
(2000) 11 MAD CK 0023
In the Madras High Court

B. Deenadayalan

APPELLANT

Vs

The Management, Kancheepuram Kamakshiamman Silk
Handloom Weavers' Co-operative Production and Sales
Society Limited and Another

RESPONDENT

Date of Decision : 15-11-2000

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A

Tamil Nadu Shops and Establishments Act, 1947 — Section 41, 41(2), 41(2)

Citation : (2001) 1 MLJ 145

Hon'ble Judges : V. Kanagaraj, J

Bench : Single Bench

Judgement

V. Kanagaraj, J.—The first respondent in W.P.No. 5583 of 1999, aggrieved against the order passed by the learned single Judge of this

Court in allowing the writ petition filed by the Management, a Co-operative Society thereby quashing the proceedings of the second respondent

herein, has preferred this writ appeal praying to set aside the order passed by the learned single Judge in W.P.No. 5583 of 1999.

2. Tracing the history of the case, we are able to find that two charges have been framed against the appellant/workman by the Management, first

respondent Co-operative Society as per the charge memo dated 7.6.1996 relating to misappropriation of substantial volume of stock and cash

proceeds thereby causing a loss to the management to the tune of Rs. 6,98,935. The Management seeking explanation of the appellant on the

charges framed and having not been satisfied with the explanations offered by the appellant/delinquent, had ordered the domestic enquiry

appointing the Enquiry Officer for that purpose, in which two witnesses have been examined on the part of the Management besides marking 14

documents as Exs.M-1 to M-14. On the part of the appellant/workman he would not examine any witness nor even would he examine himself as a

defence witness, but would file 11 documents along with the Final Report, which would be marked as Exs.D-1 to D-11.

3. The Enquiry Officer, in consideration of the materials made available on record and appreciating the evidence as required under law, had

submitted his report on 30.9.1996 thereby recording a finding that both the charges have been established against the appellant/workman.

Thereupon, the Management furnishing copy of the enquiry findings has issued a show cause notice to the appellant seeking his explanation with

respect to the proposed punishment, for which the appellant had submitted his detailed objection, in consideration of which and not being satisfied

with, the first respondent Management had confirmed the proposed punishment of dismissal from service as per its order dated 7.12.1996.

4. Aggrieved, the appellant/workman had preferred an appeal u/s 41(2) of the Tamil Nadu Shops and Establishments Act, 1947 (hereinafter

referred to as the "Act") before the second respondent Appellate Authority who in consideration of the grounds raised therein and holding a further

enquiry on the appeal wherein on the part of the Management one witness would be examined and 19 documents would be marked and on the

part of the delinquent, he would examine himself in chief and mark three documents. But the delinquent having sufficiently cross-examined the

Management witnesses, had abstained thereafter thus evading to submit himself for being cross-examined by the Management and in such a

condition, the Appellate Authority with remarks that the dismissal order dated 7.12.1996 passed by the Management was neither for a proved

misconduct nor for a reasonable cause, would ultimately set aside the order of dismissal passed by the Management.

5. Aggrieved, the Management has filed the writ petition in W.P.No. 5583 of 1999 and the learned single Judge of this Court, having dealt with the

same would not only set aside the order of the Appellate Authority, the second respondent herein, holding that no interference was called for by

the Appellate Authority in exercise of his powers u/s 41 of the Act but also quash the entire proceeding of the second respondent/Appellate

Authority thus justifying the findings of the domestic enquiry, as per his order dated 24.9.1999. It is only aggrieved against this order passed by the

learned single Judge, the appellant/workman has come forward to prefer the above writ appeal on grounds:

(i) that the learned single Judge has misdirected himself about the powers of the Appellate Authority and the scope of enquiry u/s 41 (2) of the Act;

(ii) that the learned Judge failed to note that it is that satisfaction of the Appellate Authority regarding the evidence in support of proof of charges in a case of dismissal from service and not the satisfaction of the employer;

(iii) that the learned Judge holding that the employer's satisfaction based on the enquiry finding is enough to sustain an order of dismissal, has

rendered the very appeal before the Appellate Authority futile and ineffective;

(iv) that the learned Judge has failed to appreciate the scope of an appeal u/s 41(2) of the Act and the powers of the Appellate Authority;

(v) that the learned Judge's finding fault with the Appellate Authority for allowing the evidence to be let in and appreciating the same would clearly

amount to curtailing or restricting the powers of the Appellate Authority;

(vi) that the learned Judge's finding that there was a de novo enquiry before the Appellate Authority is not correct since the evidence let in would

only amount to additional evidence, which is permissible u/s 41(2) of the Act; and

(vii) that the learned Judge completely failed to take note of the fact that the appellant's co-employee admitted the charges and the said admission

later had been suppressed by the Management.

On such grounds, the appellant/workman would pray to set aside the order passed by the learned single Judge.

6. A few facts traced here, would help knowing the case factually, covering the subject regarding the writ appeal. The appellant was working as a

Salesman in the Salem branch of the first respondent/Management. While so, the Management framed two specific charges against the appellant,

as per the charge memo, dated 7.6.1996 namely:

(1) that the appellant, as salesman was placed in-charge of the Sales Section of the Salem Branch of the Management along with one A. Moorthy,

jointly and severally responsible for the sale proceeds and the goods. That as per the orders of the Management, he should not keep more than Rs.

300 in cash, which has to be converted into Demand Draft, the next day and sent to the Head Office. That during the relevant time, which was a

rebate period, he had kept in cash a sum of Rs. 4,37,890 towards suspense account and Rs. 879.40. in cash thus having kept a total amount of

Rs. 4,38,769.40. either without converting and sending as Demand Draft or even without drawing the bill for the sale while going on leave on

26.2.1996 but only stating that he had entrusted the same with the co-worker A. Moorthy without even an intimation to the Management thus

misappropriating the said sum.

(2) That while handing over the charge, while going on the leave and knowing the practice in vogue, the delinquent neither properly handed over

the stock as per chitta nor intimated the same to the Head Office about the handing over of the charge. By commission of the above misconduct,

the delinquent has caused a loss to the Society by way of deficit in the stock to a sum of Rs. 6,98,935, acting in connivance with the co-worker A.

Moorthy. Hence, the charge.

7. To the above charge memo issued, the appellant/delinquent had submitted his explanation dated 15.6.1996 and as already mentioned, the

Management, not being satisfied with the explanation offered on the part of the appellant, ordered the enquiry to be held based on the charge

memo appointing the Enquiry Officer, who, having recorded the evidence and appreciating the same, has arrived at his finding ultimately, holding

the delinquent guilty of the delinquencies brought under both the charges as per his report dated 30.9.1996 leading to the punishment of dismissal

to be inflicted by the disciplinary authority on the appellant with further opportunity as per the dismissal order dated 7.12.1996. Aggrieved, the

delinquent has preferred an appeal before the Appellate Authority, the second respondent herein, u/s 41(2) of the Act when the Management has

raised the legal question that the provisions of the Act have no application to the Co-operative Societies and therefore the appeal is not

maintainable. The Management also raised another legal question that the exercise of power by the Appellate Authority u/s 41(2) of the Act and

the manner in which it had allowed parties freely to record oral and documentary evidence, itself acting as the Enquiry Officer, without caring to

decide the appeal based on the evidence already recorded by the Enquiry Officer, thus conducting a de novo enquiry, is impermissible in law.

8. The main issue taken up for consideration by the Appellate Authority is,

whether the dismissal order passed by the Management was for a reasonable and sufficient cause and whether the same was liable to be set aside? The Appellate Authority having gone through the procedures adopted by the Enquiry Officer and the conclusion arrived at by the disciplinary authority and as already seen giving further opportunity for both to let in further evidence, in which the Management would examine one witness and mark 19 documents on its side and on the part of the delinquent, he would examine himself in chief and mark three documents and having sufficiently cross-examined the Management witnesses, he had evaded responsibility to submit himself for being cross examined by the Management and in such a condition, the Appellate Authority appreciating those additional evidence placed on record also would ultimately hold that the delinquent had not committed any misconduct thereby causing loss to the Society either by way of depositing any stock or by way of misappropriation or even in handing over the charge, no irregularity had occurred. Further holding that the dismissal order dated 7.12.1996 passed by the respondents against the appellant was neither for a proved misconduct nor for a reasonable cause, the Appellate Authority would ultimately allow the appeal setting aside the order of dismissal passed by the disciplinary authority. It is this decision that has been arrived at by the Appellate Authority was under challenge in the writ petition before the learned single Judge.

9. The learned single Judge having discussed the various aspects involved right from the initiation of the disciplinary proceeding down to the order passed by the Appellate Authority, would ultimately hold that no interference was called for by the Appellate Authority in exercise of his power u/s 41 of the Act and would quash the proceeding of the Appellate Authority thus justifying the domestic enquiry finding and the punishment inflicted by the disciplinary authority. It is only aggrieved against this order of the learned single Judge, the delinquent has come forward to prefer this writ appeal on grounds and for the reliefs extracted supra.

10. In the precised argument advanced on the part of the learned senior counsel representing the appellant, he would submit that the charges against the appellant are that he allowed the co-employee to misappropriate the stock and the cash proceeds, thus causing loss to the

Management; that the learned single Judge resenting to the Appellate Authority having appreciated the evidence and remarking that the Appellate

Authority had almost conducted a de novo trial, as though the Appellate Authority had no power to appreciate the evidence or allow additional

evidence, has arrived at the conclusion to hold that the Appellate Authority had gone beyond his jurisdiction and has therefore set aside the orders

of the Appellate Authority. Commenting that the powers of the Appellate Authority u/s 41 of the Act are akin to Section 11-A of the Industrial

Disputes Act, the learned senior counsel, in his attempt to drive his point home, would cite a judgment of the Apex Court delivered in The United

Planters Association of Southern India v. K.G. Sangameswaran and an Ors. (1997) 1 L.L.J. 1104 and would point out what is held by the Apex

Court in para No. 19 of the said judgment, regarding the powers of the Appellate Authority aptly applies to the case in hand. Hence, we extract

para 19 of the said judgment:

A perusal of Section 41 of the Tamil Nadu Shops and Establishments Act, 1947 and Rule 9 of the Tamil Nadu Shops and Establishments Rules,

1948 it will be seen that the jurisdiction of the Appellate Authority to record evidence and to come to its own conclusion on the questions involved

in the appeal is very wide. Even if the evidence is recorded in the domestic enquiry and the order of dismissal is passed thereafter, it will still be

open to the Appellate Authority to record, if need be, such evidence as may be produced by the parties. Conversely, also if the domestic enquiry

is ex parte or no evidence was recorded during those proceedings, the Appellate Authority would still be justified in taking additional evidence to

enable it to come to its own conclusions on the articles of charges framed against the delinquent officer.

11. Reciting the above paragraph from the said judgment, the learned senior counsel would lay stress to his point that the Appellate Authority in the

case in hand had not at all exceeded its jurisdiction but had exercised only the lawful powers conferred on it either in reappraising or reappreciating

the evidence recorded by the Enquiry Officer or in allowing additional evidence to arrive at his own findings as he has rightly arrived at in the case

in hand. The learned senior counsel would further submit that the interference caused on the part of the learned single Judge into the decision of the

Appellate Authority is undesirable in the circumstances of the case. The learned senior counsel would further point out that the co-worker A.

Moorthy has accepted the guilt to have been committed on his part and hence the very enquiry proceeding contemplated and held against the

appellant itself is not only against all the legal convictions but also vindictive on the part of the Management. On such arguments, the learned

Counsel would ultimately pray for allowing the appeal setting aside the order of the learned single Judge of this Court.

12. On the part of the learned senior counsel, appearing on behalf of the first respondent/Management, whose arguments would be adopted by the

learned Counsel for the second respondent, would point out that the delinquency was in a large scale and had been perpetrated by the appellant

acting hand-in-glove with the said A. Moorthy, the co-worker, both of whom were jointly in-charge of the stock and cash. The learned senior

counsel would also point out that merely because a co-accused admits the guilt of misappropriation, the other co-accused would not become

cleared off the accusation or charges since the duties and responsibilities cast on him are heavy and hence, on evidence, right conclusions have

been arrived at by the Enquiry Officer thereby holding the appellant guilty of the charges framed. The learned Counsel would also justify the

enquiry conducted and finding given resulting in the punishment inflicted by the disciplinary authority. The learned senior counsel would also point

out that the Appellate Authority in exercise of his appellate jurisdiction should not have acted as an Enquiry Officer in excess of his jurisdiction,

which could be largely seen at many places of his order as a result of which wrong conclusions have been arrived at by the Appellate Authority and

the learned single Judge has rightly pointed out wherever the Appellate Authority has erred in his exercise of jurisdiction and has not only set aside

the order passed by the Appellate Authority but also has rightly restored the findings of the Enquiry Officer and the penalty inflicted by the

punishing authority. On such arguments, the learned senior counsel would pray that the interference sought for on the part of the appellant into the

order of the learned single Judge is not on tenable grounds.

13. On a fair assessment of the materials placed before us, as aforementioned, we are able to see that two specific charges have been framed

against the delinquent/appellant by the first respondent/Management while he was serving as the Salesman jointly placed in-charge of the stock and the cash along with one A. Moorthy while they were serving as salesmen at the Salem Branch of the first respondent/Management during the relevant time. The first charge being that the delinquent flouting the conventions and instructions of the Management that they should not keep more than Rs. 300 cash but entrust the amount in the Bank converting the same into Demand Draft and sending it to the Head Office the next day. He was found to have kept in cash a sum of Rs. 4,37,890 towards suspense account and a cash of Rs. 879.40 ps. either without sending the same as Demand Draft or even without drawing the bill for the said sale while the delinquent entered on leave on 26.2.1996 thus leaving it to be decided that he had committed misappropriation of the said amount. Secondly, while going on leave, knowingly to the practice in vogue, the delinquent neither properly handed over the stock nor intimated the same to the Head Office about handing over charge thus committing both the above misconducts. In the said process, it is alleged that the delinquent has been responsible to cause a loss of Rs. 6,98,935 by way of deficit in stock, acting in connivance with the co-employee A. Moorthy.

14. On the charge memo dated 7.6.1996 issued to the delinquent containing the two specific charges mentioned supra, the delinquent had submitted his explanations dated 15.6.1996 and the management, in consideration of the explanations offered, without being satisfied with the same, had ordered the domestic enquiry thereby appointing an Enquiry Officer, who, having afforded opportunity for both the management and the delinquent to record their evidence and having regard to such materials placed on record and appreciating the evidence thus placed, had ultimately submitted his report dated 30.9.1996 finding the delinquent guilty of both the charges, based on which, the management having issued yet another show cause notice accompanied by a copy of the enquiry report to the delinquent, had sought for his explanations to be offered with respect to the proposed punishment of dismissal from service.

15. On receipt of the explanations from the delinquent, the disciplinary authority, not being satisfied with the same, had confirmed the proposed punishment of dismissal from service, as per its order dated 7.12.1996,

testifying the validity of which, the appellant delinquent had preferred the appeal before the Appellate Authority, who, having allowed parties to have further opportunity to let in oral and documentary evidence and appreciating the evidence thus placed on record in an elaborate manner would ultimately arrive at the conclusion to set aside the finding of the enquiry officer and the punishment inflicted by the disciplinary authority. Aggrieved against this order passed by the Appellate Authority, the Management has filed the writ petition challenging the order of the Appellate Authority mainly on the legal grounds that (a) the very appeal preferred by the delinquent before the Appellate Authority u/s 41(2) of the Tamil Nadu Shops and Establishments Act was not maintainable since the provisions of the said Act have no application to the Co-operative Societies thus placing reliance on the Division Bench judgment of this Court delivered in the case of Managing Director Repatriates Co-operative Finance and Development Bank Limited, Madras v. Deputy Commissioner of Labour and Anr. W.A.No. 1008 of 1989 and (b) that the Appellate Authority in having freely allowed the parties to adduce oral and documentary evidence before it, it had acted as an Enquiry Officer conducting a de novo enquiry and it has no such authorities to go into recording of such elaborate evidence and appreciating the same, instead of appreciating those evidence already recorded by the Enquiry Officer in the disciplinary proceeding which is impermissible in law and hence the conclusion arrived at by the Appellate Authority on such procedure adopted in setting aside the findings and punishment by the Appellate Authority was erroneous and could not be sustained in law. The learned single Judge accepting the contentions of the Management would ultimately allow the writ petition thereby setting aside the order passed by the Appellate Authority and it is only against this order passed by the learned single Judge of this Court in W.P.No. 5583 of 1999, dated 24.8.1999, the delinquent has come forward to prefer this appeal on grounds which have been already extracted.

16. On a careful perusal of the pleadings by parties and having regard to the materials placed on record and upon hearing the learned Counsel for both, what comes to be known is that it is a domestic enquiry instituted by the Management against the delinquent appellant herein on two specific

charges framed both of which have been held proved by the Enquiry Officer followed by the order of dismissal passed by the disciplinary

authority. On an appeal preferred by the delinquent before the Appellate Authority, the said authority having allowed parties to produce additional

evidence - oral and documentary - when the delinquent, who in spite of opportunity afforded by the Enquiry Officer did not come forward to

examine himself or his witnesses, got himself examined as the sole witness before the Appellate Authority besides marking 3 documents on his side

as Exs.A-1 to A-3 which are respectively the suspension order, his explanation offered to the charge sheet and the dismissal order. Even it comes

to be known that when it came to the point of his cross-examination by the Management, the delinquent had not submitted himself before the

Appellate Authority for being cross-examined by the other side and hence the Appellate Authority considering his evidence adduced in chief and

the said documents marked and in further consideration of the evidence adduced on the part of the Management and having its own discussions on

the facts and circumstances of the case, has ultimately arrived at the conclusion to declare that neither for a proved misconduct nor for a

reasonable cause the dismissal order had been passed on the delinquent appellant, thereby setting aside the same, but without costs.

17. It is only seeking to quash this order passed by the Appellate Authority, the Management has filed the writ petition, which came up for

consideration before the learned single Judge, testifying the order of the Appellate Authority mainly on two grounds, as already mentioned besides

the others viz., (i) that the very appeal, as preferred by the Appellate Authority u/s 41(2) of the Act, was not maintainable since the provisions of

the said Act have no application to the Co-operative Societies and (ii) that the manner in which the Appellate Authority adopted a novel procedure

allowing the parties to adduce oral and documentary evidence freely before it, thus itself acting as the Enquiry Officer, is nothing short of a de novo

enquiry held by the Appellate Authority, which is impermissible in law.

18. So far as the first point testifying the legality of the delinquent preferring the appeal u/s 41(2) of the Act is concerned, it has been duly

considered by the Appellate Authority himself. The Management's contention in this is that the Co-operative Society like the first respondent

Management was totally exempt from the purview of the Tamil Nadu Shops and Establishments Act and therefore the appeal preferred u/s 41(2)

of the said Act would have no application thus placing reliance on a Division Bench judgment of this Court delivered in Managing Director

Repatriate Co-operative Finance and Development Bank Limited, Madras v. Deputy Commissioner of Labour and Anr. W.A.No. 1008 of 1989

However, on a later notification issued by the State Government on 5.9.1979, the second respondent had himself over-ruled the jurisdiction issue

raised by the Management holding that the appeal was maintainable. This issue even though has been taken up for discussion by the learned single

Judge he would also ultimately concur with the second respondent/Appellate Authority accepting the conclusions arrived at by him to the effect that

the appeal was maintainable. Neither this question is highlighted before us in this appeal nor is it necessary on our part to have any more discussion

and it is better to conclude that the said question raised on the part of the Management has been once and for all settled.

19. So far as the second and main point for decision is concerned, the grievance of the appellant is that there had been no valid reasons assigned

on the part of the learned single Judge to interfere with and disturb the order passed by the Appellate Authority thereby setting aside the finding

and the punishment inflicted on the appellant. According to the appellant, as revealed from the grounds of appeal and the arguments advanced on

the part of his counsel, the Appellate Authority had rightly exercised his jurisdictional powers in arriving at his own conclusion as he had arrived at

and neither had there been any exercise of power beyond his jurisdiction nor could the norms on which the conclusions have been arrived at be

termed either irregular or in arbitrary exercise of power by the Appellate Authority.

20. In short, the appellate would say that the Appellate Authority had only in exercise of the powers conferred by law and in the manner expressed

by the Apex Court in its judgment delivered in The United Planters Association of Southern India v. K.G. Sangameswaran and an Ors. (1997) 1

L.L.J. 1104, pointing out the relevant paragraph No. 19 of the judgment, according to which, u/s 41 of the Tamil Nadu Shops and Establishments

Act, 1947 and Rule 9 of the Rules 1948, the jurisdiction of the Appellate Authority to record evidence and arrive at its conclusion on the questions

involved in the appeal is very wide, that it is open for the Appellate Authority to record such evidence as may be produced by parties; that if the

domestic enquiry is ex parte and no evidence was recorded, the Appellate Authority would still be justified in recording the additional evidence to

enable it to arrive at its own conclusions on the Articles of charges.

21. In the above scenario, the short question that falls for consideration is, whether the Appellate Authority in dealing with the appeal had correctly

exercised its jurisdiction in setting aside the findings of the Enquiry Officer and the punishment inflicted by the disciplinary authority or has it

exceeded in its jurisdiction to interfere with the order of dismissal passed by the disciplinary authority, conducting a de novo enquiry, acting as

though he was the Enquiry Officer, as pointed out by the learned single Judge?

22. A perusal of the orders of the learned single Judge would reveal that he had taken into account the entire procedure conducted by the enquiry

officer from the date of framing of the charges down to inflicting the punishment on the delinquent. The learned single Judge had also gone into the

various dates and the events when the enquiry proceedings have been conducted particularly the documents marked by either of the parties. The

learned Judge would further find that the workman having himself sufficiently cross-examined the witnesses of the management and further having

adduced his evidence in chief, had, at the last moment, abstained from subjecting himself for cross-examination by the management as a result of

which, only on such materials made available on record the enquiry officer had arrived at his findings and submitted his report holding the appellant

guilty of both the charges since they have been established against him that thereafter accompanied by the copy of the findings causing a second

show-cause notice regarding the proposed punishments and after due consideration of the explanations offered on the part of the delinquent and

not being satisfied with the same, the Management had ultimately imposed the punishment of dismissal on the delinquent on 7.12.1996.

23. The learned single Judge would then focus his attention on the manner in which the second respondent Appellate Authority dealt with the

subject on appeal preferred and dealt with by him in respect of the dismissed delinquent. It is here, the learned single Judge is able to find that the

Appellate Authority instead of appreciating the materials already placed before

him, as recorded by the Enquiry Officer, and punished by the disciplinary authority, has gone into conducting a second enquiry, himself acting as an enquiry Officer, which question would arise only when there was no proper enquiry held or no proper opportunity had been afforded by the Enquiry Officer. But, in the case in hand, since a full enquiry had been held by the Enquiry Officer, exhausting the procedures, the exercise that had been undertaken by the Appellate Authority in recording further oral and documentary evidence was not at all required in the circumstances of the case and since it is in excess of the Appellate Authority's jurisdiction, the learned single Judge would consider the act of the Appellate Authority a de novo enquiry and the same is undesirable and unsustainable in law.

24. The main accusation of the Management before the learned single Judge is that even without recording a finding as to how the appreciation of evidence by the Enquiry Officer in any way would vitiate or become irregular, based on minor discrepancies referred to as though every one in the Society is motivated against the delinquent, the Appellate Authority has set aside the punishment imposed by the disciplinary authority and it is nothing but arbitrary exercise of power in excess of his jurisdiction, which is uncalled for u/s 41(2) of the Act. While considering this contention of the Management, the learned single Judge had also considered the proposition held in a judgment delivered in *Thirumangalam Co-operative Urban Bank Ltd. v. Assistant Commissioner of Labour, Madurai and Anr.* (1992) 2 L.L.J. 886, wherein it is held that the reassessment of the evidence by the Appellate Authority u/s 41(2) of the Act is permissible, but the same must be on proper basis and not whimsical or arbitrary.

25. The, having discussed about the rules and procedures adopted in the conduct of the enquiry by the Enquiry Officer and the appreciation of evidence by him, so as to hold the delinquent guilty of both the charges leading to his dismissal from service and expressing satisfaction with the enquiry proceeding, the learned single Judge would then start dissecting the manner in which the Appellate Authority had conducted his proceeding wherein additional evidence had been allowed to be let in by allowing the delinquent to examine himself as a witness and mark his documents wherein on the part of the management also certain documents have been

marked, as if there had been no enquiry at all held by appointment of the Enquiry Officer by the management. The learned single Judge then discussing the manner in which the Appellate Authority, without properly appreciating the evidence as recorded by the Enquiry Officer, but himself started conducting a re-enquiry of the same by allowing parties not only to let in oral evidence but also to mark exhibits in the circumstances of the case, found the same to be undesirable and in excess of his jurisdiction resulting in interfering with the findings recorded by the Enquiry Officer.

26. The learned single Judge thus resented to the finding recorded by the Appellate Authority since the subject had been dealt with as though action had been taken under Sections 80 and 91 of the Co-operative Societies Act for recovery of the misappropriated amount from the delinquent, would also decry the remarks of the Appellate Authority that the delinquent cannot be held to have committed any misconduct causing loss to the Society and hence the conclusions arrived at by the Enquiry Officer cannot be sustained. Further remarking that there is no reason for the Appellate Authority to record such a finding, the learned single Judge would hold that the finding recorded by the Enquiry Officer is perverse.

The learned single Judge would further comment that the Appellate Authority should have acted within the four corners of Section 41 (2) of the Act, but the manner in which the findings were recorded to the effect that the delinquent was not guilty of misconduct, cannot be sustained. Holding that the allegation of victimisation has no relevance in the context of the case, as has been held in *M. Palaniswami v. Madhukarai Cement Works*

Employees (Madras) (1975) 2 L.L.J. 78, the learned single Judge would point out that the Appellate Authority cannot proceed also as he is an

original authority; that when there are cogent materials available and since they are subject to the subjective appraisal and satisfaction of the

employee and in the light of the materials placed before the Appellate Authority, the learned single Judge would further hold that the Appellate

Authority ought to have agreed with the employer when there is reasonable cause for dismissal, as it had been held in *Associated Corporation*

Industries Limited (India) v. Additional Commissioner for Workmen's Compensation (1972) 1 L.L.J. 108.

27. For all the discussions held above with instances and in the context of the

judgments delivered by this Court earlier, the learned single Judge would ultimately arrive at the conclusion that it is clear that the Appellate Authority had exceeded in its jurisdiction to interfere with the orders of the disciplinary authority and there is no reason at all to hold that there was no reasonable cause *ex facie* as it had been wrongly held on the part of the Appellate Authority; that since abundant evidence had been let in before the Enquiry Officer, which had been recorded and well considered therein, the Appellate Authority should have restrained himself from conducting a parallel enquiry or a *de novo* enquiry, which is not at all called for in exercising power u/s 41 of the Act and in fact according to the learned single Judge the circumstances do not at all warrant interference by the Appellate Authority either into the domestic enquiry as it had been held or into the findings of the Enquiry Officer or even in the punishment inflicted by the disciplinary authority and consequent would quash the proceedings of the second respondent/Appellate Authority.

28. The reasons assigned on the part of the learned single Judge is that the Appellate Authority/second respondent had exceeded his jurisdiction acting over and beyond the scope of Section 41 of the Act under which the appeal was preferred before him when in the circumstances of the case, no such interference in the manner made by the Appellate Authority had been called for. To ascertain whether in the manner in which and the extent to which the Appellate Authority has exercised its powers, in recording authority has exercised its powers, in recording additional evidence and appreciating the same so as to arrive at its conclusions as it has done in dealing with the appeal preferred by the delinquent, we have to necessarily trace Section 41 of the Act and Rule 9 of the Tamil Nadu Shops and Establishments Rules, 1948. Sub-Sections (2) and (3) of Section 41 of the Act read:

(2) The person employed shall have a right to appeal to such authority and within such time as may be prescribed either on the ground that there as no reasonable cause for dispensing with his services or in the ground that he had not been guilty of misconduct as held by the employer.

(3) The decision of the Appellant Authority shall be final and binding on both the employer and the person employed.

Rule 9(3) of the Tamil Nadu Shops and Establishments Rules, 1948 contemplates:

The procedure to be followed by the Appellate Authority (Deputy Commissioner of Labour), when hearing appeals preferred to him under Sub-

section (2) of Section 41 shall be summary. He shall record briefly the evidence adduced before him and then pass orders giving his reasons

therefore. The result of the appeal shall be communicated to the parties as soon as possible. Copies of the orders shall also be furnished to the

parties, if required by them.

29. From the provisions of the Act extracted above, it is not only the right of appeal of an employee whose services are dispensed with on ground

that there was no reasonable cause for dispensing with his services or on ground that he had not been guilty of misconduct as held by the employer

but also would declare that on such appeal, the decision of the Appellate Authority shall be final and binding.

30. Likewise, from the provision of the Rule extracted above, the procedure that is to be followed by the Appellate Authority is prescribed as

summary and that the Appellate Authority shall record briefly the evidence adduced before him and pass orders giving his reasons thereof. It is

only from these provisions of law and Rules, the Apex Court in its judgment reported in *The United Planters Association of Southern India v. K.G.*

Sangameswaran (1997) 1 L.L.J. 1104, held that the jurisdiction of the Appellate Authority to record evidence and to come to its own conclusion

on the questions involved in the appeal is very wide and that even if the evidence is recorded in the domestic enquiry and the order of dismissal is

passed thereafter, it will still be open to the Appellate Authority to record such evidence as may be produced by parties as additional evidence, to

enable it to come to its own conclusions on the articles of charges framed against the delinquent.

31. Assessing the order passed by the learned single Judge, in the light of these Rules, it could be patently seen that the learned single Judge has

arrived at his conclusions, based on the propositions propounded by this Court in different judgments at different points of time. So far as the first

judgment cited by the learned single Judge reported in *Thirumangalam Co-operative Urban Bank Ltd. v. Assistant Commissioner of Labour,*

Madurai (1992) 2 L.L.J. 886, is concerned, a learned single Judge of this Court, following the decision of this Court rendered 40 years back in

S.U.S. Davey Sons v. Commissioner for Workmen's Compensation (1960) 1 L.L.J. 485, has held that the reassessment of the evidence by the

Appellate Authority u/s 41(2) of the Act is permissible but reassessment must be on proper basis and the same cannot be whimsical or arbitrary.

According to this judgment, it is decided that the reassessment of the evidence by the Appellate Authority u/s 41(2) of the Act is permissible,

provided it is on proper basis and only if the same is either whimsical or arbitrary, the reassessment is impermissible.

32. So far as the second judgment cited by the learned single Judge delivered in M. Palanisami v. Madhukarai Cement Works Employees,

(Madras) (1975) 2 L.L.J. 78, is concerned, it is held therein that the Appellate Authority cannot proceed with the appeal on merits as if it is an

original authority. This proposition has been arrived at following an earlier judgment of this Court delivered in Associated Corporation Industries

Limited (India) v. Additional Commissioner for Workmen's Compensation (1972) 1 L.L.J. 108.

33. Applying these norms evolved relatively at an earlier point of time by this Court, the learned single Judge has arrived at the conclusion that the

Appellate Authority had exceeded in its jurisdiction in interfering with the order passed by the Management further remarking that the Appellate

Authority had conducted a de novo enquiry and relying on the evidence recorded in the domestic enquiry and in the enquiry conducted before it,

the Appellate Authority exceeding in its jurisdiction had allowed the appeal, consequently allowing the writ petition filed by the Management thus

quashing the proceedings of the Appellate Authority, the second respondent herein.

34. On the contrary, the firm case put forth by the appellant is that the Appellate Authority had acted only in exercise of its powers conferred by

law and in the manner expressed by the Apex Court in its judgment delivered in the United Planters Association of Southern India K.G.

Sangameswaran (1997) 1 L.L.J. 1104, according to which, u/s 41 of the Act and Rule 9 of the Rules, the jurisdiction of the appellant authority to

record evidence and arrive at its conclusions on the questions involved in the appeal is very wide and it is open for the Appellate Authority to

record such evidence as may be produced by parties. Needless to mention that in the above judgment, the Apex Court has spelt out the latest

judicial thinking on the subject in no uncertain terms not only giving expression unearthing the hidden meaning of the language employed in Section

41 of the Act and Rule 9 of the Rules in respect of the wide jurisdiction enjoyed by the Appellate Authority to record evidence and arrive at its

conclusion on questions involved in the appeal as has been exercised in the case in hand by the Appellate Authority and in justification of the same.

The tenor of the language in which the proposition of the Apex Court is couched is firm and definite that the Appellate Authority is certainly within

its powers conferred by law, either to entertain additional evidence or to re-appraise or reappraise the evidence already recorded by the Enquiry

Officer and such powers are very wide and there is no place to introduce any artificial barrier or restriction into such of the powers conferred on

the Appellate Authority by law within the meaning and expression given to Section 41 of the Act and Rule 9 of the Rules by the Apex Court in the

above cited judgment which becomes applicable to the facts of the case in hand in all fours.

35. While such are the wide powers enjoyed by the Appellate Authority under law, whether in entertaining additional evidence and appreciating

the same or in reappraising the evidence already recorded by the Enquiry Officer as it has been done on the part of the second

respondent/Appellate Authority in the case in hand, naturally, we are not in agreement with the conclusions arrived at by the learned single Judge to

the effect that the Appellate Authority has gone in excess than what is provided for under law or even could it be construed that the Appellate

Authority has usurped the jurisdiction and authority which are confined only to the Enquiry Officer. Consequently, we are left with no choice but to

hold that it is not correct on the part of the learned single Judge to have held that the Appellate Authority, in exercise of his powers, has either

exceeded in its jurisdiction or authority conferred by law nor has it conducted a de novo enquiry, which is impermissible in law as it has been held

by the learned single Judge.

36. For all the discussions held above, we are unable to approve the ultimate decision made on the part of the learned single Judge in quashing the

proceedings of the second respondent/Appellate Authority in exercising of his powers u/s 41 of the Act, thereby allowing the writ petition filed by

the Management but only to arrive at the following result:

In result,

(i) the above Writ Appeal No. 2007 of 1999 succeeds and the same is allowed;

(ii) the order dated 24.9.1999 passed by the learned single Judge in W.P.No. 5583 of 1999 quashing the proceeding of the appellant authority is

hereby set aside;

(iii) the proceeding and order passed by the second respondent/Appellate Authority in T.S.E. 44 of 1996, dated 2.12.1998, thereby setting aside

the order of dismissal dated 7.12.1996 passed by the disciplinary authority against the appellant herein, is restored.

37. However, in the circumstances of the case, there shall be no order as to costs.