



W.P(MD)No.1649 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 29.11.2022

Pronounced on : 12.05.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.1649 of 2019
and
W.M.P.(MD)Nos.1400 and 1841 of 2019

P.Ramar Pandi

... Petitioner

Vs.

1.The Senior Regional Manager,
Tamil Nadu State Marketing Corporation Ltd.,
(TASMAC), Madurai.

2.The District Manager,
Madurai South,
Tamil Nadu State Marketing Corporation Ltd.,
(TASMAC), Madurai,
SIPCOT Complex,
Kappalur, Madurai.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the



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2nd respondent in Na.Ka.NO.3/2016/A, dated 08.11.2017 and the order passed by the 1st respondent in Na.Ka.NO.1698/2017/A1, dated 30.01.2018, quash the same, and consequently direct the 2nd respondent to reinstate the petitioner into the service with all service benefits.

For Petitioner : Mr.R.V.Rajkumar

For Respondents : Mr.H.Arumugam,
Standing Counsel.

ORDER

Heard the learned counsel on either side.

2.The petitioner was employed as Salesman in a liquor outlet run by TASMAL. The petitioner entered service way back in the year 2003. On 23.08.2013, he met with an accident and suffered head injury. He had to take treatment for a long period. He recovered from his injuries only in the year 2016. He submitted representation dated 16.03.2016 along with medical certificate and requested the second respondent to allow him to join duty. The second respondent issued memo dated 29.03.2016 seeking explanation. The petitioner offered his explanation. Enquiry



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was conducted. Thereafter order dated 31.01.2017 was issued imposing fine of Rs.5,000/- as punishment. The petitioner was also denied backwages for the period of absence. The petitioner accepted the order and remitted the fine amount. However, the petitioner was not given any posting order. When the petitioner submitted a representation on 01.11.2017 indicating that he will have to take recourse to legal action, order dated 08.11.2017 was passed terminating his service. Questioning the same, the petitioner filed appeal before the first respondent. The first respondent vide order dated 30.01.2018 rejected the petitioner's claim. Left with no other option, the petitioner has filed the present writ petition challenging the impugned orders and seeking reinstatement.

3.The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned orders and grant relief as prayed for.

4.The respondents have filed counter affidavit and the learned standing counsel took me through this contents. The primary argument



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of the learned standing counsel is that the petitioner was unauthorizedly absent for a very long period and therefore, his services were rightly terminated. It is further contended that the petitioner cannot take advantage of the order dated 31.01.2017 passed by the then District Manager imposing penalty of Rs.5,000/- alone. Reinstatement order could have been issued only by the Managing Director. The said order is not in consonance with the provisions set out in the Code of Prevention and Detection of Fraudulent Acts in Tamil Nadu State Marketing Corporation Limited, 2014. The learned standing counsel also pointed out that the petitioner was only a contractual employee and not a permanent employee and therefore, no interference is called for. He pressed for dismissal of the writ petition.

5.I carefully considered the rival contentions and went through the materials on record. Let me first examine the provisions of 2014 Code. The said Code is intended to deal with acts of fraud. The expression “fraud” has been defined in Regulation 2(e). The act committed by the petitioner will not amount to fraud. It will however fall under the expression “other irregularities”. One cannot deny that unauthorized



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absent is an act of misconduct. Circular dated 22.09.2017 issued by the Managing Director, TASMAL reads as follows:-

“சென்னை உயர்நீதிமன்றம் கட்டளை மனு எண்.6304/2009 சிவகுமார் எதிர் மேலாண்மை இயக்குநர், டாஸ்மாக் மற்றும் இருவர் என்ற வழக்கில் 15.3.2010ல் வழங்கிய தீர்ப்பில் டாஸ்மாக் கடைப் பணியாளர்கள் மீது ஒழுங்கு நடவடிக்கை எடுப்பது சம்மந்தமாக 1946ம் வருட தமிழ்நாடு நிலை ஆணைகள் சட்டம் டாஸ்மாக் நிறுவனத்திற்குப் பொருந்தும் என உத்திரவிட்டுள்ளது. 1947ம் வருட மாதிரி தமிழ்நாடு நிலை ஆணைகள் பிரிவு 16 (e)ல் “habitual absence without leave or absence without leave for more than 10 consecutive days” என குறிப்பிடப்பட்டுள்ளது. எனவே, 10 நாட்களுக்கும் மேலாக தொடர்ந்து தகவல் அளிக்காமல் பணிக்கு வராமல் இருப்பது கடுமையான ஒழுங்கீனம் ஆகும். இந்த ஒழுங்கீனத்திற்கு ஒழுங்கு நடவடிக்கை எடுப்பது அவசியமாகும்.

எனவே, அனைத்து மாவட்ட மேலாளர்களும், 10 நாட்களுக்கும் மேல் தகவலின்றி தொடர்ந்து பணிக்கு ஆஜராகாமல் இருக்கும் பணியாளர்கள் மீது குற்றசாட்டு குறிப்பாணை வழங்கி, உள் விசாரணை அலுவலரை நியமித்து விசாரணை நடத்தி இறுதி ஆணை வழங்குமாறு அறிவுறுத்தப்படுகிறது.”

Even according to the respondents, this circular is the latest instruction



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on the subject. On going through the materials on record, one can easily come to a conclusion that the instruction set out in the circular dated 22.09.2017 was adhered to. An enquiry officer was appointed. The petitioner was found guilty of misconduct. Fine amount of Rs. 5,000/- was imposed on the petitioner. As far as the petitioner is concerned, the second respondent is the disciplinary authority. I, therefore, conclude that the disciplinary action initiated against the petitioner attained finality on 31.01.2017 itself.

6.The respondents ought to have permitted the petitioner to rejoin duty after he remitted the fine amount on 13.02.2017. Since no posting order was issued, the petitioner was constrained to submit a representation indicating that he will have to knock the doors of the Court, if posting order was not issued. It was this so-called threat made by the petitioner which triggered the impugned orders. Vide order dated 08.11.2017, the second respondent terminated the petitioner from service. Interestingly, the said order places reliance on the enquiry report dated 23.04.2016. In other words, the proceedings dated 31.01.2017 as well as the proceedings dated 08.11.2017 are anchored on the very same enquiry



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report. When once the disciplinary action had concluded and culminated in a particular manner, it could not have been reviewed or recalled in the absence of a specific provision to that effect.

7.The order dated 08.11.2017 is also liable to be set aside on the ground of violation of principles of natural justice. The first respondent did not consider the contentions projected by the petitioner and mechanically confirmed the order passed by the second respondent.

8.I can understand if the petitioner's conduct suffered from dishonest or ill-motive. No doubt the petitioner was absent for a long period. It was only due to the accident suffered by him. If during this period, the respondents had formally passed any adverse order, it would be a different matter altogether. That is not the case. Till the petitioner applied to the second respondent seeking permission for rejoining duty, no adverse order was passed against the petitioner. (delete) Only in the year 2016 when the petitioner sought posting order, enquiry officer was appointed and the petitioner was found guilty and an order of penalty was passed. It has been held in quite a few cases that for unauthorized



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absence for medical reasons, dismissal or termination of service cannot be the punishment. The authority concerned cannot mechanically impose punishment. The gravity of misconduct must be taken into account. Any punishment should be proportionate to the nature of misconduct. As rightly pointed out by the learned counsel for the petitioner, Regulation 7 contemplates imposition of punishments cataloged therein or imposition of penalty or both. In this case, the second respondent chose to impose penalty instead of the punishment set out in Regulation 7. The choice is left to the disciplinary authority. Having exercised his discretion in a particular manner, when there was no provision for review or recall, the issue could not have been revisited. The order dated 08.11.2017 passed by the second respondent was patently without jurisdiction. Since such an order has been confirmed by the first respondent, the order dated 31.01.2017 also has to be set aside.

9.The writ petitioner through his counsel informs the Court that he will not press for backwages. This undertaking is placed on record.

10.The impugned orders are set aside and the second respondent is



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directed to reinstate the petitioner and give an appropriate posting order within a period of four weeks from the date of receipt of a copy of this order. This writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

12.05.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN, J.

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**Pre-Delivery Order in
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