing the second respondent and the Bank, set aside the order of dismissal dated 28.02.1996 passed by the Bank. Challenging the same, the Bank has filed the present writ petition.

4.Heard Mr.M.S.Palaniswamy, learned counsel for the petitioner and Mr.Balan Haridoss for the second respondent.

5.On a careful perusal of the impugned order, this Court finds that the Bank had broadly classified the allegations against Subramanian under two heads namely,

a)for the shortfall of stocks of fertiliser, seeds, pesticides and groundnuts during various periods were determined at Rs.6,76,198.89, Rs.8014.66 and Rs.1,96,173/-.

b)for the misappropriation of society's funds on various dates i.e., Rs.29,880/-, Rs.96,320/-, Rs.60,000/- and Rs.4,48,995.17

6.Before the Appellate Authority, eight documents were marked on behalf of the second respondent/Subramanian and ten documents were marked on behalf of the Bank.

7.After analysing the evidence adduced by both the parties, the Appellate Authority came to the conclusion that the Bank had not properly conducted the domestic enquiry against Subramanian and therefore, his termination of service on 28.02.1996 was held to be illegal.

8.On a perusal of the Enquiry Report which was marked as Ex.R8 by the Bank, it is seen that the Enquiry officer has narrated all the allegations against Subramanian and had fixed the enquiry on 01.07.1995. On 01.07.1995, Subramanian sought for adjournment and the matter was adjourned to 08.07.1995. On 08.07.1995, Subramanian wanted some more time to peruse the document and therefore, the Enquiry was adjourned to 22.07.1995. On 22.07.1995, Subramanian did not appear before the Enquiry Officer. Therefore, fresh notice was issued on 16.08.1995, asking him to appear on 26.08.1995. On 26.08.1995, Subramanian appeared with his Advocate Babu and filed vakalat and the case was adjourned to 09.09.1995. Though Bank appeared before the Enquiry Officer with a plea

that Subramanian should not be permitted to appear along with Advocate, yet the Enquiry Officer negatived for the objection raised by the Bank and permitted Subramanian along with his Advocate. On 09.09.1995, neither Subramanian nor his Advocate appeared before the Enquiry Officer and the case was adjourned to 16.09.1995. Even on 16.09.1995, neither Subramanian nor his Advocate appeared for enquiry and therefore, fresh enquiry notice was issued on 11.11.1995 to Subramanian and the same was received by him on 13.11.1995. In the said notice, the date of enquiry was fixed on 18.11.1995. On 18.11.1995 also, neither Subramanian nor his Advocate appeared for enquiry and the Enquiry Officer waited from 10 a.m. to 5 p.m. and ultimately, passed the final orders on the same day holding that the charges against Subramanian was proved.

9. From the above, it is very clear that the Enquiry Officer has given sufficient opportunities to Subramanian to appear for enquiry. However, on reading of the Enquiry Report, the Enquiry Officer has failed to discuss the evidence adduced by the Bank and had merely concluded that misconducts have been established without analysing the evidence in a proper perspective. Therefore, the Enquiry report dated 18.11.1995 appears to be very bland.

10. Mr. Balan Haridoss, learned counsel for the second respondent submitted that if the management had wanted to adduce evidence before the Appellate Authority, they should have taken a specific plea seeking leave and in the absence of such a pleading, this Court should not remand the matter back to the Appellate Authority for fresh consideration.

11. In this case, the charges against Subramanian are indeed very grave inasmuch as it is alleged that he had defalcated huge amounts under various heads. Even in his explanation to the show cause notice, he has not denied the allegations but had only stated that apart from him, others were also involved in the misappropriation. Such a plea cannot be countenanced. Though Subramanian was dismissed from service on 28.02.1996, the proceeding before the Appellate Authority was initiated only with a delay and that condonation of delay petition was allowed and the same was taken up for hearing only in the year 2001. Before the Appellate Authority, the Bank was under the impression that the Enquiry report would satisfy the requirements of law and that his why, they did not take a plea to seek leave of the Appellate Authority to adduce evidence to prove the charges.

12. On a reading of the Enquiry Report dated 18.11.1995, this Court is in agreement with the findings of the Appellate Authority that the Enquiry Report does not contain as to how the Enquiry Officer arrived at the conclusion that the charges against Subramanian stood proved. Just because there is an infirmity in the Enquiry Report, Subramanian cannot be given a clean chit as was done by the Appellate Authority.

13.In the result, this Court is of the view that in the interest of justice, the impugned order should be set aside and the matter be remanded back to the Deputy Commissioner of Labour/Appellate Authority, Tamil Nadu Shops and Establishments, Chennai, for fresh disposal in accordance with law. However, liberty is given to the Bank to adduce evidence before the Appellate Authority to prove the allegations against Subramanian.

14.It is represented that Subramanian had died in the meantime. It is open for his legal heirs to appear before the Appellate Authority/the Deputy Commissioner of Labour, Chennai and contest the claim of the Bank.

15.Though the impugned order in T.S.E.2 31/2001 dated 21.02.2003 has been passed by the Deputy Commissioner of Labour/Appellate Authority under Tamil Nadu Shops and Establishments, Chennai, in the cause title, the Assistant Commissioner of Labour, Tamil Nadu Shops and Establishments, Chennai, has been impleaded as R1.

16.Registry is directed to dispatch the records of this case, if any and also, the copy of this order to the file of the Deputy Commissioner of Labour/Appellate Authority, Tamil Nadu Shops and Establishments, Chennai.

17.In fine, the writ petition is allowed and the impugned order passed by the Deputy Commissioner of Labour/Appellate Authority, Tamil Nadu Shops and Establishment, Chennai dated 21.02.2003 is set aside and the matter is remanded back to the Appellate Authority for fresh disposal in accordance with law. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

DP

To

1.The Deputy Commissioner,
Labour/The Appellate Authority,
Tamil Nadu Shops & Establishments,
Chennai.

2.The Assistant Commissioner,
Labour/The Appellate Authority,
Tamil Nadu Shops & Establishments,
Chennai.

+1cc to Mr.Balan Haridoss, Advocate, S.R.No.7538
+1cc to Mr.Palanisamy, Advocate, S.R.No.7581
+1cc to the Government Pleader, S.R.No.9049

LRS (CO)
Eu 1.3.17

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