



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.09.2019

CORAM

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

W.P. (MD) .No.860 of 2011

and

M.P. (MD) No.2 of 2011

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The Management,
DD 584, Ayyampalayam Farmers
Service Cooperative Societies Ltd.,
Ayyampalayam Post,
Dindigul District.

.. Petitioner

Vs.

1.The Appellate Authority
under the Tamil Nadu Shops and
Establishment Act,
Deputy Commissioner of Labour,
Nehruji Nagar, Dindigul.

2.P.M.Saravanan

.. Respondents

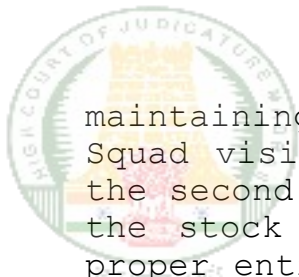
PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records of the first respondent's impugned order made in TN.S.E. Appeal No.4 of 2007, dated 08.02.2010 and quash the same.

For Petitioner	: Mr.R.Saravanan
For Respondent 2	: Mr.T.Ravichandran
For R1	: Court

O R D E R

This Writ Petition is filed challenging the order passed by the appellate authority under the Shops and Establishment Act namely the first respondent allowing the appeal filed by the second respondent in the Writ Petition under Section 41(2) of the Tamil Nadu Shops and Establishments Act, 1947.

2.The petitioner is a cooperative society registered under the Cooperative Societies Act. The petitioner society is also running two fair price shops namely shop No.1 and 1A from 2006. The second respondent was the salesman of the fair price shops to supply the essential commodities/goods to the ration card holders and for



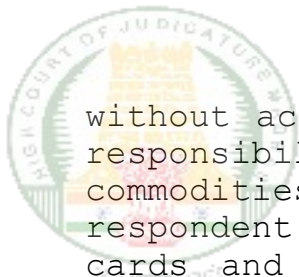
maintaining the bills and accounts. On 14.12.2006 a Special Flying Squad visited the fair price shops No.1 and 1A in the presence of the second respondent who was the salesman at that time and verified the stock and accounts including bills and ration cards. Without proper entries in cards substantial quantity of rice and sugar from shop No.1 and 1A were found to have been sold. For the misconduct of the second respondent, he was placed under suspension and later disciplinary proceedings was initiated against him by the petitioner. Charge memo was issued against the second respondent on 26.12.2006. Since explanation was offered by the second respondent denying the charges, Cooperative Sub Registrar was appointed as Enquiry Officer. Based on the enquiry report submitted by the Enquiry Officer to the petitioner and based on the findings, the second respondent was terminated from service after issuing the second show cause notice to the second respondent on 03.04.2007. The second respondent filed an appeal before the first respondent under Section 41(2) of the Tamil Nadu Shops and Establishment Act in TNSE Appeal No.4 of 2007. The appellate authority, however, set aside the order of punishment. Aggrieved by the same, the present Writ Petition has been filed by the petitioner management.

3.The learned Counsel appearing for the petitioner submitted that the charges against the petitioner are serious and grave in nature. The second respondent who was working as sales man has sold huge quantity of commodities without proper corresponding entry in the books and ration cards. The learned Counsel also relied upon the explanation offered by the second respondent himself to the effect that the second respondent could not make entries in the 'B' register as well as ration cards because of the non-availability of Packer/Weighman and because of the huge crowd of the consumers. The first respondent came to the conclusion that charges against the second respondent have been specifically denied by him and that therefore, no punishment can be imposed beyond the collection of value of the commodities found to be deficient.

4.The learned Counsel appearing for the second respondent submitted that the charges are on the basis of the bogus bills. But the management has not produced any document to show that there was shortage or loss to the establishment. It is submitted that there was no finding by the disciplinary authority that on account of willful negligence the Management had suffered a loss. It was further contended that the first respondent considering all the aspects found that the punishment of dismissal is not proper and no different view can be taken having regard to the findings of the appellate authority.

5.This Court considered the rival submissions.

6.The second respondent is working as a salesman. It is the case of the petitioner management that the second respondent had not produced any bills for the sales of commodities like rice and sugar



without actually distributing the goods to the cardholders. The responsibility of the second respondent is to see that the essential commodities are distributed to the cardholders. When the second respondent himself agreed that he did not make entries in the ration cards and the 'B' register, this Court is able to see that the second respondent has committed a serious misconduct which is proved in the enquiry. It is a case where the enquiry report is in favour of the Management finding the second respondent guilty of both the charges. The second respondent has admitted the irregularity by paying the amount towards value of the goods that was found deficient at the time of inspection. When the deficiency is admitted and the fact that commodities were not distributed to the ration cardholders, it can be presumed that the commodities were sold in open market especially when the second respondent himself admitted that he was not able to make the corresponding entries in the ration cards or in the books. The reason for the failure to make entries in the ration cards are not sound and the management has no other option but to hold the second respondent responsible for gross misconduct. Having regard to the facts pleaded and admission of second respondent with regard to the lapses, this Court is unable to subscribe to the view taken by the appellate authority namely the first appellant to reverse the decision of the petitioner. The public distribution system in this State should be monitored giving no room for any lapses and this could be achieved only by proper correctional measures. No *mala fides* is alleged in the case. The decision of the society cannot be interfered with when the misconduct is proved. Charge memo was based on the deficiencies pointed out during inspection by verifying records. It is stated by the management that out of 1229 cards 1004 cards in respect of shop No.1 and 1000 out of 1221 cards in respect of shop No.1A were verified at the time of inspection. Hence, the admission of second respondent is significant. In public interest the termination of service of the second respondent is indispensable and hence, the order of the first respondent impugned in this Writ Petition is liable to be quashed. As a result this Writ Petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

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Sub Assistant Registrar(CS)

SRM



To

1.The Deputy Commissioner of Labour,
Appellate Authority
under the Tamil Nadu Shops and
Establishment Act,
Nehruji Nagar, Dindigul.

+1CC TO MR.R.SARAVANAN, Advocate Sr. No. 86819

ORDER MADE IN
W.P. (MD) .No.860 of 2011
13.09.2019

SRK(CO)
TR(17.10.2019) 4P 3C