IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2019

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.37 of 2019
and
WMP.Nos.41 & 42 of 2019

C.Sankar ... Petitioner

Versus

1. The Tamil Nadu State Marketing Corporation Ltd,
rep. by its Managing Director,
IV Floor, CMDA Building Tower-II,
Egmore, Chennai - 600 008.

2. The Senior Regional Manager,
TASMAC, Salem-16.

3. The District Manager,
TASMAC,
Tamil Nadu Warehousing Godown,
Near National Theatre,
Katpadi Road,
Vellore.

4. Thiru. M.R.Rajeshkanna,
Shop Supervisor,
TASMAC shop No.11305,
Yerikodi Road, Thiruppathur,
Vellore District. ... Respondents

Prayer:

Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, after calling for the records pertaining to the TASMAC code 2014, Circulars Nos.1,2 and 29 dated 02.01.2018, 19.03.2018 and 26.10.2018 in R.C.Nos.1/55/2018, Na.Ka.No.0.1/55/2018 and Na.Ka.No.R2/14589/2018 issued by the 1st respondent and the three orders dated 22.10.2018, 22.10.2018 and 22.11.2018 issued by the 3rd respondent in Na.Ka.No.A2/11278/C.V/2018, Se.Mu.Na.Ka.No.A2/11278/CV/2018 and in Na.Ka.No.A2/11278/CV/2018, quash the same and consequently direct the respondents to continue the petitioner in shop No.11278 and to treat the period from 04.12.2018 till he was given duty in the same shop as duty with pay with all consequential benefits.

For Petitioner : Mr.V.Ajay Khose

For Respondents 1-3 : Mr.B.Nedunchezhian (TASMAC)

O R D E R

The memo issued against the writ petitioner, imposing the penalty as well as the GST directed to be paid, is under challenge in these writ petition.

2. The writ petitioner is working as Salesmen/Supervisor in Retail IMFL Vending Shops of the first respondent-Corporation. The first respondent-Corporation framed the Regulations with the heading and title ?"The Code of Prevention and Detection of Fraudulent Acts in Tamil Nadu State Marketing Corporation Limited -? 2014 (The Code)"?. However, the said Code was never notified or circulated to the employees enabling them to understand the procedures to be adopted in this regard.

3. The Circular issued by the first respondent states that actions will be initiated in case of identifying a MRP violation. Even the said circular was also not notified and circulated to the employees.

4. The grievances of the writ petitioner is that he has not received any show- cause notice or an opportunity was provided, enabling him to defend his case.

5. Contrarily, the impugned order has been passed unilaterally without conducting any enquiry or without even issuing a show-cause notice to the writ petitioner.

6. The counter-affidavit filed by the third respondent, more specifically in paragraphs 4, 5 and 6 are extracted hereunder:-

> "?4. I submit that selling above the Maximum Retail Price (MRP) is an offence under Standards of Weight and Measures Act, 1976, now replaced by Legal Metrology Act, 2009 and rightfully the Code had illustrated the same as a fraudulent act, and accordingly the first respondent herein being the competent authority has issued the impugned circular dated 2.1.2018, in cases of MRP violations and punishments thereof.
>
> 5. I submit that the impugned circular read with

the impugned Code shall mean that if the employee is found selling liquor more than the MRP prices a department proceedings shall be initiated by issuing a show cause notice calling for an explanation and pending proceedings the delinquent instead of being suspended shall be transferred to another shop of lesser sale within the same Taluk. The maximum punishment for violation of MRP offence to be imposed upon proved or admitted has been stipulated.

6. I submit that on 16.1.2018 the Vigilance Team conducted a surprise check in Shop No.11033 and found the shop supervisor (petitioner) and two salesmen of the shop selling more than the MRP price. Upon receipt of the report of the Vigilance Team, I initiated proceedings against the petitioner and other delinquents by issuing the impugned show cause notice dated 23.1.2018 calling for an explanation within 3 days upon receipt of the said notice, failing which departmental proceedings will be initiated and only advised to pay the fine amount for the violation, pending the above proceedings instead of placing the petitioner under suspension, as instructed under the Code the Senior Regional Manager, TASMAC, Salem had transferred the petitioner to another shop of lesser sale in the same Taluk under the impugned order of transfer dated 2.2.2018. Therefore, the petitioner-s contention that he was imposed with punishments without holding an enquiry is misconceived and premature.?"

7. This Court is of an opinion that any order affecting the rights of an employee must be issued at least by providing an opportunity to the delinquent official to defend his case in the manner known to law. As far as the other Statutes are concerned, the respondents are bound to follow the procedures contemplated under the Act.

8. However, for imposing penalty and for imposing minor punishments, the procedure of issuing show-cause notice and receiving explanations/objections are to be followed by the authorities before taking a decision and passing orders.

09. On a perusal of the impugned order itself, it is clear that no such show-cause notice was issued to the writ petitioner.

10. The learned counsel appearing on behalf of the respondents is also unable to establish that an opportunity was provided to the writ petitioner before issuing the impugned

order imposing penalty.

11. Under these circumstances, this Court is of an opinion that the writ petition is fit for remand and accordingly, the impugned order passed by the second respondent in memo dated 22.10.2018 is quashed. The respondents are directed to issue show cause notice, setting out all the details to the writ petitioner, within a period of four weeks from the date of receipt of a copy of this order. On receipt of the show cause notice from the respondents, the writ petitioner is directed to submit their explanations/objections, along with the documents, if any, within a period of two weeks from the date of receipt of the show cause notice and thereafter, the authorities competent shall consider the materials available on record as well as the explanations/objections submitted by the writ petitioner, take a decision and pass orders on merits and in accordance with law, within a period of eight weeks thereafter. It is made clear that in the event of imposing minor penalty, such a procedure can be adopted and if the authorities are of the opinion that the allegations warranting major penalty, then the procedure of enquiry and other procedures are to be followed in accordance with the Model Standing Orders.

12. With the above directions, the writ petition stand partly allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

Pkn

To

1. The Managing Director,
   Tamil Nadu State Marketing Corporation Ltd,
   IV Floor, CMDA Building Tower-II,
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2. The Senior Regional Manager,
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3. The District Manager,
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4. Thiru. M.R.Rajeshkanna,
Shop Supervisor,
TASMAC shop No.11305,
Yerikodi Road, Thiruppathur,
Vellore District.

+1cc to Mr.V.Ajay Khose, Advocate, S.R.No.18480

W.P.No.37 of 2019

RK(CO)
CS/29/03/2019