IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 16.07.2025

PRONOUNCED ON:29.07.2025

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

W.P.No.300 of 2024
and W.M.P.No.368 of 2024

The Managing Director,
Triplicane Urban Co-operative Society Limited,
Rep. By its Managing Director,
No. 156, Big street,
Triplicane, Chennai- 600 005 ... Petitioner

vs-

V. Sundaresan ...Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records of the Authority under Tamil Nadu Shops and Establishments Act, 1947, Special Joint Commissioner of Labour in TNSE I/6/2020, order dated 14.12.2022 and quash the same.

For Petitioner : Mr. M. Rajendiran

For Respondent : Mr. S. Mohan

ORDER

The respondent-Cooperative Societies before the Appellate Authority under the Tamil Nadu Shops and Establishment Act,1947 is the revision petitioner before this Court.

2. The facts which have culminated in filing of the writ petition are herein below set out briefly:

(i) The respondent herein had joined the services of the petitioner as a Sales Assistant on 24.10.1987. While the respondent was working at Andavar Nagar Fair Price Shop (HCO 68) of the respondent-Society, on 05.03.2010 he had gone to the Anna Nagar godown in the morning to arrange for taking delivery of stocks, leaving behind his Packing Assistant Menaka at the Branch. When he had left, he had not made any bill for the Sales, as there was less stock at the Branch.

(ii) When he returned at about 12.30 pm on the very same day, he was informed by the said Menaka that certain officials had arrived at the Branch for inspection. The officials were from the Department of

Vigilance and Anti Corruption along with the Cooperative Sub Registrars. They had conducted a joint inspection at the Branch with regard to maintenance of Accounts and stock position. They had certified that they did not find any specific defect during their inspection on the said date. However, the respondent was taken by the officials of the Vigilance and Anti Corruption Department at 05.00pm on the said date for further enquiry and by 07.00 am on 06.03.2010, he was arrested by the Inspector, Vigilance and Anti Corruption. He was charged with smuggling and selling of the ration rice from the Fair Price Shops of TUCS and Amudham shops and was remanded by the Court at 11.00am on 06.03.2010 on the basis of the version of the Inspector. However, he was produced before the Jurisdictional Magistrate at 05.00pm on 06.03.2010 and thereafter, he was remanded and sent to Central Prison.

(iii) On account of his arrest, the respondent was placed under suspension by the petitioner from 10.00am on 06.03.2010 till 05.09.2010. The charge sheet was issued on 31.12.2012 and a domestic enquiry was conducted from 19.04.2013 to 17.03.2017 for over a period of 4 years. Ultimately, the respondent was terminated from service vide order of the petitioner dated 22.05.2017 just at the fag end of his superannuation which was on 31.05.2017.

(iv) Aggrieved by this termination, the respondent had preferred an appeal before the Appellate Authority under the Tamil Nadu Shops and Establishment Act,1947 (hereinafter called “the TNSE Act”) challenging the impugned order dated 22.05.2017. The respondent had questioned the order on the ground that the documents that have been used to substantiate the charges framed against him were neither produced nor marked or furnished to him. In fact, the respondent, by his letter dated 20.07.2011, had specifically requested the petitioner to provide him with copies. The petitioner, by their reply dated 05.08.2011, has categorically informed the respondent that the documents will not be furnished to him and that it was for him to produce the documents to disprove the charges framed against him. This clearly indicates a violation of principles of the natural justice. The respondent also alleged bias against the Enquiry Officer and submitted that the Enquiry Officer has not appreciated the evidence or the lack of it. In fact, the witness on the side of the petitioner had deposed that not a single document has been filed or marked before the Enquiry Officer, despite which the Enquiry Officer found the respondent was guilty of the charges.

(v) Since a plea regarding the maintainability of the appeal had been raised, the respondent would contend that the Co-operative Societies are exempted from certain provisions of the TNSE Act by notification of the Government in the Tamil Nadu Government Gazette dated 14.10.1987. This Government order exempted permanently all societies registered under the Tamil Nadu Cooperative Societies Act, 1961 from the provisions of the TNSE Act except the provisions of Sections 31, 41, 43, 50 and 51. The present appeal has been filed under Section 41 and therefore, it is very much maintainable under the TNSE Act. The respondent would further contend that the enquiry was a mere lip service and the principles of natural justice had been completely given a go-by. Therefore, the respondent had sought to have the order of termination set aside.

3. The petitioner-Society has placed emphasis upon the argument that the Society comes under the purview of the Tamil Nadu Cooperative Societies Act, 1983 (hereinafter called the Act) and its Rules 1988 and is therefore bound by the Provisions of the said Act since the said Act is a Special Act. Under the said Act, an appellate jurisdiction is available under Section 152 and revision or review under Section 153. The Civil Court's jurisdiction has also been expressly barred by provisions of this Act and when the Act contemplates a particular mode of redressal, the aggrieved party has to exercise only the rights available to him under that Act. That apart, the petitioner had submitted that it was after due enquiry and investigation that the Enquiry Officer had found the charges were proved beyond doubt and on the basis of this report, a 2nd show cause notice had been issued to the respondent and ultimately, on 22.05.2017, he was dismissed from service. Since the respondent had attained the age of superannuation on 31.05.2017, his relief for reinstatement cannot be granted. The argument was also sought to be made that the charge against the respondent is one of misappropriation and therefore, his termination was justified.

4. Though the maintainability of the appeal was questioned, the petitioner has not been able to state as to why the appeal cannot be maintained especially in the light of the Government Order exempting certain provisions in respect of societies.

5. The appellate authority / Joint Commissioner of Labour had framed the following points for consideration:

1) தமிழ்நாடு கடைகள் மற்றும் நிறுவனங்கள் சட்டம் 1947ம் கீழ் இம்மேல்முறையீட்டு மனு நிலைக்கத் தக்கது தானா?
2) மேல்முறையீட்டாளர் மீது சுமத்தப்பட்ட குற்றச் சாட்டுக்கள் உள்விசாரணையில் ஆதாரங்களுடன் நிரூபிக்கப்பட்டுள்ளனவா?
3) மேல்முறையீட்டாளர் மீது தொடரப்பட்ட ஒழுங்கு நடவடிக்கைகள் மற்றும் உள்விசாரணை நிகழ்வுகள் இயற்கை நியதிகளுக்கு உட்பட்டு மேற்கொள்ளப்பட்டதா? இன்றெனில், மேல்முறையீட்டாளர் எவ்வகையில் பாதிப்புக்கு உள்ளானார்?
4) நியாயமான காரணங்களின் அடிப்படையில் தான் மேல்முறையீட்டாளரின் நிரந்தர பணி நீக்க உத்தரவு பிறப்பிக்கப்பட்டதா?

6. The appellate authority, on consideration of the materials available with him, had re-appreciated the evidence and come to the conclusion that the Enquiry officer has found the respondent guilty without there being substantial evidence to prove the charges against him and consequently had allowed the appeal and set aside the order of termination. He further directed that till the date of superannuation, it would be deemed that the respondent was in service and he was entitled to full back wages and all other attendant benefits. Challenging the same, the petitioner-Society is before this Court.

7. From the grounds set out in the writ petition, it is seen that the petitioner seeks to challenge the impugned order on the ground that the order of the authority is without jurisdiction and that the authority has totally overlooked the nature of the alleged offence for which the respondent had been charge sheeted. The petitioner would further contend that had the same been taken into account, the authority would have found that the respondent was guilty of grave misconduct. He would also contend that the appellate authority has favoured the respondent on the ground of sympathy.

8. Mr.M.Rajendiran, learned counsel appearing on behalf of the petitioner-Society would more or less reiterate the grounds set out in the affidavit. He would submit that the domestic enquiry, which had been conducted in a fair manner, ultimately held the petitioner guilty. He would further submit that the allegation that the subsistence allowance has not been paid is incorrect, as the appellate authority has found that that the subsistence allowance has been paid for the period 06.03.2010 till December 2016. He would submit that under Section 153 of the Act, an appeal remedy was available to the respondent and without exhausting the remedy available under law, the respondent has rushed to file the appeal under Section 41 of the TNSE Act. He would further submit that, in exercise of the powers under Section 6 of the TNSE Act, the State Government had exempted societies from certain provisions of TNSE Act. He would deny the allegation that no opportunity had been given to the respondent.

9. Per contra, Mr.S.Mohan, learned counsel appearing for the respondent-workman would submit that a reading of Section 6 of the TNSE Act would clearly show that the State Government could notify

the exemption of the applicability of certain provisions of the Act which could either be termination for a specified period in respect of an establishment or class of establishments, or person or class of persons, from the purview of the TNSE Act, subject to such conditions as it deems fit. In exercise of this power, a Government order has been issued in and by which Section 41 of the TNSE Act has been clearly exempted and therefore, the appeal before the appellate authority was very much maintainable. He would rely upon the judgment of this Court reported in ***2000(III) CTC 738 [The Management of Madras Atomic Power Project Employee Consumers (Co-operative Stores Limited, Kalpakkam, rep by its Special Officer Vs The Deputy Commissioner of Labour(Appeal) Madras and others]*** to substantiate the same. He would further rely upon the order of the appellate Authority which had taken note of the fact that only two documents had been marked and all other documents had not been filed before the Enquiry Officer. A mere perusal of Ex.A11 which is the letter dated 05.08.2011 would show that the petitioner has not only refused to grant copies but has also contended that it is for the respondent to let in evidence to disprove the allegation against him which would clearly establish that the principles of natural justice have been flouted. He would also point out the fact that the bill book which has been relied upon to fasten liability on the respondent is of the year 2009 whereas the alleged date of offence is 05.03.2010. He would submit that the action of the petitioner-Society was purely vindictive and the appellate authority has rightly sifted through the available evidence and come to the conclusion to allow the appeal and this Court considering the matter under Article 226 of the Constitution of India, may refrain from once again re-appreciating the evidence.

10. Heard the learned counsels and perused the materials available on record.

11. The respondent has been terminated from service on the ground that he has misappropriated funds and sold rice meant for the Fair Price Shop to third parties thereby causing shortage of stocks. These charges were denied by the respondent and his request to the petitioner to furnish him with copies of the documents which form the basis for the charge was not only turned down by the petitioner but, to add insult to injury, the petitioner has further stated that it is for the

respondent to file the documents to disprove the charges against him. The appellate authority had, after perusing the available evidence, arguments and the pleadings, framed four points for consideration.

12. The first point being the maintainability of the appeal under the TNSE Act. The appellate authority has rightly relied upon the notification of the Government of Tamil Nadu No.11(2)/LE/5671/79, published in the Tamil Nadu Government Gazette Part II to arrive at a conclusion that the appeal filed under Section 41(2) of the TNSE Act was maintainable and the appellate authority had the jurisdiction to entertain the said appeal.

13(i). The 2nd point for consideration that had been framed by the appellate authority was whether the charges have been proved in enquiry. The appellate authority had, for clarity, further divided the charges into three categories:-

a) Sale of 3 bags of rice belonging to the Fair Price Shops to 3rd parties.

b) Shortage of rice during inspection for which the respondent is responsible and

c)Creating the fake bills to show as if rice has been sold to card holders and selling it in the open market thereby earing profit.

13(ii).With reference to the charge (a), the Enquiry Officer had held that the charges were proved on the basis of the statement of one Shanmugam who had not been examined. However, one Mohan, who had deposed, clearly stated that he had seen the rice bags being loaded from Amudham Shop HACO(30) and not HCO (68) which is the ration shop in which the respondent was functioning. This clearly proves that the charge is totally misconceived.

13(iii). With reference to Charge(b), the appellate authority had held that no documents have been produced by the petitioner herein to prove the shortage of stock and that apart, the Official, who had conducted the inspection, had not been examined. Therefore, the charge stood disproved. I see no reason to disagree with this finding.

13(iv). With reference to Charge (c), the appellate authority had found that the Enquiry Officer had relied on the statement of five cardholders and bills secured from them and Receipt Book No.58 to arrive at a conclusion that the respondent is guilty of issuing fake bills. The appellate authority has held that the five cardholders have not been examined but their statements were filed. Therefore, it is only an unsubstantiated statement that has been put forward to prove that the respondent was guilty of the charge. This finding on the basis of the available evidence cannot be found fault with.

14. The 3rd point for consideration was whether the Disciplinary Proceedings and enquiry had been held in a fair manner and whether the enquiry has caused prejudice to the respondent.

14(i) From the records and the order of the appellate Authority, it is clearly evident that except for the receipt Book No.58 and a Sales Book, no other documents have been filed to substantiate this fact.

Further, the documents which formed the basis of the charges have not made available to the respondent despite his request, on the contrary, the petitioner had not only expressly denied providing the document but had also contended that it is for the respondent to disprove the charges framed against him. Such an observation runs contrary to the dicta laid by the Hon'ble Supreme Court reported in ***(1986) 3 SCC 229 [Kashinath Diksita Vs Union of India and others].*** In the judgment, the Hon'ble Supreme court had observed that when a Government servant is facing disciplinary proceeding, he is entitled to be afforded a reasonable opportunity to meet the charges against him in an effective manner and such charges can be met effectively once he receives the statements and documents so that he can prepare his defense, cross examine the witness and point out inconsistencies if any. The learned Judge had referred to earlier judgments of the Hon'ble Supreme Court and relied upon the following observations laid down in the judgment reported in ***(1975) 1 SCC 155 [State of Punjab Vs Bhagat Ram]*** where the Hon'ble Supreme court has observed as follows:

> *"13...........The State contended that the respondent was not entitled to get copies of*

statements. The reasoning of the State was that the respondent was given an opportunity to cross-examine the witnesses and during the cross-examination the respondent would have the opportunity of confronting the witnesses with the statements. It is contended that the synopsis was adequate to acquaint the respondent with the gist of the evidence.

The meaning of a reasonable opportunity of showing cause against the action proposed to be taken is that the Government servant is afforded a reasonable opportunity to defend himself against the charges on which inquiry is held. The Government servant should be given an opportunity to deny his guilt and establish his innocence. He can do so when he is told what the charges against him are. He can do so by cross-examining the witnesses produced against him. The object of supplying statements is that the Government servant will be able to refer to the previous statements of the witnesses proposed to be examined against the Government servant. Unless the statements are given to the Government servant he will not be *able to have an effective and useful cross-examination.*

It is unjust and unfair to deny the Government servant copies of witnesses examined during investigation and produced at the inquiry in support of the charges levelled against the Government servant. A synopsis does not satisfy the requirements of giving the Government servant a reasonable opportunity of showing cause against the action proposed to be taken ...."

The instant case is similar to the above referred case inasmuch as, under Ex.A11, the petitioner has not only denied to furnish the documents but has also gone one step further by stating that it is for the respondent to provide documents to disprove the charges against him, which is unknown to the law of evidence.

15. (i) The appellate authorities finding that the long delay in concluding the disciplinary proceedings is also a ground to set aside the disciplinary proceedings has to be upheld in the light of the judgment of the Division Bench of this Court reported in ***2006 (5)CTC 141 [Amaldoss.D Vs The State of Tamilnadu]*** where the Division Bench

had relied upon the judgment of the Hon'ble Supreme Court reported in ***AIR 1990 SC 1308 [State of Madhya Pradesh vs Bani Singh].*** In the said judgment, the Hon'ble Supreme Court has interfered with the punishment on account of a delay of twelve years between the issuance of the charge-sheet and the imposition of penalty.

(ii) In the case on hand, the delay is nearly 7 years. The Charge Memo has been issued 2 years and 9 months after the date of suspension. Thereafter, the disciplinary proceedings has taken nearly 4 years to be completed. Further, the appellate authority's finding that the disciplinary proceedings had not been conducted in a fair manner especially in the light of the documents not being supplied to the respondent has to necessarily be upheld particularly in view of the judgment of the Hon'ble Supreme Court reported in ***(2013) 4 SCC 301 [Nirmala J.Jhala Vs State of Gujarat and another]*** where the Hon'ble Supreme Court found fault with the High Court placing the onus on the delinquent to explain the charges by holding that the onus of proof is upon the Department and not upon the delinquent who is facing the charge. The Bench has observed as follows:-

"52.3. The High Court erred in shifting the onus of proving various negative circumstances as referred to hereinabove, upon the appellant who was delinquent in the enquiry.

52.4. The onus lies on the department to prove the charge and it failed to examine any of the employee of the court, i.e., Stenographer, Bench Secretary or Peon attached to the office of the appellant for proving the entry of Shri Gajjar, Advocate in her chamber on 17.8.1993.

In the instant case, it is seen that the petitioner-Society has not examined those persons who have given statements against the respondent-workman but has chosen to rely upon the statement alone thereby depriving the respondent an opportunity to cross examine them. Therefore, their testimony remained uncorroborated and unproved. The reliance that was placed on those statements to arrive at a conclusion that the respondent is guilty of the charges is totally misconceived. The appellate authority has rightly analysed the evidence on record to arrive at a conclusion that the enquiry has not been conducted in a fair manner and the petitioner-Society has not proved the charges against the respondent. Therefore, I see no reason to interfere with the wellconsidered order of the appellate authority. Accordingly, the Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

29.07.2025

Index: Yes/No
Speaking order/non-speaking order
Neutral Citation: Yes/No
srn
To,

The Special Joint Commissioner of labour,
Chennai -6

P.T.ASHA, J.,

srn

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and
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