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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2021

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.17505 of 2013

M.Sundara Vadivel
S/o.Marimuthu

...Petitioner

-Vs-

1. The Senior Regional Manager,
Tamil Nadu State Marketing Corporation Ltd.,
Salem.
2. The District Manager and Deputy Collector,
Tamil Nadu State Marketing Corporation Ltd.,
Namakkal District.
3. The Managing Director,
Tamil Nadu State Marketing Corporation Ltd.,
Chennai - 8

...Respondents

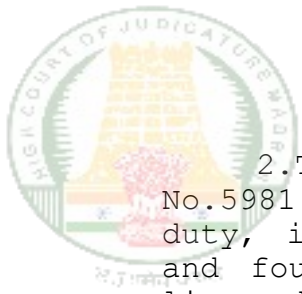
Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the entire records relating to the proceedings of the 3rd respondent in Na.Ka.No.2401/R1/2011 dated 11.03.2013 and quash the same and consequentially direct the 3rd respondent to reinstate the petitioner into service with all back wages and arrears.

For Petitioner : Mr.T.Muruganantham

For R1 to R3 : Mr.K.Sathish Kumar

ORDER

This writ petition has been filed to call for the entire records relating to the proceedings of the 3rd respondent in Na.Ka.No.2401/R1/2011 dated 11.03.2013 and quash the same and consequentially direct the 3rd respondent to reinstate the petitioner into service with all back wages and arrears.



2.The petitioner was appointed as a supervisor in Shop No.5981 run by the 2nd respondent Corporation. While he was on duty, inspection was conducted by the 2nd respondent officials and found shortage of sum of Rs.23,102/- and also found the liquor bottles pasted with quick fix adhesives. When the bottles were sent for chemical analysis, they have found that water was mixed up with the liquor and the indent for the supply was not specifically mentioned. Based on the findings, the 2nd respondent initiated departmental enquiry and terminated the services of the petitioner vide its proceedings in Na.Ka.No.371/2008/E.

3.Against the termination order passed by the 2nd respondent, the petitioner preferred an appeal before the 1st respondent and the said appeal was dismissed, thereby the petitioner had filed a Review before the 3rd respondent, which was kept pending. Hence, the petitioner was constrained to file a writ petition in W.P.No.21989 of 2009, wherein this Court had directed the 3rd respondent to pass orders on the Review Petition dated 23.09.2009 filed by the petitioner within a period of eight weeks. Thereafter, the 3rd respondent had reviewed the petition and confirmed the order of the 2nd respondent dated 11.02.2009 and also the decision of the appellant authority dated 03.07.2009 and also the order passed by the 3rd respondent in Review Petition on 15.03.2010 and 02.08.2010 and rejected the relief sought by the petitioner. Aggrieved over the same, the petitioner has preferred the present writ petition.

4.Learned counsel for the petitioner submitted that when the 2nd respondent conducted investigation in Shop No.5981 run by them, they found shortage of sum of Rs.23,102/- which was not remitted in the account of the bank maintained by the 2nd respondent. The learned counsel for the petitioner submitted that the said sum was collected only after the banking hours the same could not be remitted on that day but the said amount has been remitted in the account on the next day itself and the petitioner has also submitted a proof challan before the 2nd respondent Corporation but the 2nd respondent without taking into consideration the said facts, terminated the services of the petitioner, accordingly the order passed by the 2nd respondent is liable to be set aside.

5.Despite several opportunities, the 2nd respondent has not filed any counter and the writ petition is of the year 2013. Based on the materials and available facts, this petition is taken up for final disposal on merits and in accordance with law.

6.Learned Standing Counsel appearing for the 2nd respondent Corporation on instructions would submit that the said shortage amount of Rs.23,102/- was remitted into the bank by the petitioner on 02.05.2008.



7. Heard the learned counsel on either side and perused the materials on record.

8. In view of the aforesaid submission made by the 2nd respondent Corporation and also on perusing the charge memo issued to the petitioner for the shortage of Rs.23,102/- and the detailed explanation submitted by the petitioner, it is seen that the respondent Corporation had conducted enquiry and terminated the services of the petitioner and thereafter the petitioner had preferred an appeal before the 1st respondent, which was dismissed, against which the petitioner preferred a review petition before the 3rd respondent and the 3rd respondent had rejected the request of the petitioner without affording any opportunity and the order of the original authority came to be confirmed.

9. It is seen from the records that the 2nd respondent has not passed a reasoned order and the other appellate authorities have also confirmed the same without considering the explanations submitted by the petitioner and have simply accepted the enquiry report of the original authority / the 2nd respondent herein and passed the impugned order imposing punishment of dismissal of services of the petitioner.

10. This Court vide its order dated 03.02.2020 in W.P.No.150 of 2013 had passed the following order. The relevant paragraphs are extracted hereunder:

16. In view of the decisions cited supra and Rule 6(1) of Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules, it is clear that the appellate authority is the final fact finding authority and is expected to assess the evidences available on record by due application of mind and also record the reasons even though not elaborately, but indicating as to how the appellate authority has satisfied himself with the reasons given by the disciplinary authority. When Rule 6 (1) of the Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules mandates that the appellate authority should consider all those materials, in the instant case, no such finding has been given by the appellate authority except simply saying that he has perused some documents and came to the conclusion that the punishment awarded by the 1st respondent is not an excessive and rejected the same.

17. Considering the facts and circumstances of the case and also the decisions rendered by the Hon'ble Supreme Court and this court cited supra, This court with no hesitation, has come to the



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conclusion that the second respondent / appellate authority has passed a cryptic order / non - speaking order without considering the issues that were raised by the petitioner is his Appeal. As rightly pointed out by the learned senior counsel for the petitioner, the order of the appellate authority /2nd respondent is not in conformity with the rule 6(1) of TNPSS (D&) Rules.

18. In fine, the impugned order in RC. No.047950/AP1(2) /2000, dated 03.07.2010 passed by the second respondent in respect of P.R.NO.67/2009 is quashed and the matter is remitted to second respondent to consider afresh quashed and the matter is remitted to second respondent to consider afresh and to pass orders therein, on merits and in accordance with law, within a period of twelve (12) weeks from the date of receipt of the copy of this Order.

11.In view of the above, the impugned order passed by the 3rd respondent is liable to be dismissed. It is further stated that the aforesaid shortage amount of Rs.23,102/- had already been remitted in the bank on 02.05.2008 and on taking into account the aforesaid statement of the writ petitioner, the 3rd respondent is hereby directed to take a lenient view while imposing a punishment against the petitioner for the aforesaid reasons.

12.In the result, this writ petition stands allowed. The impugned order is hereby quashed and the matter is remitted back to the 2nd respondent / the original authority to consider afresh and pass appropriate orders on merits and in accordance with law within a period of twelve (12) weeks from the date of receipt of a copy of this order, without taking any of the observation that has been made in the above paragraphs.

13.It is also made clear that the petitioner undertakes to file an affidavit before the 2nd respondent that he is ready to forgo with the back wages in the event of reconsidering his punishment inflicted by the respondent and also undertakes that he will not indulge in any illegal activity during the course of his employment. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar



kas/dk

To

1. The Senior Regional Manager,
Tamil Nadu State Marketing Corporation Ltd.,
Salem.
2. The District Manager and Deputy Collector,
Tamil Nadu State Marketing Corporation Ltd.,
Namakkal District.
3. The Managing Director,
Tamil Nadu State Marketing Corporation Ltd.,
Chennai - 8

+1cc to Mr.RRN LEGAL, Advocate, S.R.No.66413

W.P.No.17505 of 2013

SSI (CO)
CT 30/12/2021