



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated 16.08.2019

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THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

AND

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A(MD)No.166 of 2015

T.Sethuramalingam

.. Appellant/Petitioner

Vs.

1.O.838 Ambasamutram Agricultural Producers  
Co-operative Sales Society,  
rep. by its the Special Officer,  
Ambasamutram,  
Tirunelveli District.

2.The Deputy Registrar of the Co-operative Society,  
The Office of the Deputy Registrar of the  
Co-operative Society,  
Tirunelveli.

.. Respondents/Respondents

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent, to  
set aside the order W.P(MD)No.8227 of 2010 dated 18.04.2013.

Prayer in WP(MD). 8227/ 2010 :

Writ Petition is filed under Article 226 of the  
Constitution of India, praying this Court to pass an order or  
direction, more particularly in the nature of WRIT OF CERTIORARI to  
call for the records in pursuance of the 2nd respondent s order in  
Na.Ka.No.14197/2008 Saba dated 04.05.2010 and quash the same as  
devoid of merits.

For Appellant : Mr.A.Haja Mohideen

For Respondents : Mr.N.Shanmugaselvam  
Addl. Govt. Pleader

#### JUDGMENT

**(Judgment of the Court was delivered by K.RAVICHANDRABAABU, J.)**

This writ appeal is filed against the order made in W.P(MD)  
No.8227 of 2010 dated 18.04.2013.



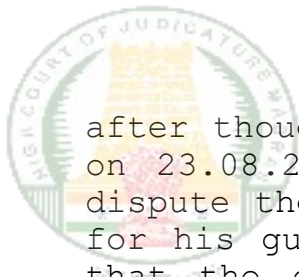
2.The appellant is the writ petitioner. He challenged the order of punishment of dismissal from service, before the Writ Court. The Writ Court after hearing both sides and considering facts and circumstances warranting the imposition of the punishment, dismissed the writ petition. Hence, the present writ appeal is filed challenging the said order of the Writ Court.

3.Heard the learned counsel for the appellant and the learned Additional Government Pleader appearing for the respondents. We perused the entire materials placed before us and the order passed by the Writ Court.

4.The grievance of the appellant before us is that in the enquiry conducted by the department, he was not issued with the report filed by the Vigilance Authorities. Therefore, it is contended that the entire proceedings is vitiated.

5.The writ petitioner was working as a Salesman in a Co-operative society. He accompanied the lorry, which was carrying the stock for the Fair Price Shop. The lorry was intercepted by the Vigilance Officers and a check was conducted and it was found that the 10 bags of rice were missing and 21 bags of rice were tampered with. The writ petitioner gave a statement on 17.08.2007 accepting the guilt in full for the missing bags as well as the shortage in the 21 bags of rice. He also remitted a sum of Rs.7,100/- being the cost of rice, which was missing. He was placed under suspension and a charge memo was issued on 23.08.2007. In the reply submitted to the charge memo dated 10.08.2007, the writ petitioner has accepted his guilt and requested to grant him pardon. However, an enquiry was conducted and the Enquiry Officer submitted a report on 11.02.2008 holding that the charges were proved. The writ petitioner was given an opportunity to give further explanation and in the reply dated 11.07.2008, for the first time, the writ petitioner has chosen to state that he was not guilty of the charges. The Disciplinary Authority, however, rejected the above said contention of the writ petitioner and accepted the finding of the Enquiry Officer and imposed the punishment of dismissal from service. An appeal preferred before the Joint Registrar of Co-operative Societies challenging the order of dismissal, was also rejected by an order dated 04.05.2010. Thereafter, the above writ petition was filed before the Writ Court.

6.The Writ Court pointed out that the writ petitioner has clearly and categorically admitted the guilt in his statement given on 17.08.2007; that at no point of time, the writ petitioner has stated that the said statement was either obtained under threat or coercion; that the writ petitioner having admitted the guilt, had not retracted the statement at any earlier point of time and therefore, the subsequent plea raised by the writ petitioner is an



after thought; that the writ petitioner was issued with charge memo on 23.08.2007 and however, the writ petitioner did not choose to dispute the allegation made against him but made a candid admission for his guilt as is evident from his explanation dated 10.09.2007; that the domestic enquiry conducted found the charges as proved; that nothing prevented the petitioner from establishing before the Enquiry Officer that the statement obtained from him was under threat and coercion; that the plea of non-furnishing of certain documents was not pleaded before the Enquiry Officer and therefore, the writ petitioner's explanation dated 11.07.2008 given after the enquiry report is an after thought. The Writ Court also observed that it cannot act as an appellate authority and re-appreciate the findings rendered in the domestic enquiry. Insofar as the proportionality of the penalty is concerned, the Writ Court found the writ petitioner accompanied the lorry, which was carrying the stock for the fair price and that the lorry was intercepted by the Vigilance Department and on a thorough check, it was found that there was a large scale stock deficit and pilferage from 21 bags of rice. Therefore, the Writ Court found that the writ petitioner has been rightly found guilty of misappropriating Government property and consequently, it refused to interfere with the order of punishment.

7.A careful consideration of the above findings rendered by the Writ Court would only drive us to an irresistible conclusion that the order under challenge does not require any interference in this writ appeal. Though it is claimed by the writ petitioner that the vigilance report was not furnished to him, it appears that no such plea or objection was raised by him during the enquiry proceedings. Further, as rightly pointed out by the Writ Court, when the first admission was made by the writ petitioner before the Vigilance Authorities on 17.08.2007, he has not chosen to retract the same at any point of time before completion of the domestic proceedings and on the other hand, the fact remains, that the writ petitioner participated in the enquiry proceedings and gave his explanation dated 10.08.2007, wherein also, it seems that he has candidly admitted the guilt, as found by the Writ Court.

8.When such being the factual position, we do not find that non-furnishing of the vigilance report alone, under the given facts and circumstances, will vitiate the entire proceedings. The Disciplinary Authority, after appreciating the report submitted by the Enquiry Officer, has chosen to impose the punishment of dismissal from service and the appellate authority also confirmed the same. Therefore, the Writ Court has rightly refused to interfere with the order of punishment. We also find that, going by the seriousness of the charge levelled against the writ petitioner, the punishment imposed is appropriate and not disproportionate and therefore, it does not warrant any interference.



Accordingly, this Writ Appeal fails and the same is dismissed.  
No costs.

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Sd/-

Assistant Registrar (AD-I)

// True Copy //

Sub Assistant Registrar(CS)

To

- 1.The the Special Officer,  
O.838 Ambasamutram Agricultural Producers  
Co-operative Sales Society,  
Ambasamutram,  
Tirunelveli District.
- 2.The Deputy Registrar of the Co-operative Society,  
The Office of the Deputy Registrar of the  
Co-operative Society,  
Tirunelveli.

+1 CC to M/s.SPL GP ( SR-82590[F] dated 20/08/2019 )

Judgment made in  
W.A(MD)No.166 of 2015  
16.08.2019

skn

JMN(06.09.2019) 4P : 4C