



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.12.2019

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.1868 of 2013

WEB COPY

K.Santhanam

.. Petitioner

Vs.

1.The Appellate Authority under
Tamil Nadu Shops and Establishment Act,
Deputy Commissioner of Labour,
(Re-designated as Joint Commissioner),
Office of the Deputy Commissioner of Labour,
Ratnasamy Nadar Road,
Visalakshipuram, Madurai - 14.

2.The Special Officer,
A.1248, The Sree Meenakshi Mills Tholilalars'
Co-operative Stores Ltd.,
61-A, V.P. Complex,T.P.K. Main Road,
Vasanthanagar, Madurai - 3. .. Respondents

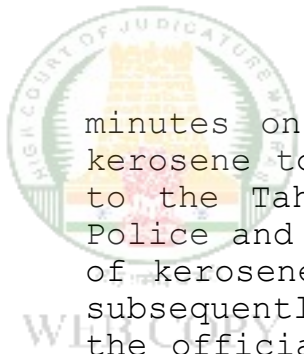
PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records of the impugned order passed by the 1st respondent dated 17.04.2012 in T.N.S.E.A.No.5/2011 and consequential order dated 28.08.2012 A.Thi.Mu.bearing No.4273/2012, quash the same and direct the respondents to reinstate the petitioner with all attendant benefits and pass such further or other orders.

For Petitioner : Mr.R.Saravanan
For Respondent No.1 : Mr.S.Dhayalan,
Government Advocate.
For Respondent No.2 : Mr.G.Murugan

ORDER

This writ petition has been filed for issuance of a Writ of Certiorarified Mandamus to call for the records of the impugned order passed by the 1st respondent dated 17.04.2012 in T.N.S.E.A.No.5/2011 and the consequential order dated 28.08.2012 in A.Thi.Mu.No.4273/2012, quash the same and direct the respondents to reinstate the petitioner with all attendant benefits.

2.The case of the petitioner is that he was appointed as salesman in the 2nd respondent society during the year 1989. By order dated 27.04.2010, he was entrusted with the duty of the Pump Operator Work in the Kerosene Bulk situated at Sundararajapuram, Madurai. In the said Kerosene Bulk, one Tmt.K.Rajeswari was working as Salesman. It is alleged that during his tenure as Pump Operator, when the salesman Tmt.K.Rajeswari was come late by 30

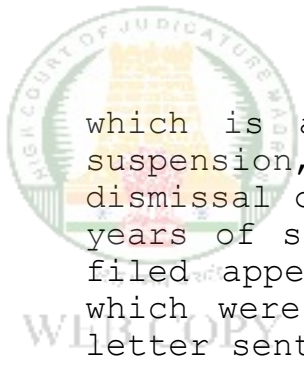


minutes on 07.09.2010, the petitioner unauthorizedly sold out the kerosene to the public without the card holders, which was reported to the Tahsildar, Public Distribution and Food Cell Inspector of Police and they rushed to the said bulk and caught hold of 50 litres of kerosene and the petitioner was taken to the police station and subsequently, a criminal case was lodged against him. Subsequently, the officials of the stores verified the stock and found that there was deficiency to the tune of Rs.20,849/- and the 2nd respondent has taken disciplinary action against the petitioner and suspended him vide order dated 07.09.2010, without assigning any reasons and without mentioning the period of suspension as required under Section 76 of the Tamil Nadu Cooperative Societies Act, 1983. On 08.09.2010, a complaint was made by the Circle Deputy Registrar of Co-operative Societies to the Inspector of Police, Food Cell without enclosing the copy of the Inspection Report of the Inspection Officer, who conducted inspection against law and without scrutiny of appointment order and duties and responsibilities fixed to the petitioner and the salesman Tmt.K.Rajeswari.

3.According to the petitioner, on 07.09.2010, only 55 litres of kerosene found in the canes whereas there was no other kerosene sold out and after that the salesman Tmt.K.Rajeswari had alone distributed the kerosene while the deficit of 1782 litres were verified. On 25.09.2010, a charge memo was issued to him without enclosing the copy of the inspection report. The petitioner submitted his explanation denying the charges and also stated that he was not held responsible for the deficit and loss caused to the stores. Domestic enquiry was conducted by an Advocate and the enquiry officer did not conduct the enquiry in a fair and just manner and also conducted the enquiry against the principles of natural justice and equity and obtained signatures from the petitioner.

4.The learned counsel for the petitioner would contend that the enquiry officer had also not stated what was written in the enquiry proceedings and the enquiry was conducted only to favour the management on the same day itself with urgent move. The enquiry was completed on a single day without even giving opportunity to the petitioner. The inspection officer who gave the inspection report, which is the basic report for charges, was not examined in the domestic enquiry in the presence of the petitioner. Second show cause notice was given by enclosing the copy of the findings of the enquiry report proposing the punishment of dismissal without assigning any reasons as to how the management found that the charges were proved, which is against the settled law.

5.The learned counsel for the petitioner would further submit that on 15.02.2011, after receiving the show cause notice with the copy of the findings, sent objection letter to reopen the enquiry. But the 2nd respondent failed to give opportunity to the petitioner,

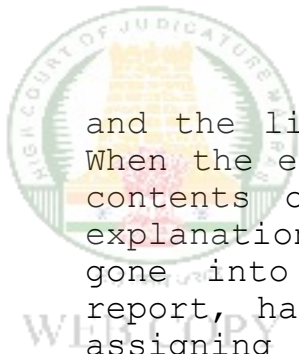


which is against the principles of natural justice. After the suspension, no subsistence allowance was paid. On 28.02.2011, dismissal order was passed without considering the past record of 25 years of service of the petitioner. Against which, the petitioner filed appeal before the 1st respondent raising 10 valid grounds, which were not considered in proper perspective and the reopening letter sent by the petitioner has also not been considered.

6.The learned Government Advocate appearing for the 1st respondent submitted that on 07.09.2010, the petitioner was entrusted with the duty of pump operator. When the salesman Tmt.K.Rajeswari was came late by 30 minutes, he unauthorizedly sold out the kerosene to the public without the card holders, which was reported to the Tahsildar, Public Distribution and the Inspector of Police, Food Cell and accordingly, they rushed to the bulk and caught hold of 55 litres of kerosene. On verification, there was deficiency to the tune of Rs.20,849/- and hence, the 2nd respondent was constrained to take disciplinary action against him and accordingly, the petitioner was placed under suspension and subsequently, charge memo, dated 25.09.2010, was issued calling for explanation. The petitioner submitted his explanation on 21.12.2010. Since it was found unsatisfactory, domestic enquiry was conducted, in which, the Enquiry Officer gave his findings that the charges were proved. Hence, the 2nd respondent issued a 2nd show cause notice proposing a punishment of dismissal and calling for explanation and subsequently, he was terminated from service vide order dated 28.02.2011. Against which, the petitioner has preferred an appeal under Section 41(2) of the Tamil Nadu Shops and Establishment Act, 1947 and the 1st respondent after hearing both sides, has passed the impugned order, dated 17.04.2012. Against the same, the petitioner also filed a review petition and the 1st respondent has rightly rejected the same, vide impugned order, dated 28.08.2012, which require no interference at the hands of this Court.

7.Heard the learned counsel appearing for the petitioner, learned Government Advocate appearing for the 1st respondent as well as the learned counsel for the 2nd respondent and perused the materials available on record.

8.Perusal of records shows that the domestic enquiry was conducted on 29.01.2011 and the enquiry officer submitted his report on the same day, without even giving an opportunity to the petitioner either to cross-examine the witnesses or to engage an Advocate to conduct the case, as the domestic enquiry itself was conducted by an Advocate. Even in the domestic enquiry, the inspection officer, who gave inspection report, which is the basic report for charges, was not examined in the presence of the petitioner and no opportunity was given to the petitioner to cross-examine him. The charge memo does not include the list of witnesses



and the list of documents to be relied on by the enquiry officer. When the enquiry report was served on the petitioner, on seeing the contents of the enquiry report, immediately he gave his further explanation. Even the disciplinary authority has not independently gone into the enquiry report and simply enclosing the enquiry report, had called for explanation from the petitioner and without assigning any reason, the management found that the petitioner was found guilty. The petitioner gave his detailed explanation, but the 2nd respondent had simply passed the order without even stating any reasons and without application of mind, against which, the petitioner filed an appeal raising ten grounds and none of the grounds has been discussed by the appellate authority and the appellate authority has passed a non-speaking order.

9.It is settled law that the authority has to apply his mind while passing the order. It is found that the enquiry has been conducted in a haphazard manner without even giving an opportunity to the petitioner. None of the contentions raised by the petitioner has been discussed either by the disciplinary authority or by the appellate authority and the appellate authority had simply recorded the findings of the enquiry officer. Even in the counter, it has been only stated that when the salesman Tmt.K.Rajeswari was came late by 30 minutes, the petitioner has done the sale.

10.It is also brought to the notice of this Court that no subsistence allowance was paid to the petitioner. It has to be construed that the petitioner was not given any means to even contest the proceedings, as per the settled law laid down by this Court in **Managing Director, Poultry Development Co-op. v. G.Jeelendran** reported in **2002(95)LLR 619**. His 25 years of service was not taken into account while passing the impugned orders. None of the grounds raised by the petitioner has been considered. The enquiry itself has been conducted in a very arbitrary manner and therefore, the impugned orders are liable to be quashed. Accordingly, the impugned orders dated 17.04.2012 and 28.08.2012 are set aside and the respondents are directed to reinstate the petitioner into service with all attendant benefits, within a period of twelve weeks from the date of receipt of a copy of this order. The writ petition is allowed accordingly. No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



smn

To

1.The Deputy Commissioner of Labour,
(Re-designated as Joint Commissioner),
Appellate Authority under
Tamil Nadu Shops and Establishment Act,
Office of the Deputy Commissioner of Labour,
Ratnasamy Nadar Road,
Visalakshipuram, Madurai - 14.

2.The Special Officer,
A.1248, The Sree Meenakshi Mills Tholilalars'
Co-operative Stores Ltd.,
61-A, V.P. Complex,
T.P.K. Main Road,Vasanthanagar,
Madurai - 3.

+1 CC to M/s.G.MURUGGAN, Advocate (SR-105238[F] dated 17/12/2019)
+1 CC to M/s.R.SARAVANAN, Advocate (SR-105239[F] dated 17/12/2019)
+1 CC to M/s.SPL.GP (SR-105301[F] dated 17/12/2019)

ORDER MADE IN
W.P (MD) No.1868 of 2013
16.12.2019

SMA/22/01/2020/5P/6C