



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.01.2017

CORAM :

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P(MD)No.1416 of 2017

and

W.M.P(MD)No.1160 of 2017

Lt Col S.Kandasamy (Retd)

... Petitioner

vs.

1)The General Officer Commanding,
Headquarters Dakshin Bharat Area,
Island Grounds,
Chennai-600 009.

2)The Chairman,
Golden Palm Military Canteen
Headquarters Dakshin Bharat Area,
Island Grounds,
Chennai-600 009.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order of the 2nd respondent in 75735/ Complaint/Q4 dated 16.01.2017 and quash the same as arbitrary and illegal and consequently direct the Respondents to allow the petitioner to continue in service.

For Petitioner : Mr.A.Iruthayaraj
For Respondents : Mr.N.Shanmuga Selvam
Senior Panel Counsel

ORDER

Challenging the order of termination passed by the 2nd respondent dated 16.01.2017, the petitioner has filed this writ petition to quash the same with a consequential direction to the respondents to allow him to continue in service.

2.The petitioner is an Ex-Serviceman, who was appointed as Deputy Director, Golden Palm Canteen, Palayamkottai, Tirunelveli District, in December 2013. The petitioner is stated to have committed certain misconducts, for which, the court of inquiry has been convened and the impugned order has been passed. According to the petitioner, he has received the show cause notice dated 30.11.2016 after the court of enquiry and given a detailed reply on 08.12.2016 objecting to the conduct of inquiry. Thereafter, on receipt of the reply, by an order dated 16.01.2017, the petitioner's services sought to be terminated with effect from 31.01.2017. The details of the charges against the petitioner are as follows:-

'(a)Illegal possession of numerous hot listed Smart Cards, not initiating actions to curb such corrupt malpractice on misuse of these cards.



(b) Continuous usage of old smart cards for drawal of liquor.

(c) Issue of liquor to Canteen Staff of Golden Palm Canteen Tirunelveli and its Extension Counters as incentive for overtime/extra work from the hot listed smart cards, which is contrary to the existing policy.

(d) Not intimating the discrepancy of liquor stores (70 cases of Rum) during collection and regularisation of the same in the next collection.

(e) Accepting gifts from dealers during festivals.

(f) Allowing collection of subscription from Ex-Servicemen by representatives of Ex-servicemen League in Golden Palm Canteen Tirunelveli, which is contrary to the existing orders.''

3. When capital punishment is going to be imposed, it should be preceded by enquiry and opportunity has got to be given which is absent in this case and only on that ground, the impugned order is liable to be interfered with and accordingly, the impugned order is set aside. However, this order will not preclude the respondents from proceeding afresh against the petitioner, if so advised and pass appropriate orders in accordance with law.

4. The writ petition is allowed in the above terms. Any observation touching the merits of the matter will not prejudice both the parties while conducting de novo enquiry and the enquiry shall be conducted on day-to-day basis and shall not be adjourned beyond seven working days at any point of time. No costs. Consequently, W.M.P(MD)No.1160 of 2017 is closed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

1) The General Officer Commanding,
Headquarters Dakshin Bharat Area,
Island Grounds, Chennai-600 009.

2) The Chairman,
Golden Palm Military Canteen
Headquarters Dakshin Bharat Area,
Island Grounds, Chennai-600 009.

+2cc to M/s.T.Selvan Advocate in SR. 5130

+1cc to M/s..N.Shanmuga Selvam Advocate in SR. 5141

nbi

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W.P (MD) No.1416 of 2017

and

W.M.P (MD) No.1160 of 2017

31.01.2017