



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.10.2021

PRONOUNCED ON : 28.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.NO.11066 OF 2011

V.Mohanasundaram

... Petitioner

Vs.

1. The Management,
rep. by its Spl. Officer,
Mandavelli Women's Co-operative
Stores Ltd.,
Mandavelli, Chennai-600 028.

2. The II Additional Labour Court,
Chennai.

... Respondents

PRAYER:

Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records in I.D.No.269 of 2006 dated 29.11.2010, on the file of II Additional Labour Court, Chennai and directing the first respondent to reinstate the petitioner with full back wages with continuity of service with effect from 07.10.2002.

For Petitioner : Mr.M.Sivaraman

For Respondent-1 : Mr.G.Thangavel

O R D E R

The petitioner herein, while working as an an Assistant Salesman in the first respondent's Co-operative Stores was served with a charge memo dated 23.10.2002, alleging pro-tem misappropriation of Rs.3569.50/- between 27.02.2002 to 28.02.2002. The basis for the charge was that on 27.02.2002, there was a shortage of Rs.500/- in the total sales collection of Rs.3569.50 and hence, the Manager had refused to receive the total sales collection. On the next day, i.e., on 28.02.2002,



the petitioner had remitted the full sales collection amount of Rs.3569.50/-, which includes the shortage reported the earlier day. Pursuant to the charges, an enquiry was conducted and the petitioner was dismissed from services on 01.11.2004. The revision filed by him under Section 153 of the Tamil Nadu Co-operative Societies Act, 1983 was also dismissed by the Joint Registrar of Co-operative Societies on 15.07.2005. Ultimately, the industrial dispute in I.D.No.269 of 2006 was also dismissed on 29.11.2010, which order is put under challenge in the present Writ Petition.

2. The punishment of dismissal could be termed to be shockingly "disproportionate" to the charges, as the petitioner had an explanation for the shortage of Rs.500/- alleged in the charge memo. Though the explanation seems to be an allegation, he had also chosen to remit the total sales collection amount on the next day itself. The incident had occurred on 27.02.2002 and after about 8 months, the petitioner was placed under suspension on 07.10.2002, thereafter he was subjected to a prolonged enquiry over two years. Such a delayed action is not only unjustifiable, but could also indicate an act of victimization for some minor charges.

3. When charges which would not amount to gross indiscipline are made, the Hon'ble Supreme Court in the case of Pravin Kumar V. Union of India (UOI) and others reported in 2020 (9) SCC 471 had held that, major penalties of dismissal or removal from services, would be discriminatory and impermissible in the following manner:-

"36. ... But unlike in criminal cases, in matters of disciplinary proceedings Courts only interfere on grounds of proportionality when they find that the punishment awarded is inordinate to a high degree, or if the conscience of the Court itself is shocked. Thus, whereas imposition of major penalty (like dismissal, removal, or reduction in rank) would be discriminatory and impermissible for trivial misdeeds; but for grave offences there is a need to send a clear message of deterrence to the society. Charges such as corruption, misappropriation and gross indiscipline are prime examples of the latter category, and ought to be dealt with strictly."

4. In the light of the aforesaid decision, this Court is of the view that the punishment of dismissal is disproportionate to the charges levelled against the petitioner, particularly, when he had chosen to remit the entire sales collection amount on the next day itself.



5. However the learned counsel for the first respondent would submit that, the petitioner was in the habit of committing irregularities and on three occasions, he was suspended from service for such irregularities. In this background, if the original punishment of dismissal is modified into one of compulsory retirement, the ends of justice could be secured.

6. In the light of the above observations, the order of dismissal dated 01.11.2004, is modified into one of compulsory retirement, with continuity of service till 01.11.2004. In view of such modification, the petitioner would be entitled for the death cum retirement benefits, including pensionary benefits, if any. Accordingly, the order of the Joint Registrar of Co-operative Societies dated 15.07.2005 passed under Section 153 of the Co-operative Societies Act, as well as the order of the second respondent/learned II Additional Judge, Labour Court, Chennai passed in I.D.No.269 of 2006 dated 29.11.2010, are set aside. The Writ Petition stands partially allowed. There shall be no orders as to costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

DP

To

1. The II Additional Judge,
The II Additional Labour Court,
Chennai.

2. The Spl. Officer,
Mandavelli Women's Co-operative
Stores Ltd.,
Mandavelli, Chennai-600 028.

+2ccs to Mr.M.Sivaraman, Advocate, S.R.No.5050

W.P.No.11066 of 2011

MT(CO)
PM/10/02/2022