

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 14.08.2019
CORAM

THE HONOURABLE Mr. JUSTICE V.PARTHIBAN

W.P.No.17343 of 2019
and W.M.P.Nos.16850 & 16851 of 2019

M.S.Sivadoss

...Petitioner

Vs.

1.The Principal Secretary to Government,
Co-operation, Food and Consumer Protection (CA1)
Department,
Fort St. George,
Chennai-600 009.

2.The Joint Registrar of Co-operative Societies,
Nagapattinam Region, Nagapattinam,
Nagapattinam District.

3.The President,
Myladuthurai Consumer Cooperative,
Wholesale Store Ltd., T917,
No.5B, Narayanapillai Street,
Myladuthurai-609 001,
Nagapattinam District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the entire records relating to the impugned G.O. issued by the first respondent in G.O.(D). No.74, Cooperation, Food and Consumer Protection (CA1) Department, dated 06.03.2015 and quash the same and consequently directing the respondents to reinstate the petitioner into service along with back wages, attendant benefits and other monetary benefits to the petitioner.

For Petitioner : Mr.C.Prakasam

For Respondents : Mr.D.Venkatachalam
Additional Government Pleader
for R1 & R2
Mr.R.Bala Ramesh for R3

O R D E R

The petitioner was appointed as Salesman in the third respondent Society in the year 1986. He was posted at Poraiyar Branch Fair Price Shop, on 13.04.2006. While he was working in the said shop, he was placed under suspension on 11.06.2007. Subsequently, a charge memorandum has been issued. According to the charge memorandum, the petitioner was found to have committed acts of misconduct, viz, sold 866 kgs of rice, 126 kgs of sugar and 69 kgs of wheat illegally in the open market, which were actually meant for public distribution. The petitioner submitted his explanation stating that due to heavy rush, he was not able to properly make entries in the bill book, stock register, sales register and other records and therefore, there appears to be some shortage in respect of certain items meant for public distribution.

2. According to the third respondent, the petitioner caused loss to the society to the tune of Rs.8,816/- due to his act of misconduct and that amount was also repaid by him. Thereafter, an enquiry was conducted into the charge memorandum. On conclusion of the enquiry, a report was submitted holding the charges proved against the petitioner. The Disciplinary Authority agreed with the findings of the Enquiry Officer and imposed a penalty of 'dismissal from service', on the petitioner, on 30.06.2009. As against the order passed by the disciplinary authority, a revision was filed under Section 153 of Tamil Nadu Cooperative Societies Act, before the second respondent. The second respondent vide his proceedings, dated 12.05.2010, rejected the revision petition stating that the revision petition was not filed within 90 days. At this, the petitioner filed Review Petition under section 154 of the Tamil Nadu Cooperative Societies Act, and the review was disposed of, rejecting the claim of the petitioner, on merits, vide order dated 25.01.2011. Thereafter, a further review application has been filed to the Government, the first respondent herein, and the same was rejected by G.O.(D)No.74, Cooperation, Food and Consumer Protection (CA1) Department, dated 06.03.2015. The said order passed by the Government/first respondent is put to challenge the present writ petition.

3. The learned Counsel Mr.C.Prakasam, appearing for the petitioner would submit that although there was a valid explanation offered by the petitioner in regard to the charges framed against him, yet, the Disciplinary Authority has not agreed with the explanation, but proceeded with the enquiry. According to the learned counsel, without supportive materials, a report was filed holding the charges

proved against the petitioner. On the basis of the enquiry report, the Disciplinary Authority imposed the extreme punishment of 'dismissal' from service, on 30.06.2009.

4.The learned counsel would submit that even assuming that there is dereliction of duty on the part of the petitioner, for a solitary act of misconduct, the punishment of 'dismissal from service' is extremely disproportionate and therefore, on the ground of proportionality, the punishment of 'dismissal from service' is liable to be interfered with.

5.Per contra, Mr.R.Balaramesh, the learned counsel appeared for the third respondent Society and filed a counter affidavit on behalf of the 3rd respondent.

6.In the counter affidavit it is stated that the petitioner has committed serious acts of misconduct by selling the products, which are meant for public distribution, in the open market and thereby caused loss to the Government. According to the counter affidavit, the second respondent inspected the shop and verified 576 family cards for a period of three months, i.e. for February, March and April 2007 and found that there were no entries. According to the counter affidavit, essential commodities were supplied to the family card holders on subsidized rates. The petitioner, during the course of his duty, has made false entries in the Register maintained by him as if essential commodities were supplied to the family cards. The commodities which were sold in the open market fetched higher rates and therefore, the petitioner had illegally gained monetary benefits. Therefore, for such serious act of misconduct, the petitioner was punished by the Disciplinary authority and the punishment of 'dismissal from service' is perfectly in order and the same is also proportionate to the gravity of offence committed by the petitioner.

7.Considered the submissions of the learned counsel for the petitioner as well as the learned counsel for the respondent society.

8.Although the act of misconduct alleged to have been committed by the petitioner is serious in nature, nevertheless, it appears that the punishment imposed on the petitioner, viz., 'dismissal from service' appears to be excessive, considering the solitary type of charge framed against the petitioner. The petitioner, as on date, has reached the age of superannuation, as according to the

affidavit, he is 58 years old. The type of charge framed against the petitioner has to result in severe punishment to be imposed on him, as his retention in society is against the public interest. But at the same time, this Court has to see as to whether the punishment of 'dismissal from service' is the only option available to the authority concerned.

9.As per by-laws of the Society, one of the major punishments enumerated under Chapter 6 is 'compulsory retirement', apart from 'removal from service' or 'dismissal from service'. Therefore, this Court is of the view that the punishment of 'compulsory retirement' is a fair punishment, and appears to be proportionate to the gravity of misconduct alleged against the petitioner. By imposing the punishment of 'compulsory retirement', the petitioner could be kept out of the service of the Society, as his continuance in employment was not in public interest. At the same time, the order of 'compulsory retirement' will entitle the petitioner payment of pensionary benefits for the period of service rendered by him.

10.This Court, therefore, is of the considered view, by having a sympathetic and pragmatic view in this case and also considering the solitary nature of charge framed against the petitioner and his explanation for the charges, that the impugned order passed by the Government in G.O.(R) No.74, Cooperative, Food and Consumer Protection (CA1), Department, dated 06.03.2015 is liable to be set aside. Accordingly, the impugned G.O.issued by the first respondent in G.O.(D) NO.74, Co-operation, Food and Consumer Protection (CA1) Department, dated 06.03.2015, is hereby set aside and the respondents are directed to pass orders replacing the order of 'dismissal from service' into one of 'compulsory retirement' with effect from the date of dismissal from service of the petitioner. On such imposition of penalty of 'compulsory retirement', the respondents are directed to grant all other attendant benefits to the petitioner. The respondents are directed to pass appropriate orders in this regard within a period of four weeks from the date of receipt of a copy of this order.

11.In the result, the writ petition stands disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

msk
To

1.The Principal Secretary to Government,
Co-operation, Food and Consumer Protection (CA1)
Department,
Fort St. George,
Chennai-600 009.

2.The Joint Registrar of Co-operative Societies,
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Myladuthurai-609 001,
Nagapattinam District.

+1cc to Mr.C.Prakasam , Advocate SR.No. 69913
+1cc to Mr.R.Bala ramesh , Advocate SR.No. 69836
+1 cc to Government Pleader Sr.No. 69732

W.P.No.17343 of 2019

A.SK(20/09/2019)