

W.P.(MD).No.21246 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.02.2025

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.21246 of 2016

and

W.M.P.(MD)No.15189 of 2016

- 1.N.Selvaraj (Died)
- 2.Shanthi
- 3.S.Karthik
- 4.Saranya

... Petitioners

(P2 to P4 are substituted, vide Court order, dated 31.07.2023 in WMP(MD)No.14591 of 2023 in WP(MD)No.21246 of 2016)

Vs.

- 1.The Joint Registrar of Cooperative Societies,
Karur Region, Karur.
- 2.The Special Officer / President,
The Karur Agricultural Producers
Cooperative Marketing Society Limited,
Karur.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a ***Writ of Certiorarified Mandamus***, to call for the records pertaining to the impugned order, dated 08.04.2013, passed by the second respondent and consequential impugned order vide, Na.Ka.2649/2013 சுப (சீராய்வு மனு எண்.7/2013), dated 29.06.2015, passed by the first respondent and to quash the same and consequently, to direct the respondents to reinstate the



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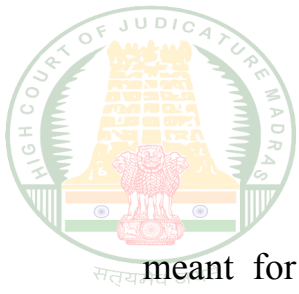
petitioner in service in the second respondent Society with continuity of service and all other attendant benefits.

For Petitioners : Mr.D.Shanmugaraja Sethupathi
For Respondents : M/s.D.Farjana Ghoushia
Special Government Pleader

ORDER

The present writ petition filed for issuance of a Writ of *Certiorarified Mandamus*, to call for the records pertaining to the impugned order, dated 08.04.2013, passed by the second respondent and consequential impugned order vide, Na.Ka.2649/2013 சப (சீராய்வு மனு எண்.7/2013), dated 29.06.2015, passed by the first respondent and to quash the same and consequently, to direct the respondents to reinstate the petitioner in service in the second respondent Society with continuity of service and all other attendant benefits.

2. The petitioner was appointed as a Salesman in the 2nd respondent Society and he was working in a Fair Price Shop (Pavithram-II). The petitioner was placed under suspension on 13.02.2012 by the then Special Officer since there was contemplation of disciplinary proceedings. Thereafter, a charge memo, dated 27.09.2012, was issued framing two charges. In the charges, it has been stated that there is deficiency in the stocks such as rice and other commodities which is



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meant for public distribution system. Before submitting the explanation, the petitioner sought for various documents but the same were not furnished. The petitioner waited for some time and thereafter, submitted a detailed explanation wherein it is stated that the goods were damaged due to rats and hence, there is deficiency in the stocks. Further, the shop is situated in the place wherein water stagnation occurs regularly, thereby, the stock was damaged, consequently, there is deficiency in the stocks. Thereafter, domestic enquiry was conducted. In the enquiry report, it is stated that charges are proved. Based on the enquiry report, the 2nd respondent, vide order, dated 08.04.2013, had terminated the service of the petitioner. The contention of the petitioner is that the domestic enquiry was conducted without providing relevant document and without giving proper opportunity. Thereafter, the petitioner filed a statutory revision under Section 153 of the Tamil Nadu Cooperative Societies Act. The contention of the petitioner is that without considering the grounds, the punishment was confirmed, vide order, dated 29.06.2015. Aggrieved over the same, the present writ petition is filed. Pending writ petition, the writ petitioner died on 13.05.2020. Thereafter, his legal heirs, i.e., his wife and two sons were substituted in the writ petition as petitioners 2 to 4.

3. The respondents have filed a counter affidavit stating that the petitioner



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has committed the same offences regularly and habitually. On one such occasion, he was caught red handed while smuggling 23 bags of rice and he was arrested by the Police. Punishments were imposed on the petitioner several times for such offences. He was imposed with a punishment of increment cut for one year without cumulative effect and the suspension period was considered as duty period and he was pardoned. On one such occasion, he was dismissed from service but he was reinstated in service in the year 1999 again. In spite of several opportunities, the petitioner had not changed the attitude. Therefore, finally, the respondents thought it would be fit to dismiss the petitioner from service. Hence, the impugned order was passed. The enquiry was conducted after giving sufficient opportunities and there is no violation of principles of natural justice. Therefore, the writ petition deserves to be dismissed.

4. After considering the rival submissions, this Court is of the considered opinion that while considering the past history of the petitioner, the respondents ought to have mentioned in the show cause notice and called for objections from the petitioner. In fact, the respondents are bound to issue show cause notice indicating the imposition of major punishment and call for objections from the petitioner. But in the present case the respondents failed to issue do so. While contesting the revision, one of the grounds stated by the petitioner is that before



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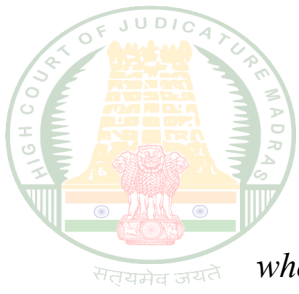
imposing the major punishment, the respondents have not issued the second show cause notice. The said ground is extracted hereunder:

□உத்தேச தண்டனை குறித்து இரண்டாம் காரணம் கோரும் அறிவிப்பு அனுப்பிவைத்து அதன் மேல்விளக்கத்தை கோரி பெறாமலேயே 08.04.2013 தேதிய நிரந்தரப் பணி நீக்க ஆணையை இரத்துசெய்து, தன்னை சங்கத்தில் விற்பனையாளராக தொடர்ந்து பணி செய்ய அனுமதிக்குமாறு மனுதாரர் நிவாரணம் கோருகிறார்.□

Therefore, it is evident that before imposing major punishment, the respondents failed to issue the second show cause notice. Further, while considering the past history, the respondents failed to issue show cause.

5.The learned Counsel appearing for the petitioner relied on the judgment rendered by this Court in the case of ***Rajamanickam S. Vs. Tamil Nadu Warehousing Corporation, (represented by Chairman cum M.D.) Madras and Another*** reported in ***2000 III LLJ page 1514*** and the relevant portion is extracted hereunder:

“8. Learned counsel for the petitioner also relied upon an unreported decision of D. RAJU, J. (as his Lordship then was) in W.P. No 6056 of 1988, which was affirmed by a Bench of this Court in the case of Sri Bharati Mills v. S. S: Mohan (supra), wherein this Court has held that



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where an employer takes into account the past objectionable conduct of employee and imposed extreme penalty of termination of service but the employee was not put into notice of such intention of employer and where the objectionable past conduct was not made a part of charge-memo, the principles of natural justice would be violated and the order of dismissal was liable to be set aside. In my view, the said decision has no application to the facts of the case. The order of disciplinary authority does not indicate anywhere that he took into account same past misconduct of the petitioner before framing the charges. On the other hand, the charges that were levelled against the petitioner was not only with reference to the past misconduct, but also the incident of assault and the enquiry was held on those charges and on the basis of the report of the enquiry officer, the disciplinary authority has found that the charges were also proved. Hence, it is not a case where the disciplinary authority has taken into consideration certain past misconduct without putting on notice to the petitioner the past misconduct before passing an order of dismissal. Hence, the decision of the learned single Judge in W.P. No.6056 of 1988 which was affirmed by a Division Bench of this Court has no application to the facts of the case. Learned counsel for the petitioner relied upon a decision of this Court in *Management of Easwaran Ltd. v. Third Additional Labour Court and another (supra)*, where the past record of service was taken into account by the management only for the purpose of imposing the extreme penalty of dismissal and the order of punishment would be vitiated because no notice was given to the worker before taking into account the past record of service and it would prejudice the worker. As already held by me, this decision has no application as the past record of the petitioner was taken into account after notice to the petitioner.”

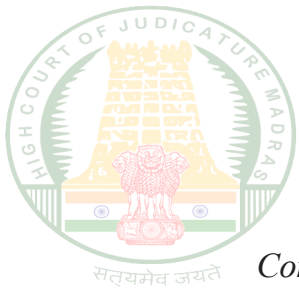


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In the above said judgment, it has been stated if the employer is intending to refer to the past objectionable conduct of the delinquent, the employer is bound to issue show cause notice, call for objections from the delinquent and thereafter, the employer ought to consider the same. As stated supra, the respondents failed to issue the second show cause notice as well as the respondents failed to issue show cause notice before referring to the past objectionable conduct.

6. In another judgment, the Hon'ble Division Bench of this Court in the case of ***the Management of Eswaran and Sons Engineers (P) Ltd Vs. III Additional Labour Court, Madras and Another*** in ***W.A.No.1206 of 1996*** has held that notice is incumbent, failure of issuing notice before imposing major punishment is vitiated. The relevant portion of the judgment is extracted hereunder:

“7. Therefore, on the second question argued by Mr. Balasubramanian, we have no hesitation in holding that in this case, the past record of service having been taken into account only for the purpose of imposing the extreme penalty, the order of punishment is vitiated because no notice was given to the worker before taking into account the past record of service to the prejudice of the worker. This is a legal infirmity in the order of dismissal as well as in the award of the Labour Court. This legal infirmity is sufficient to interfere with the Judgment of the Labour Court in proceedings under Article 226 of the



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Constitution of India. We also find that the learned single Judge of this Court while holding that the punishment is excessive, had given several directions, which are not warranted especially be-cause the worker had attained the age of superannuation on August 8,1991 and also for the reason that some punishment is necessary for the proved charges of using filthy language against a superior officer.”

Therefore, following the above said judgments, this Court is inclined to consider the prayer.

7. The Learned Counsel appearing for the petitioner submitted that the service of the deceased employee may be calculated until his superannuation. This Court is not inclined to consider the same, since the allegation against the deceased employee is deficiency of stocks and the deficient is huge. Therefore, the deceased petitioner is not entitled to calculate the service period until his superannuation.

8. For the reasons stated supra the following orders are passed:

- i. The impugned punishment of termination from service is modified as compulsory retirement.



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ii. The service period of the deceased petitioner from 15.05.1989 to 08.04.2013 shall be taken for calculating the service of the deceased employee and for the said period, the terminal benefits shall be calculated.

iii. From the above said amount, Rs.50,000/- shall be deducted as punishment and the balance amount shall be paid to the petitioners 2 to 4.

9. With the above said directions, the writ petition is allowed. No costs.

Consequently, connected miscellaneous petition is closed.

04.02.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
Tmg

To

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Karur Region, Karur.
- 2.The Special Officer / President,
The Karur Agricultural Producers
Cooperative Marketing Society Limited,
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S.SRIMATHY, J.

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