

A.Kulandaisamy Vs. Commissioner for Milk Production and Dairy Development

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Court : Chennai

Decided On : Mar-07-2013

Judge : The Hon'Ble Mr.Justice Vinod K.Sharma

Appellant : A.Kulandaisamy

Respondent : Commissioner for Milk Production and Dairy Development

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS Dated :

07. 03.2013 Coram THE HONBLE MR. JUSTICE VINOD K.SHARMA
W.P.No.7724 of 2009 and M.P.No.1 of 2009 A.Kulandaisamy .. Petitioner .. Vs ..

1. The Commissioner for Milk Production and Dairy Development/Managing Director, Tamil Nadu Coop Milk Producers Federation Ltd., Aavin Illam, M.M.Colony, Chennai.

2. The General Manager, The Nilgiris District Co-op Milk Producers Union Ltd., Coonoor Road, Udhagamandalam, The Nilgiris. .. Respondents Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records vide Na.Ka.No.1131/Admn/2006 dated 17.04.2009 on the file of the 2nd respondent and quash the same. For Petitioner : Mr.L.Chandrakumar For Respondents : Mr.K.Tamilvendan * * * * * O R D E R The

petitioner prays for issuance of a writ in the nature of Certiorari, to quash the charge memo issued vide Na.Ka.No.1131/Admn/2006 dated 17.04.2009. 2.The petitioner joined the services of the first respondent Union as Fodder Assistant in 1982, and was promoted as Assistant Agricultural Officer in 1989 and thereafter, as Deputy Manager (Marketing). 3.While working as Assistant Agricultural Officer with the second respondent Union between 1986 and 1993, the petitioner was placed under suspension vide order Na.Ka.No.12017/PC/A1/94 dated 10.01.1995 on the allegations of misconduct of having committed irregularities and misappropriation, while on deputation. 4.The suspension was subsequently revoked on 07.09.1995 and the petitioner was reinstated in service at Erode and transferred again to the second respondent Union/parent department. 5.The petitioner was served the charge memo vide Na.Ka.No. 12017/PC/A1/94 dated 27.11.1995 containing 7 charges. 6.The sixth charge against the petitioner was as under:- "The District Collector vide proceeding Na.Ka.No.42/20885/85 dated 06.10.1987 leased out 151.21 Acres of Kattu poromboke land in survey No.512/1 of Sholur Village, Bokkapuram, Nilgiri District to the 2nd respondent's Union for cultivation of fodder. In the above said land, there were 805 classified trees and 2005 unclassified trees. The Thasildar Ooty presented in the spot and instructed the in-charge person Thiru.K.Krishnan Junior Manager and Thiru.A.Kulamdaisamy Fodder Assistant to maintain the above said trees and the trees should not be cut and removed for any reasons. On September 1986, Mr.Krishnan Junior Manager was transferred to Ooty and Mr.A.Kulandaisamy was full in charge of Bokkapuram Fodder Farm. In September 1989 while he was promoted as Assistant Agricultural Officer and took entire charge of Fodder Farm there were 771 classified trees and 1923 unclassified trees after deducting fallen trees due to winds and rain. The 2nd respondent Union vide Na.Ka.No.7044/PI/87 dated 5.9.1991 intimated the Collector that the Union would take care of and maintenance of the numbered trees in the fodder farm and gave an undertaking not to cut and remove the trees. However during 1993 an Enquiry was conducted on receipt of complaints, it was found that 80 Sandal Wood trees 50 rose wood trees 6 naval trees, 74 Vengai trees and 62 unclassified trees were missing which were under the control of Thiru.A.Kulandaisamy and he caused loss of faith and damaged the good will of 2nd respondent Union. Hence Thiru.A.Kulandaisamy, AAO, for his personal Gain

misappropriated the missing trees during his service." 7.The charge memo was based on the report submitted by the Chief Vigilance and Chief Security Officer dated 05.12.1994. The enquiry officer was appointed to go into the charges. The petitioner participated in the enquiry. The enquiry officer submitted a detailed report exonerating the petitioner of the charges. 8.In the enquiry report, it was held that except for charge No.3, other charges were not proved, as the petitioner was named in Charge No.3. The second respondent accepted the finding of the enquiry officer and passed final orders vide Na.Ka.No.12017/D1/Estt/2002 dated 07.10.2002, ordering the adjustment of dues from the petitioner and ordering that the period of suspension be treated as leave on loss of pay. The proceedings, thus, stood concluded finally. 9.It is submitted that vide order Na.Ka.No.28785/97/N2(2) dated 11.5.2000, the first respondent directed an enquiry under Section 81 of the Tamil Nadu Cooperative Societies Act, 1983, by the Deputy Registrar (HQR)/Enquiry Officer, for holding enquiry in respect of 13 allegations based on the report of the Audit department. 10.Charge 10 of the order under investigation under Section 81 of the Tamil Nadu Cooperative Societies Act, reads as under:- "As per 1993-94 unions Audit Report 151.21 Acres of Government land was leased out to the 2nd respondent Union for 99 years. The above said land was entrusted to the 2nd respondent including trees. At present, some trees were missing and the value could not be estimated. And the above said charge as per listed there were shortage of 108 Sandal Wood Trees, 52 rose wood trees, 10 naval trees, 74 vengai trees, total shortage of 244 trees. In respect of the above charge Dr.A.Subramanian, then Managing Director, Daniel Kanagaraj then security were examined. Apart from this the petitioner was examined in respect of charge Nos.3 and 4 along with Dr.A.Subramanian then Managing Director. The enquiry officer submitted a detailed report to the 1st respondent. In his report the enquiry officer categorically stated that Dr.A.Subramanian then Managing Director was not responsible for the missing trees or lesser trees or cut trees or the fallen trees. Further suspicious special report of the Audit for the year 1993-94 is not based on any documents." 11.The case of the petitioner is, that the petitioner was already charge-sheeted for the missing trees and enquiry was conducted wherein final orders were passed holding that the charge was not proved, whereas for the proved charge, petitioner was directed to make good the

losses, in view of the proved charge 3. 12. The contention of the learned counsel for the petitioner is, that the second charge memo is not maintainable, as the petitioner was tried for these charges earlier in which he was acquitted and for the charge for which he was held guilty, he was punished. 13. The impugned charge memo is challenged on the ground of double jeopardy. It is contended that it was not open to the respondents to re-open a matter, which already stood concluded and had attained finality. 14. The impugned order is also challenged on the ground that it was not open to the respondents to proceed under Section 81 of the Tamil Nadu Cooperative Societies Act, after detailed departmental enquiry, in which the petitioner was acquitted. The impugned charge memo is without jurisdiction, as second enquiry on the same set of charges, after acceptance of first enquiry report is not permissible. 15. The learned counsel for the respondent, on the other hand, vehemently contends, that the writ petition deserves to be dismissed, as earlier, action taken against the petitioner was under the departmental rules, whereas now the action is proposed to be taken under Section 81 of the Tamil Nadu Cooperative Societies Act, which is a statutory enquiry. The finding recorded in the departmental proceedings, therefore, cannot be a bar to the second enquiry under Section 81 of the Tamil Nadu Cooperative Societies Act. 16. It is also the contention of the learned counsel for the respondents that the second enquiry under Section 81 is with respect to different charges where only one of the charge is identical, therefore, it cannot be a ground to challenge the charge memo. The writ petition, therefore, deserves to be dismissed. 17. On consideration, I find that the writ petition deserves to succeed. It is true that the respondents were free to hold enquiry under Section 81 of the Tamil Nadu Cooperative Societies Act with regard to new charges and it is for the charged employee to contest the charge before the enquiry officer, but, at the same time, it is not open to the respondents to re-open the charges, qua which enquiry stood concluded. 18. The petitioner has not been named in any other charges, whereas the charge against the petitioner under Section 81 of the Tamil Nadu Cooperative Societies Act is the one which has already been enquired into and attained finality by imposing punishment of recovery and ordering that suspension period be treated as the period spent on leave with loss of pay. 19. The second proceedings, on the same charge is hit by principle of double jeopardy, which is not permissible in law, therefore, the stand of

the respondents cannot be accepted. 20. Consequently, this writ petition is allowed. The impugned charge memo is ordered to be quashed, but with no order as to costs. Connected M.P. is closed. sra To 1. The Commissioner for Milk Production and Dairy Development/Managing Director, Tamil Nadu Coop Milk Producers Federation Ltd., Aavin Illam, M.M.Colony, Chennai.

2. The General Manager, The Nilgiris District Co-op Milk Producers Union Ltd., Coonoor Road, Udthagamandalam The Nilgiris

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