

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.BHARATHIDASAN

W.P.No.3474 of 2014

and

M.P.Nos.1 to 3 of 2014

Management

Andhiyur Consumer

Co-operative Stores Ltd.,

Andhiyur represented

by its President

... Petitioner

Vs

1.The Joint Registrar of
Co-operative Societies,
Erode Region, Erode.

2.S.Shanmugam

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records pertaining to the proceedings of the 1st respondent with regard to the revision preferred by the 2nd respondent under section 153 of TN Co-operative Societies Act, 1983 r/w. Rule 169 of TN Co-operative Societies Rules, 1988 and quash the order dated 27.09.2013 in Na.Ka.No.1980/2011/SB passed by the 1st respondent directing reinstatement of the 1st respondent by setting aside the order of dismissal dated 27.01.2011 passed against the 2nd respondent by the special officer of the petitioner society.

For Petitioner

: Mr.K.V.Shanmuganathan

For Respondents

: Mrs.T.Girija,
Government Advocate for R1

Mr.R.Gopinath for R2

O R D E R

This writ petition has been filed challenging the order passed by the 1st respondent modifying the punishment imposed on the 2nd respondent.

2. The 2nd respondent was working as a sales man in the writ petitioner society. On 31.07.2010, a charge memo has been issued against the 2nd respondent levelling 4 charges as against him viz.,

1.While he was working as a sales man in the fair price shop, Pachampalayam he has belatedly remitted the sales amount.

2.There was a deficit in stock.

3.Caused damage to the goods to the tune of Rs.6,462/-.

4.He had failed to pay penalty of Rs.500/- imposed by the Inspector of Society.

3. Earlier a show cause notice was issued to the 2nd respondent for which he had submitted his explanation admitting the belated deposit of sale proceeds and deficit in stock for which he has also paid interest. Regarding the charge of causing damages to the goods worth about Rs.6,462/-, the 2nd respondent has given his explanation that the goods were delivered to the fair price shop was in a damaged condition, hence, he was not in a position to sell the goods and hence he was not responsible for the loss. So far as the 4th charge regarding payment of fine amount is concerned he has deposited the fine amount as early as on 03.07.2010 and he has not caused any loss to the society.

4. Thereafter, enquiry was conducted and enquiry officer submitted a report holding that all the four charges were proved. After receipt of the report from the enquiry officer the Disciplinary Authority after issuing show cause notice passed an order holding that all the charges are proved and also removed him from service.

5. Challenging the above said order the 2nd respondent filed a revision before the 1st respondent. The 1st respondent, revisional authority held that the charges levelled against the petitioner has been proved, however, considering the various circumstances he has modified the punishment into that of withholding increment for a period of three years without cumulative effect and reinstatement to service without back wages and continuity of service. Now challenging the order modifying the punishment, the Society filed the present writ petition.

6. The learned counsel appearing for the petitioner would contend that the 1st respondent revisional authority without giving valid reasons whatsoever have modified the sentence into that of withholding the increments for three years with cumulative effect. He would also contend that when the charges

are serious and the 2nd respondent being a habitual offender the 1st respondent ought not to have modified the sentence.

7. Mr.R.Gopinath, learned counsel appearing for the 2nd respondent would contend that it is not a case of misappropriation of funds of the Society, whereas, it is a case where there is some delay in depositing the sale proceeds for which the petitioner has given a suitable explanation and he has also paid interest for the belated payment of deposit of sale proceeds. Considering the above circumstances, the revisional authority has modified the punishment. Even though the revisional authority has passed an order reinstating the 2nd respondent into service, so far the 2nd respondent has not been reinstated into service.

8. I have considered the rival submissions.

9. The 1st charge levelled against the 2nd respondent was that, in three occasions he has not deposited the sale proceeds within time. The 2nd respondent also admitted the same and he has also paid interest for the belated payment. The 2nd charge is related to a stock deficit to the tune of Rs.3,500/- which was also deposited by the petitioner along with interest. As far as the 3rd charge is concerned, it is related to damage to the goods worth about Rs.6,462/-, for which the 2nd respondent has submitted his explanation that, the goods were delivered to him in a damaged condition, apart from that the self-life of the goods was also expired, hence, he was not in a position to sell those goods. Further he has also submitted that, the amount has already been deducted from his salary. The 4th charge was for non-payment of fine amount. Admittedly, the petitioner has deposited the fine amount as early as on 03.07.2010.

10. The revisional authority after considering the materials had come to a conclusion that all the charges have been proved. But taking into consideration the alleged loss caused to the society has been compensated and the 2nd respondent has also paid the entire amount, had taken a lenient view and modified the punishment of removal from service into a one of reinstatement into service withholding increments for 3 years without cumulative effect. However, the revisional authority did not order back wages and continuity of service.

11. I have also carefully considered the materials available on record. Considering the fact that the petitioner is only a sales man, and also taking into consideration that, there is no allegation of misappropriation of any funds. The main charge is belated payment of sale proceeds to the society. Taking into consideration of the fact, for the belated deposit, the 2nd respondent has paid interest and the loss is also

compensated by the 2nd respondent, the revisional authority modified the punishment. I do not find any illegality in the orders passed by the 1st respondent/ revisional authority. Hence, the writ petition is dismissed. No costs. Consequently, the connected miscellaneous petitions are also closed.

12. Now it is stated that, even though revisional authority passed the order as early as on 27.09.2013, so far the petitioner was not reinstated into service. In the above circumstances, the petitioner is directed to reinstate the 2nd respondent on or before 01.01.2019.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

dsa

To

1.The Joint Registrar of
Co-operative Societies,
Erode Region, Erode.

+1 cc to Mr.K.V.Shanmuganathan, Advocate, S.R.No.81116

+1 cc to Mr.R.Gophinath, Advocate, S.R.No.81460

+1 cc to the Government Pleader, S.R.No.81762

SSM(11/01/2019)

W.P.No.3474 of 2014

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