

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2017

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WRIT PETITION No.18363 of 2017
and
W.M.P.No.19936 of 2017

S.Santhakumar

Petitioner

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Vs.

1. The Managing Director,
The Tamilnadu State Marketing
Corporation Limited,
TASMAC, 4th Floor,
CMDA Tower No.2,
Egmore, Chennai - 600 008.
2. The Senior Regional Manager,
The Tamilnadu State Marketing
Corporation Limited,
No.56, Brindavan Road,
Azhagapuram, Salem - 16.
3. The District Manager,
TASMAC Ltd., (Vellore),
Vellore District.
4. The District Manager,
Arakkonam TASMAC District,
Tamilnadu Warehouse Complex,
Ranipet, Vellore District.

Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for all relevant records relating to the impugned enquiry notice issued in Na.Ka.No.A2/1167/C.V/10 dated 10.07.2017 passed by the 3rd Respondent herein and quash the same as arbitrary, unreasonable, improper, illegal, against the Rules and Regulations of the Respondents and violation to the principles of natural justice and thereby directing the Respondents to reinstate the petitioner into service as salesman under the respondents or to proceed with the disciplinary proceedings by issuing a fresh charge memo based on the documents available by

giving the opportunity of submitting the explanation, conclude the enquiry disciplinary proceedings following the Rules of enquiry/Procedures to be adopted for enquiry/disciplinary proceedings contemplated under the Rules and Regulations of the respondents in pursuant to the order passed in W.P.No.26242 of 2012 dated 04.05.2017 of this Hon'ble Court as per the stipulated time frame fixed by this Hon'ble Court.

For Petitioner : Mr.S.Srinivasan

For Respondents : Mr.John Kennady

O R D E R

The enquiry notice issued by the third respondent in the proceedings dated 10th July, 2017, is under challenge in this writ petition. The writ petitioner was earlier removed from service on account of the disciplinary proceedings initiated against him and challenging that order of removal, the petitioner filed W.P.No.26242 of 2012.

2. This Court considering the facts and circumstances, passed a final order on 4th May, 2017, allowing the writ petition on the ground that the order impugned in that writ petition was a non-speaking order and unsupported with any reasoning. This Court, considering the facts and circumstances, passed the following order in the above writ petition.

"14. Such being the factum of the case, this Court is of the firm view that the writ petition deserves to be allowed. Accordingly, the impugned orders are quashed and the writ petition is allowed. However, since the allegations are relating to adulteration of alcohol, which is severe in nature, liberty is granted to the Disciplinary Authorities to proceed with the disciplinary proceedings, by issuing a fresh charge memo based on the documents available and complete the enquiry, by following the Rules of enquiry contemplated under the Tamil Nadu Civil Services (Discipline and Appeal) Rules. With this liberty, the writ petition stands allowed. No costs."

3. Pursuant to this order, the respondents have issued the enquiry notice in proceedings dated 10th July, 2017. The learned counsel appearing for the writ petitioner contended that this Court while passing final orders in the earlier writ petition has stated that a fresh charge memo has to be issued and instead of issuing fresh charge memo, the respondents have now issued the enquiry notice. The order passed by this Court is very clear that a fresh enquiry is to be conducted on the charges.

If the charge memos are already issued by the disciplinary authority to the writ petitioner, it is needless to state that the disciplinary authority can proceed with the enquiry as per Rule.

4. In the case on hand, admittedly, the charge memo was issued at the time when the disciplinary proceedings were initiated. Now, the disciplinary authority has proposed to continue the enquiry from the stage of conducting domestic enquiry. Thus, the charge memo issued earlier is to be treated as valid for the continuance of domestic enquiry. Once, the charges are framed and the disciplinary authority is sustaining the charges, there is no necessity of issuing the same charge memo once again. This Court in earlier writ petition, set aside the order of termination only on technical grounds and liberty was granted to the disciplinary authorities to proceed with the disciplinary proceedings. Once liberty is given, it is left open to the disciplinary authorities to proceed with the disciplinary proceedings from the appropriate stage. If a fresh charge memo is issued once again, then also the writ petitioner will approach this Court by stating that some charges were framed once again and second enquiry on the same set of charges are impermissible.

5. Thus, the intention of the writ petitioner to avoid and evade the disciplinary proceedings is apparently found, in the way in which the present writ petition is filed. At each stage, the writ petitioner is attempting to file a writ petition in order to escape from the clutches of disciplinary proceedings and thus, the attitude of the writ petitioner in this regard is deprecated.

6. In such view of the matter, the mere enquiry notice issued by the respondents is in accordance with law and the writ petition cannot be maintained against the notice issued for participating in the enquiry and such a notice cannot be construed as a grievance, enabling the writ petitioner to move this writ petition Under Article 226 of the Constitution of India. It is for the writ petitioner to participate in the enquiry and prove his innocence.

7. In this view of the matter, no further adjudication is required in this writ petition. Accordingly, the writ petition stands dismissed. However, there is no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

To

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Arakkonam TASMAC District,
Tamilnadu Warehouse Complex,
Ranipet, Vellore District.

+1cc to Mr.Srinivasan, Advocate in sr.no.50847

+1cc to Mr.M.John Kennady, Advocate in sr.no.51176

W.P.No.18363 of 2017

PA (CO)
NR 08/08/2017

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