



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :17.12.2019

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.28230 of 2019
and WMP No.27898 of 2019

R.Vijayan

...Petitioner

Vs.

1. Tamil Nadu State Marketing Corporation Limited (TASMAC),
Rep by its Managing Director,
4th Floor, CMDA Tower-2,
Egmore, Chennai - 8
2. The Senior Regional Manager,
TASMAC Limited, Salem.
3. The District Manager,
TASMAC Limited,
Vellore District,
Vellore.

..Respondents

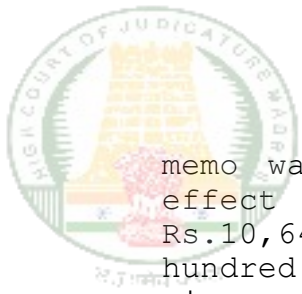
Prayer:- Writ petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order in proceedings No.Se.Mu.Na.Ka.A2/1075-2/Si.Vi/2014 dated 05.09.2019 on the file of the 3rd respondent and quash the same and consequently, direct the Respondents to reinstate the petitioner in to service with all attended benefits and continuity of service within a reasonable time to be fixed by this Court.

For Petitioner : Mr.R.Neelakandan
For Respondents : Mr.P.Arumugarajan
Standing Counsel for TASMAC

ORDER

This writ petition has been filed challenging the impugned order passed by the 3rd respondent, dismissing the petitioner from service.

2. The case of the petitioner is that he was working as a Supervisor in a shop that was run by the Tamil Nadu State Marketing Corporation (TASMAC). During the year 2014, a charge



memo was issued against the petitioner and two others to the effect that there is a deficit stock to the tune of Rs.10,64,890/- (Rupees Ten lakhs sixty four thousand eight hundred and ninety only) and therefore, the same constitute misappropriation and cheating. Consequently, the petitioner gave his explanation and an enquiry officer was also appointed for enquiring into the charges that were framed against the petitioner and two others. In the meantime, the criminal case that was given against the petitioner and two others ended in an acquittal by judgement dated 12.01.2018.

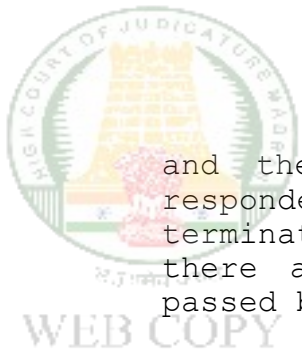
3. The Enquiry officer after considering the entire materials placed before him, by his report dated 05.12.2018 found that the charges against the petitioner have not been proved and this report was sent by him to the District Manager of TASMAL, Vellore District.

4. The petitioner was placed under prolonged suspension and therefore, he moved this Court by filing WP No.15535 of 2019, seeking for reinstatement. During the pendency of the writ petition, the petitioner was reinstated into service by the 3rd respondent through his proceedings dated 26.06.2019.

5. As a bolt from the blue, the petitioner received the impugned order that was passed by the 3rd respondent terminating the petitioner from his service based on the very same charges, for which, he was found not guilty by the Enquiry Officer. This order has become a subject matter of challenge in this present writ petition.

6. Mr.R.Neelakandan, learned counsel for the petitioner submitted that the impugned order passed by the 3rd respondent is illegal and is opposed to principles of natural justice. The learned counsel submitted that the Enquiry Officer had already given a report to the effect that the charges against the petitioner are not proved. This report has not been taken into account by the 3rd respondent in the impugned order. Even if the 3rd respondent wanted to independently consider the cases, the learned counsel submitted that he should have given a notice to the petitioner and only thereafter, he should have passed any orders. The learned counsel submitted that such a major penalty cannot be imposed against the petitioner without giving him an opportunity.

7. Per contra, the learned counsel for the respondent submitted that the charge against the petitioner is misappropriation to the tune of Rs.10,64,890/-. The learned counsel submitted that taking into account, the gravity of the charges



and the loss that was caused to the Corporation, the 3rd respondent was constrained to impose the maximum penalty of termination from service. The learned counsel submitted that there are absolutely no grounds to interfere with the order passed by the 3rd respondent.

8. This Court has carefully considered the submissions made on either side and also perused the materials on record.

9. From the above summation of the facts, it can be seen that Charge memo was issued against the petitioner in the year 2014 and the specific charge against the petitioner and two other persons was that they have misappropriated to the tune of Rs.10,64,890/-, since there was a deficit found in the stock that was maintained in the shop. This came to light pursuant to the internal inspection conducted by the Corporation. Pursuant to the charge memo, the petitioner was kept under suspension.

10. The Enquiry Officer was appointed and the petitioner has also participated in the enquiry and given his explanation. The Enquiry officer after considering the entire materials placed before him and the statement made by the petitioner, came to a categorical conclusion that the charges against the petitioner are not proved. He submitted a report to that effect to the 3rd respondent on 05.12.2018. Pursuant to the submission of the report, no steps were taken to continue further with the Disciplinary proceedings. In the meantime, the petitioner was also acquitted in the Criminal case by the Judgement of the Judicial Magistrate II, Vellore, dated 12.01.2018, made in C.C.No.305 of 2015.

11. The petitioner who was kept under prolonged suspension was made to approach this Court and when the writ petition was pending, the petitioner was taken back into service by an order dated 26.06.2019.

12. The 3rd respondent has proceeded to pass the impugned order by terminating the service of the petitioner on the ground that there is a serious charge against the petitioner. The 3rd respondent is the Disciplinary Authority insofar as the petitioner is concerned. Even where a negative report is given by the Enquiry Officer, it is not binding on the Disciplinary authority and it will always be open to the disciplinary Authority to take an independent decision. However, in case where the Disciplinary Authority does not agree with the Enquiry report and wants to proceed further against a delinquent, he has to issue a notice to the delinquent employee and call for an explanation and only thereafter, he can proceed further to pass



final orders. Unfortunately, in this case, the 3rd respondent has not even referred to the Enquiry report that was submitted by the Enquiry Officer. The 3rd respondent has straight away passed the impugned order by imposing a major penalty by terminating the petitioner from service, without even affording him an opportunity. The impugned order passed by the 3rd respondent has resulted in civil consequences. The bare minimum procedure that was required to be followed by the 3rd respondent, was to have put the petitioner on notice. This has not been followed in this case. Therefore, the impugned order passed by the 3rd respondent dated 05.09.2019 requires interference, on this simple ground.

13. In view of the above discussion, the impugned order passed by the 3rd respondent dated 15.09.2019 is hereby quashed. The 3rd respondent is directed to reinstate the petitioner into service with all attendant benefits. If the 3rd respondent wants to initiate any proceedings against the petitioner, the same can be done only in accordance with law and only after affording sufficient opportunity to the petitioner.

14. This writ petition is accordingly allowed. No costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The Managing Director,
Tamil Nadu State Marketing Corporation Limited (TASMAC),
4th Floor, CMDA Tower-2, Egmore, Chennai - 8
2. The Senior Regional Manager, TASMAC Limited, Salem.
3. The District Manager, TASMAC Limited,
Vellore District, Vellore.

+1 cc to M/s.R.Neelakandan, Advocate Sr.No. 105045

AKM/18.12.19/4P-5C /

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