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WP.No.4933 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.10.2024

CORAM

THE HONOURABLE Mr.JUSTICE C.KUMARAPPAN

WP.No.4933 of 2020

M.Anbalagan

... Petitioner

Vs.

1. The Joint Registrar of Co-Operative Societies,
(Revisional Authority U/s 153 of Tamil Nadu
Co-operative Societies Act, 1983)
Namakkal Region,
Namakkal District.
2. The President,
No.1571, Kondichettypatty Primary
Agricultural Co-Operative Credit Society,
Namakkal District-637 002.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, praying to issue a writ of Certiorarified Mandamus, calling for the records of the 2nd Respondent dated 25.07.2011 and order of the 1st Respondent in Revision Petition No. 5997/ 2019/ Sa.Pa, dated 13.12.2019 and quash the same and consequently direct the Respondents to reinstate the petitioner in service and give all monetary and other attendant benefits.



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For Petitioner : Mr.N.Kolandaivelu

For Respondents : Mr.M.Rajendiran
Additional Government Pleader for R1
Mr.R.Bala Ramesh for R2

ORDER

The instant writ petition has been filed challenging the order of dismissal dated 25.07.2011 confirmed by the 1st respondent on 13.12.2019.

2. The learned counsel for the petitioner has argued elaborately in respect of the vagueness of the charges, and also would submit that the deficit in stock though proved in the departmental proceedings, subsequently in the criminal proceedings in C.C.No.110 of 2012 held to be not proved and the petitioner was acquitted from all the charges. In such a way, subsequent discharge in the criminal proceedings would vitiate the findings of the Enquiry Officer and also the consequential punishment. The learned counsel for the petitioner would further submit that, the charge is only for mere deficit of stock, and not for misappropriation or falsification of accounts, and that for the mere deficit, the petitioner alone cannot be mulcted with liability. Furthermore, there were no proper enquiry conducted by the petitioner. It is



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for all these reasons, contended that the order of dismissal is liable to the interfered with.

3. Per contra, the learned counsel appearing for the respondents would vehemently contend that the findings of the criminal Court is no way helpful for the petitioner, in as much as the petitioner himself has admitted the deficit of stock to the tune of Rs.12,403.97/- by way of their explanation and has also repaid the said deficit amount, further he has also accepted that there was no bias and that he was provided with all due opportunity to defend him effectively. In such circumstances, the reliance of subsequent acquittal order is of no use to the petitioner.

4. I have given my anxious consideration to either side submissions.

5. The primordial submission of the learned counsel for the petitioner is that the order of discharge passed in the criminal proceedings in C.C.No.110 of 2012 would nullify the disciplinary proceedings initiated on the same set of charges. While looking at the Charge Memorandum dated 14.02.2011, there were two charges. The first charge is in respect of deficit



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of controlled stock, and the 2nd charge is deficit in respect of an uncontrolled stock. In this connection, the learned counsel for the petitioner would invite the attention of this Court in respect of the judgment passed in C.C.No.110 of 2012 dated 13.10.2017.

6. While perusing the charge framed against this petitioner in C.C.No.110 of 2012, it is in respect of a deficit of controlled stock to the tune of Rs.7,870/-. Before, the learned Judicial Magistrate, 5 witnesses were examined, among those 5 witnesses, one of whom [PW3-Sivasankaran], was examined as the Management witness in the domestic enquiry. The learned Magistrate, after considering available evidences ultimately found that the charge against the petitioner has not been proved, and, acquitted the petitioner. From the perusal of the criminal Court judgement, it is obvious that the prosecution did not prove the same set of charges, which was already dealt in the Departmental proceedings, which resulted an acquittal in favour of the petitioner. Thus, contended that in view of acquittal, the finding of the disciplinary proceedings ought to be set aside. In this connection, the learned counsel relied upon the following judgements:-

**(i) *G.M.Tank Vs. State of Gujarat and Others* reported in
(2006) 5 SCC 446;**



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**(ii) *Ram Lal Vs. State of Rajasthan and Others* reported in
(2024) 1 SCC 175.**

The ratio of the above two judgments is, whenever there is an acquittal in the criminal proceedings after full consideration of the prosecution evidence, then the Writ Courts while exercising the power of judicial review is obligated to examine the substance of the Criminal Court judgment and not go by the mere form of the expression used therein. It was also further held that the order passed in the criminal proceedings on similar set of facts, and on relying same witnesses, both before Criminal Court and Disciplinary Proceedings, then the punishment imposed based on the finding of the disciplinary proceedings are liable to be interfered with, and has ultimately declared the order of termination as null and void.

7. In ***G.M.Tank's*** case [cited supra], the Hon'ble Supreme Court held that when the departmental proceedings and the criminal case are based on identical and similar set of facts, and the charge in a departmental proceedings and the charge before the criminal Court are one and the same, and when the criminal case ended in acquittal after full trial and hot contest,



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then the judgment of the Criminal Court can be relied, and the order of dismissal from service can be interfered with. This Court has absolutely no grievance in respect of the above settled legal precedents. However, it is equally settled principle of law that the standard of proof before the Criminal Court, and the Disciplinary Authority are altogether distinct, where in the departmental proceedings, the standard of proof is only based upon the preponderance of probabilities, but otherwise in before the Criminal Court.

8. While looking at the peculiar facts of this case, though the petitioner was acquitted in the criminal proceedings initiated on the similar set of charges before the disciplinary proceedings, the petitioner has categorically accepted his guilt of deficit of stock. This is evident through the explanation of this petitioner. Further, the above admission is again vindicated and reinforced by the payment of deficit amount of Rs.7,870/- and Rs.12,403.97/- on 11.02.2011 and 14.02.2011 respectively. Accordingly, when the petitioner himself has admitted the charge before the Disciplinary Authority and has paid the deficit amount, the subsequent acquittal by the Criminal Court will in no way aid the petitioner to set aside the finding of the Disciplinary Authority, as the same is rest upon the admission of the petitioner.



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9. In spite of long delay of 8 years to approach the Court in challenging 2011 termination order, one argument which still in his favour is that he was not charged for any misappropriation and that the charge was only in respect of a deficit. While looking at the criminal proceedings, the witnesses have stated that without even any inspection and without submitting the relevant records, they have arrived at a conclusion of deficit stock.

10. It is in this background, and taking into consideration of the subsequent acquittal of the petitioner especially on the fact that there was no charge for misappropriation, this Court is of the firm view that the punishment of dismissal is disproportionate to the granting of the charge and shocking the conscience of this Court. Even the impugned order does not contain any ratiocination for imposing such maximum punishment.

11. In view of the above peculiar circumstances, though the findings of the Disciplinary Authority are based on the admission of the petitioner, this Court would like to interfere only to the extent of the order of punishment. However, this Court deems it appropriate to remit back the matter before the Disciplinary Authority to reconsider the proportionality of the punishment



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taking into consideration of the observation made hereinabove.

12. In the result, this writ petition is partly allowed, with a direction to the 2nd respondent to reconsider the proportionality of punishment as indicated hereinabove, within a period of four (4) weeks from the date of receipt of a copy of this order. No costs.

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Index : Yes /No

Speaking order/Non Speaking Order

Neutral Citation : Yes/No



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C.KUMARAPPAN, J.

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