

**BEFORE THE REGISTRAR OF CO-OPERATIVE SOCIETIES,  
PUDUCHERRY.**

R.P. No.7/2014

Present : **Thiru T. KARIKALAN,**  
Registrar of Co-operative Societies  
Puducherry.

J. Gnanasekaran  
S/o. Jayaraman  
No.11, Muthallamman Koil Street  
Pavazha Nagar  
Puducherry – 605 005.

.. Petitioner

Vs.

The Managing Director  
Pondicherry Co-operative Spinning  
Mills Ltd., No. P. 396,  
Pondicherry-Villupuram National Highway  
Thiruvandarkoil P.O., Thirubuvanai  
Puducherry – 605 102.

.. Respondent

**ORDER**

*(Issued under Section 141 of the Puducherry Co-operative Societies Act)*

Animadverting upon the order No. PCSM/044/92 dated 19<sup>th</sup> August 2013 of the respondent, dismissing the petitioner from service on the strength of the standing order Nos. 21(1)(f) and 21(4), this revision petition is filed under Section 141 of the Puducherry Co-operative Societies Act, 1972.

**THE TUSSLE**

2. The portrayal of the case of the petitioner, quintessentially and precisely as stood exposted from the records would run thus:

2.1 The petitioner is an employee of the Pondicherry Co-operative Spinning Mills Ltd., No. P. 396 (for brevity the 'Mills') with E.I.D. No.044 as doffer in simplex division. On 25<sup>th</sup> March 2013 while working in third shift in Unit I, he was directed by the maistry to perform a duty assigned to Unit II. He refused to perform the duty stating that it was not his job. When the shift supervisor



gave similar instruction, he gave a similar reply. Thiru A. Thillaivillalan, E.I.D. No.610 also refused to carry out the work.

2.2 The maistry reported the matter to the Managing Director, vide his letter 25<sup>th</sup> March 2013. Both the employees were placed under suspension with effect from 26<sup>th</sup> March 2013.

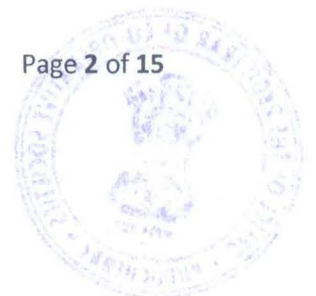
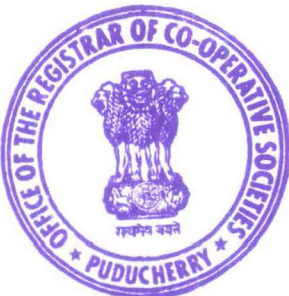
2.3 Thiru Thillaivillalan, in his letter dated 27<sup>th</sup> March 2013, stated that when the maistry and supervisor directed him to perform a duty, the petitioner threatened him not to do the duty and hence both of them did not perform the duty. Realizing that he was at fault, he expressed regret and requested that he may be reinstated in service. He assured that he would not commit such mistakes in future. Based on his letter, Thiru Thillaivillalan was reinstated with effect from 28<sup>th</sup> March 2013. He was informed that during the period of suspension he was not entitled for any salary.

2.4 For refusal to carry out the instruction, the petitioner was issued with a charge sheet dated 29<sup>th</sup> March 2013. He was directed to show cause why disciplinary action should not be initiated for the misconduct committed by him under standing instructions Nos. 19(7), 19(8), 19(9) and 19(13).

2.5 Refuting the charges, the petitioner gave his explanation on 2<sup>nd</sup> April 2013. Having found his explanation not satisfactory, a disciplinary enquiry was initiated and Thiru T.S. Suresh, Advocate was appointed as enquiry officer. Before the enquiry officer, the petitioner sought to permit to examine the maistry, co-worker and the administrative manager. By his report dated 16<sup>th</sup> July 2013, the enquiry officer found the charges proved and recommended maximum punishment for the misconduct committed by the petitioner.

2.6 Forwarding the enquiry report to the petitioner, the respondent by his show-cause notice dated 23<sup>rd</sup> July 2013 directed the petitioner as to why he should be dismissed from service. Faulting the enquiry report, the petitioner denied the charges and sought to withdraw the show-cause notice and give him the job back with all monetary benefits. This representation was found unsatisfactory to the respondent. Narrating the misconducts committed by him in the past, the respondent passed the impugned order of dismissal against the petitioner with effect from 19<sup>th</sup> August 2013.

3. The grounds on which the petitioner made an inroad are:



3.1 The petitioner was directed to perform a duty not assigned to him as per the work allocation. This work was never performed by him in the past.

3.2 When his co-worker Thiru Thillaivillalan committed the same misconduct of refusal to perform the duty directed by his superiors, his co-worker was taken back to service while the petitioner was dismissed from service. Thus the respondent has committed a hostile discrimination against him.

3.3 The enquiry was totally a mockery, conducted against all cannons of natural justice. He was denied the opportunity to enquire the witnesses cited by him. The document produced by him before the enquiry officer was not considered by the enquiry officer and the report is perverse and in support of management.

3.4 By passing the order of dismissal from service, the respondent has acted in a closed mind. He sought to reinstate him into service with all monetary benefits.

#### **THE REFUTE**

4. Per contra, gainsaying and challenging the averments/allegations in the petition, the respondent filed his defence. Shorn of unnecessary details, the imperative points may be stated thus:

4.1 The petitioner joined in the mills as mill operative trainee on 16<sup>th</sup> April 1992 and was regularized in the category as Bale Breaker Attender with effect from 16<sup>th</sup> October 1996. Right from 1999 the petitioner was confronted with various misconducts, charges and misdemeanors. He was placed under suspension off and on. He was charged for using filthy language and manhandling co-workers. Based on his assurance that he would reform himself, he was taken back to work but nothing worked right with him.

4.2 He, along with his colleague Thiru Thillaivillalan, refused to send the simplex bobbin to spinning department unit, as directed by his superior officers. As the act of rebellion affected the production, both of them were suspended, pending enquiry. As Thiru Thillaivillalan admitted his misconduct and assured to discipline himself, he was reinstated into service and he was not paid for the period of suspension.

4.3 Since no such representation was received from the petitioner, a charge sheet was issued and an enquiry was instituted against him to go into the charges. The charges were proved and after following due process and



procedures, the petitioner was dismissed from service. While inflicting the punishment, his past service studded with misconducts was taken into account. The petitioner was found to be disturbing the production, misbehaved with co-workers right from the beginning, threatening his fellow workers and hence this extreme punishment of dismissal from service was imposed on the petitioner with effect from 19<sup>th</sup> August 2013.

### THE RIVAL SUBMISSIONS

5. The revision petition came up for hearing on 15<sup>th</sup> July 2014. The petitioner was represented by Thiru S. Sivakumar, Joint Secretary of CITU, while Thiru S. Muthukumar, Deputy Factory Manager was authorized by the respondent.

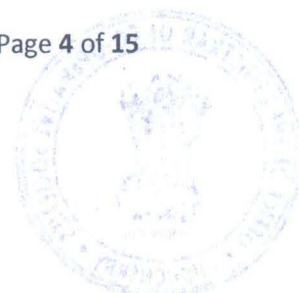
6. The petitioner submitted his written arguments; the nitty-gritty, pith and core of the same may be summed up thus:

6.1 The past misconducts listed out by the respondent are a closed chapter. Based on his explanation, the management has already exonerated him. The impugned order is for the alleged misconduct committed by him on 25<sup>th</sup> March 2013. The enquiry was only to go into the charge based on the complaint given against him.

6.2 Thiru Thillaivillalan, who was suspended along with the petitioner, has given a letter, making some allegations against the petitioner, as directed by the management. The allegations are untrue.

6.3 The petitioner has produced documentary evidence to fortify that the work assigned to him was to be done by the workers of Unit II. He never denied his assigned work. The respondent has imposed the punishment of dismissal from service with vexatious charges. The punishment is liable to be interfered with and is to be quashed in the interest of justice.

7. The respondent submitted that the very same work was done by the petitioner in the past. When he was directed to perform the very same work, he declined to do it. Had he come up a letter of remorse, the entire exercise would have been avoided. Before awarding the punishment, the past misconduct was taken into reckoning as per standing order No. 21(5)(i). The petitioner deserved the punishment of dismissal from service.



### THE CENTRIPODAL ISSUES

8. A combined and collective consideration would lead to approach the issues involved in the revision petition in the following dimensions, viz:

(i) Whether awarding a lesser punishment to Thiru A. Thillaivillalan is justified?

(ii) Whether the enquiry conducted against the petitioner was fair?

(iii) Whether the punishment imposed on the petitioner is commensurate with the misconduct?

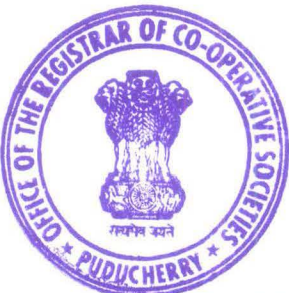
9. Let me deal with the issues seriatim.

### ON THE FIRST ISSUE

10. The intense charge of the petitioner is that when he and his co-worker Thiru Thillaivillalan committed the same misconduct and were placed under suspension, the latter was taken back into service on the strength of his letter expressing regret for his misconduct. Even before me, the petitioner maintained that the work assigned to him on 25<sup>th</sup> March 2013 was to be done by someone in Unit II and he was not obliged to do it.

11. Viewing from the factual scenario, the question before me is whether imposing a lighter punishment of denial of wages for the period of suspension on Thiru Thillaivellalan, while the petitioner was dismissed from service, is discriminatory. In the case of *Obettee (P) Ltd. Vs. Mohd. Shafiq Khan*, (2005) 8 SCC 46, the Hon'ble Supreme Court held that as distinctive features and different and higher punishment was held to be justified in the following manner:

“On consideration of the rival stands one thing becomes clear that Chunnu and Vakil stood on a different footing so far as the respondent workman is concerned. He had, unlike the other two, continued to justify his action. That was clearly a distinctive feature which the High Court unfortunately failed to properly appreciate. The employer accepted to choose the unqualified apology given and regrets expressed by Chunnu and Vakil. It cannot be said that the employer had discriminated so far as the respondent workman is concerned because as noted above he had tried to justify his action for which departmental proceedings were



initiated. It is not that Chunnu and Vakil were totally exonerated. On the contrary, a letter of warning dated 11.4.1984 was issued to them.” [Underlined to add emphasis]

12. Placing reliance on the above judgment, the Hon’ble Supreme Court in *Lucknow K. Gramin Bank (Now Allahabad, U.P. Gramin Bank) vs. Rajendra Singh*, [2013] INSC 727 : 2013 (3) KLT SN 73 (C. No.73) observed thus:

“As per the ratio of *Obettee (P) Ltd.* case even if the nature of misconduct committed by the two sets of employees is same, the conduct of one set of employee accepting the guilt and pleading for lenient view would justify lesser punishment to them than the other employees who remained adopted the mode of denial, with the result that charges stood proved ultimately in a full-fledged enquiry conducted against them. In that event, higher penalty can be imposed upon such delinquent employees. It would follow that choosing to take a chance to contest the charges such employees thereafter cannot fall back and say that the penalty in their cases cannot be more than the penalty which is imposed upon those employees who accepted the charges at the outset by tendering unconditional apology.” [Emphasis supplied]

13. Following the proposition of the above judgments, the petitioner cannot heard to contend that parity should be maintained with his co-worker in the matter of punishment. When his co-worker tendered apology and accepted his guilt, he was entitled for a lighter punishment. The petitioner maintained that his refusal to perform the duty directed by his supervisor was just and proper. So he is in a different footing and hence cannot find fault the punishment imposed on Thiru Thillaivillalan. This point is answered in favour of the respondent and against the petitioner.

#### **ON THE SECOND ISSUE**

14. It is well settled in law that a disciplinary enquiry is not an empty formality to be completed, but it is a serious proceeding to give the employee a chance to meet the charges and to prove his innocence. A disciplinary proceeding is a two sided proceeding; both the parties must co-operate in it and must make an attempt to enable the authority to arrive at the truth. The enquiry officer must act with a detachment since he is professing to exercise a dignified function and open mind should be kept with regard to the charges made against the employee, until the charges are proved.



15. In *Nand Kishore vs. State of Bihar*, [1978] INSC 88 : AIR 1978 SC 1277 : (1978) 3 SCC 366 : 1978 (3) SCR 708, it was held that the disciplinary proceedings before a domestic Tribunal are of quasi-judicial character and, therefore, it is necessary that the Tribunal should arrive at its conclusions on the basis of some evidence, that is to say, such evidence which, and that too, with some degree of definiteness, points to the guilt of the delinquent and does not leave the matter in a suspicious state as mere suspicion cannot take the place of proof even in domestic enquiries. If, therefore, there is no evidence to sustain the charges framed against the delinquent, he cannot be held to be guilty as in that event, the findings recorded by the enquiry officer would be perverse.

16. Preliminary enquiry which is conducted invariably on the back of the delinquent employee may often constitute the whole basis of the charge sheet. Before a person is, therefore, called upon to submit his reply to the charge-sheet, he must, on a request made by him in that behalf, be supplied the copies of the statements of witnesses recorded during the preliminary enquiry particularly if those witnesses are proposed to be examined at the departmental trial. This principle was reiterated in *Kashinath Dikshita vs. Union of India* [1995 Supp(1) SCC 321] wherein it was also laid down that this lapse would vitiate the departmental proceedings unless it was shown and established as a fact that non-supply of copies of those documents had not caused any prejudice to the delinquent in his defence.

17. In the backdrop of the above legal scenario, the factual milieu needs to be considered. The kick-start of the entire episode is the complaint from the maistry, who reported the incident on 25<sup>th</sup> March 2013. The letter in entirety is reproduced below:

"25-3-13

அனுப்புநர்

P. பழனிராஜன், EID No.02

ப்ரிப்பரேடரி மேஸ்திரி,

ஸ்பின்கோ,

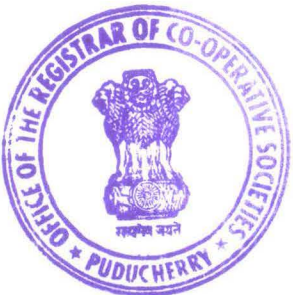
திருபுவனை.

பெருநர்

உயர்திரு மேலாண் இயக்குநர்

ஸ்பின்கோ,

திருபுவனை.



ஐயா,

25-3-2013 III shift பரிப்பரேடரி பிரிவில் ஞாபக டாப்பராக து. ஞானசேகரன், EID No. 44, A. தில்லைவில்லாலன் EID No. 610 இருவர் டாப்பராக வேலை பார்த்தார்கள். நான் Unit I SI-1 யில் ஓடும் 40'ம count பாவினை Unit IIக்கு தள்ளிவிடுமாறு டாப்பர் இடம் கூறினேன். அதற்கு இருவரும் அது என்னுடைய வேலை இல்லை என்று கூறினார்கள். நான் உடனே சூப்பரவைசர் துரைராஜ் இடம் நடந்ததை கூறினேன். அவர் உடனே வந்து இருவரையும் அழைத்துப் பேசி பாவினை Unit IIக்கு தள்ளிவிடுமாறு கூறினார். அவர்கள் அது என்னுடைய வேலை இல்லை நான் தள்ளிவிடமாட்டேன் என்று கூறிவிட்டனர். ஆதனால் நடந்ததை தங்கள் கவனத்திற்கு தெரியப்படுத்துகிறேன்.

இப்படிக்கு  
ஒம்:-  
P. பழனிராஜன்”

18. As is evident, the maistry has just reported that the petitioner and another employee Thiru Thillaivillalan have refused to perform a certain duty, even after the supervisor has instructed them. There is nothing on record that the petitioner was indulging in a reprehensible manner or obstructing other workers from performing their duties. The charge sheet dated 29<sup>th</sup> March 2013 issued to him indicted with the following misconducts enumerated in the standing orders:

19 (vii) – Riotous or disorderly behaviour during working hours in the premises of the factory or any act subversive of discipline connected with the working of the concern;

19 (viii) – Negligence or neglect of work;

19 (ix) – Habitual breach of any rules or instructions for the maintenance and running of any department or the maintenance or the cleanliness of any portion of the premises of the industrial establishment;

19 (xiii) – Willful slowdown in work or production or an abetment or instigation thereof.

19. It is beyond grasp and it defies logic how for the alleged refusal to work, the petitioner was mulcted with misconduct of riotous or disorderly behaviour, willful slowdown in work or abetment or instigation thereof.



20. The fountain head of the occurrence is the complaint from the maistry. In fact it is the foundation of the proceeding. For strange reasons, the respondent has not cited the maistry or the shift supervisor as witnesses to establish that the petitioner refused to perform the work allotted him. The complaint letter was not marked as list of document. There is nothing on record that the said complaint letter was provided to the petitioner. These aspects make the charge sheet inchoate and embryonic.

21. Profitable reference may be made to the judgment of the Hon'ble High Court of Madras in *D. Venkataraman vs. The Secretary to Government, Home (Transport) Department, Chennai, 2014-2-L.W. 587*, where in it was observed that –

“After all, a charge sheet for misconduct must disclose the rules of conduct which an employee has violated, the allegations containing sufficient materials showing how a person has violated the specified rule of conduct and how he has been ex-facie found to be blameworthy requiring his explanation and the disciplinary rule under which the charges against him are required to be enquired into. Also, the charge sheet must contain a list of documents on the basis of which charges against him are proposed to be established and a list of witnesses for oral evidence. It cannot be gainsaid that issuance of charge memo/charge sheet puts a question mark to an employee's career.”

22. I have few observations to make on the enquiry report as well. The petitioner in his letter dated 1<sup>st</sup> June 2013, addressed to the enquiry officer has forwarded the work allocation of Units I and II. He also sought for permission to enquire the shift maistry, co-worker and administrative manager to drive home the point that the charges framed against him were baseless. Again, vide letter dated 29<sup>th</sup> June 2013 he reiterated his request to enquire his witnesses. He stated that denial to examine them as petitioner's witness on the score that these persons were not enquired by the management was not tenable. By not examining them as witnesses, the management has nothing to lose but it would cause enormous damage to the petitioner in establishing that he was not guilty.

23. In his report dated 16<sup>th</sup> July 2013 the enquiry officer gave a finding at page 3 that the petitioner has requested to cross examine the shift maistry, co-worker and administrative manager. Since the management has not



examined them, the petitioner was not permitted to cross examine them. As a matter of fact, the petitioner has requested to examine them as his witnesses, as stated supra. The petitioner alleged before me that by not permitting him to examine the maistry and co-worker he could not establish that the work assigned to him was to be performed by the workers of Unit II. The petitioner has every reason to feel let down that the doors of justice were shut to him and entire enquiry was a travesty.

24. Now the point that falls for consideration is whether non-examination of witness would vitiate the enquiry process. The law enunciated by the Division Bench of the High Court of Madras in *P. Erajan vs. The Deputy Inspector of Police, Tirunelveli and others*, 2005 (4) CTC 202 clinches the issue. In the said case, the petitioner, an inspector of police, was charged for demanding and accepting a bribe and for having insisted to record a higher amount of loan or deposit from some persons. The enquiry officer held that the charges were proved. On appeal, the Tribunal dismissed the appeal preferred by the petitioner. The matter came before the High Court.

25. Assailing the order of the Tribunal, on behalf of the petitioner it was contended that though the Tribunal concluded that the applicant was a party for manipulation or records, the enquiry officer did not examine Kulandaivelu, who got the receipts and without the evidence of the said Kulandaivelu, the conclusion arrived at by the Tribunal was against law and therefore the order of Tribunal has to be set aside.

26. Allowing the writ petition, the Court held that –

“The enquiry officer should have examined the said Kulandaivelu or she should have allowed the petitioner to examine Kulandaivelu as defence witness. Such non examination of the important and indispensable witness makes the second charge as baseless. Further in our opinion, in the wake of non-examination of Kulandaivelu as prosecution witness, the enquiry officer should have permitted the petitioner to examine Kulandaivelu as defence witness. But the claim of the petitioner was denied. Such denial, closed the door of both sides, namely cross examination or chief examination of Kulandaivelu by the petitioner and prevented him to prove his case and therefore, such denial, is a clear violation of principles of natural justice and such violation of principles of natural justice, we are of the view that the finding of the enquiry



officer and the punishment imposed thereupon as well as the order of the Tribunal have to be set aside. Accordingly they are set aside.” [Underlined to add emphasis]

27. Coming back to the case on hand, the enquiry officer held that all the charges levelled against the petitioner, as per the standing order, stand to be proved and recommended the maximum punishment under standing order No.21(1). Without enquiring the maistry and the shift supervisor, this conclusion was arrived at by the enquiry officer. Normally the enquiry officer who is fact finding authority would confine himself from holding that the charges are proved or otherwise and would not go the extent of suggesting the punishment. Such suggestion of punishment is likely to prejudice the management. By recommending the maximum punishment, the enquiry officer, in my considered view, has exceeded his brief.

28. To decide the issue, I find that the respondent has indicted the petitioner with charges not germane to the complaint made against him. The enquiry officer has not permitted the petitioner to examine certain witnesses. Holding the charges as proved the enquiry officer recommended imposing the maximum punishment on the petitioner. Guided by the dictum of the High Court of Madras [supra], the facts of which are pari materia to the present case, I have little hesitation to hold that violation of principles of nature justice is writ large on the face of the enquiry report and consequently on the impugned order. In this backdrop, I am constrained to state that enquiry against the petitioner was not fair and in the manner known to law. This issue is answered accordingly.

### **ON THE THIRD ISSUE**

29. While confronting with the issue whether the punishment of dismissal of the petitioner is proportionate with the misconduct committed, I am quite aware that the imposition of punishment on an employee is in the exclusive domain of the disciplinary authority and role of revisional authority and the Courts is extremely limited. The interference in the matter of punishment will be justified only in rare cases and for reasons to be recorded.

30. The law is well settled on this subject. It will be useful to refer the judgment of the Hon'ble Apex Court in *B.C. Chaturvedi v. Union of India and others*, (1995) 6 SCC 749 wherein it was observed:



"A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof." [Emphasis mine]

31. The aforesaid proposition of law is referred to and reiterated in *Union of India vs. K.G. Soni*, (2006) 4 Suppl. SCR 560 : (2006) 6 SCC 794 : 2006 (8) SCALE 49 : 2006 (7) JT 509. The following observation of the Hon'ble Supreme Court is worth quoting:

"The common thread running through in all these decisions is that the Court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in the *Wednesbury's* case (supra) the Court would not go into the correctness of the choice made by the administrator open to him and the Court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision. To put differently, unless the punishment imposed by the Disciplinary Authority or the Appellate Authority shocks the conscience of the Court/Tribunal, there is no scope for interference. Further to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In a normal course if the punishment imposed is shockingly disproportionate, it would be appropriate to direct the Disciplinary Authority or the Appellate Authority to reconsider the penalty imposed."

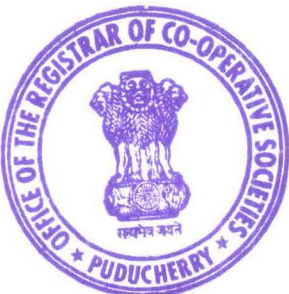


32. Guided by the above dictum, I am disposed to deal with the punishment imposed vis-à-vis the misconduct committed by the petitioner. The petitioner is justified to feel grieved that he was visited with the extreme punishment of dismissal from service. As noted above, the charge against the petitioner was that he did not obey the instructions of his superiors. The enquiry has not brought out the fact whether the work assigned to the petitioner was to be performed by him or some other. The maistry was not enquired by the enquiry officer, nor was he permitted to be enquired by the petitioner. Even before me the respondent has stated that it was the work normally done by the petitioner in the past. It was vehemently denied by the petitioner. He produced certain records to buttress his contention that the work was assigned to some other employee of Unit II.

33. While furnishing the comments on the appeal petition, the respondent stated that since Thiru A. Thillaivillalan has submitted a letter admitting his guilt he was allowed to work. Since the petitioner has not given such a request, a charge sheet was issued to him. Even during the hearing the respondent submitted that had the petitioner given a letter of regret seeking admonition, the whole proceedings would have taken place at all. This goes to show that the misconduct is not so severe or heinous and a letter of remorse and denial of wages for the period under suspension would be a fitting punishment. If it is so, why the proceedings were dragged to the extent of inflicting punishment of dismissal from service?

34. Before imposing the punishment, the respondent forwarded the enquiry report to the petitioner, vide notice dated 23<sup>rd</sup> July 2013. He has quoted the past cases where the petitioner was charged with misconduct. To this notice, the petitioner gave a representation on 29<sup>th</sup> July 2013. Without meeting the objections objectively the respondent made a curt observation in his order, imposing the punishment of dismissal from service, that his explanation was not satisfactory. The 'how' of it was not explained. Instead, the respondent has given various details of misconduct and punishment imposed on the petitioner in the past.

35. During the hearing the petitioner submitted that just to impose the extreme punishment of dismissal, the respondent has reopened the past cases. This is an act of vindictiveness, he contended. Per contra, the respondent maintained that the punishment was just and proper and considering the past misconduct is in accordance with standing order No. 21(5)(i).



36. To seek an answer as to when past record is relevant to be considered for imposing punishment on an employee, formidable support may be found in the decision of the Division Bench of High Court of Madras in *Sundaram G. vs. M.O.R.S.I. Ltd., Coimbatore and another*, 2000 (II) LLJ 979. It was held that:

“The previous record need not mean that there must be a domestic enquiry in the past. The previous record can only be taken to mean the conduct of the appellant in the past. As the learned single Judge rightly held, it does not mean that only when punishment had been awarded, the management should take it to be blameworthy conduct.”

37. I have bestowed my thoughtful consideration on the past record of the petitioner. The charge in all these cases was use of abusive language and for impulsive behaviour. In all these cases warning was issued and wages was denied for the period of suspension. No doubt, the petitioner does not have an enviable past record and time and again it is marred by his repulsive character. But in the instant case, the charge was only disobedience of an order of superior. As narrated above, the enquiry did not drive home the point that the charge was proved comprehensively. The charge sheet and the conduct of enquiry were found wanting. The established procedure in conduct of disciplinary proceedings were not faithfully followed, leaving it open that the misconduct is not comprehensively proved.

38. To cut the long story short, for the reasons recorded above I hold that inflicting the punishment of dismissal from service on the petitioner is too harsh and quite disproportionate to the alleged misconduct. The petitioner's grievance that he was imposed with this punishment in an unjust way cannot be swept under the carpet. The impugned order suffers from legal and procedural wrangles and does not stand to legal standards.

39. However I do not give a clean chit to the petitioner. The task that was assigned to him by his superior was a simple and casual task. He ought not to have denied doing it in the interest of organisation and for maintaining tranquility in his workplace. He has gone to the extent of saying that this small work has to be done by some other employee and produced various records to fortify his point. In an organisation like a spinning mill, no watertight compartment can be maintained.

40. The petitioner is quite aware, as a responsible member of the Trade Union, that his mills is passing through a turbulent period and against many



odds the mills is back on rails. Refusing to do a casual work, even it is not assigned to him, and making it as an issue is an act blowing out of proportion. All the hands should join together to restore past glory. An element of sacrifice and greater interest and devoting to the organisation is very much expected from a trade unionist. But the petitioner failed to deliver what is expected of him. Added to that, he has poor past record. His aggression will be viewed only as arrogance.

### THE UPSHOT

41. In the backdrop of the factual position and tested on the touchstone of the principles of law and governing rules, the inevitable conclusion is that the impugned order dated 19<sup>th</sup> August 2013 inflicting the punishment of dismissal on the petitioner does not stand to reason and hence should fall. The order stands set aside. The petitioner should be permitted to re-join duty forthwith.

42. The petitioner cannot be let off the hook for his repulsive and reprehensible conduct. He has to blame himself for taking the matter this long. It is hoped that the petitioner will reform himself to be more responsible and devoted. It will be not only in the interest of the organisation but to himself. For gaining re-entry into the mills, the petitioner has to pay a price which will mend his ways. As a sequel, from the date of his dismissal from service till the date of re-joining duty, the petitioner is not entitled for any monetary benefit whatsoever. However for the purpose of calculation of his terminal benefits, this period of service will be taken into account. This will meet the ends of justice.

43. In fine, the revision petition stands allowed to the extent indicted above. However the parties are left to bear their respective costs.

Pronounced in the open forum on this 24<sup>th</sup> day of July, 2014.



[T. KARIKALAN]  
REGISTRAR OF CO-OPERATIVE SOCIETIES

The parties.