BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 16.09.2019
CORAM

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P.(MD)No.4290 of 2011

Anandaraj Devadoss ... Petitioner

vs.

1.The Joint Registrar,
Regional Office,
Co-Operative Societies, Tuticorin.

2.The Special Officer,
E.E.443, Asirvatham Primary
Agricultural Co-Operative Loan Society,
Asirvathapuram, Tuticorin District. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the first respondent in his proceedings in Na.Ka.No.7382/2010 Sa.O in Review Petition No.2/2010, dated 02.11.2010 confirming the order, dated 10.06.2010 made in Revision Petition No.18 of 2009 confirming the order dismissing the petitioner from service, dated 07.09.2009 and quash the same and to direct the second respondent to reinstate the petitioner into service.

For Petitioner : Mr.PT.S.Narendravasan

For R1 and R2 : Mr.D.Muruganandam,
Additional Government Pleader

O R D E R

This Writ Petition is filed by the petitioner to quash the proceedings of the first respondent in Na.Ka.No.7382/2010 Sa.O in Review Petition No.2/2010, dated 02.11.2010 confirming the order, dated 10.06.2010 made in Revision Petition No.18 of 2009 confirming the order, dated 07.09.2009, dismissing the petitioner from service, and to direct the second respondent to reinstate the petitioner into service.

2.The petitioner was employed as a Salesman in the second respondent Society, which is running a fair price shop to distribute essential commodities to Ration Card holders. A charge memo was issued to the petitioner alleging that the petitioner has failed to discharge his duties and responsibilities as Sales Man by selling commodities in utter disregard to the regulations. The second charge was that the petitioner has misused his position as a Salesman by committing serious irregularities.

3.From the charges framed against the petitioner, it is seen that there was an inspection and it was found during the inspection, conducted by the officials, that the petitioner has sold commodities without there being corresponding entries in the Ration Cards, indicating that the sales were in open market. The petitioner also distributed commodities to some of the card holders more than what they are entitled to as per the guidelines. Apart from that, there was a shortage in the stock. At the time of enquiry, it was found that the irregularities were in relation to the commodities of worth about Rs.8,561.35/-. The said sum of Rs.8,561.35/- was arrived at by taking into account the value of the commodities as per the control rate fixed for each commodities at the time of inspection.

4.The petitioner submitted his explanation to the charges admitting the irregularities and paid the said amount. After depositing the sum of Rs.8,561.35/-, the petitioner requested the second respondent to drop the charges and to reinstate him in service. However, the second respondent conducted a departmental enquiry and dismissed the petitioner from service by order dated 07.09.2009. The petitioner, then, filed a revision petition before the first respondent under Section 153 of Tamil Nadu Cooperative Societies Act, 1983, and the first respondent dismissed the revision by order, dated 10.06.2010. Thereafter, the petitioner filed a review petition before the first respondent under Section 154 of Tamil Nadu Cooperative Societies Act, 1983. The review petition filed by the petitioner was also dismissed by the first respondent by order dated 02.11.2010. Challenging the order of first respondent, in the review petition, confirming the earlier order and one passed by the second respondent, dismissing the petitioner from service, the above writ petition is filed.

5.The learned Counsel for the petitioner submitted that the punishment of dismissal is disproportionate to the charges and that therefore, the order of first respondent confirming the order of dismissal, has to be set aside. The learned Counsel then submitted that the petitioner had already remitted the shortage amount of Rs.8,561.35/- long prior to the departmental enquiry. The learned Counsel further submitted that the amount was collected from the petitioner under the pretext that the charges will be dropped against the petitioner. The learned Counsel then submitted that major punishment ought not have been imposed on the petitioner, having regard to the nature of charges alleged and proved against the petitioner.

6.Finally, the learned Counsel for the petitioner relied upon a judgment of Honourable Division Bench of this Court in the case of ***Antony Gnanamuthu vs Assistant General Manager, Disciplinary Authority (Industrial Relations Division), Union Bank of India***, reported in ***(2011) 8 MLJ 1***, wherein, the Honourable Division of this Court has modified the punishment on the ground that the punishment of dismissal is disproportionate to the charges. Paragraph 23 of the said judgment is relevant and the same is extracted as follows:

> *"23.Reasons for modifying the punishment:*
>
> *(i)Thirty years of unblemished service rendered by the appellant;*
>
> *(ii)There was no monetary loss to the Bank in view of the repayment made by the appellant with interest;*
>
> *(iii)Even though the deposit holder has not signed the loan application form, his brother, who was dealing with the Bank with respect to the NRE account maintained by his brother, has given a letter to the Bank to sanction the loan. The signature in the said document was duly admitted by him;*
>
> *(iv)On an earlier occasion also, Mr.Mohammed Mustafa took a loan against the account of his brother Mr.Mohammed Ismail. The documents relating to the said transactions were marked as defence exhibits;*
>
> *(v)Similar loans were sanctioned against fixed deposit receipts in the absence of the deposit holder. Those documents were marked as Exhibit D-1(a) to (e).*
>
> *(vi)Mr.Mohammed Mustafa subsequently gave a letter to the Bank indicating that it was only with his permission, loan was taken. Though in his evidence Mr.Mohammed Mustafa has also stated that the letter was given only to save the appellant from the departmental proceedings, the fact remains that the letter of request for grant of loan contains the signature of Mr.Mohammed Mustafa.*
>
> *(vii)There was no act of tampering with records. The loan records were available with the Bank. There was no attempt made by the appellant at any time to destroy the records with a view to suppress the evidence.*
>
> *(viii)The demand draft for a sum of Rs.1,50,000/- contains the signature of Bank Manager. As per the banking practice, any demand draft for a sum exceeding Rs.50,000/- should contain the signature of the Bank Manager or another officer. Therefore, the defence taken by the Manager that he has signed the demand draft without inspecting the papers cannot be believed in its entirety.*
>
> *(ix)The Branch Manager directed the appellant on 5.9.2002 to deposit the entire amount. The appellant complied with the said direction and accordingly, the entire amount with interest was deposited on 5.9.2002 itself.*

(x)The demand drafts were taken in the name of the wife and son of the appellant. In case, his intention was to cheat the Bank, he would not have taken demand drafts in the name of his close family members.

(xi)The report of the Inquiry Officer was sent to the appellant along with a covering letter written in Hindi. It was the case of the appellant that he was not conversant with Hindi and as such, he was not aware of the necessity to submit a reply to the notice given by the Bank, enclosing a copy of the Inquiry report. Therefore, he failed to submit a detailed explanation to the finding recorded by the Inquiry Officer. The act of sending notice in a language not known to the appellant appears to have caused prejudice to him.

(xii)The prevailing family circumstances of the appellant appears to have prompted him to take the loan."

7.Relying upon the above judgment where the punishment was modified for several reasons and one of the reasons was that there was no monetary loss to the Bank in view of the repayment made by the appellant, the learned Counsel for the petitioner submitted that the petitioner should be shown some lenience, as he had already deposited the entire amount that was determined in the charge memo.

8.The second respondent filed a detailed counter affidavit elaborating the nature of charges.

9.From the charges, it is seen that the petitioner has committed irregularity in performing his duties and misused his position as a Salesman by selling the materials in open market. It is also seen that the materials sold were not confined to the card holders and the petitioner has sold commodities in excess of the quantity permissible through ration card. There was actual shortage in stock. It is in the said circumstances, the second respondent would contend that the acceptance of petitioner for payment of Rs.8,561.35/- will only lead to the conclusion that the petitioner has admitted the irregularities. The learned Special Government Pleader referring to the counter affidavit, submitted that the petitioner, who was found guilty of charges, cannot be shown any indulgence, especially, when the petitioner himself has admitted his guilt.

10.This Court considered the rival submissions on both sides.

11.It is not in dispute that the petitioner has committed serious irregularities. Though it was contended that the irregularities are not serious, this Court is of the view that the Salesman in Fair Price Shops are expected to follow the strict instructions and regulations, while distributing the commodities to card holders. Several irregularities are being pointed out throughout the State against the malfunctioning of Fair Price Shops. If such irregularities are allowed to exist, the object behind the policy of the Government in distributing the essential commodities through Fair Price shops will be spoilt. It is seen that the petitioner had paid a sum of Rs.8,561.35/-, towards the value of commodities, that was fixed as per the price, at which the Fair Price Shops are expected to sell. The market value of the commodity is different and if the market value is taken into account, the value of the goods sold by the petitioner will be more than Rs.30,000/-. With the available machineries and resources, it is not possible for the second respondent to monitor the Fair Price Shops through out. The irregularities can be found, only when there is surprise inspection. In every organised department, the employees are expected to follow the rules/guidelines as part of their duty. The irregularities committed by the petitioner as a Salesman should be presumed to be with an intention to gain personally unless the contrary is proved. Irregularities in Fair Price Shop should be seriously viewed. The judgment relied upon cannot be applied to the facts of this case.

12.Having regard to the over all circumstances, this Court has no reason to hold that the punishment of dismissal is excessive or disproportionate. The payment made by the petitioner was only by acknowledgement of irregularities, the petitioner had committed. In such circumstances, this Court does not find any error or irregularity in the order passed by the first respondent in the review as well as in the revision, confirming the order of the second respondent as such. Accordingly, this writ petition is dismissed. No costs.

Sd/-
Assistant Registrar(AD-II)

/TRUE COPY/

Sub Assistant Registrar

cmr

To

The Joint Registrar,
Regional Office,
Co-Operative Societies, Tuticorin.

+1 CC to M/s.SPL GP (SR-87235[F] dated 17/09/2019)
+1 CC to M/s.PT.S. NARENDRAVASAN, Advocate (SR-86760[F] dated 16/09/2019)

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JM/16.10.2019/5P/4C