



WEB COPY

W.P.No.14200 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.14200 of 2016
and
W.M.P.No.12415 of 2016

The Management,
Ponni Co-operative Supermarket,
Salem District Consumer
-Co-operative Wholesale Stores Ltd.,
Seetharaman Salai,
Salem-636 009.

...Petitioner

Vs.

1. The Authority under Tamil Nadu Shop and
Establishments Act 1947,
(Deputy Commissioner of Labour),
Salem-636 001.

2. Thiru.C.Chandrasekaran

..Respondents

Prayer : Writ Petition filed Under Article 226 of the Constitution of India, to issue a writ of Certiorari, to call for the records in Ka.Ni.Sa.06/2012 on the file of the Authority under Tamilnadu Shop and Establishments Act 1947 (Deputy Commissioner of Labour) Salem-636 001, the 1st respondent herein, to quash the order dated 30.11.2015 (received by the petitioner on 2.2.2016) passed therein.



For Petitioner : Mr.M.R.Raghavan
For Respondents :
For R1 : Mr.S.John J.Raja Singh
Additional Government Pleader
For R2 : No Appearance

ORDER

The order passed by the Authority under Tamil Nadu Shop and Established Act, 1947 in proceeding dated 30.11.2015 is under challenge in the present writ petition.

2. The petitioner is the Management, Ponni Cooperative Supermarket, Salem District Consumer Co-operative Wholesale Stores Limited. The petitioner states that it is a Co-operative Society, registered under the provisions of the Tamil Nadu Co-operative Societies Act. The service conditions of the employees are governed under the special bylaws approved by the Competent Authorities under the provisions of the Co-operative Societies Act. The second respondent was employed as an Assistant Salesman in the Fair Price Shop. The second respondent Workman was responsible for the maintenance of stock of essential and non-essential commodities. During the course of employment, the second respondent committed a stock deficit in the Tamilarasu Party Shop as detailed below :

*“Non controlled items*

<i>Shortage noted on 26.08.2001</i>	<i>Rs.11,391.35</i>
<i>Shortage noted on 25.11.2001</i>	<i>Rs. 17,059.50</i>
<i>Shortage noted on 14.12.2001</i>	<i>Rs. 1,581.00</i>
<i>Total</i>	<i>Rs. 30,031.85</i>

Shortage of essential commodities

<i>Shortage noted on 28.10.2001</i>	<i>Rs. 129.50</i>
<i>Shortage noted on 25.11.2001</i>	<i>Rs. .50</i>
<i>Total</i>	<i>Rs. 130.00</i>

Other Items

<i>Shortage noted on 14.12.2001</i>	<i>Rs. 5,820.00</i>
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The total amount of shortage thus amounted to Rs.35,981.85.

In so far as Mariamman Koil Fair price shop was concerned, the deficit recorded were as follows:

Essential commodities

<i>Shortage noted on 04.12.2001</i>	<i>Rs. 1,404.00</i>
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Non controlled items

<i>Shortage noted on 04.12.2001</i>	<i>Rs. 149.25</i>
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Other items

<i>Shortage noted on 04.12.2001</i>	<i>Rs. 1,071.00</i>
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<i>Total</i>	<i>Rs. 2,624.25</i>
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The total shortage amounted to Rs.38,606.10 in both the shops. The said amount was misappropriated by the 2nd respondent.”



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3. A charge sheet dated 04.02.2002 was issued to the second respondent calling upon to explain as to why the disciplinary action should not be proceeded against him. However, the second respondent did not send any reply. He has not submitted any explanation with reference to the allegations set out in the charge sheet. Thus, the Authorities appointed an Enquiry Officer, who in turn conducted the enquiry by affording the opportunity to the charged official. The Enquiry Officer sent various communications on 30.03.2002, 06.04.2002 and 20.07.2002 to the second respondent. In spite of the communications, the second respondent Workman has not responded to the enquiry proceedings. Thus, the Enquiry Officer proceeded with the ex-parte enquiry and submitted his findings on 30.08.2002.

4. The Enquiry Officer found that the charges are held proved against the second respondent Workman. Further, it is held that the charges of stock deficit led to misappropriation. Accordingly, the Disciplinary Authority imposed the penalty of dismissal from service on the second respondent on 20.03.2003.



5. The second respondent invoked Section 2(A) of the Industrial Disputes Act, challenging the order of dismissal from service. The petitioner Management participated in the conciliation proceedings and contended that the petitioner lost confidence in the second respondent Workman due to his act of causing stock deficit and misappropriation. The conciliation proceedings ended and a failure report was filed to the Government, and thereafter, the matter was not pursued by the Conciliation Officer.

6. Subsequently, the second respondent Workmen approached the first respondent Authority under the provisions of the Tamil Nadu Shops and Establishments Act, 1947, and filed an appeal under Section 41 of the said Act. The first respondent, without considering any of the documents filed by the Management, passed an order setting aside the punishment of dismissal from service.

7. The learned counsel appearing on behalf of the petitioner mainly contended that the findings in the Enquiry Report and other relevant documents filed by the Management were not considered. Even the second respondent had not submitted any document to rebut the documents



submitted by the Management or to establish his innocence or otherwise. In fact, the second respondent had not given any evidence before the first respondent during the course of adjudication. Therefore, the first respondent has committed an error in forming a final opinion.

8. A perusal of the findings of the order passed by the first respondent reveals that the second respondent has not denied the charges by submitting any of his explanations or documents. It was an ex-parte enquiry, conducted by the Management. Therefore, the second respondent had not availed the opportunities provided by the Disciplinary Authority to defend his case.

9. When the Workman has not participated in the process of enquiry, the first respondent if found that the Management has committed any error in following the procedures, the matter is to be remanded back to the Management for the purpose of conducting a fresh enquiry. Contrarily, the punishment of dismissal in toto cannot be set aside, despite the fact that the Workman had not participated in the process of Enquiry and remained ex-parte.



10. In the present case, the first respondent authority has found that there is no specific mentioning of the ex-parte order passed by the Enquiry Officer against the second respondent Workman and there is no such mentioning in the Enquiry Report. Contrarily, it is stated that the statements were obtained from the other two employees. While the statement of the other employees of the Co-operative Society has been recorded, the Enquiry Officer ought to have entered the ex-parte proceedings also. Considering the said findings, the first respondent formed an opinion that the punishment has to be set aside and accordingly, set aside the punishment.

11. This Court is of the considered opinion that the second respondent Workmen had not participated in the process of Departmental Disciplinary Proceedings and he had not availed the opportunities provided by the Management. Accordingly, the Enquiry Officer formed an opinion that the charges are held proved based on the documents and the deposition of the witnesses submitted by the petitioner Management. That apart, the second respondent Workman has not adduced any fresh evidence even before the first respondent Authority. In the absence of any fresh evidence before the



first respondent, the authority has erroneously formed an opinion that the order imposing the punishment of dismissal from service is erroneous. Such a finding is perverse and not in consonance with the principles. If at all the Authority found that some procedural lapses are committed, then the de-novo enquiry alone is to be considered and setting aside the punishment at the outset is impermissible and not in accordance with the law.

12. For all these reasons, this Court finds that the orders passed by the first respondent is infirm and accordingly the impugned order passed by the first respondent in proceedings in Ka.Ni.Sa.06/2012, dated.30.11.2015 is quashed and the writ petition stands **allowed**. No costs. Consequently connected miscellaneous petition stands closed.

17.10.2022

Index : Yes
Speaking order
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To

1. The Authority under Tamil Nadu Shop and Establishments Act 1947,
(Deputy Commissioner of Labour),
Salem-636 001.



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S.M.SUBRAMANIAM, J.

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