

W.P.(MD).No.9272 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 12.08.2025

ORDER PRONOUNCED ON : 21.08.2025

**CORAM:
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

**W.P.(MD).No.9272 of 2019
and WMP(MD).No.7284 of 2019**

The Management
Q.1271, Vaigai Primary Agricultural
Co-operative Credit Society Ltd.,
Kalari (Village & Post)
Ramanathapuram District

....Petitioner

Vs

1.The Appellate Authority Under Section 41
of Tamil Nadu Shops and Establishments Act
(Joint Commissioner of Labour)
Bharathi Ula Road, Race Course Colony
Near Thamarai Thotti, Madurai 624 002

2.V.Sivakumar (died)

3.Amutha

4.Yahavi

5.Kuveena

....Respondents

(R3 to R5 are impleaded vide Court order
dated 06.02.2025)



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Prayer : This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the first respondent relating to TNSE Appeal No.8 of 2015, quash the order dated 03.09.2018 passed therein, grant such other relief(s) as expedient to the facts and circumstances of the matter.

For Petitioner : Mr.S.Seenivasagam

For Respondents : M/s.D.Farjana Ghoushia
Special Government Pleader for R1
: R2-died
: Mr.C.Jeganathan for R3 to R5

ORDER

The present writ petition has been filed by the management of a Primary Agricultural Co-operative Credit Society Limited challenging the order passed by the first respondent herein, wherein the appeal filed by the second respondent challenging the order of dismissal has been allowed.

(A)Factual background:

2.The second respondent herein was employed as a Secretary of the petitioner Co-operative Society. He was issued with a charge memo on 25.07.2014 on various charges. He has submitted his explanation on 31.10.2014 and an additional charge memo was issued to him on 11.02.2015. Since the delinquent had not appeared before the enquiry officer, he was set



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exparte and enquiry proceedings got concluded. The delinquent was found guilty of all the charges levelled against him.

3.A second show cause notice was issued to the delinquent on 11.04.2015. On the ground that no explanation was submitted by the delinquent, an order of dismissal came to be passed on 25.04.2015. Challenging the order of dismissal, the delinquent had preferred an appeal before the first respondent. The first respondent by his impugned order dated 03.09.2018 had allowed the appeal primarily on the ground that though the delinquent had sent his reply to the second show cause notice, the cover was returned by the management as 'unclaimed'. Thereafter, the management has proceeded to impose the punishment of dismissal from service. In such circumstances, the appellate authority has allowed the appeal and set aside the punishment. Challenging the same, the present writ petition has been filed by the management.

(B)Submissions of the learned counsels appearing on either side:

4.According to the learned counsel appearing for the writ petitioner, serious charges have been levelled as against the delinquent. He has not maintained the cash book and he had retained various ledgers at his home and he has not presented the same for auditing. He had further submitted that the delinquent has not presented the accounts to the computer staff for preparing the accounts in the Excel Sheet. He has not submitted the document during



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the proceedings under Sections 81 and 82 of the Tamil Nadu Co-operative Societies Act. Merely because the explanation submitted by the delinquent was not considered by the management, the order of dismissal cannot be set aside by the appellate authority. The appellate authority could have even gone into the explanation submitted by the delinquent and he could arrive at an independent finding whether the explanation is acceptable or the punishment imposed is proportionate to the proved charges or not. Instead, the appellate authority has proceeded to set aside the order of punishment which is not sustainable in the eye of law.

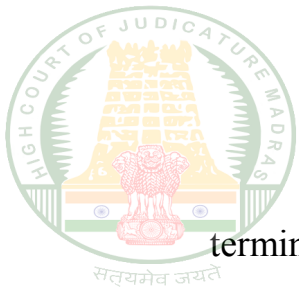
5.The learned counsel for the petitioner had further submitted that the purpose of sending a notice to the delinquent along with the enquiry report is to ascertain his views with regard to the quantum of punishment. Therefore, the said procedure could have been adopted by the appellate authority himself. The learned counsel had relied upon a judgment of the Hon'ble Supreme Court reported in **2009 (13) SCC 109 (Union of India (UOI) and others Vs. Bishamber Das Dogra)** wherein the Hon'ble Supreme Court was pleased to hold that merely because the enquiry report was not furnished or explanation to the second show cause notice was not considered, the punishment imposed by the management cannot be set aside, unless serious prejudice is pleaded and proved by the delinquent. Hence, he prayed for allowing the writ petition.



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6.Per contra, the learned counsel appearing for the legal heirs of the deceased second respondent had submitted that he had raised a specific ground before the appellate authority that the explanation offered by him to the second show cause notice was returned by the President of Society as 'unclaimed'. However, the management has proceeded to impose a punishment on the ground that he has not submitted his explanation. This has caused serious prejudice to the delinquent. The learned counsel had further submitted that subsistence allowance was not paid during the period of suspension. Though such a ground was raised by him before the appellate authority, while challenging the order of dismissal, the same has not been taken into consideration by the appellate authority.

7.The learned counsel had further submitted that, in the proceedings initiated under Section 81 of the Tamil Nadu Co-operative Societies Act, he has been exonerated. Therefore, there is no allegation of any misappropriation or dereliction of duty on the part of the delinquent. He had further pointed out that the delinquent had passed away on 05.10.2018. In such circumstances, the question of remitting the matter back to the management for consideration of explanation offered by the delinquent could not arise. When no serious charges have been levelled as against the delinquent and there is no allegation of any misappropriation or dereliction of duty, the charges as against the delinquent should be treated as abated and the



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terminal benefits shall be released by the management. Hence, he prayed for sustaining the order passed by the appellate authority.

8.Heard both sides and perused the material records.

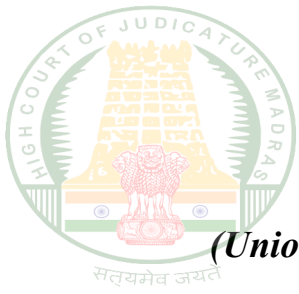
(C).Discussion:

9.The domestic enquiry report has been submitted before the disciplinary authority on 08.04.2015. The disciplinary authority has issued a second show cause notice on 11.04.2015 calling upon the explanation from the delinquent. The delinquent had sent his explanation on 17.04.2015.

10.It is the case of the delinquent that the explanation offered by him was returned by the management as 'unclaimed'. This Court has called for the original records from the appellate authority to verify whether explanation offered by the delinquent has been returned or not. On verification of the original records, it could be seen that the cover sent by the delinquent has been returned by the management as 'unclaimed'.

11.A perusal of the dismissal order dated 25.04.2015 reveals as if the delinquent has not submitted his explanation to the second show cause notice. Therefore, it is clear that the management has proceeded to impose the punishment of dismissal from service without even receiving the explanation offered by the delinquent.

12.The learned counsel appearing for the petitioner had relied upon the judgment of the Hon'ble Supreme Court reported in **(2009) 13 SCC 102**



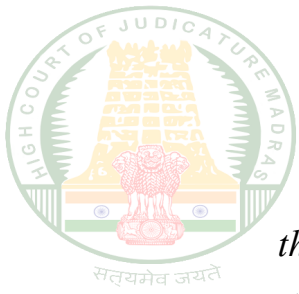
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(Union of India and others Vs.Bishamber Das Dogra) to contend that

merely because the enquiry report was not enclosed or the second show cause notice was not issued, it would not vitiate the punishment imposed by the management, unless serious prejudice is established. A perusal of the judgment of the Hon'ble Supreme Court cited by him reveals that it relates Security Guard in CISF who had remained unauthorisedly absent on several occasions. In fact, he has deserted and return back after 50 days. In such circumstances, considering the fact that the delinquent in that case was a member of disciplined force, the Hon'ble Supreme Court was pleased to hold that non-furnishing of enquiry report would not cause any serious prejudice to the delinquent, especially when he has not disputed his absence. However, in the present case, the delinquent had raised various grounds in his explanation to the second show cause notice and non-consideration of the same would clearly cause serious prejudice to him.

13.The Hon'ble Supreme Court in a judgment reported in ***AIR 1963 SC 1612 (State of Assam and another Vs. Bimal Kumar Pandit)*** in paragraph No.36 has held as follows:

“6.....In issuing the second notice, the dismissing authority naturally has to come to a tentative or provisional conclusion about the guilt of the public officer as well as about the punishment which would meet the requirement of justice in his case, and it is only after reaching conclusions in both these matters provisionally



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that the dismissing authority issues the second notice. There is no doubt that in response to this notice; the public officer is entitled to show cause not only against the action proposed to be taken against him, but also against the validity or the correctness of the findings recorded by the enquiring officer and provisionally accepted by the dismissing authority. In other words, the second opportunity enables the public officer to cover the whole ground and to plead that no case had been made out against him for taking any disciplinary action and then to urge that if he fails in substantiating his innocence, the action proposed to be taken against him is either unduly severe or not called for. This position is not in dispute.”

14. In view of the judgment of the Hon'ble Supreme Court, it is clear that on receipt of second show cause notice, the delinquent can, not only question the action proposed against him but he can also challenge the validity or the correctness of the findings recorded by the enquiry officer. In fact, the delinquent would be at liberty to plead that no case has been made out for initiating disciplinary action.

15. In the present case, the delinquent has been exonerated in the proceedings under Section 81 of the Co-operative Societies Act. Therefore, it is clear that there are no serious charges of misappropriation or dereliction of duty or breach of trust as against him. In such circumstances, the non-consideration of the explanation offered by the delinquent to the second



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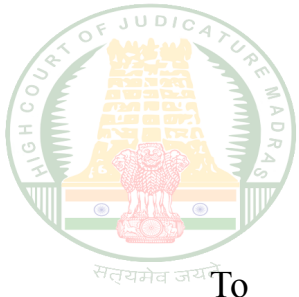
show cause notice has caused serious prejudice. Immediately after the appellate authority had allowed the appeal, the delinquent had passed away on 05.10.2018. In such circumstances, it would not be appropriate to remit the matter back to the appellate authority or the management to start the proceedings afresh.

(D).Conclusion:

16.In the light of the above said deliberations, there are no merits in the writ petition and the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Internet : Yes/No
Index : Yes/No
NCC : Yes/No
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To
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1.The Joint Commissioner of Labour
The Appellate Authority Under Section 41
of Tamil Nadu Shops and Establishments Act
Bharathi Ula Road, Race Course Colony
Near Thamarai Thotti, Madurai 624 002

2.The Section Officer
V.R.Section
Madurai Bench of Madras High Court
Madurai



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R.VIJAYAKUMAR, J.

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Pre-delivery order made in

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