



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.03.2021

CORAM:

THE HONOURABLE **MR. JUSTICE M.DHANDAPANI**

W.P. (MD)No.14867 of 2011

and

W.M.P (MD)No.2 of 2011

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The Management,
Thiruvalar Solai
Primary Agriculture Co-operative Bank,
Tricy.

... Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Trichy.

2.A.Thilagam

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records on the file of the 1st respondent pertaining to its order passed in I.D.No.48 of 2010 dated 22.03.2011 and quash the same.

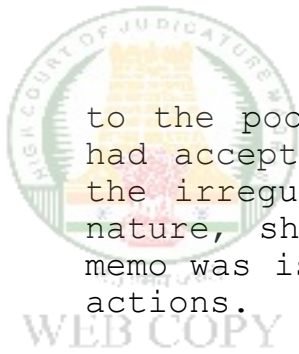
For Petitioner : Mr.Sridharan

For R2 : Mr.D.Shanmugaraja Sethurpathi

O R D E R

This writ petition is filed by the petitioner seeking for an issuance of a writ of Certiorari, calling for the records on the file of the 1st respondent pertaining to its order passed in I.D.No.48 of 2010 dated 22.03.2011 and quash the same.

2.The case of the petitioner is that the second respondent was employed as a Sales Woman in the Village Fair Price Shops under the control of the petitioner bank. Whiles, on 22.07.2006, the Co-operative Sub Registrar, Public Distribution, had inspected the shop and noted the deficiency of the Rice (Boiled) 1012 kgs, Sugar 114 kgs and Kerosene 542 liters. Due to which, there was heavy stock deficit and financial loss to the petitioner bank. Further, the second respondent has misappropriated the sale amount and utilized those amounts for her personal expenses, for which disciplinary action has already been taken on four occasions viz., 13.02.1997, 06.02.2006, 21.07.2006 and 21.11.2007. Further, the above said inspection reveals that bogus sales to the ration card holders and false and fabricated the sale bills, stock deficit in the essential commodities like, rice, sugar and kerosene had not been distributed



to the poor people. On verification, the second respondent herself had accepted and signed the inspection report on 27.09.2006. Since the irregularities committed by the second respondent are grave in nature, she was suspended from service on 23.07.2009 and a charge memo was issued on 03.08.2006 for civil liabilities and disciplinary actions.

3.Challenging the said Charge memo, the petitioner has approached this Court by way of writ petition and the said writ petition was dismissed on 12.07.2007 with a direction to work out her remedy in the manner known to law. Thereafter, a domestic enquiry was conducted, after providing sufficient opportunities to the second respondent. The findings of the enquiry report reveals that the charges against the second respondent were proved. After issuing second show cause notice and on receipt of explanation from the second respondent, she was dismissed from service on 09.01.2008. Aggrieved by the said order of dismissal, the second respondent preferred a revision before the Joint Registrar of Co-operative Societies, Trichy Circle, on 06.08.2008, under Section 153 of the Tamil Nadu Co-operative Societies Act, who confirmed the order of dismissal passed by the Petitioner Bank. Aggrieved over the same, the second respondent preferred a Conciliation Petition before the Assistant Commissioner of Labour (Conciliation) Trichy, who gave a failure report dated 11.12.2009. Subsequently, the second respondent raised an industrial dispute in I.D.No.48 of 2010 before the Labour Court, Trichy, and the said I.D was allowed, directing the petitioner Bank to reinstate the second respondent in service without back-wages. Aggrieved over the same, the present writ petition is filed.

4.The learned counsel appearing for the petitioner submitted that though the second respondent had admitted her guilt by paying the financial loss for bogus bills to the respondent Society, the stock deficit was caused not due to the bad condition of the shop. Hence, the order of the labour Court is perverse and liable to be interfered with. Hence, he prays for allowing the present writ petition.

5.The learned counsel for the second respondent submitted that for mere payment of bogus bill cannot be deemed to be acceptance of the guilt by the petitioner and the petitioner has also made the payment for the loss of goods only to show her bona fides. However, the above said deficiency was caused only due to the bad condition of the building, for which, fixing the responsibility against the second respondent cannot be sustained. The Labour Court, considering the service rendered by the second respondent, ordered for reinstatement into service, which cannot be interfered with by this Court under Article 226 of the Constitution of India. Hence, he prays for dismissal of this writ petition.

<https://hcservices.ecourts.gov.in> the learned counsel appearing for the petitioner and



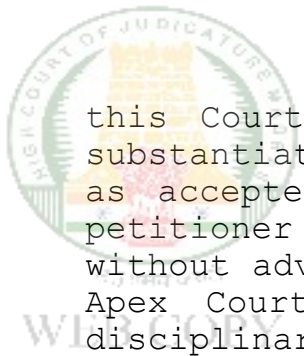
the learned counsel appearing for the second respondent and perused the materials available on record.

7. It has been consistently laid down by the Hon'ble Apex Court that in exercise of its power of judicial review, the Courts cannot extend the examination to the correctness of the act of the disciplinary authority, but only limit itself to the manner in which the decision has been arrived at by the authorities and whether the same is in accordance with law. This Court is to test only the correctness of the decision arrived at by the authorities on the basis of the evidence before it and not proceed with the case as if it is an appeal against the impugned order.

8. The facts in the present case are not in dispute. Admittedly, the second respondent was working as a Sales woman in the fair price shop run by the petitioner Management. It is not in dispute that there was a stock deficit relating to the distribution of essential commodities to the downtrodden people. Further, the second respondent prepared bogus bills and caused loss to the petitioner Management and also she has not properly distributed the essential commodities to the public and the said essential commodities were sold in open market. The second respondent has not taken any steps to disprove the case. Even a perusal of the order of the Labour Court reveals that the second respondent paid the deficit amount of Rs.14,043/- to the petitioner Management, which was marked as Ex.M.10 and the same was accepted by the second respondent. Before the Labour Court, though the petitioner Management clearly established the guilt of the second respondent by way of marking document, the Labour Court has arrived at a conclusion, based on the previous service rendered by the second respondent.

9. Public Distribution System is primarily meant to cater to the needs of poor people. The main allegation against the Petitioner is that she had sold the essential commodities, which were meant for distribution to the public, in open market and also she prepared bogus bills, thereby depriving the same to needy people. In spite of sufficient opportunity of hearing, the petitioner has not disproved the charges alleged against her, when the onus lies on her to establish that, on the date of inspection, there was no deficit of stock of PDS goods. It is further to be pointed out that insofar as departmental proceedings are concerned, the standard of proof required is not as required at the time of criminal trial as the respondents are not required to prove the case against the petitioner beyond reasonable doubt, but only on the touchstone of preponderance of probabilities.

10. On a holistic consideration of the materials available on record, this Court is of the considered opinion that the findings recorded in the enquiry are just and reasonable. It is to be pointed out that the Court, under the guise of judicial review, cannot

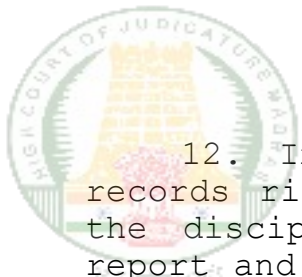


this Court. The petitioner having not produced any material to substantiate his case, the finding recorded by the enquiry officer, as accepted by the authorities below to fasten the guilt on the petitioner does not require any interference. The Labour Court, without adverting to the law laid down on the subject by the Hon'ble Apex Court, had interfered with the punishment awarded by the disciplinary authority, which cannot be sustained.

11. Insofar as the punishment awarded to the petitioner is concerned for the delinquency, it has been the consistent view of the Courts that, it is always within the domain of the Appointing Authority to decide on the punishment to be imposed on the delinquent, which should be proportionate to the act of the delinquent. Only when the punishment is disproportionate and shocking the conscience, the Courts interfere with the same, in exercise of powers under Article 226 of the Constitution of India. In ***Prem Nath Bali - Vs - High Court of Delhi*** reported in **(2015 (16) SCC 415)**, the Hon'ble Supreme Court has held as under :

"20. It is a settled principle of law that once the charges levelled against the delinquent employee are proved then it is for the appointing authority to decide as to what punishment should be imposed on the delinquent employee as per the Rules. The appointing authority, keeping in view the nature and gravity of the charges, findings of the inquiry officer, entire service record of the delinquent employee and all relevant factors relating to the delinquent, exercised its discretion and then imposed the punishment as provided in the Rules.

21. Once such discretion is exercised by the appointing authority in inflicting the punishment (whether minor or major) then the courts are slow to interfere in the quantum of punishment and only in rare and appropriate case substitutes the punishment. Such power is exercised when the court finds that the delinquent employee is able to prove that the punishment inflicted on him is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges thereby shocking the conscience of the court or when it is found to be in contravention of the Rules. The Court may, in such cases, remit the case to the appointing authority for imposing any other punishment as against what was originally awarded to the delinquent employee by the appointing authority as per the Rules or may substitute the punishment by itself instead of remitting to the appointing authority."



12. In the case on hand, a careful perusal of the entire records right relating to the enquiry, it clearly transpires that the disciplinary authority has applied his mind to the enquiry report and all the other materials while imposing the punishment of dismissal from service and there being no infirmity in the said order, the interference with the same by the Labour Court is wholly unsustainable. On an overall consideration of the materials, this Court is in consensus with the order passed by the disciplinary authority imposing punishment of dismissal from service on the petitioner and the interference by the Labour Court in modifying the said punishment deserves to be interfered with by confirming the order passed by the disciplinary authority. The punishment imposed on the petitioner by the disciplinary authority is in no way shocking the conscience of this Court or disproportionate to the delinquency and, therefore, this Court is inclined to confirm the punishment imposed on the petitioner by the disciplinary authority by setting aside the order passed by the Labour Court.

13. It must not be lost sight of that interests of administration demands that, undesirable elements are thrown out and any charge of misdemeanour is enquired into promptly. Disciplinary proceedings are meant not really to punish the guilty, but to keep the administrative machinery unsullied by getting rid of bad elements. Allowing the unscrupulous elements to continue in the system would not only erode the public confidence in the administrative machinery but any interference by this Court would also have a detrimental effect on the faith the public has imposed on the Judiciary. Persons, like the petitioner, who are leeches attaching themselves to the public machinery, time and again, suck the blood of the public, by their intolerant acts and weeding out them from the system is the need of the hour so that the downtrodden and needy do not suffer by their cunning and devious acts. The petitioner, having been found guilty of the charges, he has been dealt with promptly in accordance with law and this Court, sitting under Article 226 is not inclined to interfere with the same in exercise of its powers of judicial review, which, as stated above, has to be exercised with caution and the present case does not fall under the category where the exercise of judicial review is warranted. Hence, this Court does not find any reason to interfere with the punishment imposed by the disciplinary authority on the petitioner.

14. Accordingly, the writ petition is allowed and the order of the Labour Court dated 22.03.2011 passed in I.D. No.48 of 2010 is set aside and the order passed by the disciplinary authority is restored. In view of the order passed by this Court, it is made clear that the 2nd respondent is not entitled for any terminal benefits from the Government of Tamil Nadu for the admitted amounts as per the statute. No costs.



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Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

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Sub Assistant Registrar(CS)

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To

1.The Presiding Officer,
Labour Court,
Trichy.

+1 CC to M/s.M.SRIDHARAN, Advocate (SR-9743[F] dated 09/03/2021)

+1 CC to M/s.D.SHANMUGARAJA SETHUPATHI, Advocate (SR-9757[F] dated 10/03/2021)

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