



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.02.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD) .No.264 of 2016

and

W.M.P. (MD) .No.196 of 2016

The Management,
Southern Railway Employees,
Consumer Cooperative Store,
through its President,
Dindigul Post & District.

...Petitioner

Vs.

1. The Appellate Authority,
Tamil Nadu Shop and Establishment Act,
(Deputy Commissioner of Labour),
Nehruji Nagar,
Dindigul Post & District.

2. C.Senthilkumar

... Respondents

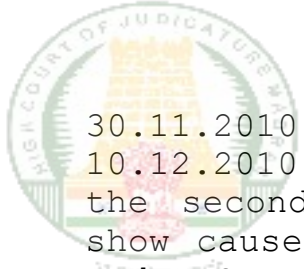
Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records from the first respondent's impugned order passed by the first respondent made in T.N.S.E. Appeal No.11/2012 dated 14.02.2014 and quash the same as illegal.

For Petitioner	: Mr.R.Saravanan
For R1	: Mrs.S.Srimathy
	Special Government Pleader
For R2	: Mr.S.Karthick

ORDER

Heard the learned counsel on either side.

2.The petitioner is a Society registered under the Tamil Nadu Co-operative Societies Act. The second respondent herein was working as a Junior Assistant / Secretary in-charge from 03.09.2009 to 11.03.2010. One R.Prabhu was working as a Salesman in the retail shop during the relevant time and he committed misappropriation of the sales amount to the tune of Rs.4.22 Lakhs. The second respondent was guilty of lack of supervision in this regard. He was placed under suspension and charge memo dated 27.11.2010 was issued. He submitted his explanation on



30.11.2010. The Enquiry Officer submitted his report on 10.12.2010 holding that the charges 1 and 2 are levelled against the second respondent stood proved. The Management issued the show cause notice on 31.12.2010. In the mean while, an enquiry under Section 81 of the TNCS Act was ordered. Based on the same, a criminal case was registered against the second respondent herein. The second respondent was dismissed from service by an order dated 15.10.2012. Aggrieved by the same, the second respondent preferred an appeal before the first respondent under the Tamil Nadu Shops and Establishment Act. The first respondent set aside the dismissal order and allowed an appeal on 14.12.2014. This is under challenge in this Writ Petition.

3.The learned counsel appearing for the petitioner reiterated the grounds set out in the affidavit filed in support of the Writ Petition. This Court went through the contents of the charge memo. The charges levelled against the second respondent basically pertain to lack of supervision. Before the Appellate Authority on the side of the employee as many as 15 documents were marked. It is seen there from that instruction was given to the salesman concerned to set right the shortfall. The salesman had also remitted the shortfall amount with interest. But, this aspect of the matter was not taken note of in the domestic enquiry. The delinquent's explanation dated 30.11.2010 was marked as document No.3 during the appeal proceedings. The steps taken by the second respondent have been set out in detail. In fact, shortfall was noticed and thereafter the person concerned was made to work with one Inbavalli and Chelladurai. That is how all the facts came to light. The Appellate Authority took the view that when sufficient steps were taken by the second respondent and consequently, the shortfall amount had also been made good, there was absolutely no justification or reasonable cause for dispensing with the service of the second respondent.

4.This Court is of the view that reasons given by the Appellate Authority are very much sound and do not warrant any interference. This Court went through the grounds taken in the affidavit filed in support of the Writ Petition. The petitioner pleads that the second respondent had connived with the said Prabhu and indulged in misappropriation. But this runs counter to the charges framed by the petitioner society. Charge that is now under consideration only alleges lack of supervision on the part of the second respondent. This cannot be improved upon. The affidavit filed by the petitioner is also silent with regard to the payment of the amount in question together with interest with the said Prabhu. If that is so, only for mere lack of supervision there is no justification for dismissing the second respondent from service.



5. The Writ Petition stands dismissed. No costs.
Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

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/True Copy/

Sub Assistant Registrar

To
The Deputy Commissioner of Labour,
Appellate Authority,
Tamil Nadu Shop and Establishment Act,
Nehruji Nagar,
Dindigul Post & District.

+1cc to The Spl. Government Pleader Sr.No.48618

TSG

VB/SKN/RSK/SAR1/31.05.2018/3P/3C

W.P. (MD) .No.264 of 2016
13.02.2018