



W.P.No.4117 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.4117 of 2014

and

M.P.No.1 of 2014

P.Rajamanickam

...Petitioner

Vs

1.The Deputy Commissioner of Labour
(Appellate Authority u/s 41 of the
Tamil Nadu Shops and Establishments
Act, 1947),
District Collectorate Campus,
Salem - 636 001.

2.The Management,
A. Kullampatti Primary Agricultural
Co-operative Society Ltd.,
A. Kullampatti & P.O.,
(Via) Edapadi,
Salem District - 637 101.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order of the first respondent in Ka.Ni.Sa.2/2011 dated 30.07.2013 and quash the same and direct the second respondent to pay



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wages for the period from 08.04.2008 to 30.06.2011 to the petitioner and settle the terminal benefits.

For Petitioner : Mr.M.Ravindran, Sr. Counsel
for Mr.M.Elumalai

For R1 : Mr.G.Velu,
Additional Government Pleader

For R2 : Mr.L.P.Shanmugasundaram

ORDER

Heard Mr.M.Ravindran, learned Senior Counsel for the petitioner, Mr.G.Velu, learned Additional Government Pleader for the first respondent and Mr.L.P.Shanmugasundaram, learned counsel for the second respondent.

2. The petitioner herein, while serving as an Assistant Secretary of the second respondent Society, was levelled with certain charges, through a charge memo dated 25.06.2003, with an allegation that he had failed to supervise properly the work assigned to him. Not being satisfied with the explanation given by the petitioner to the show cause notice in this regard, an enquiry was conducted and initially, he was imposed with a punishment of suspension. The challenge to the punishment under Section 153 of the Tamil



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Nadu Cooperative Societies Act was allowed and the authority, while setting aside the punishment, had ordered for a fresh enquiry. Accordingly, a fresh enquiry was conducted and a report dated 09.04.2007 was submitted, whereby, the charges against the petitioner were held to be proved. It is submitted that the petitioner had given a reply on 01.02.2008, stating that there was violation of the principles of natural justice during the course of enquiry and had sought for a fresh enquiry. However, his request was not considered and pursuant to the second show cause notice, he was dismissed from service on 08.04.2008. As against the order of punishment, he had preferred an appeal under Section 41(2) of the Tamil Nadu Shops and Establishments Act, 1947 before the first respondent herein and through the impugned order dated 30.07.2013, the appeal was rejected. Hence, the present Writ Petition.

3. Among various grounds raised by the petitioner touching upon the merits of the case, the learned Senior Counsel appearing for the petitioner predominantly stressed upon the ground that the impugned order passed by the first respondent herein is a non-speaking order.



4. A perusal of the impugned order would also reveal that though the order runs to about 12 pages, the reason assigned by the Appellate Authority for rejecting the appeal seems to be in a single sentence. The petitioner herein had produced a copy of the Appeal Petition dated 29.12.2009 and a perusal of the same would reveal that he had raised several grounds questioning the order of punishment. None of these grounds have been addressed by the Appellate Authority in the impugned order.

5. Rule 9(3) of the Tamil Nadu Shops and Establishments Rules, 1948, prescribes the procedure to be followed by the Appellate Authority while hearing the appeals preferred under Section 41(2). As per the Rule, the Appellate Authority is mandated to record the evidences adduced before him and then pass orders giving his reasons therefor. Thus, it is incumbent on the part of the Appellate Authority to address each and every ground raised by the appellant and assign reasons for agreeing and disagreeing with such grounds, while passing the final order.

6. Since the procedure contemplated under the Rule has been grossly violated, this Court is of the view that the matter could be remanded back to



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the first respondent for fresh consideration. In view of such a decision, I do not intend to address any of the other grounds raised in the present Writ Petition, which may have a bearing on the final outcome to be taken by the Appellate Authority.

7. In the result, the impugned order passed by the first respondent dated 30.07.2013 is quashed and the matter is remanded back to the first respondent herein for fresh consideration. The first respondent shall adhere to the procedures contemplated under Rule 9(3) of the Tamil Nadu Shops and Establishments Rules, 1948, and on consideration of all the grounds raised by the petitioner in his Appeal Petition dated 29.12.2009, pass a speaking order on its own merits and in accordance with law, within a period of three (3) months from the date of receipt of a copy of this order.

8. Accordingly, the Writ Petition stands partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Index:Yes/No
Speaking order/Non-speaking order
hvk



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To

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(Appellate Authority u/s 41 of the
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M.S.RAMESH,J.

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