



W.A.(MD).Nos.398 and 399 of 2016 and W.P.(MD).No.1194 of 2011 & W.P.No.5880 of 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 13.02.2024

CORAM

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
AND
THE HON'BLE MR.JUSTICE C.KUMARAPPAN**

**W.A.(MD).Nos.398 and 399 of 2016
and
C.M.P.(MD).Nos.2667 and 2669 of 2016**

W.A.(MD).No.398 of 2016

The Special Officer,
(Represented by its President),
R-1594 Pillathurai Primary Agricultural
Cooperative Credit Society Limited,
Pillathurai,
Musiri Taluk,
Tiruchirappalli District.

.. Appellant/2nd Respondent

Vs.

1.R.Periyasamy

.. Respondent/Petitioner

2.The Joint Registrar of Cooperative Societies,
Trichy Region,
Trichy.

.. Respondent/1st Respondent

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, praying to set aside the order passed by the learned Judge in W.P.(MD).No.3145 of 2010 dated 10.06.2015 and dismiss the Writ Petition.



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For Appellant : Mr.D.Shanmugaraja Sethupathi

For R-1 : Mr.D.Anbarasu

For R-2 : Mr.A.K.Manikkam

W.A.(MD).No.399 of 2016

The Special Officer,
(Represented by President),
R-1594 Pillathurai Primary Agricultural
Cooperative Credit Society Limited,
Pillathurai,
Musiri Taluk,
Tiruchirappalli District.

.. Appellant/2nd Respondent

Vs.

1.N.Sakthivel

.. Respondent/Petitioner

2.The Joint Registrar of Cooperative Societies,
Trichy Region,
Trichy.

.. Respondent/1st Respondent

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, praying to set aside the order passed by the learned Judge in W.P.(MD).No.3146 of 2010 dated 10.06.2015 and dismiss the Writ Petition.

For Appellant : Mr.D.Shanmugaraja Sethupathi

For R-1 : No appearance

For R-2 : Mr.A.K.Manikkam



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COMMON JUDGMENT

DR.G.JAYACHANDRAN,J.

and

C.KUMARAPPAN,J.

The Special Officer of the Pillathurai Primary Agricultural Cooperative Credit Society Limited, Tiruchirappalli District is the appellant in the present Writ Appeals. These two Writ Appeals are preferred being aggrieved by the common order passed by the learned Single Judge in W.P. (MD).Nos.3145 and 3146 of 2010 dated 10.06.2015 preferred by R.Periyasamy and N.Sakthivel respectively.

2. The sum and substance of the Writ Petitions and the order passed by the learned Single Judge runs as below:

(i) The writ petitioners, N.Sakthivel followed by R.Periyasamy, were working as Salesman in the Fair Price Shop, run by the appellant Society. On 18.11.2008, inspection was conducted in Thathiyangarpettai Fair Price Shop, in which the said Periyasamy was working as Salesman. During the course of inspection, the inspection team found that Periyasamy was in possession of 12 ration cards and he had recorded in the register that



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essential commodities were sold to those 12 card holders during his tenure.

Therefore, a charge memo was issued to him on 28.01.2009, alleging that by using the 12 ration cards, which were in his possession, he had created fake bills, as if 1371 Kg of rice, 129 Kg of sugar and 386 litres of kerosene were distributed. Enquiry was conducted for two charges, one for creating fake bills for essential commodities using 12 ration cards and the second charge for holding 12 ration cards for the purpose of misappropriating essential commodities. The Enquiry Officer found the delinquent Periyasamy guilty of creating false sale bills for essential commodities with an intention to make unlawful gain, which is the sum and substance of the first charge, however, took note of the fact that the 12 ration cards, which were in his possession, were later cancelled and no adequate evidence was placed by the Department to hold him guilty. Accordingly, pending enquiry, he was put under suspension on 20.11.2008. As far as the first incident is concerned, for the proved charge, he was punished with cut in increment for two years with cumulative effect.

(ii) While the enquiry was pending, the Taluk Supply Officer and the Revenue Divisional Officer had conducted a door to door inspection in the



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Village on 23.11.2008. In the 100% verification of the cards, they found that out of 56 cards, 36 card holders were not residing in the Village, 18 cards were cancelled long back and only 2 out of them had appealed against the cancellation and rest of them have not appealed. Therefore, the Salesman ought not to have supplied essential commodities to these card holders, but however inspite of proper intimation and knowledge of the cancellation of the cards, he had created bills as if materials were supplied to those card holders and therefore, he is liable for departmental proceedings. Enquiry was conducted and for the second charge, he was again suspended on 04.08.2009. As the outcome of the enquiry, he was dismissed from service vide order dated 03.12.2009. The said Periyasamy preferred revision before the Joint Registrar of Co-operative Societies, Trichy and the same came to be dismissed on 26.02.2010.

3. As far as the case of Sakthivel is concerned, who was the predecessor of Periyasamy in the said ration shop as Salesman, he was issued with a charge memo dated 17.08.2009 for supplying essential commodities to 36 card holders, who are not residents of the Village, for 18 card holders, whose cards were cancelled and no appeal was preferred by



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them. For dereliction of duty and breach of trust, Sakthivel was subjected to departmental proceedings and was found guilty. Capital punishment of dismissal from service was imposed on him by order dated 03.12.2009. The said Sakthivel preferred revision petition before the Joint Registrar of Co-operative Societies and the same came to be dismissed by order dated 26.02.2010.

4. When both Periyasamy and Sakthivel approached this Court by filing Writ Petitions in W.P.(MD).Nos.3145 and 3146 of 2010 respectively, the learned Single Judge of this Court, after perusing the records and hearing the Department, allowed the Writ Petitions on the premise that Periyasamy was already subjected to departmental enquiry, punished with cut in increment for two years with cumulative effect and therefore, he cannot be subjected to departmental proceedings twice for the same offence. Further, the learned Single Judge had also observed that as a Salesman, commodities were supplied to the card holders. The allegation that the cards seized are bogus ration cards is not proved and even if it is so, it is not the duty of the Salesman, but it is the duty of the Taluk Supply Officer, who has to test the genuineness of the ration card as well as the holder of the



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ration card. Being aggrieved, the Special Officer has preferred the present Writ Appeals.

5. The learned counsel appearing for the appellant would submit that the learned Single Judge, while exercising the power under Article 226 of the Constitution of India, had failed to consider the observations made by the fact finding authority, who is the disciplinary authority and the appellate authority. The material placed before the authorities were well considered and proper punishment was imposed in view of the fact that the essential commodities meant for poor people living below the poverty line had been diverted by the unscrupulous writ petitioners, who were in charge and responsible for proper distribution of the essential commodities to the card holders.

6. The learned counsel for the appellant would also specifically submit that the findings of the learned Single Judge that Periyasamy had already been punished for the same misconduct is factually incorrect. The said Periyasamy was subjected to two different disciplinary proceedings, one in respect of holding 12 ration cards and the proportionate



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misappropriation of essential commodities by creating fake bills using those 12 ration cards. The second departmental proceedings was in respect of supplying essential commodities to 56 ration cards, which were found to be in the name of the families, which have left the Village and not the residents of the Village and 12 of them were found not eligible, their cards were cancelled and they were not entitled for any essential commodities. The learned counsel further submitted that for such a grave misconduct and breach of trust causing loss to the Society, the punishment of dismissal from service is proportionate. However, the learned Single Judge has erred in allowing the Writ Petitions and permitting the writ petitioners to join the service. The learned counsel contended that the persons who have committed breach of trust and grave dereliction of duty against the interest of general public cannot be taken into service and therefore, the Writ Appeals have to be allowed.

7. The learned counsel appearing for the first respondent in W.A.(MD).No.398 of 2016, Mr.R.Periyasamy, submitted that the said Periyasamy was transferred to Thathiyangarpettai Fair Price Shop only on 01.04.2008. The inspection of the shop was conducted on 18.11.2008, seven months



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after he joined the said Fair Price Shop. He was suspended on 20.11.2008 and was reinstated only on 06.04.2009 after the completion of enquiry by the Enquiry Officer, C.G.Pethanaraj. Within four months, he was again put under suspension and a charge memo was issued alleging that he had supplied essential commodities to 56 card holders, who were not entitled. According to the learned counsel, the second charge memo is not sustainable because the substance of charge found in the second charge memo is for the very same period and consequence of the same inspection. Having imposed a penalty of cut in increment for a period of two years with cumulative effect, there cannot be another punishment for the very same act.

8. Further, the learned counsel would submit that the gravity of the charge does not warrant a capital punishment of dismissal from service, since it is very difficult for a salesman, who handles more than 1000 cards to identify the cards, which are cancelled and the card holders, who are not residents of the Village. Therefore, the learned counsel submitted that the learned Single Judge, having a holistic view of the issue, had rightly allowed the Writ Petitions and set aside the punishment imposed by the Department on Periyasamy as well as Sakthivel.



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9. This Court, after giving anxious consideration to the submissions and the material available, finds that as far as Periyasamy is concerned, the inspection, which was conducted on 18.11.2008 by the Taluk Supply Officer and the Revenue Divisional Officer, had recorded that Periyasamy was in possession of 12 ration cards. The Salesman, who are supposed to sell the commodities based on the ration cards produced by the card holders, are not expected to hold the ration cards in their possession. Some possible explanation ought to have been given by the Salesman for the possession of 12 ration cards. But, in this case, such explanation is conspicuously absent, for which, the said Periyasamy was imposed with punishment of cut in increment for two years with cumulative effect and he has suffered it. This punishment cannot be a bar to initiate further departmental proceedings for a graver offence, which is reflected in the charge memo dated 17.08.2009, which is the outcome of 100% verification of the card holders of the Village by their team lead by the Taluk Supply Officer. This inspection was conducted on 23.11.2008 resulting in suspending the writ petitioner, Periyasamy, on 04.08.2009. This Court finds no error in the action taken by the Department. The Enquiry Officer had gone through the records and had rightly held that using the ration cards, 56 in number, essential commodities

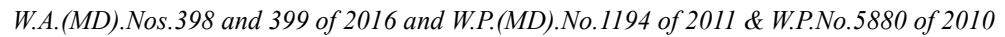


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were purported to have been sold to them by creating bills. As a Salesman, both Periyasamy as well as Sakthivel are liable to explain as to how the commodities were supplied to the cards, which were cancelled, wherein, no appeal was preferred by the card holders.

10. As pointed out by the learned counsel appearing for the appellant Society, 'A' register and 'B' register are to be maintained by the Salesman, which will clearly show the live card holders and the quantum of essential commodities sold to them every day/month. The Salesman cannot feign ignorance of the cancellation of the cards and the non-residence of the card holders for years together. Therefore, the element of dereliction of duty as well as misconduct being clearly proved, the writ petitioners are liable for adequate punishment for the proven charges.

11. However, as pointed out by the learned counsel appearing for the first respondent in W.A.(MD).No.398 of 2016, whether dismissal of service is proportionate to the proved charges, we are of the view that the punishment of dismissal from service has to be modified as compulsory retirement. Hence, this Court is inclined to interfere with the order of the



12. Accordingly, the impugned order passed by the learned Single Judge in W.P.(MD).Nos.3145 and 3146 of 2010 dated 10.06.2015 is set aside and the Writ Appeals are partly allowed modifying the punishment of dismissal from service imposed by the Special Officer, by orders dated 03.12.2009, as compulsory retirement. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

NCC : Yes / No
Index : Yes / No
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To

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The Joint Registrar of Cooperative Societies,
Trichy Region,
Trichy.



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