

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.38937/2015 & MP.Nos.2 & 3/2015

D.Suresh Kumar

... Petitioner

Vs

1.The Senior Regional Manager
Tamil Nadu State Marketing Corporation
[TASMAC], Salem-16.

2.The District Manager
Tamil Nadu State Marketing Corporation
[TASMAC], Vellore District 632001.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of certiorarified mandamus calling for the records on the file of the respondents in connection with the proceedings of orders [1] dated 06.04.2015 bearing No.Se.Mu.Na.Ka.A2/1127/C.V/2013 passed by the 2nd respondent and [ii] Se.Mu.No.3704/2015/A dated 31.10.2015 passed by the 1st respondent, quash the same and consequently, direct the respondents to reinstate the petitioner in service with all service, monetary and attendance benefits.

For Petitioner: Mr.J.Raja Rao

For RR 1 & 2 : Mr.C.Kasirajan

ORDER

By consent, the writ petition is taken up for final disposal.

2. The petitioner, in the affidavit filed in support of this writ petition would aver among other things, he was appointed as Supervisor in the services of the Tamil Nadu State Marketing Corporation [TASMAC] Limited, on a consolidated pay of Rs.5000/- per month and was posted to Shop No.11060, Vellore District. It is further averred by the petitioner that while he was on duty on 06.10.2013, a surprise inspection was conducted by the Flying Squad and the 2nd respondent, Mr.Sivakumar, - District Manager of TASMAC, Vellore District also accompanied the Flying Squad and at the

time of inspection/making enquiry, the Flying Squad questioned two men who were sharing and drinking liquor outside the shop and during the course of enquiry, the 2nd respondent suddenly started alleging that the petitioner had sold the liquor by way of loose sales and though the petitioner has vehemently denied the same, the 2nd respondent coerced the petitioner and forced him to subscribe the signature in blank papers and filled up the contents.

3. The 2nd respondent has placed the petitioner under suspension on 07.10.2013 and issued a charge memo on 20.12.2013 stating that at the time of inspection by the District Manager on 06.10.2013 in Shop No.11060, loose sales of Old Secret Rum 180ml and Diamond Rum 180ml, have been effected and therefore, he was called upon to appear before the 2nd respondent and submit his explanation failing which, orders will be passed, based on the available documents. The petitioner, accordingly appeared before the 2nd respondent and submitted that the 2nd respondent has falsely implicated the petitioner for the reason that the persons who consumed liquor, were doing so outside the shop and he is nothing to do with the alleged delinquency and also undertaken that in the event of reinstatement, he will not claim back wages and prayed for reinstatement, considering the family circumstances. The 2nd respondent, not satisfied with the same, has appointed Mr.Madhavamoorthy, Assistant Director of Cooperative Auditing [Retired] as the Enquiry Officer and the petitioner alone was examined and thereafter, concluded the enquiry proceedings and had given a finding that the charge framed against the petitioner has been proved. The 2nd respondent has issued the 2nd Show Cause Notice on 03.12.2014, calling upon the petitioner to submit his explanation. Accordingly, the petitioner submitted his explanation denying the allegations. The 2nd respondent, vide proceedings dated 06.04.2015 has accepted the report of the Enquiry Officer and dismissed the petitioner from service. The petitioner, aggrieved by the same, filed an appeal before the 1st respondent, who vide impugned order dated 31.10.2015, has confirmed the order of dismissal, passed by the 2nd respondent and challenging the legality of the same, the petitioner came forward to file the present writ petition.

4. The learned counsel for the petitioner would submit that admittedly the inspection was conducted by the 2nd respondent and apart from placing the petitioner under suspension, has issued the charge memo and also appointed the Enquiry Officer and in the charge memo, the list of witnesses and documents relied on, have not been cited and during the course of enquiry also, no witnesses were examined on behalf of the Department, so also no documents were filed and despite that, the Enquiry Officer has given a positive finding to the effect that the charge framed against the petitioner has been proved and the 2nd respondent has assumed the role of the

Disciplinary Authority and accepted the findings and imposed the punishment of dismissal from service on the petitioner and on appeal also, the Appellate Authority, without due and proper application of mind, merely confirmed the order of dismissal passed by the 2nd respondent and would further contend that the principles of natural justice have been given a complete go-by and therefore, prays for interference.

5. Per contra, the learned Standing Counsel appearing for TASMAC has invited the attention of this Court to the counter affidavit filed by the 2nd respondent and would submit that fair and reasonable opportunity has been afforded to the petitioner and considering the gravity of the charge and nature of delinquency, the 2nd respondent thought fit to impose the punishment of dismissal from service and on appeal, the Appellate Authority, on due and proper application of mind, has rightly confirmed the order of dismissal passed by the 2nd respondent against the petitioner and in the light of the concurrent findings recorded by the Disciplinary Authority and Appellate Authority, this Court in exercise of its jurisdiction under Article 226 of the Constitution of India, may not interfere with the same and prays for dismissal of the writ petition.

6. This Court paid its best attention to the rival submissions and also perused the materials placed before it.

7. The Tamil Nadu State Marketing Corporation Limited has formulated Code of Prevention and Detection of Fraudulent Acts in Tamil Nadu State Marketing Corporation Limited-2014 ["The Code"].

8. Code No.6 speaks about the investigation procedure and as per Code No.6[b], "the person concerned shall be informed in writing of the alleged fraud giving necessary details to enable him to understand the fraud alleged against him and he should be given an opportunity to explain the charges levelled against him" and as per Code No.6[g], "at the enquiry, the charge sheeted person will be given the fullest opportunity to cross examine the witnesses examined on behalf of the Management and also examine witnesses, if any, on his behalf. It shall be the responsibility of the person to bring the witnesses he chooses to examine on his behalf to the enquiry" and as per Code No.6[l], "upon conclusion of enquiry, the Enquiry Officer will submit to the Management, a report containing his findings after a careful examination of the proceedings of the enquiry. The report should be a self-contained speaking report" and Code No.6[o] says that "while imposing any punishment, the Management shall take into consideration the gravity of the misconduct proved, the previous record of service of the employee and any aggravating

circumstances that may exist." In the considered opinion of the Court, Code No.6 of the said Code has not been properly followed.

9. The 2nd respondent himself was the part of the Flying Squad and having noted the delinquency of loose sales, has placed the petitioner, Mr.Sureshkumar-Bar Supervisor and Mr.Devenadran, Salesman, under suspension and he himself issued the charge memo dated 20.12.2013. A perusal of the same would disclose that the charge is very vague and list of documents relied on by the Department and list of witnesses to be examined during the course of domestic enquiry have not been enclosed. The Enquiry Officer was appointed and he called upon the petitioner to appear for enquiry before him and offer his explanation failing which, based on the documents available with the office, necessary orders will be passed. The petitioner, in his explanation has denied the charges and also made allegations against the 2nd respondent. A perusal of the report of the Enquiry Officer would disclose that except the petitioner, no other witnesses have been examined and no documents have also been marked and based on which, he concluded that the charge framed against the petitioner has been proved.

10. Here again, the Enquiry Officer has failed to follow Code Nos.6[g] and 6[l].

11. The petitioner was issued with a second show cause notice, for which also, he has given his explanation and the 2nd respondent / Disciplinary Authority without recording any findings on the contents of the report of the Enquiry Officer, merely observed as to the general conduct expected from the employees and imposed him with the order of punishment of dismissal from service. The petitioner filed an appeal to the 1st respondent / Appellate Authority and when the petitioner specifically prayed for summoning Mr.Sivakumar, the District Manager, who was part of the raiding party, to be examined as a witness, the Appellate Authority gave a finding to the effect that despite summons sent thrice, Mr.Sivakumar, the District Manager, did not appear and went on to hold that the order of punishment passed by the Disciplinary Authority does not warrant interference. The sequence of events pointed out by this Court in the above cited paragraphs would clearly indicate that the Code of Prevention and Detection of Fraudulent Acts in Tamil Nadu State Marketing Corporation Limited-2014, has not been followed in letter and spirit and the 2nd respondent / Disciplinary Authority has pre-determined the mind and in all fairness, as a member of the raiding party, he should not have proceeded further and he would have asked the higher officers to appoint somebody to deal with the matter but all along he has fully participated. Even for the sake of arguments, the 2nd respondent being the Disciplinary

Authority, is entitled to proceed further, the fact remains that the mandate cast upon the Disciplinary Authority as well the Enquiry Officer as per the said Code, has been given a complete go-by and not only the charge memo is vague, even during the course of enquiry, except the petitioner, no other witnesses were examined and no documents were marked and the Enquiry Officer have given a cryptic finding and held that the charge framed against the petitioner has been proved. The 2nd respondent being the Disciplinary Authority is expected to apply his mind and however, by making a general observation about the conduct of the TASMAC employees, had chosen to accept the findings of the Enquiry Officer and imposed the punishment of dismissal from service against the petitioner. Before the Appellate Authority, the petitioner has made a specific request, praying for summoning and examining Mr.Sivakumar, the District Manager, who was part of the Inspection/Raiding Party and though the Appellate Authority records a finding that despite summons issued thrice, he did not appear, proceeded to hold that as per the materials placed, the charge framed against the petitioner has been proved and thought fit to confirm the order of dismissal from service.

12. Thus, in all stages, the respondents 1 and 2 had failed to follow Code of Prevention and Detection of Fraudulent Acts in Tamil Nadu State Marketing Corporation Limited-2014, and the proceedings conducted is in per se violation of the principles of natural justice and therefore, the order of punishment of dismissal from service passed by the 2nd respondent as confirmed by the 1st respondent, warrants interference.

13. In the result, the writ petition is partly allowed and the impugned orders passed by the 2nd respondent dated 06.04.2015 bearing No.Se.Mu.Na.Ka.A2/1127/C.V/2013 and the order passed by the 1st respondent, dated 31.10.2015 in Se.Mu.No.3704/2015/A, confirming the order of the 2nd respondent, are hereby set aside and the petitioner is directed to be reinstated into service forthwith and the 2nd respondent is at liberty to issue a fresh charge memo containing details of lapses / delinquency on the part of the petitioner along with supporting documents and shall follow the procedure contemplated under the Code of Prevention and Detection of Fraudulent Acts in Tamil Nadu State Marketing Corporation Limited-2014, in letter and spirit and also observe the principles of natural justice scrupulously and pass appropriate orders in accordance with law as expeditiously as possible.

14. It is also claimed by the petitioner that during the period of suspension, he has not been paid with the subsistence allowance. The respondents are directed to pass appropriate orders as to the payment of the subsistence allowance, subject to submission of non-employment certificate from the petitioner. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

AP

To

1. The Senior Regional Manager
Tamil Nadu State Marketing Corporation
[TASMAC], Salem-16.

2. The District Manager
Tamil Nadu State Marketing Corporation
[TASMAC], Vellore District 632001.

+1cc to Mr.K.Vijaya Ragavan, Advocate, sr 10713.

RK (CO)
RMP (02/03/17)

W.P.No.38937/2015

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