



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.04.2022

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P. (MD)No.8684 of 2012

A.Arivazhagan

... Petitioner

vs.

1.The Deputy Commissioner of Labour/
Appellate Authority,
Tamil Nadu Shops and Establishment Act,
Madurai.

2.The Special Officer,
A.2984, Karuppayurani Primary Agricultural
Cooperative Bank Limited,
Madurai.

3.The Management,
A.2984, Karuppayurani Primary Agricultural
Cooperative Bank Limited,
Madurai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order of dismissal passed by the 2nd respondent on 03.04.2010 and was confirmed by the 1st respondent in TNSE Case No.11 of 2011, dated 24.04.2012, passed by the 1st respondent and to quash the same and to direct the 3rd respondent to reinstate the petitioner with back wages.

For Petitioner	: M/s.D.K.Malathi
For Respondents	: M/s.D.Farjana Ghoushia Special Government Pleader

O R D E R

These Writ Petitions are filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order of dismissal passed by the 2nd respondent on 03.04.2010 and was confirmed by the 1st respondent in TNSE Case No.11 of 2011, dated 24.04.2012, passed by the 1st respondent and to quash the same and to direct the 3rd respondent to reinstate the petitioner with back wages.

2. The petitioner was appointed as a Night Watchman in the year 1988 and worked in the Bank up to 1990. Thereafter, he worked as Clerk until 01.02.2010, then, transferred as Salesman cum Bill



Collector to the Fair Price Shop in Karuppayurani run by the Society. The petitioner worked there for only one week, i.e., upto 09.02.2010. Thereafter, the petitioner was suspended from service on the charges of misappropriation. The second respondent had received a complaint that the petitioner smuggled kerosene from the Fair Price Shop. On inspection and enquiry it was found from the entries in the ration cards that 1198 liters was not distributed on 08.02.2010 to the card holders but sold in the open market and the Society has lodged criminal compliant on 10.02.2010. On the basis of the compliant, the second respondent inspected the Fair Price Shop on 10.02.2012 and inspected 222 ration cards and found that there was a theft of essential commodities from the Fair Price Shop. Based on the charge sheet, the petitioner was terminated from service. Challenging the termination, the petitioner preferred an appeal to the first respondent and the same was dismissed.

3. The contention of the petitioner is that both the authorities have taken the statement of the petitioner, wherein the petitioner has accepted the guilt and based on that sole reason, the charges levelled against the petitioner are held to be proved and there is no independent proof. As far as the first charges is concerned, there is no mention about the period at what time the alleged misappropriation had taken place and the petitioner had nothing to do with the surcharge.

4. Likewise the second charge is very vague and that there is no particulars and it is unknown how the second respondent had come to the conclusion that there is deficit in the quantity of the essential commodities. There is no independent proof to substantiate the charge of the 2nd respondent. The contention of the petitioner is that he was falsely implicated. There is neither complaint nor a ration card was produced before the second respondent in support of the charges levelled against the petitioner. According to the petitioner, depositing the amount on the next day for the essential commodities sold on the previous date is a practice in Fair Price Shops. Thus, for the same, on 08.02.2010, the amount was deposited on 09.02.2010 and there was no deficit of quantity of goods as alleged and there is no private sale. These entries were not taken into consideration. Aggrieved over the termination order, the petitioner has preferred the present Writ Petition.

5. The second respondent has filed a counter affidavit stating that the present Writ Petition is not maintainable because alternative remedy of revision before the Joint Registrar of Co-operative Society under Section 153 of the Tamil Nadu Co-operative Societies Act is applicable. Moreover, the Writ Petition is not maintainable especially when the second respondent is a Co-operative Society and run by it is own Board of Directors. Such Writ Petitions are not maintainable in the light of large Bench judgment



of this Court in **K.Marappan Vs Deputy Director of Co-operative Society, Namakkal** reported in **2006 (4) CTC 689**. The second respondent has stated that he received several complaints from the people. Thereafter, the Revenue Inspector and the Civil Supply Inspector along with the Secretary of the Society made surprise visit to the Society on 09.02.2010. During the inspection, it was understood by the Inspector from the available records that the petitioner smuggled 1196 liters of kerosene and on 08.02.2010, there was no distribution of kerosene to the card holders and he found some other mal practice done by the petitioner. The Civil Supply Inspector reported to the Society to take suitable action against the petitioner. The Secretary of the Society who accompanied the Civil Supply Inspector made a final note regarding the inspection and the same was submitted before the second respondent on 10.02.2010. On 10.02.2010, stock verification was carried on and it was found that the petitioner has committed mal practice and has incurred loss to the tune of Rs.6,927/- by way of bogus bill and stock deficit to the tune of Rs.1,035.10/- and the second respondent found several mal practice done by the petitioner. Thereafter, a show cause notice, dated 14.03.2010, was issued, levelling charges against the petitioner and also fixed three days for his explanation.

6. On 13.03.2010, the petitioner has submitted his guilt to the effect that he gave his consent also to the second respondent. Thereafter, on 15.03.2010, the second respondent issued a notice to the petitioner stating that on 22.03.2010, domestic enquiry will be conducted. On 22.03.2010, the petitioner accepted the guilt in the enquiry proceedings and has given admission statement to all the 9 charges. The petitioner preferred an appeal before the first respondent, i.e., Deputy Commissioner of Labour invoking Section 41 of Tamil Nadu Shops Establishment Act, with a delay of 329 days. The said Appeal in TNSE Appeal No.11 of 2011 was also dismissed by the appellate authority on 24.04.2012 and confirmed by an order, dated 03.04.2010. For the allegation that the respondents have taken the admission and has approved, was vehemently refused by the respondents. If the petitioner vehemently denies his case, then, the question of independent proofs will arise but in the case in hand, the petitioner himself admitted the guilt of charges and therefore, the charges were held proved and subsequently, it was confirmed by the appellate authority. Therefore, there is no infirmity in passing such an order and the respondents prayed to dismiss the Writ Petition.

7. Heard M/s.D.K.Malathi, learned Counsel appearing for the petitioner and M/s.D.Farjana Ghoushia, learned Special Government Pleader appearing for the respondents.



8. It is seen from the records that the entire proceedings were based on the admission of the petitioner before the Labour Officer under Tamil Nadu Shops and Establishment Act. The respondents have not independently produced any proof or evidence but held that the petitioner is guilty of the nine charges. On perusing the orders, it is seen that the respondents have relied on the admission of guilt by the petitioner. There is no independent evidence to prove the charges.

9. Therefore, this Court is of the considered opinion that the Regional Authority, Appellate Authority as well as the order passed by the Labour Officer under Tamil Nadu Shops and Establishment Act erroneously held that the petitioner is guilty of charges. Since the petitioner has accepted the guilt before the Enquiry Officer, the respondents have not even recorded that there is *prima facie* evidence to conclude the evidence against the petitioner. The petitioner has raised a plea that the charges are vague, the charge is not stating the date and time of misappropriation and has raised various plea and therefore the claim of the respondent that the petitioner has not raised the plea and has accepted the guilt is incorrect. Therefore, this Court is of the considered opinion that the enquiry was not conducted properly and the punishment is disproportionate. Hence, this Court is inclined to modify the punishment from dismissal to stoppage of increment for three years without cumulative effect. The petitioner is entitled to continuity of service but is not entitled to back wages for the non employment period. It is seen from the records that the petitioner is 55 or 56 years of age and if he is allowed to continue in his job, the petitioner would be entitled to the monetary benefits and other service benefits for the next four years. Therefore, this Court is inclined to allow the Writ Petition. The respondents are directed to implement the order within a period of six weeks from the date of receipt of a copy of this order.

10. With the above direction, the Writ Petition is allowed. No costs.

Sd/-

Assistant Registrar(CS-)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Tmg



Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

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+1 CC to M/s.K. MALATHI, Advocate (SR-21704[F] dated 27/04/2022)

+1 CC to M/s.SPL. GP (SR-23004[F] dated 29/04/2022)

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nsn(CO)

TR(13.06.2022) 5P 6C