

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.10.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

W.P.No.4442 of 2015

N. Ravi

... Petitioner

vs.

The District Manager,
Tamilnadu State Marketing Corporation Limited,
(TASMAC),
Vellore, Vellore District

... Respondent

Prayer :- Writ petition has been filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus to call for the records of the respondent in proceedings No.Na.Ka.No.A2/1027/C.V/2013 dated 31.12.2014, (received by the petitioner on 31.01.2015) and quash the same and consequently, direct the respondent to reinstate the petitioner back into service.

For Petitioner : Mr.T.Dharani

For Respondent : Mr.C.Kasirajan

O R D E R

With the consent of both sides, the main writ petition itself is taken up for final disposal.

2. The writ petition has been filed seeking certiorarified Mandamus to call for the records of the respondent in proceedings No.Na.Ka.No.A2/1027/C.V/2013 dated 31.12.2014, (received by the petitioner on 31.01.2015) and quash the same and consequently, direct the respondent to reinstate the petitioner back into service.

3. The petitioner was appointed as a shop supervisor of TASMAC retail shop No.11255 at Rajakuppam, Vellore District, by an order dated 29.12.2003, for a consolidated salary of Rs.3000/- per month and he was transferred to TASMAC retail shop No.11246 at Pakkam village in the same capacity. While so, on

12.09.2013, a flying squad headed by Assistant Manager (Accounts) came for a surprise inspection to the shop of the petitioner and they found a bottle of M.G.M.No.1 VSOP Brandy 180 ml batch no.127 dated 13.07.2013, kept separately in the corner of the shop. It was informed to the flying squad that there was a crack in the bottle and hence the same was kept separately. However, the Assistant Manager intentionally stated that the said bottle was kept separately with an intention to sell it in loose quantity. All the efforts taken by the petitioner to make the Assistant Manager to understand ended in futile.

4. While so, on 19.09.2013, the petitioner was placed under suspension and on 23.10.2013, he was served with a charge memo containing one article of charges, namely, liquor was sold in loose quantity from a liquor bottle, viz., MGM No.1 VSOP brandy 180 ml batch no.120 dated 13.07.2013. On denial of the charge by the petitioner, an inquiry officer was appointed to enquire the charge against the petitioner. The inquiry officer after conducting enquiry has held that the charge has not been proved and submitted a report on 20.08.2014 and a Copy of the report was also furnished to the petitioner. However, ignoring the report of the inquiry officer, the respondent, in his capacity as disciplinary authority has imposed a punishment of removal from service by proceedings dated 31.12.2014 and the same was received by the petitioner on 31.01.2015. Challenging the said impugned order dated 31.12.2014, the present writ petition has been filed.

5. Today when the matter was taken up for consideration, the learned counsel for the petitioner submitted that it is no doubt even if the inquiry officer held that the charges against a delinquent has not been proved, it is always open to the respondent to disagree with the finding of the inquiry officer by recording reason for disagreement. But, in the present case, no such disagreement note was ever served on the petitioner by the respondent. On the other hand the respondent on its own has imposed the punishment as if the petitioner has committed a serious offence and such imposition of punishment will deter others in future. Such a unilateral finding of the respondent which is in no way connected with the charges levelled against the petitioner will be liable to be quashed and the learned counsel for the petitioner has also produced number of judgments with regard to the same.

6. The learned counsel appearing for the TASMAG, by filing a detailed counter, opposed the Writ Petition stating that during the course of investigation, it was found that the petitioner was selling the liquor in a loose quantity and in

this regard, statement was also obtained from the petitioner and the petitioner has also accepted the same. Hence, the petitioner was removed from the service as per order dated 19.09.2013 and thereafter charge memo has been issued. In fact, the petitioner has already filed a Writ Petition in W.P.No.16427 of 2014 challenging the said charge memo and while disposing the said Writ Petition, this Court directed the petitioner to appear before the inquiry officer to explain his case. Accordingly, the petitioner has given his explanation and moreover witness from the management side was cross examined by the petitioner. Based on the enquiry report, second show case was issued and thereafter, the petitioner gave his explanation and after going through all the records, final order was passed by the respondent. Thus, he sought for dismissal of the writ petition.

7. It is the main submission of the learned counsel for the petitioner that when the enquiry officer has held that the charges levelled against the petitioner have not been proved, the respondent as a disciplinary authority is duty bound either to accept or differ with the finding of the inquiry officer. In the event of the disagreeing with the findings of the inquiry officer, the disciplinary authority ought to have recorded the disagreement note with the finding of the inquiry officer. But, in the instant case, without recording such disagreement note, punishment was imposed on the petitioner directly. With regard to the same, the learned counsel for the petitioner had also produced a judgment of the learned Single Judge of this Court in W.P.Nos24307, 24330 of 2009 and 8131of 2010. The relevant portion of the judgment is as follows:

" 13. We have already quoted the extracts from the show-cause notice issued by the disciplinary authority. It is clear that no notice at all was given before the disciplinary authority recorded its final conclusions differing with the finding of fact of the inquiry officer. The notice to show cause was merely a show-cause against the proposed punishment. In view of the long line of authorities, the decision of the High Court cannot be sustained. The appeal is accordingly allowed and the decision of the High Court is set aside.

14. The proceedings may be recommenced from the stage of issuance of a fresh show-cause notice by the disciplinary authority to the appellant indicating his tentative disagreement with the findings of the inquiry officer."

8. Even in the case on hand, on perusal of the entire materials available on record, I find that absolutely no such disagreement note was recorded by the respondent before

disagreeing with the finding of the inquiry officer. Therefore, I am of the opinion that, the order of dismissal of the petitioner is liable to be quashed.

9. Accordingly, the dismissal order of the respondent in Na.Ka.No.A2/1027/C.V/2013 dated 31.12.2014 is quashed and the matter is remitted back to the respondent and the disciplinary authority is directed to issue fresh show-cause notice to the petitioner indicating his tentative disagreement with the findings of the inquiry officer calling for explanation from the petitioner and pass a fresh order. The entire exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

10. With the above direction, the present writ petition is disposed of. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

mrp

To

The District Manager,
Tamilnadu State Marketing Corporation Limited,
(TASMAC),
Vellore, Vellore District

+1cc to Mr.C. Kasi Rajan, Advocate, S.R.No.61079
+1cc to Mr.T. Dharani, Advocate, S.R.No.60958

lrs (CO)
md(25/11/2016)

W.P.No.4442 of 2015