

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition No.5447 of 2015

K.Senthilkumar

.. Petitioner

Vs.

The District Manager,
Tamil Nadu State Marketing
Corporation Ltd., (TASMAC),
Vellore, Vellore District.

.. Respondent

Writ petition has been filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus calling for the records of the respondent in his proceedings Che.Mu. Na.Ka. A2/228/ C.V/2013 dated 10.12.2014 (received by the petitioner on 12.1.2015) and quash the same and consequently direct the respondent to reinstate the petitioner back into the service.

For Petitioner : Mr.V.Rajinikanth
For Respondent : Mr.C.Kasirajan

ORDER

The petitioner has come up with the present writ petition, challenging the proceedings of the respondent in Che.Mu. Na.Ka. A2/228/ C.V/2013 dated 10.12.2014 (received by the petitioner on 12.1.2015) and consequently, to direct the respondent to reinstate him back into the service.

2. It is the case of the petitioner that he was appointed as Shop Supervisor of TASMAC Retail shop No.11251 at Kothoor, Vellore District, by order dated 31.12.2003. He was paid a consolidated salary of Rs.3,000/- per month. Thereafter, he was transferred to Ranipettai TASMAC Retail shop No.11139 in the same capacity due to shortage of staff. While so, on 5.4.2013, the flying squad headed by the respondent came for surprise inspection and they found some bottles stored in the corner of the shop with an intention to sell it in loose quantity, pursuant to which, the petitioner was placed under

suspension on 6.4.2013. Subsequently, on 26.7.2013, he was issued with a charge memo and on denial of the charge by the petitioner, an enquiry officer was appointed and the enquiry officer, after conducting enquiry, held that the charge framed against the petitioner was not proved. However, by ignoring the report of the enquiry officer, the respondent in the capacity of disciplinary authority, imposed a punishment of removal from service, by his proceedings dated 10.12.2014. Hence, challenging the same, the petitioner has come up with the present writ petition.

3. Today when the matter was taken up for consideration, learned counsel appearing for the petitioner submitted that it is no doubt, even if the enquiry officer held that the charge against a delinquent has not been proved, it is always open to the respondent to disagree with the finding of the enquiry 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 his 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 an unilateral finding of the respondent, which is in no way connected with the charges levelled against the petitioner, is liable to be quashed. In support of his contention, learned counsel has produced number of judgments.

4. Per contra, learned counsel appearing for the respondent TASMAC, 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 suspended from the service as per order dated 6.4.2013 and thereafter, charge memo has been issued. After that, an enquiry officer was appointed and since the offence is a grave one, the petitioner was removed from service by the respondent. Thus, he sought for dismissal of the writ petition.

5. Keeping the submissions made on either side, I have carefully gone through the entire materials available on record.

6. It is the main submission of the learned counsel appearing for the petitioner that when the enquiry officer has held that the charge levelled against the petitioner has not been proved, the respondent as a disciplinary authority is duty bound either to accept or differ with the finding of the enquiry officer. In the event of disagreeing with the findings of the enquiry officer, the disciplinary authority ought to have recorded the disagreement note with the finding of the enquiry

officer. But, in the instant case, without recording such disagreement note, punishment was imposed on the petitioner directly. In this regard, the learned counsel has also produced a judgment of the learned Single Judge of this Court made in W.P.Nos.24307, 24330 of 2009 and 8131 of 2010. The relevant portion in the said judgment is usefully extracted hereunder:-

" 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."

7. Even in the case on hand, on a 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 enquiry officer. Therefore, I am of the opinion, the order of dismissal of the petitioner is liable to be quashed.

8. Accordingly, the impugned order of the respondent in his proceedings in Che.Mu. Na.Ka. A2/228/ C.V/2013 dated 10.12.2014 is quashed and the writ petition is allowed. The matter is remitted back to the respondent and the respondent is directed to issue fresh show-cause notice to the petitioner indicating his tentative disagreement with the findings of the enquiry officer and 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. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

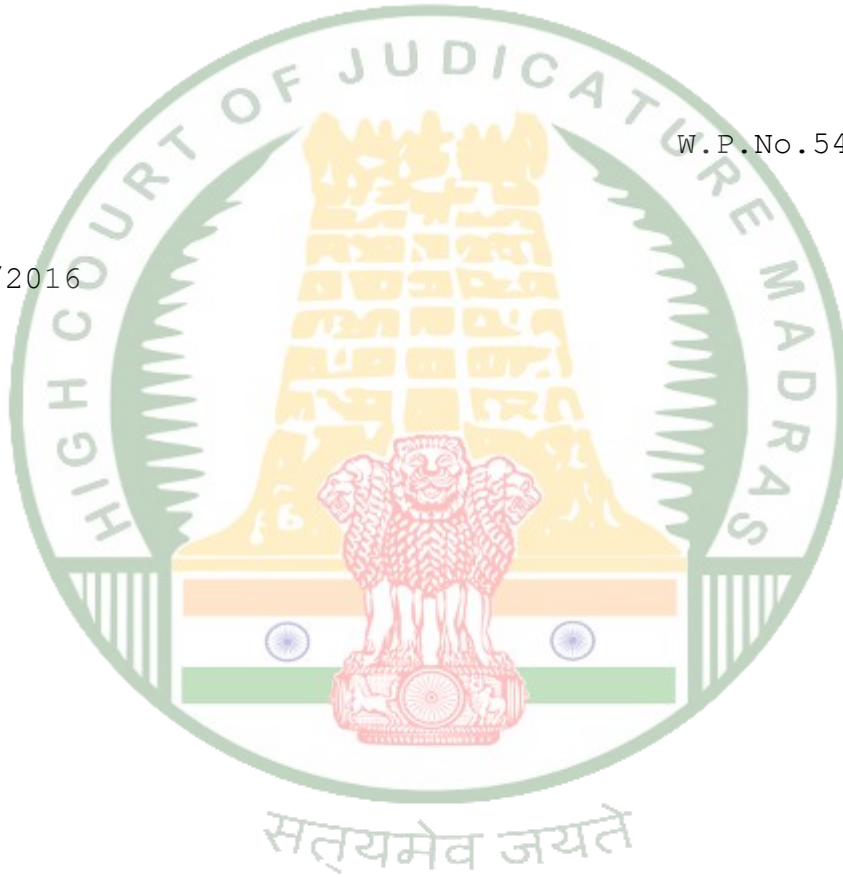
1.The District Manager,
Tamil Nadu State Marketing
Corporation Ltd., (TASMAC),
Vellore, Vellore District.

+1cc to Mr.C.Kasirajan, Advocate sr.62094

+1cc to Mr.V.Rajinikanth, Advocate sr.62397

W.P.No.5447 of 2015

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