

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2019

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P.No.23523 of 2014

S.Selvam

... Petitioner

vs.

1. The Managing Director,
Vellore T.V.Malai Co-operative
Milk Products Union Ltd.,
Sathuvachari, Vellore - 9.
 2. The Commissioner for Milk Production
and Dairy Development, Madhavaram,
Chennai 600 051.
 3. The Deputy Registrar (Dairy),
Vellore Tiruvannamalai District,
Co-operative Milk Producers Union Ltd.,
Gopalapuram, Gandhi Nagar, Vellore - 6.
- ... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of Certiorarified mandamus, calling for the records pertaining to the proceedings in Revision Petition No.9112/12/M1, dated 27.06.2014 of the 2nd Respondent, in pursuance of the order of recovery of the 1st Respondent Ref.No.11112/Accts-1/07, dated 07.09.2007, and quash the same for Petitioner only and consequently, direct the 1st Respondent not to recover any amount from the Petitioner.

For Petitioner

:Mr.Vijayan
for M/s.Karan & Uday

For 1st Respondent

:Mr.D.Venkatachalam,
for Mr.R.Bala Ramesh

For Respondents 2 & 3

:Ms.T.Girija,
Government Advocate

O R D E R

Petitioner has come up with this Writ Petition challenging the order dated 27.06.2014 passed by the 2nd Respondent in Revision Petition No.9112/12/M1, in pursuance of the order of

recovery dated 07.09.2007 passed by the 1st Respondent vide Ref.No.11112/Accts-1/07, and for a consequential direction to the 1st Respondent not to recover any amount from him.

2. Even though the impugned order dated 27.06.2014 is passed against two staff of the Vellore - Tiruvannamalai Co-operative Milk Producers' Union Ltd., Sathuvachari, one S.Selvam alone, has approached this Court.

3. According to the Petitioner, he has been working as a Senior Factory Assistant in the 1st Respondent/Union and he was entrusted the work of selling hot milk and other dairy products in the Old Bus Stand, Vellore Parlour, run by the 1st Respondent/Union, and remitting the amount collected towards selling of the same, to the authorities concerned.

4. It is further stated by the Petitioner that the 1st Respondent/Union increased the sale price of hot milk from Rs.18/- to Rs.25/- per litre, dating back from 25.11.2000 till August 2002. However, the same was not informed to the Petitioner or other employees working in the parlor. All of a sudden, the Petitioner was served with a letter dated 29.11.2006 of the 1st Respondent/Union, stating that he did not collect the increased sale amount and remit the same to the Union. Further, the 1st Respondent/Union, had asked the Petitioner to remit a sum of Rs.3,15,584/- towards the increased sale amount of coffee and hot milk, for the period between 25.11.2000 till August 2002.

5. While so, the 1st Respondent/Union proceeded to deduct a sum of Rs.2,818/- from the Petitioner's monthly salary, without considering the Petitioner's letter to the 1st Respondent/Union, seeking not to deduct any amount from his salary. As the Petitioner found it very difficult to meet both ends meet, on account of the recovery of the said sum from his salary, he filed a Writ Petition in W.P.No.11054 of 2008 before this Court and obtained an order of interim injunction. Thereafter, by an order dated 13.10.2009, the said Writ Petition was disposed of on technical grounds, by relying upon Marappan's case, that no writ will lie against Co-operative Societies. However, liberty was granted to the Petitioner to file Revision under Section 153 of the Co-operative Societies Act, within 30 days.

6. It is the case of the Petitioner that he was hospitalized and hence, could not file a Revision within the time stipulated. Thereafter, the Petitioner filed a Revision Petition before the Registrar of Milk Co-operative Societies, Madhavaram Milk Colony, Chennai-51, the 2nd Respondent herein, with a Petition for condonation of delay. By an order dated

27.06.2011, the said Revision Petition was disposed of by the 2nd Respondent, without giving an opportunity to the Petitioner. Pursuant to the passing of the said order, the 1st Respondent/Union began recovery of the amount from the Petitioner's salary.

7. Aggrieved by the order dated 27.06.2011 passed by the 2nd Respondent and the action of the 1st Respondent/Union in pursuance of the same, the Petitioner filed a Writ Petition in W.P.No.15201 of 2012, and the said Writ Petition was allowed with the following direction:

" This Writ Petition is allowed and the impugned order dated 07.06.2011 is set aside. The Petitioner is directed to represent the Revision Petition before the 3rd Respondent within a period of two weeks from the date of receipt of copy of this order and the Revisional Authority is directed to take note of the reasons adduced by the Petitioner for entertaining the Revision Petition beyond the period of limitation and pass orders on merits, within a period of four weeks after hearing the 2nd Respondent also."

8. Accordingly, the Petitioner filed Revision Petition vide Roc No.9112/12/M1 before the 2nd Respondent, in July 2012. After hearing both the parties, the 2nd Respondent passed final orders on 27.06.2014. Aggrieved by the same, the Petitioner is before this Court with the above Writ Petition.

9. Learned counsel for the Petitioner contended that before giving effect to the recovery towards the alleged amount, the 1st Respondent/Union did not take steps for enquiry under Section 81 of the Tamil Nadu Co-operative Act and its Rules, and that no proceedings under Section 87 of the Act was passed and intimated to the Petitioner. He further contended that the 2nd Respondent failed to consider that the increase in the sale price of hot milk from Rs.18/- to Rs.25/- was not intimated to them immediately and that the remittance of the sale amount of hot milk at the rate of Rs.18/-, was accepted by the 1st Respondent/Union and it was not rejected. Hence, according to the learned counsel, on the principle of estoppel, the Union cannot claim any amount.

10. In reply, learned counsel appearing for the 1st Respondent/Union submitted that, based on the Resolution passed by the Board of the Vellore-Thiruvannamalai Union, vide subject No.8, dated 23.10.2000, it was resolved to increase the selling price of hot milk from Rs.18/- to Rs.25/- per litre, with effect

from 01.11.2000 and that the Circular information was communicated to the parlor, where the Petitioner was working, vide proceedings dated 23.11.2000, stating that the revised rates will take effect from 25.11.2000. It is further submitted by the learned counsel that, the Petitioner has stated in his representation dated nil (received by the Union on 16.08.2012) that the communication vide proceedings dated 23.11.2000, pertaining to revision of sale price of hot milk to Rs.25/- per litre from 25.11.2000, was issued to them, and that the Petitioner has not denied the knowledge of revision of sale price of hot milk. Learned counsel also stated that Memo has been issued to the Petitioner vide Reference dated 03.06.2002, directing him to remit the differential amount, failing which, disciplinary action will be initiated against him, and that the said Memo was acknowledged by the Petitioner. In addition, a reminder was sent on 23.10.2002, and the same was acknowledged by the Petitioner, and only thereafter, disciplinary action was initiated against him.

11. Heard the learned counsel for the parties and carefully gone through the material documents available on record.

12. It is not in dispute that the sale price of hot milk was revised from Rs.18/- to Rs.25/- per litre, with effect from 25.11.2000, and that, the Petitioner remitted the sale proceeds at the increased of Rs.25/- per litre, only from 01.08.2002. Also, it is seen that the daily sale proceeds of hot milk at the rate of Rs.18/-, have been remitted by the Petitioner to the 1st Respondent/Union, and the same has been received by the Union, without any murmur. Though, it has been stated that there was a communication dated 03.06.2002 by the 1st Respondent/Union, directing the Petitioner to remit the differential amount, failing which, disciplinary action will be initiated against him, there is no iota of evidence to show that the proceedings dated 23.11.2000 of the 1st Respondent/Union, as regards the revision of milk prices from Rs.18/- to Rs.25/- per litre, with effect from 25.11.2000, was served on the Petitioner before 25.11.2000. Whereas, the Resolution, as regards revision of sale price of hot milk, was served on the other staff, viz. M.Soosairaj, who is one of the Petitioners in the Revision Petition Roc.No.9112/12/M1.

13. It is not the case that hot milk was sold at Rs.25/- per litre with effect from 25.11.2000 and the difference of Rs.7/- per litre, was misappropriated by the Petitioner herein. It is quite clear that there is no intimation to the petitioner herein about the revision of sale price of hot milk prior to 25.11.2000, and that on coming to know about the revision of sale price of hot milk, the Petitioner began remitting the sale

proceeds at the increased rate of Rs.25/- per litre, with effect from 01.08.2002. Hence, this Court is of the view that the order dated 27.06.2014 passed by the Revisional authority/2nd Respondent, confirming the recovery proceedings dated 07.09.2007 passed by the 1st Respondent/Union, needs to be interfered with, and that, there cannot be any recovery from the Petitioner herein. Accordingly, the order dated 27.06.2014 passed by the 2nd Respondent, as also the recovery proceedings dated 07.09.2007, passed by the 1st Respondent/Union, confirming the same, are set aside.

14. It is made clear that any amount recovered pursuant to the impugned order, shall be refunded within a period of 45 days from the date of receipt of a copy of this order, failing which, interest shall be recovered from the Officials responsible to refund the same.

15. It is represented that the Petitioner attained superannuation on 31.07.2016, and that, a sum of Rs.6,00,000/- (Rupees Six Lakhs only) payable to the Petitioner under the heads 'Gratuity' and 'Provident Fund', is being withheld by the 1st Respondent/Union. This Court is of the view that it is not correct on the part of the 1st Respondent/Union to withhold the gratuity benefits due to an employee, unless the case of moral turpitude is involved, or there is evidence to show that the employee has caused loss to the Organization. In any event, as the adverse order passed against the Petitioner herein, has been interfered by this Court, the amount payable to the Petitioner under the heads 'Gratuity' and 'Provident Fund' shall be paid to him, within a period of 45 days from the date of receipt of a copy of this order, failing which, the amount payable to the Petitioner under the said heads, will attract interest at 12% per annum for Provident Fund, and 15% for Gratuity (as recovery needs to be made), from the date of receipt of a copy of this order.

In fine, the Writ Petition is allowed with the above direction and observation. No costs. Consequently, connected M.P.No.2 of 2014 is closed.

s/d-

Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

To:

1. The Managing Director,
Vellore T.V.Malai Co-operative
Milk Products Union Ltd.,
Sathuvachari, Vellore - 9.
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and Dairy Development,
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3. The Deputy Registrar (Dairy),
Vellore Tiruvannamalai District,
Co-operative Milk Producers Union Ltd.,
Gopalapuram, Gandhi Nagar, Vellore - 6.

+1 CC to Mr. Karan & Uday, sr 74716.

+1 CC to Mr.R.Bala Ramesh, Advocate sr 74221.

W.P.No.23523 of 2014

PVS (CO)
SP (25/10/2019)



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