



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2021

CORAM

THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

W.P.No.7596 of 2014

&

M.P.No.1 of 2014

A.Ramalingam

... Petitioner

Vs.

1.The Joint Registrar of Co-op Societies/Review Authority
Cuddalore Region, Cuddalore
Cuddalore District.

2.The President
I.I 629 sirupakkam Primary Agricultural
Coop Credit Society
Sirupakkam, Tittagudi Taluk
Cuddalore District

... Respondents

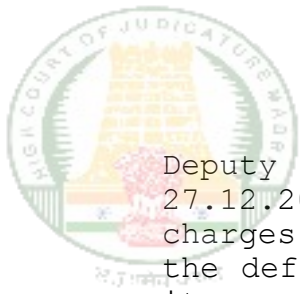
PRAYER: The Writ Petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified mandamus calling for the entire records relating to the impugned order passed by the 1st respondent in his proceedings Na.Ka.No.1992-2013-Thu.va.Tha dated 04.06.2013 whereby confirming the order passed in Na.Ka.10196/09-Thu.Va.Th-1, dated 09.09.2010 and quash the same and consequently direct the respondents to reinstate the petitioner into service as packer in the 2nd respondent society with all backwages, attendant benefits and other monetary benefits.

For Petitioner : Mr.C.Prakasam

For Respondents : Mr.L.P.Shanmuga sundaram for R2

O R D E R

The petitioner was appointed as a packer in the 2nd respondent society on 14.09.1993. He was given incharge as salesman on 29.02.2008. During the inspection conducted by the Co-operative Sub Registrar (Public Distribution System) Vridhachalam on 08.09.2008 a deficit of stock was found in respect of rice, sugar and grocery. It was also found that the petitioner has raised bogus bills for sale of rice for 556 kgs. Therefore, a charge memo was issued on the instructions of the



Deputy Registrar (Public Distribution System), Cuddalore on 27.12.2008. A domestic enquiry was conducted and all the three charges were held to be proved. The petitioner himself accepted the deficit of stock and remitted the deficit amount. Therefore, it was held that he accepted the charges and he has sought for reinstatement by his reply to enquiry report on 03.11.2009. In the meanwhile, the petitioner has been requesting the respondents to pay the subsistence allowance. However, without paying the subsistence allowance, he was dismissed from service on 25.11.2009. He filed an revision before the 1st respondent and it was rejected by an order dated 09.09.2009 and a review filed against that order was also dismissed. Thereafter, the 2nd respondent by cheque dated 23.03.2013 sent the subsistence allowance due to the petitioner and it was returned by the petitioner.

2. I heard the submissions of both the sides.

3. Admittedly, as stated in the counter affidavit filed by the respondents, subsistence allowance was paid by a cheque dated 23.03.2013 after the order of dismissal was imposed on 25.11.2009. On the face of it, the order of dismissal stands vitiated for violation of principles of natural justice and non adherence to the mandatory requirement of the statute to pay subsistence allowance to the delinquent in order to enable him to effectively defend his case. In so far as the subsistence allowance was not given during enquiry and it was paid only after four years after the order of dismissal passed by the respondents, the entire disciplinary proceedings stands vitiated.

4. The second limb of argument is that there was deficit of stock and thereby non remittance of sale amount was set right by remittance of the money equal to the value of the goods as demanded by the respondents. As such there is no loss caused to the society. It is categorically contended by the learned counsel for the petitioner that during rush hours, it is the usual practice of all the ration shops to make entries in the ration cards and raise the bills later. At any cost there is no allegation of misappropriation. Therefore, for deficit of stock which was compensated by way of money, order of dismissal is disproportionate and too harsh. Even though, this point was raised by the petitioner in his appeal and revision, there is no discussion on this aspect by the Disciplinary Authorities. Even though in the considered opinion of the Court, deficit of stock could happen due to damages caused by rodents and spillages of the grains from damaged gunny bags, loss of weight due to drying etc., All these aspects should be taken into consideration. When there is no allegation of misappropriation or corruption or illegal aggrandizement by salesmen, the punishment of dismissal



appears to be harsh and disproportionate. The petitioner has also raised a point that the similarly placed sales persons, who caused deficit of stock were ordered to be reinstated in the society by the same authority with regard to Cuddalore District. Whereas, the petitioner alone was discriminated and given harsh punishment. When the similarly placed persons were given minor punishment for the identical charges, treating the petitioner with a different yardstick is violative of principles of natural justice. Even this aspect should have been considered by the authorities. Therefore, this Court is inclined to set aside the order confirming the order of dismissal and the matter is remitted back to the Disciplinary Authority. A further direction is given to the Disciplinary Authority to reconsider the proportionality of the punishment and to pass orders within a period of three months from the date of receipt of a copy of this order. However, it is made clear that for the interregnum period where the petitioner was out of employment, he will not be entitled to actual monetary benefits and his services will be calculated notionally, on the principles of no work no pay.

Writ petition is disposed of with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kpr

To

1.The Joint Registrar of Co-op Societies/Review Authority
Cuddalore Region, Cuddalore
Cuddalore District.

2.The President
I.I 629 sirupakkam Primary Agricultural
Coop Credit Society
Sirupakkam, Tittagudi Taluk
Cuddalore District

+lcc to Government Pleader Sr No.36919

W.P.No.7596 of 2014
&
M.P.No.1 of 2014

SR (CO)
PR (31/08/2021)