



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.03.2018

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WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD) .No.2118 of 2018

R.Thirulogachander

...Petitioner

Vs.

1. Tamil Nadu State Marketing Corporation Limited,  
Represented by its Managing Director,  
Gandhi Irwin Road,  
Egmore,  
Chennai.
  2. Tamil Nadu State Marketing Corporation Limited,  
Represented by its Senior Regional Manager,  
Trichirappalli Region, Thiruchirappalli District.
  3. Tamil Nadu State Marketing Corporation Limited,  
Represented by its Deputy Collector / District Manager,  
Thanjavur District,  
Thanjavur.
- ...Respondents

**PRAYER:** Writ petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling of the records of the third respondent in Na.Ka.No.7937/RV-2/2013 dated 30.09.2015 and confirmed in appeal by the second respondent in MM.No.4035/2015/U dated 01.09.2016 and further by the first respondent in SM.Ka.No.R1/20129/2017 dated 04.08.2017 and quash all the orders and consequently respondents will have to be directed to reinstate the petitioner back into service with all attendant and monetary benefits as per the time limit fixed by this Court.

For Petitioner : Mr.V.Perumal

For Respondents : Mr.H.Aurmugam

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**ORDER**

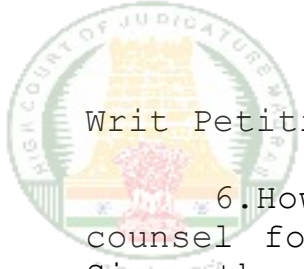


2.By consent of both parties, the main Writ Petition itself is taken up for final disposal.

3.The petitioner was employed as a Salesman in one of the liquor outlets run by TASMAL. The allegation made against the petitioner and the Supervisor is that they had mixed water with liquor and that they had allowed the outsiders to enter the shop in question. A Charge memo was issued on 28.06.2014 and the enquiry was conducted on 17.03.2015. The Enquiry Officer has found that the charges framed against the petitioner and the said Supervisor stood proved. The Disciplinary Authority namely, the third respondent herein dismissed the petitioner from service by order dated 30.09.2015. The same was confirmed by the second respondent on 01.09.2016. The first respondent has also confirmed the order of dismissal by his proceedings dated 04.08.2017. All these three orders are under challenge in this Writ Petition.

4.The writ petitioner was also prosecuted in C.C.NO.24 of 2016, on the file of the Judicial Magistrate No.1, Kumbakonam. The petitioner was acquitted by judgment dated 26.07.2017. It is a settled principle of law that the judgment of acquittal is not binding on the Disciplinary Authority. It is open to the Disciplinary Authority to take an independent view. It is because the standard of proof between the proceedings in criminal proceedings and departmental proceedings are different. But then the judgment of acquittal is a relevant material. It is to be taken into account. In this case, the judgment of acquittal was pronounced on 26.07.2017. The first respondent while confirming the order dated 04.08.2017 did not even advert to the aforesaid judgment of acquittal. Therefore to this extent the order passed by the first respondent is tainted. It is a settled principle of law that an order passed by the Administrative Authority will have to take into account all the relevant material. Since the relevant matter was not taken note of, this Court has to necessarily interfere with.

5.The learned counsel appearing for the petitioner contended that the enquiry held against the petitioner was more a farce. According to him, the entire proceedings concluded within a single day i.e., 17.03.2015. He further highlighted several infirmities in the enquiry proceedings. This Court wanted to know as to how the enquiry was actually conducted. But the minutes of enquiry are not presently available. It is also seen that the petitioner did not even cross-examine the witness examined on the side of the Disciplinary Authority. The Enquiry Officer would proceed on the premise that the delinquent did not want to cross-examine on the said witness. This is not correct. The petitioner has filed a Writ of Certiorari, therefore in the very nature of things, the minutes of enquiry must be made available before this Court. Since the same are not made available, this Court has to intervene in favour of the petitioner. Accordingly the orders impugned in the



Writ Petition stand quashed.

6. However as rightly pointed out by the learned standing counsel for the respondents, the matter cannot be left as such. Since the allegations made against the petitioner are serious and the enquiry was not conducted properly in the very nature of things, the matter must be remitted to the file of the Disciplinary Authority for holding a fresh enquiry in accordance with law. This submission made by the learned Standing counsel for the respondents is reasonable. The same is accepted as such. Even while quashing the orders impugned in the Writ Petition, it is made clear that the authorities are at liberty to hold enquiry against the petitioner and proceed afresh in accordance with law. It is also made clear that the charge memo issued against the petitioner is not quashed. Since the order of removal is being quashed, the petitioner has to be necessarily reinstated. However the question of paying back wages will not arise at this stage. It will depend on the outcome of the enquiry to be held against the petitioner and the final orders to be passed by the authorities.

7. With these directions, the Writ Petition is allowed and the respondents are directed to reinstate the petitioner in service within a period of two weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

+ 1 cc TO Mr.V.Perumal , Advocate in SR No. 54781  
+ 1 cc TO Mr.H.Arumugam , Advocate in SR No. 54985

tsg

AE/SKN RSK/SAR3/27.06.2018/3P/3C

ORDER MADE IN  
**W.P. (MD) .No.2118 of 2018**  
**13.03.2018**