

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2019

C O R A M

THE HONOURABLE Mr.JUSTICE S.M.SUBRAMANIAM

WP.No.2059 of 2018
and W.M.P.Nos.2576 and 2577 of 2018

P.Loganathan

...Petitioner

Vs.

The Deputy Collector/District Manager,
TASMAC Limited,
Dharmapuri.

... Respondent

PRAYER:-

Writ Petition filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus to call for the records pertaining to the impugned order of suspension dated 31.10.2017 passed by the respondent in his proceedings of Na.Ka.No.945/2017/C.V.2 and quash the same and consequently directing the respondent to reinstate the petitioner and regularize the period of suspension as duty.

For Petitioner : Mr.R.Nalliyappan

For Respondent : Mr.V.Arunkumar
for B.Nedunchezian
Standing Counsel for TASMAC.

सत्यमेव जयते
O R D E R

The order of suspension dated 31.10.2017, which is impugned, states that on account of serious irregularities committed by the writ petitioner, he was placed under suspension. The charges are also stated in the impugned order. The writ petitioner was directed to submit his explanation/objection within a period of seven (7) days from the date of receipt of charge memo issued under proceedings dated 31.10.2017. Instead of defending his case by submitting explanation, the writ petitioner has chosen to file the present writ petition on the ground that the order of suspension has been issued along with the charge memo.

2. The learned counsel for the writ petitioner states that

the writ petitioners has already submitted his explanation to the charges.

3. A plain reading of the allegations set out in the impugned charge memo reveals that the nature of allegations set out are undoubtedly serious and a criminal case was also registered against the writ petitioner on 15.10.2017, by Adiyamankottai Police Station registered in F.I.R No.354 dated 15.10.2017 under the Tamilnadu Prohibition Act. The said criminal case is pending completion of investigation. This being the factum of the case, the ground raised by the writ petitioner deserves no consideration.

4. An order of suspension cannot be construed as a punishment. Suspension is an interim arrangement made under the Rules to keep the delinquent employee away from performance his official duties till the completion of enquiry. Suspension being not a punishment, this Court is of the opinion that there is no infirmity in respect of the order passed by the respondent in placing the writ petitioner under suspension vide the charge memo, wherein, the charges are also set out. The writ petitioner had already submitted his explanation/objection in respect of the allegations set out in the relief sought for. Thus, the competent disciplinary authority has to conduct the enquiry, and based on the enquiry report, all further actions shall be initiated for passing final order in the departmental disciplinary proceedings.

5. It is clarified that mere pendency of the criminal case is not a bar for the disciplinary authority to proceed with the departmental disciplinary proceedings. The criminal case requires a high standard of proof to establish the crime and to convict the person. However, no such strict proof is required for the purpose of concluding the departmental disciplinary proceedings. Preponderance of probability is enough to punish a public servant under the Disciplinary Rules. Thus, there is no impediment for the disciplinary authority to proceed with the departmental disciplinary proceedings, conclude the same and pass final orders in the departmental proceedings.

6. However, the said exercise shall be done if records to establish the charges are available with the respondent. In the event of non-availability of materials with the respondent, they have no wait for the final decision in the criminal case. In the present case on hand, the allegations are in relation to the goods supplied to TASMAL shops. This being the factum of the case, materials are very much available with the officials.

7. It is made clear that the writ petitioner has to

establish his innocence or otherwise, by participating in the enquiry proceedings and by submitting the documents and adducing evidence. This Court cannot adjudicate the merits of the case advanced by writ petitioner in the present writ petition. The petitioner is always at liberty to raise all his defences before the competent authority and based on the findings, appropriate orders shall be passed in the departmental disciplinary proceedings.

8. This being the procedure to be followed, this Court is of the opinion that disciplinary charges made in respect of the charge memo is certainly tenable. Though the learned counsel for the writ petitioner states that the present writ petition is filed challenging the order of suspension, this Court is of the opinion that the order of suspension cannot be revoked in view of the fact that criminal case is also registered and the charge memo has been issued to the writ petitioner and he has also submitted his explanation to the charges. This being the factum, the respondent is bound to complete the process of enquiry and pass final orders in the departmental disciplinary proceedings as early as possible and without causing any undue delay.

9. The writ petition is devoid of merits and the same stands dismissed. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

msv

To

The Deputy Collector/District Manager,
TASMAC Limited,
Dharmapuri.

+1cc to M/S.R.Nalliyappan, Advocate, S.R.No.9884
+1cc to M/S.B.Nedunchezian, Advocate, S.R.No.10729

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PPA (CO)
CS/05/03/2019