



WEB COPY

W.P.No.3272



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.08.2024

CORAM

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.32720 of 2012

P.Periyasamy

... Petitioner

Vs.

1. The Revisional Authority/ Joint Registrar of Co-operative Societies,
Salem Region, Collectorate,
Salem – 636 001.

2. No.S1471, The Sankari Co-operative Stores Limited,
Represented by its Special Officer, New Edapadi Road,
Sankari – 637 301, Salem District. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the entire records relating to the impugned Revisional Orders passed by the first respondent in Na.Ka.13886/2010 Sa.Pa. dated 27.09.2012 confirming the Order of Dismissal passed by the second respondent dated 24.12.2010 and quash the same as null and void and consequently direct the second respondent to reinstate the petitioner into service as PDS Salesman with back wages, continuity of service and all other attendant benefits from the date of dismissal from service till the date of reinstatement.

For Petitioner : Mr.S.Pandian

For R1 : M/s.Geetha Thamaraiselvan,
Special Government Pleader

For R2 : Mr.L.P.Shanmugasundaram



ORDER

While the petitioner was working as 'Salesman' under the Public Distribution System i.e., Fair Price Shops, run by the Respondent No.2 Stores, there was an allegation of temporary misappropriation of an amount of Rs.37,466.50/- on 09.06.2010, 10.06.2010, 11.06.2010 and 14.06.2010, besides deficit of stock to the tune of Rs.2,446.90/-. The amount of Rs.37,466.50/- said to have been misappropriated by the petitioner was remitted back by the petitioner on 16.06.2010 and 01.07.2010. It was at that stage, the Respondent No.2 issued a charge-memo dated 02.09.2010 to the petitioner alleging temporary misappropriation of the amount besides non-payment of the cost of the deficit stock to the tune of Rs.2,466.90/-.

2. In response to the same, the petitioner submitted his explanation and accordingly, the Respondent No.2 required the petitioner to remit the cost of deficit stock of Rs.2,466.90/- through memo dated 16.09.2010. Accordingly, the petitioner remitted the said amount on 16.09.2010. It is thereafter the Deputy Registrar, Sankari Zone, through Proceedings bearing Na.Ka.No.589/210 dated 11.10.2010 sought permission from the Respondent No.1 for reinstating the petitioner into service, while informing the Respondent No.1 that a punishment of 'stoppage of increment for a period of one year without cumulative effect' was



imposed on the petitioner. The Respondent No.1 through proceedings bearing Na.Ka.No.2196/2010/PDS dated 22.10.2010, directed the Deputy Registrar, Sankari Zone to impose the punishment of dismissal from service against the petitioner. It is thereafter, an enquiry was conducted against the petitioner on 23.10.2010 and ultimately the Respondent No.2 passed the impugned order dated 24.12.2010, dismissing the petitioner from service. Aggrieved by the said order dated 24.12.2010, the petitioner filed a Revision Petition under Section 153 of the Tamil Nadu Co-operative Societies Act, 1983 before the Respondent No.1. However, the Respondent No.1 through an order dated 27.09.2012, rejected the Revision Petition filed by the petitioner. It is aggrieved by the said order of dismissal dated 24.12.2010, as confirmed by the Respondent No.1 dated 27.09.2012, the petitioner approached this Court by filing the present Writ Petition.

3. As already noted above, the entire misappropriated amount was deposited by the petitioner even before issuance of the charge-memo dated 02.09.2010. The Respondent No.2, after having called for explanation from the petitioner, directed the petitioner to pay the cost of the deficit stock and accordingly, the petitioner paid the same and the Respondent No.2 also concluded to impose the punishment of 'stoppage of increment for a period of one year



without cumulative effect'. However, the Respondent No.1 refused to grant permission for reinstatement of the petitioner into service by revoking the suspension and directed for imposing the punishment of dismissal from service. It is only thereafter, the Respondent No.2 appears to have appointed the Enquiry Officer and conducted an enquiry, resulting in passing of the impugned order dated 24.12.2010, imposing the punishment of dismissal from service. The said order of dismissal is again confirmed by the Respondent No.1 herein through order dated 27.09.2012.

4. From the above, it is clear that the Respondent No.1 herein has directed the Deputy Registrar, Sankari Zone to see that the punishment of dismissal from service is imposed on the petitioner through Letter dated 22.10.2010. Once the Respondent No.1 has issued certain directions, the question of Respondent No.2 in conducting an enquiry in a proper manner and imposing the punishment commensurate with the charges levelled against the petitioner would not arise. The Respondent No.2 is bound by the mandate given by the Respondent No.1 and accordingly, the Respondent No.2 has given effect to the direction issued by the Respondent No.1 and imposed the punishment of dismissal from service. Though the petitioner filed a Revision Petition under Section 153 of the Tamil Nadu Co-operative Societies Act, 1983 before the Respondent No.1, the same is an empty



formality, as it is pursuant to the direction issued by the Respondent No.1, the Respondent No.2 imposed the punishment of dismissal from service against the petitioner. Though the Respondent No.1 passed an elaborate order dated 27.09.2012, in the light of his previous direction through letter dated 22.10.2010, directing for dismissal of the petitioner from service, any amount of discussion that was undertaken by the Respondent No.1 while exercising his powers under Section 153 of the Tamil Nadu Co-operative Societies Act, 1983 is of no use and the same is only an empty formality to strengthen his earlier decision. In the circumstances, the entire process that was undertaken by the Respondent No.2, as confirmed by the Respondent No.1 after the proceedings dated 22.10.2010 issued by the Respondent No.1 is vitiated, as the same is with an objective to comply with the direction issued by the Respondent No.1. Any amount of opportunity that was afforded to the petitioner after 22.10.2010, resulting in passing of the order of dismissal dated 24.12.2010 is liable to be declared as arbitrary, illegal and violative of the principles of natural justice. Consequently, the impugned orders are liable to be declared as illegal.

5. Then, coming to the aspect of the relief for which the petitioner is entitled to in this Writ Petition is to be decided. The petitioner was dismissed from service on 24.12.2010 and he has been out of service since then. As of now,



the petitioner is aged 59 years i.e., a year short of attaining the age of superannuation. At this stage, this Court is of the solicited the view of the learned counsel appearing for the petitioner. The learned counsel appearing for the petitioner fairly submitted that once the impugned orders have been set aside, the petitioner is entitled for all consequential service benefits, however, made a concession that the petitioner would be satisfied in case if 25% of the backwages are paid to the petitioner and his services are taken back and allowed to retire from service.

6. Considering the overall facts and circumstances of the case and also the fact that the petitioner was punished on two earlier occasions for similar misconduct and minor punishments were imposed and also taking into consideration the fact that the petitioner has admittedly failed to deposit the amounts received on sales within the time and deposited the same belatedly and also the fact that there is a long lapse of time since the year 2010 i.e., about 14 years, this Court is of the considered view that this is not a fit case, where it can be remitted back for reconsideration by the Respondent No.1 afresh.

7. In the light of the above, this Court is of the considered view that it would be fit and proper to direct reinstatement of the petitioner into service, while



permitting the Respondent No.2 to impose the punishment of 'stoppage of increment for a period of five years with cumulative effect and pay the backwages at the rate of 25% since the date of dismissal from service till the date of reinstatement'. The entire service since the date of dismissal till the date of reinstatement shall be treated as 'in service' for all purposes subject to giving effect to punishment of stoppage of increment as permitted herein above and backwages at the rate of 25%. The Respondent No.2 is directed to pass consequential orders to reinstate the petitioner into service as expeditiously as possible at any rate within a period of eight weeks from the date of receipt of a copy of this order. If the consequential order is not passed within the time stipulated above, the petitioner shall be entitled for full wages/ salary from the date of this order till reinstatement.

8. Accordingly, the Writ Petition is disposed of. No costs. Connected Miscellaneous Petitions, if any shall stand closed.

20.08.2024

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Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No



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To

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Salem Region, Collectorate,
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2. No.S1471, The Sankari Co-operative Stores Limited,
Represented by its Special Officer, New Edapadi Road,
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MUMMINENI SUDHEER KUMAR, J.

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