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IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 29.06.2021

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.Nos.26174 & 26175 of 2017

Ramasamy

... Petitioner in
W.P.No.26174 of 2017

L.Ramesh

... Petitioner in
W.P.No.26175 of 2017

Vs

1. The Joint Registrar of
Co-Op. Societies,
Kancheepuram Region,
Kancheepuram District.
 2. The Management of G.3414,
Kayarambedu Primary Agricultural
Co-op.Credit Society Ltd.,
Rep.by its President, Kayarambedu,
Guduvancherry,
Kancheepuram District.
 3. V.Duraisamy,
Co-op. Sub Registrar (Retd)/
Enquiry Officer,
No.71/12, Thiruvalluvar Street,
Chinna Kancheepuram,
Kancheepuram District.
 4. The Deputy Commissioner of Labour,
(Minimum Wages)
Appellate Authority for Tamilnadu Shops
and Establishment Act, Teynampet,
Chennai-18.
- ...Respondents in both cases

Prayer in W.P.No.26174 of 2017: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order dated 18.08.2016 issued by the second respondent herein and the consequential impugned order in TNSE No.II/7/2016 dated 18.09.2017 passed by the fourth respondent herein and quash the same and consequently direct the second and third



respondents to conduct afresh domestic enquiry for the charge memo dated 24.11.2015 by affording enough opportunity by recording the evidence along with cross examination of the witnesses of the management.

Prayer in W.P.No.26175 of 2017: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order dated 19.08.2016 issued by the second respondent herein and the consequential impugned order in TNSE No.II/6/2016 dated 18.09.2017 passed by the fourth respondent herein and quash the same and consequently direct the second and third respondents to conduct afresh domestic enquiry for the charge memo dated 03.02.2016 by affording enough opportunity by recording the evidence along with cross examination of the witnesses of the management.

(in both cases)

For Petitioners : Mr.T.Sundaravadanam

For R1, 3 & 4 : Mr.K.V.Sajeev Kumar
Government Counsel

For R2 : Mr.L.P.Shanmugasundaram
Standing Counsel

COMMON ORDER

By consent of both the parties, these writ petitions are taken up for final disposal.

2. The petitioners herein, who have been appointed as Salesmen in the second respondent Society, were subjected to charges of bogus billing. A Disciplinary action was conducted, wherein, all the charges were held to be proved. Subsequent to the enquiry report, the second respondent herein had dismissed the petitioner in W.P.No.26174 of 217 from services on 18.08.2016 and the petitioner in W.P.No.26175 of 2017 on 19.08.2016. The appeal against the dismissal order before the Deputy Commissioner of Labour was also dismissed on 18.09.2017. The present writ petitions have been filed against the orders of dismissal and rejection of appeal.

3. The learned counsel for the petitioners submitted that after the conclusion of the enquiry, the second respondent herein had not issued any further show cause notice calling for explanation on the proposed punishment and therefore, the orders of dismissal itself cannot be sustained. In support of his claim, the learned counsel relied on the decision of this Court in the case of K.Ravi Vs.The Joint Registrar of Co-operative Societies and two others passed in W.P.No.3152 of 2016 dated 14.09.2016.



4. The learned Standing Counsel appearing for the second respondent, however, would submit that the charges against the petitioners herein are very severe in nature, whereby, huge monetary loss was caused to the second respondent Society. Though he would admit that the second show cause notice was not issued, he placed reliance on the averments made in the counter affidavit and submitted that K.Ravi's case (supra) is not applicable to the petitioners, since the petitioners herein had challenged the order of the second respondent before the Deputy Commissioner of Labour by way of an appeal, which is not fact in K.Ravi's case (supra).

5. I have given careful consideration to the submissions made by the respective counsels.

6. Admittedly, the petitioners herein were not issued with a second show cause notice on conclusion of the enquiry, whereby, the charges against them were held to be proved. In service jurisprudence, such issuance of second show cause notice is mandatory, whereby, the disciplinary authority is required to inform the delinquent about the proven charges and call for explanation with regard to the contemplated action against him. In the absence of such a show cause notice, the consequential punishment cannot be sustained. However, the learned Standing Counsel would submit that they are willing to issue a second show cause notice along with a enquiry report calling for the explanation from the petitioners.

7. In identical facts connected with the same agricultural co-operative society in the judgment cited by the learned counsel for the petitioners in K.Ravi's case (supra), this Court had remitted back the matter to the disciplinary authority from issuance of a second show cause notice. The relevant portion of the said order reads as follows:

"4.The learned counsel for the petitioner would submit that the second respondent ought to have issued show cause notice calling for explanation from the domestic Enquiry Report from the petitioner before passing the impugned order of dismissal from the services of the second respondent society. The act of the second respondent is against the principles of natural justice. Hence, the impugned order has to be set aside.

5. Learned Special Government Pleader appearing for the first respondent would submit that the respondent society is ready to issue the second show cause notice to the



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petitioner along with the Enquiry Report calling for explanation from the petitioner for the domestic Enquiry Report dated 03.05.2016 and on receipt of the explanation from the petitioner, the second respondent society will pass a fresh order.

6. At this stage, the learned counsel for the petitioner would submit that the impugned order may be set aside by remanding the matter back to the second respondent for issuing the second show cause notice calling for explanation for the Domestic Enquiry Report from the petitioner and then to pass fresh orders.

7. Though this Court is not inclined to remand the matter back to the second respondent as the enquiry was already concluded, considering the fact that the second show cause notice was not issued enclosing the Enquiry Report for explanation from the petitioner, the impugned order has to be set aside and the matter has to be remanded back to the second respondent enabling him to issue the second show cause notice enclosing the Domestic Enquiry Report calling for the explanation from the petitioner and then pass orders based on the explanation of the petitioner.

8. Accordingly, the impugned order of dismissal passed by the second respondent is set aside and the matter is remanded back to the second respondent for the issuance of the second show cause notice enclosing the Domestic Enquiry Report calling for the explanation from the petitioner and then pass orders based on the explanation of the petitioner. The entire exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order"

8. In the light of the above observations and recording the submission of the learned counsel for the respondents, this Court is of the view that the matter can be remitted back to the second respondent for issuance of a second show cause notice. Accordingly, the impugned orders of dismissal dated 18.08.2016 and 19.08.2016 passed by the second respondent herein, as well as the order passed by the fourth respondent dated 18.09.2017,



are quashed and the matter is remitted back to the second respondent for issuance of a second show cause notice including the copy of the enquiry report to the petitioners herein, within a period of two weeks from the date of receipt of a copy of this order. On receipt of such notice, the petitioners herein shall give their further explanation within a period contemplated in the show cause notice and thereafter, the disciplinary authority shall consider the explanation within a period of twelve weeks from the date of receipt of the further explanation and thereafter take further course of action in accordance with law.

9. The writ petitions stand ordered accordingly. No costs.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

hvk/sbn

To

1. The Joint Registrar of
Co-Op. Societies,
Kancheepuram Region,
Kancheepuram District.
2. The Management of G.3414,
Kayarambedu Primary Agricultural
Co-op.Credit Society Ltd.,
Rep.by its President, Kayarambedu,
Guduvancherry,
Kancheepuram District.
3. The Deputy Commissioner of Labour,
(Minimum Wages)
Appellate Authority for Tamilnadu Shops
and Establishment Act, Teynampet,
Chennai-18.

+2cc to Mr.T.Sundaravadanam, Advocate, S.R.No.30081, 30082.
+1cc to the Government Pleader, S.R.No.30578

W.P.Nos.26174 & 26175 of 2017

SKY(CO)
HS(02/08/2021)