



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.03.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P(MD)No.16884 of 2012

and

M.P(MD)No.1 of 2012

WEB COPY

The Karur Agricultural Producers

Co-operative Marketing Society Ltd., R.378

Rep. by its Special officer,

145, Jawahar Bazaar,

Karur-639 001.

... Petitioner

vs.

1.The Deputy Commissioner of Labour (Appeal),
Dindigul.

2.S.Jeyaraj

... Respondents

PRAYER:- Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, to call for the records relating to the order of the first respondent, dated 30.12.2011 made in Appeal T.S.E.No.1 of 2011, who is the Appellate Authority (Deputy Commissioner of Labour (Appeal), Dindigul under the Tamil Nadu Shops and Establishment Act, 1947 and quash the same.

For Petitioner : Mr.V.Nagarajan

For R1

: Mr.C.Ramar,

Additional Government Pleader

For R2

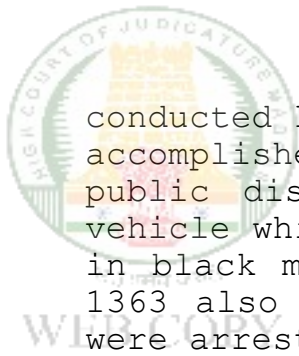
: Mohammed Imran

for M/s.Ajmal Associates

ORDER

This Writ Petition has been filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, to call for the records relating to the order of the first respondent, dated 30.12.2011 made in Appeal T.S.C.No.1 of 2011, who is the Appellate Authority (Deputy Commissioner of Labour (Appeal), Dindigul under the Tamil Nadu Shops and Establishment Act, 1947.

2. The petitioner's Society is a Karur Agricultural Producers Co-operative Marketting Society Limited registered under the Tamil Nadu Co-operative Societies Act. The said society is having more than 45 fair price shops under its control. One Mr.S.Jeyaraj was employed as a salesman and worked in the fair price shops under Public Distribution System in Seethapathi Colony and Kodaiyur as a Salesman during the period 06.06.2007 and 27.07.2009. He was indulged in malpractices and caught red handed during the inspection

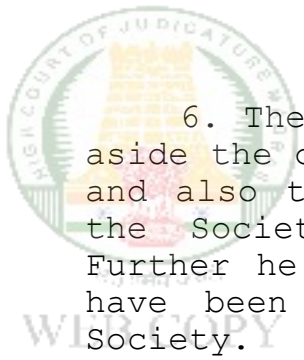


conducted by the District Supply Officer when the salesman with his accomplices transported illegally 86 bags of ration rice meant for public distribution to the downtrodden people of the state. The vehicle which was involved in illicit transportation to sell the rice in black market through Tempo XLIV bearing registration No.TN 33 M 1363 also impounded. The culprits including the salesman S.Jeyaraj were arrested on 27.07.2009 and remanded into judicial custody.

3. On the basis of stock verification reports given by two staffs of the society and supported by the inspection report of the Taluk Supply Officer, stock deficit and cash misappropriation were detected. The District Collector has also issued orders detaining him under prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 by his order in CrI.M.P.No.2 of 2009 (CS), dated 07.08.2009. On the basis of the reports received from the staffs of the society for the serious irregularities and misappropriation, he was suspended from 28.07.2009 by the proceedings, dated 28.07.2009. The explanation was called for from the second respondent. Not satisfied with the explanation, charge-memo has been issued and the domestic enquiry was ordered. The Domestic Enquiry Officer has conducted the enquiry and given his report on 09.08.2010. Further explanation is sought from the second respondent by supplying a copy of the enquiry report. Not satisfied with his explanation, further opportunity is afforded to the second respondent before passing the final order. The second respondent in his explanation has categorically admitted his liability that due to his wife's ill-health he mis-utilised the sales amount for her treatment. Hence, it was conclusively proved that he has admitted the charges and prayed for the employment. The criminal case is pending against him in Cr.No.329 of 2009 under Sections 6(4) of TNSC (RDCS) Orders 1982 r/w Section 7(i) 9(ii) of EC Act 1955.

4. Considering all the materials available on record, the first respondent passed an order dismissing the petitioner from service on 31.01.2011. If any employee aggrieved by the order of the Management may prefer a Revision under Section 153 of the Co-operative Societies Act before the Revisional/appellate Authority, the Joint Registrar of Co-operative Society since the Societies are registered under the Tamil Nadu Co-operative Societies Act.

5. Aggrieved by the order of the Special Officer, dated 31.01.2011, the second respondent preferred an appeal before the Deputy Commissioner of Labour (Appeal) Dindigul in T.S.E.No.01 of 2011 under Tamil Nadu Shops and Establishment Act, 1947. The petitioner's society appeared before the Authority and filed a detailed counter stating that the appeal is not maintainable since the second respondent has other avenues to ventilate his grievances under the Co-operative Society Act to prefer a Revision under Section 153 of the Tamil Nadu Co-operative Societies Act.



6. The Deputy Commissioner of Labour allowed the appeal and set aside the order of dismissal stating that the charges are not proved and also the second respondent has remitted the deficit amount to the Society on various dates by acknowledging his liability. Further he has deposed before the Enquiry Officer that the amounts have been remitted by him to avert any financial loss to the Society.

7. Aggrieved against the said order, the petitioner has come out with the present writ petition seeking to set aside the order of the Deputy Commissioner of Labour.

8. It is seen from the records that the impugned order has been issued only after following the Principles of Natural Justice. The order has been issued only on the proved charges as found out by the Domestic Enquiry Officer in this regard. The order was supported by documentary evidences. With regard to the payment of subsistence allowance as per the provisions of the Tamil Nadu Payment of Subsistence Allowance Act, 1981, it is submitted that there is clear provision in the Bye-laws of the Respondent Society in respect of their payment and accordingly the second respondent was paid subsistence allowance. The Domestic Enquiry Officer is an independent Enquiry Officer. He has followed due process of law. Having participated in the enquiry, the second respondent is not estopped from questioning the same. However, it is submitted that the Enquiry was conducted in a fair and proper manner. No bias whatsoever can be attributed by the Enquiry Officer.

9. The disciplinary proceedings initiated against the second respondent is only on the basis of the Inspection Registers of the Taluk Supply Officer prepared at the time of inspection in the concerned Fair Price Shops. The deficit in the controlled commodities were found out only during the inspection conducted by the Taluk Supply Officer on 29.07.2009. The second respondent was arrested on 27.07.2009 by the Food Cell Police consequent to the seizure of 86 bags of rice smuggled by the second respondent with the assistance of one G.Rayan by the District Supply Officer, Karur. Subsequent to the same, the Joint Registrar of Co-operative Societies, Karur Region vide letter, dated 28.07.2009 instructed the petitioner's society to arrange to open the Seethapatti and Kodaiyur Shops by posting another salesman. There are two separate occurrence in this event. One is seizure of 86 bags of rice on 27.07.2009 intended for Public Distribution System and another is Inspection carried out at the concerned shops on 29.07.2009. The seizure made by the District Supply Officer leading to the arrest of the second respondent and consequent Inspection was done by the Taluk Supply Officer on the directions of the Higher Officials. One Pasupathy was present during the inspection by the Taluk Supply Officer on 29.07.2009 and to this effect, he has signed in the Inspection Register and has also acknowledged the receipt of stocks in the



regard does relate to the Charge memo issued by the petitioner.

10. Further, the second respondent during the enquiry held on 16.06.2010 has submitted a letter to the Enquiry Officer and the same was also marked as a document on his side. In the above said letter, the second respondent has stated detail about his preventive detention in Karur Sub-Jail and later in Trichy Central Jail and his release on condition bail etc., Hence, the observation of the Enquiry Officer regarding the criminal proceedings pending against him is only based on documents and that too furnished by the second respondent.

11. The stock deficit was arrived by the Taluk Supply Officer as well as Staff of the petitioner society. There is no element of fabrication in this regard and there is no necessity for the same also. Attempt to smuggling of controlled items that too rice meant for S.G.R.Y.Scheme is a criminal offence. Hence, the punishment imposed on the second respondent is in proportion and does commensurate with the gravity of offence. The dismissal order was issued only after due process of law and on receipt of findings from the Enquiry Officer. The copy of the report was forwarded to the second respondent.

12. In view of the above observation, the writ petition is allowed and the order of the Deputy Commissioner of Labour, Dindigul, dated 30.12.2011 made in Appeal T.S.C.No.1 of 2011 is set aside. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Crl.Side)

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Sub Assistant Registrar(CS)

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To

The Deputy Commissioner of Labour (Appeal),
Dindigul.

+1 CC to M/s.V.NAGARAJAN, Advocate (SR-10850[F] dated 10/03/2020)

+1 CC to M/s.SPL.GP (SR-11077[F] dated 11/03/2020)

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-11152[F]

W.P(MD)No.16884 of 2012

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SMA/23/03/2020/4P/5C