

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 02.09.2016

CORAM

THE HONOURABLE MR. JUSTICE B.RAJENDRAN

W.P. No.1947 of 2016

K.P.Karnan

.. Petitioner

Vs.

The District Manager,
Tamilnadu State Marketing
Corporation Limited
(TASMAC),
No.59-A, Ware Housing Corporation,
Chennai Trunk Road,
Villupuram - 605 602

.. Respondents

PRAYER : Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the entire records relating to the order passed by the respondent bearing proceedings No.Se.Mu.No.R.V. 09/09/2013, dated 31.12.2015 and quash the same and consequently direct the respondent herein to reinstate the petitioner into service with continuity of service and all attended benefits.

For Petitioner : Mr.K.Sasindran

For Respondent : Mr.B.Nedunchezhiyan
Standing Counsel

O R D E R

This Writ Petition has been filed to issue a Writ of Certiorarified Mandamus calling for the entire records relating to the order passed by the respondent bearing proceedings No.Se.Mu.No.R.C. 09/09/2013, dated 31.12.2015 and quash the same and consequently direct the respondent herein to reinstate the petitioner into service with continuity of service and all attended benefits.

2. According to the petitioner, he was engaged as a sales man in TASMAC Shop No.11633 at Kadaladikulam Village, Villupuram district. While so, the petitioner was suspended by the respondent vide order dated 06.09.2013 on the ground of irregularities, which was noticed in the said shop, during

inspection. Thereafter, a charge memo dated 16.09.2013 was served on the petitioner, for which, explanation was also submitted by him. Not being satisfied with the explanation submitted by the petitioner, the respondent ordered departmental enquiry by appointing an enquiry officer. After conducting enquiry, the enquiry officer submitted enquiry report to the respondent by stating that the charges are not proved. However, without issuing second show cause notice and the reasons on account of which the authority differ from the finding of the enquiry report and without getting explanation from the petitioner, all of a sudden, the respondent dismissed the petitioner from service on 31.12.2015 and hence he has come forward with this Writ Petition.

3. The learned counsel for the petitioner would submit that impugned order has been passed without application of mind. Though the enquiry officer in his report submitted that the charges made against the petitioner are not proved and without any reasons, the termination order was passed, which is against the principles of natural justice. He would further submit that in the similar circumstances, this Court in several batch of Writ Petitions, namely W.P.Nos.24307, 24330 of 2009 and 8131 of 2010 dated 26.04.2010; W.P.No.20745 of 2015 dated 13.07.2015, W.P.No.21428 of 2015 dated 16.07.2015, W.P.No.23102 of 2015 dated 31.07.2015 and W.P.No.23103 of 2015 dated 31.07.2015 set aside the termination orders and ordered reinstatement of the petitioners therein into service. In this connection, he would also rely upon the Judgment of the Hon'ble Supreme Court in the case of S.P.Malhotra V. Punjab National Bank and Others reported in (2013) 7 Supreme Court Cases 251.

4. The learned counsel for the respondent would contend that after submission of the report by the enquiry officer, an intimation regarding disagreeing with the said report has been sent to the petitioner.

5. Admittedly, when the authority disagrees with the enquiry officer's report, the same should be intimated to the petitioner, on which ground the authority differs with the report of the enquiry officer. Thereafter, the petitioner should be served with second show cause notice calling for explanation well in advance and thereafter only the order is liable to be passed. Whereas according to the petitioner, such 2nd show cause notice, intimating that the authority disagrees with the report of the enquiry officer, has not been issued. As rightly pointed out by the learned counsel for the petitioner, the similar issue has been dealt with by the Hon'ble Supreme Court in the case of S.P.Malhotra V. Punjab National Bank and Others reported in (2013) 7 Supreme Court Cases 251, wherein in Paragraph Nos.13 and 14, it is held as follows:-

13. In ECIL, only the first issue was involved and in the facts of this case, only second issue was involved. The second issue was examined and decided by a three-Judge Bench of this Court in Kunj Behari Misra wherein the judgment of ECIL has not only been referred to, but extensively quoted, and it has clearly been stipulated that wherein the second issue is involved, the order of punishment would stand vitiated in case the reasons so recorded by the disciplinary authority for disagreement with the enquiry officer had not been supplied to the delinquent and his explanation had not been sought. While deciding the said case, the Court relied upon the earlier judgment of this Court in Institute of Chartered Accountants of India V. L.K.Ratna.

14. Kunj Behari Misra itself was the case where the disciplinary authority disagreed with the findings recorded by the enquiry officer on 12.12.1983 and passed the order on 15.12.1983 imposing the punishment, and immediately thereafter, the delinquent officers therein stood superannuated on 31.12.1983. In Kunj Behari Misra this Court held as under: (SCC P.97, para 19)

"19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."

6. By following the said judgment of the Hon'ble Supreme Court, this Writ Petition is allowed and the impugned order dated 31.12.2015 is set aside and the matter is remanded back to the authority for fresh consideration. The respondent shall issue second show cause notice to the petitioner duly intimating

the reasons for disagreeing with the report of the enquiry officer and after affording him an opportunity of personal hearing, he shall pass appropriate orders in accordance with law as expeditiously as possible. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

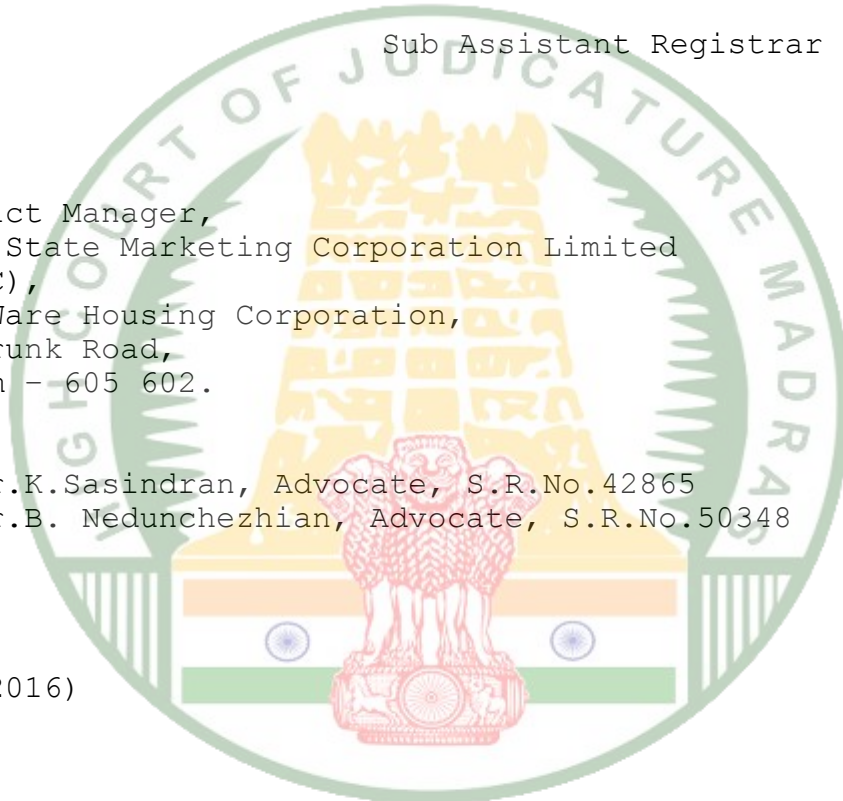
Sub Assistant Registrar

ssd
To

The District Manager,
Tamilnadu State Marketing Corporation Limited
(TASMAC),
No.59-A, Ware Housing Corporation,
Chennai Trunk Road,
Villupuram - 605 602.

+1cc to Mr.K.Sasindran, Advocate, S.R.No.42865
+1cc to Mr.B. Nedunchezian, Advocate, S.R.No.50348

KSJ(CO)
EU(04/10/2016)



सत्यमेव जयते

W.P. No.1947 of 2016

WEB COPY