



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
06.09.2019	18.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE R.THARANI

W.A.(MD) No.1297 of 2018

and

C.M.P.(MD) No.9195 of 2018

Management / President
A1805, Theni Allinagaram
Municipality Menial Employees
Cooperative Thrift and Credit Society
A.V.R.Complex
Theni Panchayat Union Office (Opp. Road)
Theni ... Appellant/Petitioner

-vs-

1.The Deputy Commissioner of Labour
Dindugul, Dindugal District

2.K.Saravanan ... Respondents/Respondents

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 13.02.2018, passed in W.P.(MD) No.13578 of 2016, on the file of this Court.

Prayer in WP(MD). 13578/ 2016 :

Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari to call for the records pertaining to the impugned order issued by the first respondent in T.N.S.E. Appeal No.7/2014 dated 24.5.2016 and quash the same.

For Appellant : Mr.T.Lajapathi Roy

For Respondents : Mr.M.Murugan
Government Advocate for R1
Mr.K.Seemaraj for R2



J U D G M E N T

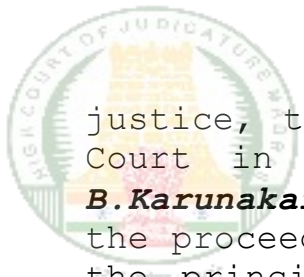
The appellant is a Co-operative Society registered under the provisions of the Tamil Nadu Co-operative Societies Act, 1983 (hereinafter, referred to as "the Act"). The appellant filed the writ petition in W.P.(MD) No.13578 of 2016 challenging the order, dated 24.05.2016, passed by the first respondent, who is the competent authority under the provisions of the Tamil Nadu Shops and Establishments Act, 1947, (hereinafter, referred to as "the Shop Act"), in T.N.S.E.A.No.7 of 2014.

2. The appeal in T.N.S.E.A.No.7 of 2014 was filed by the second respondent, who was an employee of the appellant Society. At the relevant point of time, the second respondent was working as Secretary (In-charge) of the appellant Society. On 31.12.2013, a charge memo was issued to the second respondent alleging certain delinquencies. The second respondent submitted his reply, dated 03.02.2014, denying the allegations. A domestic enquiry was conducted and the charges were held proved. The findings of the Enquiry Officer was communicated to the second respondent along with a show-cause notice, dated 27.03.2014. Ultimately, not being satisfied with the explanation offered, the second respondent was dismissed from service by order dated 10.06.2014. Challenging the order of dismissal from service, the second respondent filed an appeal before the first respondent under the provisions of the Shop Act. The appellant Society filed a counter affidavit resisting the appeal petition. The first respondent, by order dated 24.05.2016, allowed the appeal and set aside the order of dismissal from service. Challenging the same, the appellant Society filed the writ petition, which was dismissed by the impugned order.

3. Heard Mr.T.Lajapathi Roy, learned counsel appearing for the appellant, Mr.M.Murugan, learned Government Advocate appearing for the first respondent and Mr.K.Seemaraj, learned counsel appearing for the second respondent.

4. It is the submission of the learned counsel appearing for the appellant that the first respondent having not found any procedural lapses committed by the Enquiry Officer or by the Disciplinary Authority, ought not to have set aside the order of dismissal from service, when the charges framed against the second respondent were proved. The first respondent exercising powers under the Shop Act cannot go into the findings of the Enquiry Officer in his report, especially when there is no allegation against the manner in which, the domestic enquiry was conducted.

5. It is further submitted that if the first respondent had found that there was a violation of the principles of natural



justice, then in terms of the decision of the Honourable Supreme Court in the case of **Managing Director, ECIL, Hyderabad vs. B.Karunakar**, reported in **(1993) 4 SCC 727**, ought to have set aside the proceedings upto the stage where there has been a violation of the principles of natural justice and should have remitted the matter to the Disciplinary Authority to redo the exercise from the stage where the violation of the principles of natural justice had occurred and there was no justification on the part of the first respondent in setting aside the order of dismissal.

6. The learned Single Judge, in our considered view, examined in detail as to the manner in which the first respondent had allowed the appeal filed by the second respondent. Four charges were framed vide charge memo dated 31.12.2013. Charge No.3 was dropped by the Enquiry Officer, who held the other three charges to be proved.

7. The first charge being that the loan registeres maintained by the appellant Society were destroyed in a fire accident and the records were reconstructed by the second respondent and while doing so, a sum of Rs.12,51,460/-, which was due and payable to the appellant Society, was not brought on record.

8. The second charge was with regard to the quantum of interest payable by the borrowers and the correct amount was not reflected and a lower sum was mentioned resulting in loss of revenue to the appellant Society.

9. The fourth charge was with regard to the reply given by the second respondent to a query raised under the Right to Information Act and the second respondent having responded to the query, without bringing the same to the notice of the President, had exceeded the powers conferred on the second respondent in the capacity of Secretary (In-charge).

10. The first respondent, Authority competent under the Shop Act, found that after the fire accident, there was a reconstruction of records, which was followed by an inspection and further followed by an audit. The charge memo was found to be solely based on the inspection report, which had not attained finality. The subsequent audit report was found to be not taken into consideration by the Enquiry Officer or the Disciplinary Authority. The first respondent found that neither the Enquiry Officer nor the Audit Officer were examined during the domestic enquiry. The first respondent further noted that there was no allegation against the second respondent that he had wilfully not

<https://hccservices.com/india/hccservices/> correct amount payable to the Society, rather it was



based upon a final audit, which was conducted for the relevant year, namely, 2014 - 2015. Further, the allegation that there was fabrication of records with an intent to cause loss to the appellant Society was not established.

11. The first respondent noted that the discrepancy with regard to the sum of Rs.12,64,574/-, was on account of reserve for surcharge and this was pointed only in the final audit report prepared by the Junior Co-operative Auditor for Theni District and signed by the President and Secretarty of the appellant Society. After considering the entire evidence placed before the first respondent, the second respondent was exonerated of the charges. In the order dated 24.05.2016, passed by the first respondent, charges 1 and 2 were dealt together and independent reasons have been assigned by the first respondent to hold that the charges are not proved.

12. Further, the first respondent pointed out that to impose the capital punishment of dismissal from service, there should have been sufficient proof to show that the second respondent had acted wilfully and wantonly with an intent to cause loss to the appellant Society and in the absence of any such finding by the Enquiry Officer, based on the materials placed before him, it was held that the imposition of punishment of dismissal from service was not warranted.

13. As mentioned above, Charge No.3 was dropped by the Enquiry Officer himself and the Disciplinary Authority did not differ with the findings of the Enquiry Officer. With regard to the fourth charge, the allegation was that the second respondent should not have responded to the query raised by the third party under the Right to Information Act, but should have placed the same before the President of the Society. The finding of the Enquiry Officer as well as the Disciplinary Authority was examined by the first respondent and found that in terms of the duties and responsibilities assigned to various Officers to exercise powers under the Right to Information Act, which was marked as Ex.B10, it was found that the second respondent was competent to send reply under the Right to Information Act as he was entitled to function as Assistant Public Information Officer as he was holding the post of Secretary (In-charge) of the appellant Society. Thus, it was concluded that the second respondent discharged his function as Assistant Public Information Officer in terms of the duties and responsibilities conferred on various officers as mentioned in Ex.B10. Thus, the first respondent concluded that there was no reasonable cause for dismissing the second respondent from service on the said ground.

14. The finding rendered by the first respondent was



examined for its correctness by the Writ Court. As mentioned earlier, the Writ Court had independently analyzed the entire facts of the case, findings rendered by the Enquiry Officer, reasons assigned by the first respondent to interfere with the order of punishment and found that there was no illegality or perversity in the findings rendered by the first respondent. While exercising the jurisdiction under Article 226 of the Constitution of India and testing the correctness of the order passed by the Tribunal, which was exercising powers under the labour welfare legislation, the scope of interference has been clearly delineated by the Writ Court. It has been held that the Writ Court cannot act as an Appellate Authority over the findings of the Tribunal and what is required to be seen is whether there is any perversity in the order passed by the Tribunal, whether the Tribunal ignored the relevant facts, took note of the irrelevant facts and rendered a perverse finding. One more aspect, which can be gone into is whether there has been any violation of the principles of natural justice. The other aspect, which can be looked into by the Writ Court is to see whether sufficient reasons have been assigned by the Tribunal in support of his conclusion. Thus, if there is no violation of the principles of natural justice, the order passed by the Tribunal is a reasoned order and if there was no perversity in its approach and the relevant documents were considered, then the Writ Court is not expected to re-appreciate the findings and come to a different conclusion. Even assuming the Writ Court opines that in the given facts and circumstances and the documents produced a different conclusion could have been arrived at, that would not be a reason to interfere with the order of the Tribunal in the absence of perversity in the findings rendered by the Tribunal.

15. A copy of the balance sheet as on 31.03.2015 was produced. This was submitted after the final audit was conducted in 2014 - 2015. From the said balance sheet, it is seen in Paragraph No.6, under the head of "Adjusting Heads", it has been mentioned as "Reserve for Surcharge" and a sum of Rs.12,64,574/- has been shown. This aspect of the matter was considered by the first respondent to exonerate the second respondent of the charge Nos.1 and 2.

16. It is the submission of the learned counsel appearing for the appellant that the first respondent has pointed out that there has been violation of principles of natural justice, since the second respondent was not furnished with the findings of the Enquiry Officer before imposing the punishment. Therefore, it is the submission that having pointed out this defect, the first respondent ought to have borne in mind the decision in **B. Karunakar** (supra) and ought to have set aside the order passed by the Disciplinary Authority and remanded it back to the Disciplinary



Authority with a direction to furnish the enquiry report, obtained the views of the second respondent and took a fresh decision.

17. We find that such a ground was not canvassed in the writ petition. Nevertheless, this being a legal issue, we permitted the learned counsel for the appellant to argue on this aspect. Admittedly, the second respondent did not press this issue as it appears that he had not been prejudiced on account of the same. Therefore, a passing reference made by the appellant on this issue cannot be a ground to state that the order passed by the first respondent should be set aside in its entirety and remanded the matter to the Disciplinary Authority to redo the exercise. As could be seen from the orders passed by the first respondent, there are other independent reasons assigned by the first respondent as to why there was no wilful negligence on the part of the second respondent while re-constructing the records, which were destroyed in the fire accident. Apart from that, it has not been established that on account of the alleged wrong entries any loss was caused to the appellant Society. However, we do not propose to record any finding in this appeal with regard to the aspect relating to loss caused to the appellant Society, as surcharge proceedings have been initiated against the second respondent and at present, an appeal is pending against the said order.

18. Be that as it may, we are fully satisfied that the findings rendered by the Writ Court were perfectly in order as it has considered the manner in which the first respondent has taken note of the factual position and held that the charges framed against the second respondent are not proved. The appellant Society has not been successful in pointing before us that their case would fall under any one of the exceptional cases pointed out before us for invoking the remedy under Article 226 of the Constitution of India. For these reasons, we find no good reasons to interfere with the order passed by the Writ Court.

19. In the result, the writ appeal fails and it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS)



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To:
The Deputy Commissioner of Labour,
Dindigul, Dindugal District.

+1 CC to M/s.K.SEEMARAJ, Advocate (SR-87371[F] dated 18/09/2019)

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-87854[F] dated
19/09/2019)

JUDGMENT

IN

W.A. (MD) No.1297 of 2018

and

C.M.P. (MD) No.9195 of 2018

18.09.2019

KM/ (27.09.2019) 7P 4C