



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.12.2019

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P (MD)No.14924 of 2013

and

M.P (MD)No.1 of 2014

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P.Markkandan

.. Petitioner

Vs.

1.The Joint Registrar of Cooperative Societies,
Theni Region, Theni.

2.The Special Officer,
M.P.71, Aranmanaipudur
Primary Agricultural Cooperative Bank,
Aranmanaipudur,
Theni District.

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records quashing the impugned order dated 15.04.2013 issued by the 1st respondent to the petitioner in Revision Petition No.3 of 2012 and to direct the respondent to reinstate this petitioner in the post of salesman with backwages.

For Petitioner

: Selvi A.Hafiza

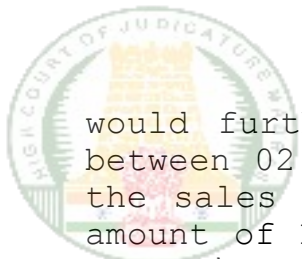
For Respondents

: Mr.S.Dhayalan,
Government Advocate.

ORDER

This writ petition has been filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order dated 15.04.2013 passed by the 1st respondent in Revision Petition No.3 of 2012 and to direct the respondents to reinstate the petitioner in the post of salesman with backwages.

2.Learned counsel for the petitioner would state that the petitioner was appointed as Salesman in the 2nd respondent society on 11.06.1991. The petitioner was ill on account of diarrhea and therefore, he did not attend the duty on 01.03.2012 and subsequently took leave between 02.03.2012 and 05.03.2012 without permission. Thereafter, on 06.03.2012 the 2nd respondent suspended the petitioner and conducted inspection wherein, it was found that there was deficiency of stock for a sum of Rs.23,573/-. According to the petitioner, the said inspection was conducted in his absence. He



would further state that since the petitioner was under treatment between 02.03.2012 and 05.03.2012, he had asked his wife to deposit the sales amount and accordingly, his wife had deposited the sales amount of Rs.22,196.50/- and Rs.1,316/- on 09.03.2012. Thereafter, the 2nd respondent issued a charge memo on 12.04.2012 framing two charges against the petitioner namely, he was unauthorisedly absented from duty between 02.03.2012 and 05.03.2012 without proper permission and there was deficiency of stock worth at Rs.23,512/-. Subsequently, a domestic enquiry officer was appointed who after enquiry submitted his report holding the petitioner guilty of both the charges and on receipt of the enquiry report, the 2nd respondent without following any procedure, straightaway passed the dismissal order dated 09.07.2012, against which, the petitioner filed a revision petition before the 1st respondent who also without any application of mind, mechanically confirmed the dismissal order passed by the 2nd respondent. For a proposition that if the employee is charged with the misconduct of unauthorised absence from duty and if such absence was not found wilful, imposing the major punishment of dismissal or even a compulsorily retirement would be disproportionate to the charge framed, the learned counsel would rely on the following decisions:-

(i)Krushnakant B.Parmar v. Union of India and Another reported in (2012)3 Supreme Court Cases 178;

(ii)J.Patrick v. Government of Tamil Nadu rep. by its Secretary, Home (Pol.VI) Department, Chennai and Others reported in (2006)4 MLJ 1008.

(iii)W.P.No.11223 of 2012, dated 20.03.2019 [D.Nagalingam v. The Secretary to Government, Home (Police-VI) Department, Chennai and Another].

(iv)W.P.No.25580 of 2005, dated 08.04.2019 [P.Bhaskaran v. The Special Commissioner & Commissioner, H.R.& C.E. Department, Government of Tamil Nadu, Chennai - 600 034 and Another;

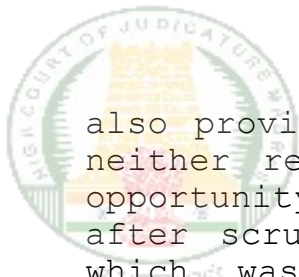
(v)W.P.No.1055 of 2008, dated 07.06.2019 [N.Muthu Gopalakrishnan v. The Presiding Officer, Labour Court, Cuddalore and Another]

(vi)W.P.No.7047 of 2007, dated 28.04.2014 [K.C.Bhaskaran v. The Assistant Director of Survey and Land Records Department, Tiruchirappalli].

(vii)W.P.No.32163 of 2012, dated 26.08.2019 [Babitha v. The Commandant, Central Industrial Security Force (CISF) (Disciplinary Authority), Department of Atomic Energy (DAE), Ministry of Home Affairs, Kalpakkam - 603 102, Kancheepuram District, Tamil Nadu and Others].

Thus, he would pray for setting aside the impugned order.

3.The respondents filed counter affidavits. Learned Government Advocate appearing for the respondents would submit that after the receipt of the report of the enquiry officer, the 2nd respondent issued a second show cause notice to the petitioner calling for further explanation along with the copy of the enquiry report and



also provided the opportunity of personal hearing. The petitioner neither replied to the second show cause notice nor availed the opportunity of personal hearing and therefore, the 2nd respondent after scrutiny of the entire records, passed the dismissal order which was rightly confirmed by the 1st respondent/revisional authority in the revision petition filed by the petitioner. Thus, he would pray for dismissal of the writ petition.

4. Heard the learned counsel for the petitioner as well as the learned Government Advocate for the respondents.

5. Perusal of record shows that the petitioner was ill on account of diarrhea and was under treatment between 01.03.2012 and 05.03.2012 and therefore he was absent from duty during the said period. However, without considering the illness of the petitioner, the 2nd respondent deliberately issued a charge memo on 12.04.2012 framing two charges against the petitioner namely, he was unauthorisedly absented from duty between 02.03.2012 and 05.03.2012 without proper permission and due to his failure in his duties and responsibilities, he caused deficiency of stock worth about Rs.23,512/-. Admittedly, as the petitioner was ill, at his request, the said amount of Rs.23,512- was deposited by his wife on 09.03.2012 with the 2nd respondent, as such, there is no question of deficiency of stock. However, the charge memo was issued after one month from the date of deposit and after nine months, a criminal complaint was lodged by the respondents on the same set of charges. It is not that the petitioner was wilfully absented from duty. It is because of his illness, he was not able to attend the duty, but without considering the same and the amount deposited made by the petitioner's wife, the enquiry officer has erroneously held the charges as proved. As held in the decisions relied on by the learned counsel for the petitioner, if the absence of the charged employee is found not wilful, then imposing the major punishment of dismissal or even a compulsorily retirement would be grossly disproportionate to the charge framed. In my considered opinion, the said view taken in the above decisions is squarely applicable to the present case. Here, though the petitioner was ill, he had asked his wife to inform his illness to the respondents and also to deposit the stock amount which had been done. Thus, the punishment of dismissal from service in my opinion is grossly disproportionate to the charges framed against the petitioner. Therefore, I am inclined to interfere with the impugned orders.

6. Accordingly, the impugned order, dated 15.04.2013, passed by the 1st respondent is quashed and the respondents are directed to reinstate the petitioner into service. The petitioner will be entitled to 50% of the backwages. The backwages payable to the petitioner shall be disbursed within a period of twelve weeks from the date of receipt of a copy of this order.



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With the above direction, the writ petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

bala/smn

To

1.The Joint Registrar of Cooperative Societies,
Theni Region, Theni.

2.The Special Officer,
M.P.71, Aranmanaipudur
Primary Agricultural Cooperative Bank,
Aranmanaipudur,
Theni District.

+1 CC to SPL.GP (SR-105292[F] dated 17/12/2019)

+1 CC to Mr.A.HATIZA, Advocate (SR-105664[F] dated 18/12/2019)

W.P(MD)No.14924 of 2013

and

M.P(MD)No.1 of 2014

16.12.2019

VB(27.01.2020) 4P 5C