



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.01.2017

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WEB COPY

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN**W.P. (MD) No.11533 of 2014****AND****MP (MD) NO 1 OF 2014**

K.Sangapillai

... Petitioner

-vs-

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

... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records relating to the impugned order of suspension passed by the respondent in his proceedings in Na.Ka.C.V.2/5053/2013 dated 27.10.2013 and quash the same as and pass such further or other orders.

For Petitioner : Mr.B.Saravanan
For Respondent : Mr.M.Muniyasamy

O R D E R

This petition has been filed, seeking to quash the impugned order dated 27.10.2013 passed by the respondent in Na.Ka.C.V.2/5053/2013, by which the petitioner has been placed under suspension.

2. The case of the petitioner is that he was appointed as Shop Supervisor in TASMAC shop; that a criminal case in Crime No.380 of 2013 was registered against the petitioner alleging that an illegal bar was run by him, thereby caused a loss to the tune of Rs.89,700/-; that subsequently, the petitioner was suspended from service and aggrieved by the same, the petitioner is before this Court.

3. According to the respondent, there was a huge misappropriation committed by the petitioner, while working in the TASKAC Shop and therefore, the impugned order of suspension is perfectly justified and it warrants no interference by this Court.

4. At this juncture, learned counsel for the petitioner would submit that the petitioner has been acquitted in the criminal case in C.C.No.2 of 2014 on the file of the learned Judicial Magistrate

No.1, Kuzhithalai.

5. It is pertinent to mention here that as held by the Apex Court in the case of Union of India and another vs. Ashok Kumar Aggarwal, reported in 2013 (14) Scale 323, an order of suspension is not a punishment and the relationship between the employer and the employee subsists even during the period of suspension. When there is master and servant relationship, the suspension can be effected by the employer and it cannot be questioned except on certain grounds like competence of the Authority issuing the said order, want of jurisdiction, contrary to the Rules, etc. Hence, as long as the competency of the authority issuing the suspension order is not challenged, this Court cannot interfere with the order of the suspension.

6. In this case, the petitioner has been acquitted from the criminal case and even if it is pending, there is no bar for the departmental proceedings to go on as per the dictum laid down by the Hon'ble Supreme Court in the case of Stanzen Toyotetsu India Private Limited vs. Girish v. and others, reported in (2014) 3 SCC 636, wherein the Hon'ble Supreme Court, by relying on its earlier judgments, has categorically held as follows:

"13. It is unnecessary to multiply decisions on the subject for the legal position as emerging from the above pronouncements and the earlier pronouncements of this Court in a large number of similar cases is well settled that disciplinary proceedings and proceedings in a criminal case can proceed simultaneously in the absence of any legal bar to such simultaneity....."

5. In view of the above stated position, this Writ Petition is disposed of with the following directions:

i) In the event of the respondent initiating disciplinary proceedings against the petitioner, the same shall be conducted on day to-day basis without adjourning the matter beyond one week at any point of time;

(*) SUB PARA (ii) and (iii) of the order dated: 09/01/2017 is deleted.**

(*)** "iv) It is made clear that the Principal Secretary to the Government of Tamil Nadu (Home, Prohibition and Excise Department) and the Managing Director of the respondent Corporation are mainly responsible for the loss to the Government for the delay, if any, in initiation of disciplinary proceedings within a period of two months from the date of receipt of a copy of this order and the loss can be recovered from them by applying the principles laid down in the case of Central Co-operative Consumers' Store Ltd. vs. Labour Court, H.P. at Shimla and another, reported in AIR 1994 SC 23, and their properties can also be attached in terms of the judgment of the Hon'ble



Division Bench of this Court in the case of A.Sachidanandam, Macneil and Magor Kilburn Group Companies Employees' Union, Chennai vs. S.Srinivasan and others, reported in 2011 (5) LLN 696 (DB) (Mad.). No costs. Consequently, connected miscellaneous petition is closed." (***)

/True Copy/

Sd/-

Assistant Registrar(Records)

(***)SUB PARAGRAPHS (ii) and (iii) of Paragraph NO. 5, are deleted and sub paragraph NO. (iv) is modified to the order already despatched on 23/02/2017 as per order of this Hon'ble Court dated: 02/03/2017.

Sd/-

Assistant Registrar(AS)

TRUE COPY

Sub Assistant Registrar

To:

TO BE SUBSTITUTED TO THE ORDER ALREADY DESPATCHED ON 23/02/2017

- 1.The Principal Secretary to the Government of Tamil Nadu
Home,Prohibition and excise Department Secretariat, chennai-9.
- 2.The Managing Director,
Tamil Nadu State Marketing Corporation Ltd., (TASMAC),
IV Floor, CMDA Tower-II,
Egmore, Chennai-8.
- 3.The District Manager,
Tamil Nadu State Marketing Corporation Ltd., (TASMAC),
Karur District, Karur.

+1 cc to Mr. B.SARAVANAN, Advocate, Sr.No: 12374

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MAS/CM-MSA:22.02.2017:3P/5C

KK /CM-MSA:16/03/2017/3P5C

W.P. (MD) No.11533 of 2014
09.01.2017