

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

W.P. No.2665 of 2012

R.Jeya Prakash

.. Petitioner

Vs.

1.The Joint Registrar of Co-operative Societies,
No.109-A/147, Karuppusamy Nagar,
Housing Unit, Goundam Palayam,
Coimbatore - 30.

2.The Special Officer,
K, 1967, Maruthur Co-operative Stores Ltd.,
No.265, Poosari Mariappan Street,
Coimbatore.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records on the file of the second respondent dated 04.10.2010 and the consequential order passed by the first respondent made in Na.Ka.No.11782/2010/V2, dated 13.01.2011 and quash the same and consequently direct the respondents to reinstate the petitioner with all proportionate benefits and continuity of service.

For Petitioner : Mrs.Thenmozhi Shivaperumal
For Respondents : Mr.L.P.Shanmuga Sundaram
Special Government Pleader (Co.Op.) for R1

Mr.S.Palaniswamy for R2

ORDER

Heard Mrs.Thenmozhi Shivaperumal, learned counsel for the petitioner; Mr.L.P.Shanmuga Sundaram, learned Special Government Pleader for the first respondent; Mr.S.Palaniswamy, learned counsel for the second respondent and perused the materials available on record.

2. This Writ Petition has been filed for issuance of Writ of

Certiorarified Mandamus to call for the records of the second respondent dated 04.10.2010 and the consequential order passed by the first respondent made in Na.Ka.No.11782/2010/V2, dated 13.01.2011 and quash the same and consequently direct the respondents to reinstate the petitioner with all proportionate benefits and continuity of service.

3. The petitioner, who was working as a Packer in the second respondent Co-operative Society was also a Sales Man In-charge. The second respondent having found stock deficit to an extent of Rs.10,459/- issued a charge memo. It seems that the petitioner submitted his explanation on 03.07.2010. Having not satisfied with the explanation offered by the petitioner, an Enquiry Officer was appointed, who after providing an opportunity to the petitioner and on the basis of evidence collected during the enquiry proceedings, came to the conclusion that the charge levelled against the petitioner was proved. The Disciplinary Authority, the second respondent herein based on the report of the Enquiry Officer, dismissed the petitioner from service.

4. Aggrieved over the order of dismissal, the petitioner preferred a revision to the first respondent. However, the revision came to be dismissed on the only ground that a criminal case was registered against the petitioner. Assailing the orders, the present Writ Petition has been filed.

5. Mrs.Thenmozhi Shivaperumal, learned counsel for the petitioner submitted that though a criminal case was registered against the petitioner in the year 2010, he was honourably acquitted by the criminal Court eventually. It is also contended that the first respondent without going into the merits of the case, dismissed the revision on the only ground that an FIR was pending against the petitioner. Hence, the order is liable to be set aside.

6. Mr.L.P.Shanmuga Sundaram, learned Special Government Pleader for the first respondent and Mr.S.Palaniswamy, learned counsel for the second respondent would argue that the charge levelled against the petitioner was found to be proved after due enquiry. It is also an admitted fact that when the revision was taken up for hearing, a criminal case was pending against the petitioner and hence, there is no infirmity in the order of the first respondent.

7. In the case on hand, it is not in dispute that when the petitioner was working as a Packer in the second respondent Co-operative Society, a charge Memo dated 28.06.2010 was issued against him alleging that there was stock deficit. Though the Disciplinary Authority dismissed the petitioner on the basis of the report of the Enquiry Officer dated 12.07.2010, it is seen

that the first respondent instead of giving findings on merits, dismissed the revision of the petitioner on the only ground of a pendency of the Criminal Case.

8. It is settled law that acquittal in a criminal case cannot be a ground to set aside the order passed in the disciplinary proceedings since standard of proof before the Forms are different. However, in my considered view, the first respondent ought to have gone into the merits of the case before passing a final order. In that view of the matter, the impugned order of the first respondent dated 13.01.2011 is set aside and the matter is remanded back to the first respondent for fresh consideration, who shall pass orders on the revision of the petitioner dated 14.12.2010 on merits and in accordance with law, after providing opportunity to all necessary parties within a period of eight weeks from the date of receipt of a copy of this order.

9. Accordingly, the Writ Petition is disposed of. There is no order as to costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

r n s
To

1.The Joint Registrar of Co-operative Societies,
No.109-A/147, Karuppusamy Nagar,
Housing Unit, Goundam Palayam,
Coimbatore - 30.

2.The Special Officer,
K, 1967, Maruthur Co-operative Stores Ltd.,
No.265, Poosari Mariappan Street,
Coimbatore.

+1cc to Mr.M.S.Palaniswamy, Advocate, S.R.No.74794

+1cc to Mr.Thenmozhi Shivaperumal, Advocate, S.R.No.74665

+1cc to the Government Pleader, S.R.No.75325

W.P. No.2665 of 2012

SR(CO)
GSP(28/11/2018)