IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 10.12.2019
CORAM
THE HON'BLE MR.JUSTICE N.ANAND VENKATESH
W.P.No.34379 of 2019
and
WMP Nos.35048 of 2019

C.Sakthivelmurugan ... Petitioner

.Vs.

1.Tamilnadu State Marketing
Corporation Ltd.,
Rep.by its Managing Director,
CMDA Towr-II,
4th Floor, Gandhi-Irwin Bridge Road,
Egmore, Chennai-8.

2.The Senior Regional Manager,
Tamil Nadu tate Marketing
Corporation Ltd., Chennai Region,
LLA Building,
735, Anna Salai, Chennai-2.

3.The District Manager (Kancheepuram District-North),
Tamilnadu State Marketing
Corporation Ltd.,
Sembarampakkam,
Chennai-600 123. ... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order dated 20.11.2019 passed by the 3rd Respondent in Na.Ka.No.020/A1/4488/MRP/2019, Quash the same and consequently direct the respondents to restore the petitioner to duty w.e.f. 20.11.2019 with continuity of service, back wages and all other consequential benefits award costs.

For Petitioner : Mr.V.Ajay Khose

For Respondents : Mr.P.Arumuga Rajan
Standing Counsel

ORDER

The subject matter of challenge in the present writ petition is the impugned order passed by the 3rd respondent suspending the petitioner from services both on the ground that the petitioner has not paid the penalty and GST pursuant to the show cause notice and that the explanation given by the petitioner is not satisfactory.

2.On the consent given by the learned counsel appearing on either side, the writ petition itself has been taken up for final hearing.

3.It is seen from records that the petitioner was appointed as a salesman in the TASMAC shop in the year 2004. It is stated that there was a surprise inspection that was conducted on 27.06.2019, and it was found that the petitioner was selling each liquor bottle by adding an extra amount more than the maximum retail price. Immediately, a show cause notice came to be given to the petitioner on 04.10.2019, calling upon the petitioner to submit his explanation.

4.The petitioner had submitted his explanation to the 3rd respondent. After the receipt of the explanation, the impugned order came to be passed suspending the petitioner from his services on the ground that the explanation is not satisfactory and the petitioner has not paid the penalty with GST as directed in the show cause notice.

5.The learned counsel for the petitioner submitted that the entire exercise that was carried out by the 3rd respondent was pre-determined and the 3rd respondent had directed the petitioner to pay the penalty and GST, even before the conclusion of the disciplinary proceedings. The learned counsel submitted that the entire dispute pertains to the fact as to whether, the petitioner had charged more than a maximum retail price. Unless the charge is proved, the petitioner cannot be directed to pay the penalty and GST. That apart, the impugned order does not reflect any application of mind.

6.Per contra, Mr.P.Arumuga Rajan, learned Standing Counsel appearing on behalf of the respondents submitted that the petitioner was indulging in selling the liquor bottle by adding an extra cost to the maximum retail price, and thereby the petitioner was misappropriating and enriching himself at the cost of TASMAC. The learned Standing counsel submitted that the respondents was not satisfied with the explanation given by the petitioner, and therefore the petitioner was suspended from services. The learned Standing Counsel further submitted that the petitioner is liable to repay back the amount with GST and there are absolutely no grounds to interfere with the impugned order.

7.This Court has carefully considered the submissions made on either side and the materials available on record.

8.This Court had an occasion to deal with a similar issue in C.Sankar .Vs. The Tamil Nadu State Marketing Corporation Ltd., and Others in W.P.No.37 of 2019 dated 27.02.2019, and the relevant portions of the order is extracted hereunder:

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

9.The order passed by this Court in the above writ petition, will squarely apply to the facts of the present case. The petitioner has been punished without even giving an opportunity. Without deciding the charge that has been made against the petitioner, the petitioner has been directed to pay the amount and on non payment, the petitioner has also been suspended from service. This clearly constitutes predetermination of the entire issue. The 3rd respondent cannot compel the petitioner to first pay the penalty and GST, and thereafter participate in the enquiry, and on nonpayment cannot suspend the petitioner. This procedure adopted by the 3rd respondent is like putting the cart before the horse. The petitioner is first punished and thereafter he is asked to attend for an enquiry. This clearly goes against the principles of natural justice.

10.In the result, the memorandum dated 04.10.2019, issued by the 3rd respondent is hereby quashed. The 3rd respondent is directed to issue a fresh show cause notice to the petitioner setting out all the details, within a period of four weeks from the date of receipt of copy of this order. On receipt of the show cause notice from the respondent, the petitioner is directed to submit his explanation/objection and also the documents relied upon by him, within a period of three weeks from the date of receipt of the show cause notice. Thereafter, the Competent Authority shall consider the entire materials and take a decision and pass orders on merits and in accordance with law, within a period of eight weeks thereafter. In the meantime, the petitioner shall be permitted to work as salesman in the TASMAC Shop.

The writ petition is accordingly allowed with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

KP

To

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Chennai-600 123.

+1cc to Mr.V.Ajay Khose , Advocate SR.No. 102816

W.P.No.34379 of 2019

A.SK(10/01/2020)