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WP.No.4458 of 2010



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03-11-2025

CORAM

THE HONOURABLE MR.JUSTICE K. SURENDER

**WP No. 4458 of 2010
and MP.No.1 of 2010**

1. K.Velmurugan (deceased)
- 2.V. Kavitha,
- 3.V.Sarveswaran,
- 4.V. Elamathi (minor),
(P2 TO P4 ARE SUBSTITUTED AS
LRS OF DECEASED P1, AS PER
ORDER DATED 27.11.2024 IN
WMP.16375/2023 IN WP.4458/2010
BY MSKJ)

Petitioner(s)

Vs

1. Joint Registrar Of
Co-operative Societies, No.3, Beach
Road, Cuddalore
- 2.The Special Officer,
The Chidambaram Agricultural
Producers Co-operative Marketing
Society Ltd. E-1348, Chidambaram
Annamalai Nagar, Cuddalore Dist.

Respondent(s)

PRAYER: This Writ Petition is filed under Article 226 of Constitution of India seeking Writ of Certiorarified Mandamus to call for the records pertaining to the preceding of 2nd respondent dated 24.01.2009 and confirmation order of the 1st respondent in Na.Ka.3219/09 Thu.Va.thu.I dated 24.12.2009 and quash the same consequently directing the 2nd respondent to reinstate the petitioner with



full backwages

For Petitioner(s): M/s.K.B.Vivekanandhan

For Respondent(s): Mr.S.Ravi Kumar Special
Government Pleader for R1
R2 - NA

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ORDER

This Writ Petition is filed for issuance of the Writ of Certiorarified Mandamus to call for the records pertaining to the preceding of the second respondent dated 24.01.2009 and confirmation of order of the first respondent in Na.Ka.No.3219 of 2009 and quash the same and for a consequential direction to the second respondent to reinstate the petitioner with full backwages.

2. The brief facts of the case are that the petitioner was appointed as a Packer and Assistant Salesman in the second respondent society on 18.02.1991 and was subsequently promoted as a Salesman. While discharging his duties, on 02.07.2008, a fire broke out in the ration shop where he was posted, resulting in damage to goods stored therein. Immediately, the petitioner was issued a charge memo dated 04.07.2008 containing three charges. The first charge alleged that on 01.07.2008, the petitioner opened the shop till 07.00 PM but left without settling the accounts and closing the doors properly. The second charge was for failing to return empty sacks which were later damaged in the fire, amounting to negligence of duty. The third charge accused him of selling commodities worth



Rs.13,760.50/- in the black market, causing a shortage of stock and bringing disrepute to the respondent society.

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3. During the course of enquiry, witnesses were examined and documents were market. The Enquiry Officer found that the total value of inventory as on 03.07.2008 was Rs.91,290/- and goods damaged due to the fire were estimated at Rs.28,203.50/-. Thus, the expected balance stock should have been Rs.63,086.50/-, but the actual stock found was only Rs.50,350/- resulting in a shortfall of Rs.12,730.50/-. The Enquiry Officer held that though there was no direct evidence of selling the stocks in black market, the goods meant for public distribution were found short by Rs.12,730./-, which let to the inference that the petitioner indulged in black marketing. However, as regards charges No.1 and 2, the Enquiry Officer exonerated the petitioner, holding that there was no role played by him in the fire accident and that the fire occurred due to electrical short circuit.

4. The learned counsel appearing for the petitioner submitted that the goods were damaged in the fire accident itself, and therefore the alleged shortfall arouse not due to any misconduct on the part of the petitioner but due to the fire. It was further argued that when there is no evidence whatsoever, direct or circumstantial, that the petitioner indulged in selling of stocks in the black market, the finding of guilt under charge No.3 is wholly unsustainable.



5. On the other hand, the learned counsel for the respondents contended that the petitioner was in charge of the shop and once a shortfall is found, it is for him to explain the discrepancy. In the absence of any cogent explanation, the Enquiry Officer and Appellate Authority were justified in holding the petitioner guilty.

6. Upon careful consideration of the materials on record, it is evident that the entire case against the petitioner rests solely on the alleged shortfall of Rs.12,730.50/- The quantification of loss appears to be based entirely on the calculation that total inventory value was Rs.91,290/-, less goods damaged in fire valued at Rs.28,203.50/-, leaving an expected balance of Rs.63,086.50/-, whereas actual stock found was only Rs.50,350/-, thus showing a shortfall. However, the basis for arriving at the figure of Rs.28,203.50/- as the value of damaged goods is neither explained nor supported by any documentary or expert evidence. In the absence of any cogent basis for assessing the value of damaged goods, the entire calculation of shortfall becomes arbitrary and conjectural.

7. Moreover, the Enquiry Officer himself categorically recorded that there is no direct evidence that the petitioner sold the goods in the black market. If there is no evidence, then merely because a shortfall exists does not

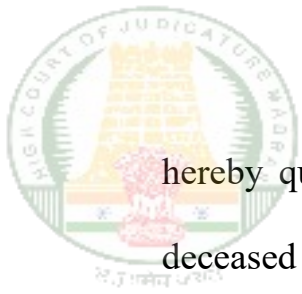


automatically lead to the conclusion that the petitioner is guilty of misconduct. The burden of proving misconduct lies on the employer. It is also noteworthy that the petitioner had already deposited a sum of Rs.12,730.50 towards the alleged loss, indicating his willingness to make good any loss, even without admitting guilt.

8. In view of the above, the finding of the guilt under Charge No.3 is based purely on inference and presumption, not supported by any material evidence. The quantification of loss is arbitrary and without basis. The Enquiry Officer's conclusion that the petitioner indulged in black marketing is perverse and contrary to record. The Appellate Authority merely confirmed the Enquiry Officer's order without independent application of mind. Therefore, the impugned orders suffer from violation of principles of natural justice and deserves to be set aside.

9. During the pendency of this Writ Petition, the original petitioner passed away. His legal heirs petitioners Nos. 2 to 4 have been brought on record and are entitled to all the benefits accruing to the deceased petitioner.

10. Accordingly, this Writ Petition is allowed. The order dated 24.01.2009 passed by the second respondent and the confirmation order dated 24.12.2009 passed by the First Respondent in Na.Ka.No.3219 of 2009 are



hereby quashed and set aside. The second respondent is directed to treat the deceased petitioner as having been continuously in service without any break and to extend all consequential service benefits and other terminal benefits as applicable, to legal heirs of the deceased petitioner, within a period of six weeks from the date of receipt of copy of this order. There shall be no order as to costs. Consequently, connecte miscellaneous petition is closed.

(K.SURENDER J.)
03-11-2025

jai
Index:Yes/No
Speaking/Non-speaking order
Internet:Yes
Neutral Citation:Yes/No

To

1.Joint Registrar Of
Co-operative Societies, No.3, Beach
Road, Cuddalore

2.The Speical Officer,
The Chidambaram Agricultural
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