

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.29000 of 2011
and
M.P.No.2 of 2011

T.Rajendran

.. Petitioner

Vs.

1.Joint Registrar of Co-op. Societies,
Nagapattinam Region,
Nagapattinam.

2.The Special Officer,
ZC.99, Manakkudi primary Agricultural
Co-Operative Credit Society,
Manakkudi Post, Thirukuvalai Taluk,
Nagapattinam District.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorarified Mandamus, calling for the entire records relating to the impugned order passed by the 1st respondent in his proceedings Na.Ka.4866/2011/A-3, dated 19.11.2011 whereby confirming the order passed by the 2nd respondent in his proceedings No.Nil, dated 17.04.2004 and quash the same and consequently direct the respondents to reinstate the petitioner into service with all backwages and monetary benefits.

For Petitioner : Mr.C.Prakasam

For R1 : Mr.D.Venkatachalam
Additional Government Pleader (Co-op)

For R2 : Mr.M.S.Palaniswamy

O R D E R

Writ Petition is filed for issuance of a writ of Certiorarified Mandamus, calling for the entire records relating to the impugned order passed by the 1st respondent in his proceedings Na.Ka.4866/2011/A-3, dated 19.11.2011 whereby

confirming the order passed by the 2nd respondent in his proceedings No.Nil, dated 17.04.2004 and quash the same and consequently direct the respondents to reinstate the petitioner into service with all backwages and monetary benefits.

2.The petitioner while working as a Salesman in the fair price shop run by the second respondent, a charge memo consisting of 6 charges was issued to him by the second respondent. The petitioner submitted his explanation to the said charge memo. Not being satisfied with the said explanation, the second respondent conducted a domestic enquiry. The petitioner participated in the enquiry. The Enquiry Officer submitted his report holding that charges leveled against the petitioner were proved. The second respondent issued second show cause notice calling upon the petitioner to submit his explanation. The petitioner sought for time and the second respondent extended the time. The petitioner submitted his explanation. The second respondent by the order dated 17.04.2004 dismissed the petitioner from service for the charges leveled against the petitioner. The petitioner filed revision before the first respondent which was dismissed by the proceedings dated 24.05.2004. The petitioner filed W.P.No.24460 of 2004 on the ground that first respondent did not consider the objections raised by the petitioner in the revision. This Court by the order dated 28.07.2011, set aside the order of the first respondent and remanded the revision to the first respondent with a direction to consider the grounds raised by the petitioner and pass orders on merits by giving reasons. After remand, the first respondent considered the grounds raised by the petitioner and dismissed the revision by giving reasons. The present Writ Petition is filed challenging the order of the second respondent dated 17.04.2004 as confirmed by the first respondent dated 19.11.2011.

3.The learned counsel appearing for the petitioner reiterated the various grounds raised in revision and referred to grounds of revision filed in typed set of papers. The learned counsel appearing for the petitioner contended as follows:

3(i).The petitioner requested the Special Officer to promote him as Secretary, as he was possessing all requisite qualification. The Special Officer in order to promote another person who did not possess the requisite qualification, rejected the request of the petitioner and promoted the unqualified person. The petitioner sent complaint to higher authority against the Special Officer. Due to the same, the second respondent framed false and fabricated charges against the petitioner. The petitioner denied all the charges and explained how the charges are false.

3(ii).The Taluk Supply Officer was enemically disposed towards the petitioner as there was some strained relationship on earlier occasion. The report given by the Taluk Supply Officer is false. The report does not contain the particulars of the irregularities committed by the petitioner. The details of the alleged forgeries were not furnished. The petitioner has not committed any irregularity and is not responsible for the shortage. Even though the petitioner is not responsible for the shortage, he paid the value of shortage. He is not liable to pay twice the value of shortage. In fact the second respondent is liable to refund the amount paid by him.

3(iii).As far as shortage of uncontrolled articles to the value of Rs.3,527.85 as mentioned in charge no.3 is concerned, there were no shortage. The goods were available when the petitioner handed over the charge to Ganesan. Those goods were spoiled goods. The said Ganesan refused to take charge of those goods and also refused to acknowledge the availability of the said goods.

3(iv).As far as charge no.4 is concerned, the Enquiry Officer himself has recorded that petitioner has supplied the goods to the beneficiaries, but erroneously held that petitioner committed irregularity by supplying goods meant for public to SGRY and SGRY rice to general public. The Enquiry Officer having held that petitioner has supplied the goods to the beneficiaries ought to have exonerated the petitioner.

3(v).As far as charge nos.2 and 4 are concerned that petitioner supplied less quantity by affixing magnet stone weighing 250 gram, the complaint was not given by the person who alleged to have received less quantity of goods. One Jeevanandham gave the complaint belatedly. He was not examined in the enquiry. One Senthilkumar was examined. While in the complaint, it was stated that to one Singaravelu, less quantity of goods was supplied. The alleged magnet stone was not produced.

3(vi).The Enquiry Officer without properly appreciating the charges leveled against the petitioner and there being no acceptable evidence to prove the charges, erroneously held that charges are proved. The finding of the Enquiry Officer is perverse as the same is without any basis. The respondents mechanically accepted the report of the Enquiry Officer and dismissed the petitioner from service. The impugned orders of the respondents are not valid and legal and prayed for allowing the Writ Petition.

4.Per contra, the learned Additional Government Pleader appearing for the first respondent and learned counsel appearing

for the second respondent separately contended that the petitioner was working only as Salesman in fair price shop and he is not qualified to be appointed as Secretary. The allegation that ineligible person was appointed as Secretary is denied. The allegation that in order to wreck vengeance, the Special Officer issued charge memo containing false and fabricated charge is baseless.

4(i).The fair price shop in which the petitioner was working was inspected by Taluk Supply Officer and on verification of records it was found that there was shortage of goods valued Rs.3,373.60. The petitioner admitted the shortage. When there is shortage of goods, the person responsible in-charge has to pay double the value of shortage. The petitioner paid only the value of shortage. He has to pay the balance amount. Having admitted the charges and paid the amount, it is not open to the petitioner to now contend that he has not committed any irregularity.

4(ii).The petitioner was suspended from service. When he handed over charge to Ganesan, who was put incharge of fair price shop, there was shortage of goods to the value of Rs.3,527.85. It is not correct to state that there was no shortage and said Ganesan refused to take charge of spoiled goods.

4(iii).The petitioner while supplying the goods to public affixed magnet stone of 250 gram in the weighing machine and supplied less quantity of goods to the public. On the complaint, the fair price shop was inspected and in the enquiry the charge was proved by examining the affected person.

4(iv).The petitioner received rice to supply for the beneficiaries on SGRY scheme but did not supply to them. He received the tokens from the beneficiaries and without supplying rice, forged their signatures in the receipt. By above action, the petitioner brought down the reputation of the second respondent and also Public Distribution System.

4(v).The domestic enquiry was conducted in a fair and proper manner giving ample opportunity to the petitioner. In the domestic enquiry, the petitioner examined the witnesses and raised no objection during enquiry. The second respondent issued second show cause notice enclosing copy of the enquiry report and called upon the petitioner to submit his explanation. After considering all the materials, the second respondent passed the order dismissing the petitioner from service. The first respondent considering all the objections raised in the revision filed by the petitioner, dismissed the same by giving valid reason for rejecting the objections raised by the petitioner.

There is no merit in the Writ Petition and prayed for dismissal of the Writ Petition.

5. Heard the learned counsel appearing for the petitioner as well as the second respondent and the learned Additional Government Pleader appearing for the first respondent and perused the entire materials on record.

6. The first contention of the learned counsel appearing for the petitioner is that the second respondent did not promote the petitioner as Secretary, but promoted ineligible person as Secretary and when the petitioner complained about the same to the higher authorities, the second respondent framed false charges. The petitioner has not produced any material to substantiate this contention and therefore the same is unacceptable.

6(i). The second respondent issued charge memo containing 6 misconducts, alleged to have been committed by the petitioner. They can be categorized as follows:

CATEGORY I - Charges 1 and 3: Shortage of value of goods of Rs.3,373.60 and Rs.3,527.85.

CATEGORY II - Charges 2 and 4: Shortage in supply of goods to card holders by affixing magnet stone weighing 250 gram in weighing scale and forged the signature of person entitled to receive rice under SGRY scheme.

CATEGORY III - Charges 5 and 6: That due to above 4 misconducts the reputation of the second respondent and Public Distribution System is damaged.

CATEGORY I - Charges 1 and 3:

(a) The first charge is that Circle Supply Officer verified all the ration cards of fair price shop namely 100% verification and found irregularity namely shortage to the tune of Rs.3,373.60. According to the second respondent, the petitioner did not make entry in the ration card or in the stock register and fabricated bills and supplied the said goods to third parties. The Enquiry Officer has generally held that entries were made in ration cards but not made in the stock registers. There is no evidence to prove the above findings and no document was produced before the Enquiry Officer as to how many entries were made in ration cards but not in stock registers. Similarly, no material was produced to show that after making entries in the stock register, no entries were made in the ration cards. None of the ration card holders were examined in the domestic enquiry. When the petitioner denied the charge leveled against

him, the Enquiry Officer without there being any evidence, held that the charge was proved on the ground that petitioner had paid the amounts which amounts to admitting his guilt. The said reasoning is erroneous.

(b)As far as third charge is concerned, it is the contention of the petitioner that goods valued at Rs.3,527.85 were available at the time of handing over charge to Ganesan. But the said Ganesan refused to receive the same. From the enquiry report it is seen that the reason given by the Enquiry Officer for not accepting the same is correct. The petitioner did not inform the higher authorities about the spoiled goods and that there were spoiled goods at the time of handing over the goods. The petitioner informed about the spoiled goods only when charge memo was issued to him. The petitioner has denied the shortage and irregularity. There is no error in the findings of the Enquiry Officer, but did not substantiate the same by any acceptable evidence.

CATEGORY II - Charges 2 and 4:

7.The second charge is that the petitioner affixed a magnet weighing 250 gram and supplied less quantity of goods to general public. This incident alleged to have happened on 02.06.2003, while the petitioner was supplying goods to one Senthilkumar and the magnet stone was ceased. The complaint was given by one Jeevanandham on 30.06.2003 to the District Collector and an inspection was made and enquiry was conducted on 01.07.2003. In the domestic enquiry, the complainant Jeevanandham was not examined and one Senthilkumar was examined. The magnet stone was not produced. Considering the fact that complaint about this incident was not given immediately but was given after a lapse of 24 days, the second respondent has not examined any public to prove that they were supplied less quantity goods and the magnet stone alleged to have been used was also not produced, the evidence let in by the second respondent is not sufficient to hold that such charge was proved against the petitioner.

7(i)As far as fourth charge is concerned, the second respondent failed to prove that petitioner did not supply the SGRY rice to the eligible persons. The Enquiry Officer held that the petitioner supplied rice to the eligible persons but supplied the same from the rice meant for general public and supplied SGRY rice to the general public and thus committed irregularity. It is not the charge leveled against the petitioner. Without there being any charge, the Enquiry Officer found the petitioner guilty of irregularity.

8.For the above reasons it is clear that the second respondent failed to prove the above three categories of charges

leveled against the petitioner except charge No.3 in Category I. The report of the Enquiry Officer that above charges are proved is erroneous and has been rendered without properly appreciating the evidence let in before him. Second respondent proved only the charge no.3 leveled against the petitioner, which is shortage of goods worth Rs.3,527.85. For the said shortage of goods, the order of dismissal is disproportionate to the proven charges.

CATEGORY III - Charges 5 and 6:

9.The charges 5 and 6 are consequential to charges 1 to 4. The second respondent failed to prove charges 1,2 and 4 and therefore these two charges are without merits.

10.The first respondent after remand elaborately considered the objections raised in the grounds. But without properly appreciating the materials on record erroneously dismissed the Revision filed by the petitioner.

11.For the above reasons the orders of respondents are quashed. Considering the fact the second respondent proved charge No.3 leveled against the petitioner and nature of the said charge, it will be in the interest of justice that petitioner is directed to pay twice the value of shortage of goods as mentioned in charge No.3.

12.With the above direction, the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

To

1.The Joint Registrar of Co-op. Societies,
Nagapattinam Region,
Nagapattinam.

WEB COPY

2.The Special Officer,
ZC.99, Manakkudi primary Agricultural
Co-Operative Credit Society,
Manakkudi Post, Thirukuvalai Taluk,
Nagapattinam District.

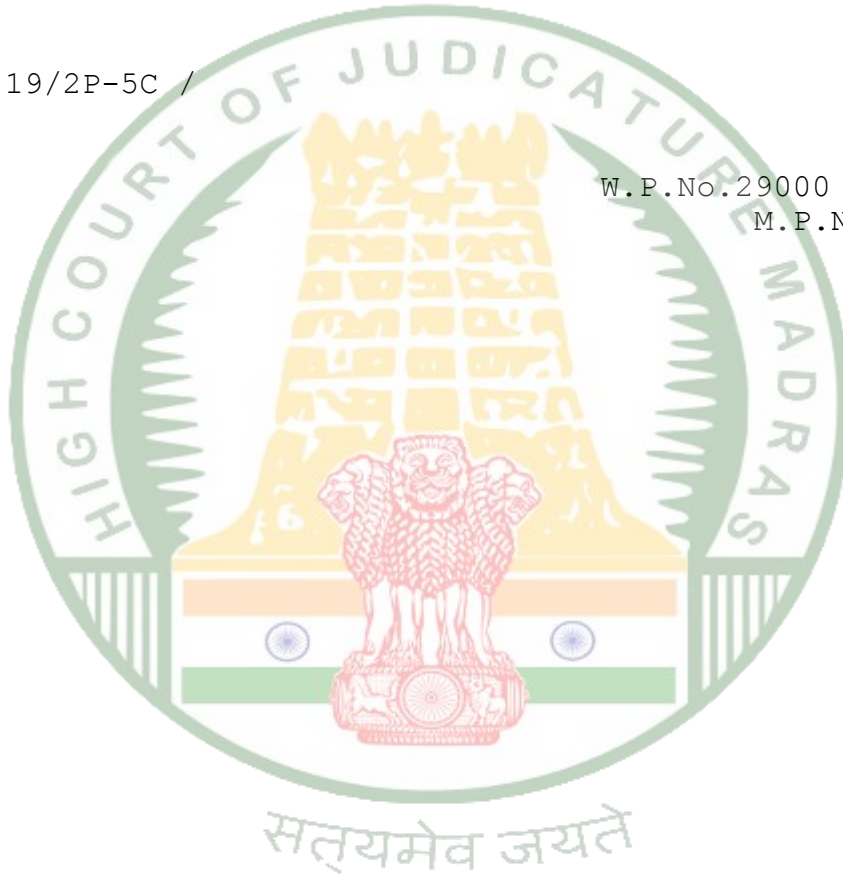
+1 cc to M/s.C.Prakasam, Advocate SR.No.76660 (30.10.19)

+1 cc to M/s.M.S.Palaniswamy, Advocate Sr.No. 73891

+1 cc to The Government Pleader Sr.No.74658

AKM/16.10.19/2P-5C /

W.P.No.29000 of 2011 and
M.P.No.2 of 2011



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