

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on: 16.03.2021

Judgment Delivered on : 16.04.2021

Coram:

THE HON'BLE MR.JUSTICE R.SUBBIAH
and
THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Writ Appeal No.556 of 2019
and
C.M.P.No.4785 of 2019

The Management of Andhiyur Consumer
Co-operative Stores Ltd.,
Andhiyur,
Represented by its President ... Appellant

Vs.

1. The Joint Registrar of Co-operative Societies,
Erode Region,
Erode.

2. S.Shanmugam, S/o Shengodan ... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent
against the order dated 27.11.2018 passed by the learned Single
Judge, in W.P.No.3474 of 2014 on the file of this Court.

Prayer in WP.No.3474 of 2014 : Petition filed under Article 226
of the Constitution of India, praying to issue a Writ of
Certiorari calling for the records pertaining to the proceedings
of the 1st respondent with regard to the revision preferred by
the 2nd respondent under section 153 of TN Co-operative Societies
Act, 1983 r/w. Rule 169 of TN Co-operative Societies Rules,
1988 and quash the order dated 27.09.2013 in
Na.Ka.No.1980/2011/SB passed by the 1st respondent directing
reinstatement of the 1st respondent by setting aside the order of
dismissal dated 27.01.2011 passed against the 2nd respondent
by the special officer of the petitioner society.

For appellant : Mr. Venkata Krishnan
for Mr.K.V.Shanmuganathan
For respondents : Mr.L.P.Shanmuga Sundaram
Special Government Pleader
for R-1
Mrs.G.Thilagavathi, Senior Counsel
for Mr.R.Gopinath for R-2

JUDGMENT

R.SUBBIAH, J

This Writ Appeal has been filed as against the order dated 27.11.2018 passed by the learned Single Judge, dismissing the Writ Petition No. 3474 of 2014 filed by the appellant herein.

2. The appellant has filed the aforesaid Writ Petition questioning the validity of the order dated 27.09.2013 of the first respondent-Joint Registrar of Co-operative Societies, allowing the Revision filed under Section 153 (1) of the Tamil Nadu Co-operative Societies Act by setting aside the order of punishment imposed upon the second respondent.

3. The brief facts as culled out from the affidavit filed in support of the said Writ Petition, which are necessary to decide the issue involved in this Writ Appeal, are as follows:

(a) The appellant is a Co-operative Society registered under the provisions of the Tamil Nadu Co-operative Societies Act, 1983, involved in distribution of essential commodities and consumer goods to the public at fair price. The second respondent herein was employed in the appellant-Society as Sales-man. While so, on 10.05.2010, the Manager of the appellant-Society carried out an inspection in Shop No.II of Pachampalayam, in which, the second respondent herein was in-charge. During such inspection, it was noticed that the second respondent/Sales-man committed several irregularities, thereby, he caused financial loss to the appellant-Society. In connection with such inspection and the irregularities unearthed, the second respondent herein was placed under suspension with effect from 12.06.2010.

(b) Thereafter, a Charge Memo, dated 31.07.2010 was issued to the second respondent herein containing four charges and he was directed to submit his explanation. The first charge was that the second respondent had committed misappropriation of the funds of the appellant-Society by making belated remittance of the sale proceeds of the controlled goods on three occasions in the month of May 2010. The second charge pertains to stock deficit committed by the second respondent herein to the tune of Rs.3,499/-. The third charge was that due to the negligence of the second respondent herein, goods worth Rs.6,462/- got damaged, thereby resulting in loss to the appellant-Society. The fourth charge related to non-payment of the fine amount of Rs.500/- imposed on the second respondent herein by the Assistant Inspector of Labour, for having distributed lesser quantity of the goods to the consumers using spurious weights.

(c) On receiving the said Charge Memo, the second respondent submitted his explanation dated 30.08.2010, in which,

he had admitted all the charges and thereafter, remitted the amount(s) due to the appellant-Society. He had also categorically admitted that he had remitted the sale proceeds belatedly, though he was fully aware of the duty cast upon him to remit the sale proceeds of the goods on the same day itself. The second respondent/Sales-man also admitted the stock deficit caused by him and also the damage that had resulted to the goods on account of his negligence.

(d) In view of the above categorical admission made by the second respondent herein, the Society could have dispensed with the domestic enquiry, however, with a view to give an opportunity to the second respondent, the disciplinary authority ordered for domestic enquiry, in which, the second respondent participated and was given an opportunity to cross-examine the witness(es) examined on behalf of the Department. Even in the domestic enquiry, the second respondent did not repudiate the charges levelled against him and his defence was that he had remitted the monetary value of the lost goods and the damaged goods to the appellant-Society.

(e) The Enquiry Officer, after considering the oral and documentary evidence adduced on behalf of both sides, had submitted Enquiry Report, dated 11.11.2010, holding the second respondent guilty of all the charges levelled against him. The appellant-Society closely scrutinised the Enquiry Report submitted by the Enquiry Officer and concurred with the findings of the Enquiry Officer.

(f) Thereafter, a second Show Cause Notice was issued to the second respondent, enclosing the Enquiry Report, in which the details of the past misconduct of the second respondent, were also referred to. After receiving the said Show Cause Notice along with the report of the enquiry officer, the second respondent submitted his reply/explanation to the Special Officer of the appellant-Society on 29.12.2010. Since the explanation submitted by the second respondent was not satisfactory, he was dismissed from service by the order of the Special Officer of the appellant-Society, dated 27.01.2011.

(g) Aggrieved by the said order of dismissal, dated 27.01.2011 passed against the second respondent/Sales-man, he preferred a Revision Petition under Section 153(1) of the said Act, read with Rule 169 of the Tamil Nadu Co-operative Societies Rules, before the first respondent-Joint Registrar of Co-operative Societies. Even in the said Revision Petition, the second respondent did not challenge the correctness and genuineness of the charge of misappropriation causing stock deficit and the other charges that had been framed against him. However, the first respondent-Joint Registrar of Co-operative Societies, passed the order dated 27.09.2013 setting aside the punishment of dismissal of the second respondent from service and directed reinstatement of the second respondent without

back-wages and continuity of service. However, the first respondent-Joint Registrar of Co-operative Societies/Revisional Authority, imposed a punishment of cut in increment for a period of three years without cumulative effect against the second respondent/Salesman. Challenging the said punishment, the appellant-Society had filed W.P.No.3474 of 2014 for the relief stated supra, and the said Writ Petition was dismissed by the learned Single Judge on 27.11.2018, holding as follows:

"11. I have also carefully considered the materials available on record. Considering the fact that the petitioner is only a sales man, and also taking into consideration that, there is no allegation of misappropriation of any funds. The main charge is belated payment of sale proceeds to the society. Taking into consideration of the fact, for the belated deposit, the 2nd respondent has paid interest and the loss is also compensated by the 2nd respondent, the revisional authority modified the punishment. I do not find any illegality in the orders passed by the 1st respondent/revisional authority. Hence, the writ petition is dismissed. No costs. Consequently, the connected miscellaneous petitions are also closed.

12. Now it is stated that, even though revisional authority passed the order as early as on 27.09.2013, so far the petitioner was not reinstated into service. In the above circumstances, the petitioner is directed to reinstate the 2nd respondent on or before 01.01.2019."

Aggrieved by the above said order passed by the learned Single Judge, the present Writ Appeal is preferred by the appellant-Society.

4. It is the submission of the learned counsel appearing for the appellant-Society that the learned Single Judge ought to have seen that the first respondent was not right in interfering with the order of dismissal passed against the second respondent, after arriving at a conclusion that the appellant-Society had established the charge(s) levelled against the second respondent/Sales-man that he had caused stock deficit of essential and non-essential commodities by holding a valid domestic enquiry. The learned counsel appearing for the appellant-Society further contended that the learned Single Judge ought to have seen that even the charge of temporary misappropriation is a serious one and the punishment of dismissal could be imposed for the

misconduct of temporary misappropriation. It is the further contention of the learned counsel for the appellant-Society that the first respondent had shown misplaced sympathy on the second respondent herein by setting aside the order of dismissal and consequently, he was reinstated by modifying the punishment of dismissal from service into one of cut in increment for three years without cumulative effect. The learned counsel appearing for the appellant-Society further submitted that the learned Single Judge had dismissed the Writ Petition without assigning any valid reason. Thus, he prayed for allowing the present Writ Appeal and consequently, the order of the disciplinary authority, dismissing the second respondent from service, is liable to be confirmed. In support of his submissions, the learned counsel appearing for the appellant/Society relied on the following decisions:

(i) 2000 (7) SCC 517 = MANU/SC/0591/2000 (Janatha Bazar (South Kanara Central Co-operative Whole Sale Stores Limited) and others Vs. The Secretary, Sahakari Nourara Sangha and others);

(ii) MANU/TN/9395/2007 (Madras High Court) (The Chief Executive Officer, Tamil Nadu Khadi and Village Industries Board and others Vs. P.Venkataraman and others), and

(iii) MANU/TN/3385/2009 (Madras High Court) (K.Damodaran Vs. The Presiding Officer, Labour Court and others).

5. Countering the above submissions of learned counsel for appellant/Society, learned Special Government Pleader appearing for first respondent-Joint Registrar of Co-operative Societies, submitted that, as a sales-man, the second respondent was entrusted with specific duties and responsibilities, as per which, he had to remit the sales amount of Ration Shop on the same day itself to Head Office concerned, which he failed to do. Hence, he was dismissed from service by conducting enquiry. But first respondent-Joint Registrar of Co-operative Societies, in the appeal, found that the punishment of dismissal from service is highly disproportionate to the gravity of charges levelled against the second respondent/Sales-man and the punishment was modified into one of cut in increment for a period of three years without cumulative effect. The learned Special Government Pleader further submitted that the impugned order dated 27.09.2013 passed by the first respondent is a well-considered and balanced/speaking order and the same needs no interference by this Court. Learned Special Government Pleader further submitted that the second respondent had not filed any appeal or other proceedings even with regard to rejection of back-wages, continuity of service and the other attendant benefits. The first respondent-Joint Registrar of Co-operative Societies had taken only a lenient view by modifying the punishment of dismissal from service into one of reinstatement of the second respondent into service and with-holding of increments for three years without cumulative effect. It is not correct on the part of the

appellant-writ petitioner-Society to state in the affidavit filed in support of the Writ Petition that the first respondent had confined to the charge of 'causing stock deficit' alone, when there are three other charges levelled against the second respondent. The indulgence shown by the first respondent with the dismissal order by substituting a lesser punishment, is wholly justified. Thus, for these reasons, the learned Special Government Pleader appearing for the first respondent prayed for dismissal of the Writ Appeal.

6. The learned Senior Counsel appearing for the second respondent submitted that the second respondent is only a sales-man and there is no allegation of misappropriation of any funds against him. The second respondent had paid the fine as early as on 03.07.2010 with regard to the last charge and he had also compensated the loss for the belated deposit of sale proceeds. With regard to the stock deficit, though not caused by him deliberately, he made good the deficit by paying the amount with interest. The learned Senior Counsel further submitted that with regard to the damage of stocks (coriander powder), he had explained that the goods were delivered to the fair price shop in a damaged condition only and therefore, he was not in a position to sell the goods and was not responsible for the loss. Considering these aspects, the first respondent has rightly interfered with the punishment of dismissal from service and modified it in exercise of his power as an appellate authority. Such an order passed by the first respondent was also confirmed by the learned Single Judge by assigning valid reasons. The learned Senior Counsel appearing for the second respondent therefore prayed for dismissing the present Writ Appeal.

7. Keeping in mind the submissions made on either side, we have carefully perused the materials available on record.

8. The first respondent, while setting aside the order of punishment of dismissal from service, had taken note of the nature of delinquency committed by the second respondent. The first respondent had also taken note of the fact that the shortage amount or deficit amount had been remitted by him. The second respondent had also given plausible explanation which gave rise to the charge(s) framed against him. Taking into account the grounds raised by the second respondent in the appeal, the first respondent-Joint Registrar of Co-operative Societies, thought it fit that it is not a fit case where the Society will be justified in imposing the punishment of dismissal from service against the second respondent/Sales-man. Accordingly, by modifying the order of dismissal, the appellate authority had substituted it with the punishment of increment cut for a period of three years without cumulative effect.

9. The learned Single Judge, on appreciation of the charges levelled against the second respondent and the order of dismissal from service imposed on him, concurred with the conclusion arrived at by the first respondent to substitute the punishment with increment cut for a period of three years without cumulative effect. In fact, the second respondent accepted the punishment which is evident that he had not preferred any appeal against the order of modified punishment. The learned single Judge concurred with the modified punishment imposed on the second respondent by the first respondent, as an appellate authority, and dismissed the writ petition filed by the appellant society. We do not find any infirmity in such order passed by the learned Single Judge who had exercised judicial discretion in confirming the order of the first respondent. We are also of the view that given the nature and magnitude of the charges levelled against the second respondent, the punishment of dismissal from service is grossly disproportionate. The second respondent deserve a punishment, but he does not deserve a capital punishment of dismissal from service. Having regard to the above, we do not find any valid reason to interfere with the order passed by the learned Single Judge. Accordingly, the Writ Appeal is dismissed. No costs. Consequently, the appellant-Society is directed to reinstate the second respondent/Sales-man in service within a period of four weeks from the date of receipt of a copy of this judgment. C.M.P. is closed.

Sd/-

Assistant Registrar (CS.VII)

/True Copy/

Sub Assistant Registrar

To

The Joint Registrar of Co-operative Societies,
Erode Region,
Erode.

+lcc to Mr.R.Gopinath, Advocate Sr.No.23046
+lcc to The Government Pleader Sr.No.23358
+lcc to Mr.K.V.Shanmuganathan, Advocate Sr.No.22945

akm/30.04.21/7P-5C/

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