

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

WP.No.30294 of 2011

A.Elangovan

Petitioner

Vs

1. The Joint Registrar
Villupuram Region
Villupuram
2. The Deputy Registrar
Thirukoilur Circle
Thirukoilur, Villupuram District
3. The Special Officer
Jambai Primary Agricultural
Cooperative Bank, Jambai
Villupuram District
4. The Additional Registrar
Marketing, Planning & Development
Registrar Office, Kilpauk
Chennai-600 010

Respondents

Prayer:- This Writ Petition is filed, under the Article 226 of Constitution of India, to issue a writ of Certiorari calling for the records relating to the order dated 12/11/2009 by the Special Officer, Jambai Primary Agricultural Cooperative Bank, Jambai, the 3rd respondent herein and confirmed by the 4th respondent on 26.05.2011 in Na.Ka.No.43203/2011, and quash the same.

For Petitioner : Mr.M.John Kennedy

For Respondents: Mr.L.P.Shanmuga Sundaram, Spl.G.P.
for R1 to R4.

ORDER

This Writ Petition is filed challenging the order dated 12/11/2009 passed by the Special Officer, Jambai Primary Agricultural Cooperative Bank, Jambai, the 3rd respondent

herein, which was also confirmed by the 4th respondent on 26.05.2011 in Na.Ka.No.43203/2011, and praying to quash the same.

2. It is averred in the Writ Petition that the Petitioner was working as a Salesman under third respondent Cooperative Society. On 09.03.2009, while attending his duty, at about 9.30 p.m., rice and other essential food materials were carried to Fair Price Shop at Devaradiarkuppam and Pallisandall shop by Lorry No.TSK 8316. The commodities viz., sugar, rice, thoordhal intended to be supplied to shop was not delivered. Hence, the Petitioner, after obtaining receipt for the same, stopped the Lorry at Thirukoilur and while he was unloading the intended supply, the Tahsildar and Taluk Supply Officer seized the said load and suspended him by an order dated 10.03.2009, finding that the said load was taken by the Petitioner with an intention to sell the same in the Open Market for a higher price.

3. It is further averred in the Writ Petition that the Tahsildar, Thirukoilur, inspected the Fair Price Shop at Devaradiyarkuppam and found deficit stock of 220 kg of boiled rice, 331 kg of sugar, 172 kg of Thoor dhal and 18kg of Black-gram, all worth Rs.13,300.10. The Tahsildar is stated to have collected the said amount of Rs.13,300.10 from the wife of the Petitioner, under Bill No.924, dated 09.03.2009, but subsequently, in the same bill, the Petitioner's signature was obtained and his wife's signature was struck up on 13.03.2009. According to the Petitioner, actually, there was no deficit stock in the Shop.

4. In connection with the above allegation of stock deficit, charge sheet was framed against the petitioner for dereliction of duty. Petitioner has given explanation stating that he honestly took efforts to stop the Lorry for getting the intended commodities, but there is no misconduct on his part. He further stated the aforesaid action taken by the Petitioner is only for the interest of the society. He further explained that there is no substance or material to prove the allegation against him for such malpractice.

5. The enquiry officer while conducting enquiry, examined the petitioner and another person on behalf of the management/3rd respondent. In his report, the Enquiry Officer pointed out that the explanation and the statement given by the Petitioner for the deficit stock, is not acceptable and further held that the charges are proved against the petitioner and he is found guilty of the said charges.

6. On receipt of Enquiry report, the special Officer initiated Disciplinary Proceedings and the 3rd respondent passed the impugned order dated 12.11.2009, terminating the Petitioner from service. Challenging the said order of termination, the petitioner filed appeal before the Revisional Authority under Section 153 of Cooperative Societies Act, 1983. The 1st respondent/Revisional Authority, dismissed the said revision and confirmed the impugned termination. Challenging the impugned order passed by the 3rd and 4th respondents, the present writ petition is filed.

7. The learned counsel for the Petitioner submits that the explanation submitted by the Petitioner was not duly appreciated by the respondents. The Petitioner has not committed any irregularity and the enquiry officer, without considering his explanation and submission, found that the charges are proved, which is baseless. The learned counsel thus prayed for setting aside the order passed by the 3rd and 4th respondents.

8. The learned Special Government Pleader would submit that two charges were framed against the Petitioner; one for diverting the supply of goods intended for the Fair Price to sell the same in the Open Market and another for stock deficit in the Fair Price shop, Devaradiarkuppam. The Enquiry Officer has submitted a report by giving its finding that the two charges levelled against the Petitioner were proved. Based on the Enquiry report, by following the procedure, the Petitioner was dismissed from service. The Appellate Authority also on analysis of entire materials placed before him, confirmed the said punishment.

9. The specific case of the petitioner is that the Management/3rd respondent has not adduced any evidence to prove the allegation against the Petitioner for dereliction of duty. It is contended by the Petitioner that the earnest efforts taken in good faith and in the interest of society to get the intended supply to the Fair Price shop, Devaradiarkuppam, viz., the Fair Price Shop, where, he is working, by stopping the Lorry was interpreted on contrary and charges were framed against him. The action of the Tahsildar, Thirukoilur, in collecting the amount for the deficit stock and obtained signature from the Petitioner's wife is not proper.

10. On the other hand, the learned Special Government Pleader submits that the Petitioner admitted that there was stock deficit in the shop and the same was reported to higher officials. Therefore, the finding of the respondents that the petitioner was found guilty of the charges of the stock deficit in the respondent society has been clearly established.

11. The next contention of the petitioner is that the punishment of dismissal of service is a major punishment for the allegation of deficit of stock in the society. Therefore, the learned counsel for the Petitioner pleaded before this court that the said major punishment could be reconsidered. It is further submitted that the bill amount for the said stock deficit has already been collected by the 3rd respondent society.

12. The learned Special Government Pleader appearing for respondents 1 to 4 would fairly submit that the request of the Petitioner for modification of punishment is concerned, the Petitioner has to file an undertaking affidavit before this court to the effect that he will not claim backwages for the period from 10.03.2009 and not claim any continuity of service. The said submission of the learned Special Government Pleader is recorded.

13. The Petitioner filed Undertaking affidavit dated 09.01.2019 before this court and it is relevant to extract the following undertaking:-

"(i) that I will not claim any backwages for the period from 10.03.2009 to the date of my reinstatement of service.

(ii) that I will not claim continuity of service for the said period i.e., from 10.03.2009 to the date of my reinstatement of service.

(iii) that in future I will do my work sincerely adhering the rules and regulations of the respondent management. "

14. The aforesaid undertaking is recorded. On going through the entire facts and circumstances of the case, this court, is of the view that the punishment imposed on the Petitioner is so grossly disproportionate to the alleged misconduct and so harsh as to shock and conscience of the court. Accordingly, considering the request of the Petitioner and the undertaking affidavit filed by the Petitioner, the impugned order deserves modification.

15. In the light of the undertaking given by the Petitioner and considering the submissions made on both sides, this court is inclined to set aside the impugned order of termination dated 12.11.2009 and 26.05.2011. Since the Petitioner is not claiming backwages for the period from 10.03.2009 and not claiming continuity of service, the respondents are directed to reinstate the petitioner into service.

16. In the result, the Writ Petition is allowed on the above terms. No costs. The respondents are directed to reinstate the petitioner within a period of eight weeks from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

nvsri

To

1.The Joint Registrar
Villupuram Region
Villupuram

2.The Deputy Registrar
Thirukoilur Circle
Thirukoilur, Villupuram District

3.The Special Officer
Jambai Primary Agricultural
Cooperative Bank, Jambai
Villupuram District

4.The Additional Registrar
Marketing, Planning & Development
Registrar Office, Kilpauk
Chennai-600 010

+1 cc to Mr.L.P.Shanmuga Sundaram, Advocate, S.R.No.3448
+1 cc to Mr.T.Arunraj, Advocate, S.R.No.3409
+1 cc to the Government Pleader, S.R.No.3275

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MG(CO)
SSM(08/03/2019)

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