



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 19.06.2019

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

WEB COPY

W.P. (MD) No. 13714 of 2019

and

W.M.P. (MD) Nos. 10260 & 10261 of 2019

G. Ramesh

.. Petitioner

Vs.

The District Manager,
Tamil Nadu State Marketing Corporation Ltd.,
(TASMAC),
Karur District, Karur.

.. Respondent

Petition is filed under Article 226 of the Constitution of India seeking for issuance of a Writ of Certiorari, calling for the records relating to the impugned order passed by the respondent, vide his proceedings in Na.Ka.C.V.No.2/5014/2018, dated 03.06.2019 and quash the same.

For Petitioner : Mr.S.Deenadhayalan

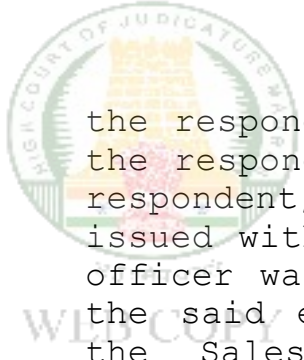
For Respondent : Mr.H.Arumugam

ORDER

This Writ Petition has been filed seeking to quash the impugned order of the respondent in Na.Ka.C.V.No.2/5014/2018, dated 03.06.2019.

2.Mr.H.Arumugam, learned Standing Counsel takes notice for the respondent. By consent, the Writ Petition is taken up for final disposal at the admission stage itself.

3.According to the petitioner, he was appointed as Salesman in TASMAC Shop No.4949, vide proceedings dated 19.10.2007. Subsequently, as per the direction of the Hon'ble Apex Court, road side TASMAC Shops were closed. Accordingly, he was given alternative employment in TASMAC Shop No.5014, situated at Punnam Chathiram, Aravakurichi Taluk, Karur District, as Salesman, by the respondent on 03.06.2017. On 10.04.2018, during surprise inspection in the said Shop, the authorities have found shortfall of Rs.19,32,760/- and therefore, a show cause notice dated 11.04.2018 was issued by the respondent to the Supervisor, Additional Supervisor and all the Salesmen, including the petitioner. After issuance of the said show cause notice, the Supervisor and the Additional Supervisor have remitted the entire shortfall amount of Rs.19,32,760/- on 12.04.2018 to the credit of



the respondent account. Pursuant to the proceedings initiated by the respondent, the petitioner was placed under suspension by the respondent, vide his proceedings dated 19.04.2018 and he was issued with charge memo dated 07.05.2018. Thereafter, an enquiry officer was appointed and departmental enquiry was conducted. In the said enquiry, the Supervisor, Additional Supervisor and all the Salesmen, including the petitioner gave their written explanations. Finally, on 18.06.2018, the Enquiry Officer, after completion of enquiry, submitted his enquiry report to the respondent, recommending penalty, GST and 2% interest of the penalty amount. The respondent having accepted the said Enquiry Officer's Report, issued the impugned memo dated 03.06.2019, without providing any opportunity to the petitioner, against which, the present Writ Petition has been filed.

4.The learned Standing Counsel appearing for the respondent submitted that surcharge proceedings were initiated against the petitioner and the present impugned order is only a show cause notice directing the petitioner and others to pay the total amount of Rs.11,85,941/- within a period of three days and therefore, the said order cannot be challenged in the light of the decision of this Court in the case of **Vasan Publications (P) Ltd., Vs. The Regional Provident Fund Commissioner (C & R) Employees Provident Fund Organisation** reported in **2018 (4) CTC 283**.

5.Considering the submission of the learned Standing Counsel appearing for the respondent, this Court is of the view that *prima facie* the petitioner cannot have any right to challenge the show cause notice issued by the respondent. If the petitioner is aggrieved, he can submit his explanation to the authorities along with all the relevant materials. Therefore, this Court cannot interfere with the show cause notice.

6.At this juncture, the learned counsel appearing for the petitioner submitted that the petitioner will submit his explanation within a reasonable time to be granted by this Court and also place all the materials before the authorities concerned that the recovery amount was already paid by other delinquents of the respondent Corporation. Therefore, an opportunity may be granted to the petitioner to submit his explanation before the respondent Corporation. The learned counsel further submitted that the respondent may also be directed to paid subsistence allowance during the suspension period to the petitioner.

7.The learned Standing Counsel appearing for the respondent has fairly submitted that if the explanation is submitted by the petitioner, the same may be considered in accordance with the

8. Considering the above said submissions, this Court is inclined to pass the following order:-

(i) It is open to the petitioner to submit his explanation to the respondent by placing all the relevant materials to satisfy the authorities that the above said recovery amount has already been paid by the delinquents of the respondent Corporation, within a period of two weeks from the date of receipt of a copy of this order.

(ii) If any such explanation is submitted by the petitioner, the respondent Corporation shall consider the same and pass appropriate orders on merits and in accordance with law, within a period of two weeks thereafter.

(iii) Insofar the impugned show cause notice is concerned, the petitioner shall submit his explanation to the respondent Corporation within a period of seven days from the date of receipt of a copy of this order.

(iv) If any explanation is submitted to the show cause notice, the respondent shall consider the same and pass orders on merits and in accordance with law.

(v) As far as the payment of subsistence allowance is concerned, the petitioner is directed to make a representation to the respondent. If any such representation is received, the respondent shall consider the same and pass orders on merits and in accordance with law, within a period of two weeks from the date of such representation.

9. With the above directions, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar (CS)

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To
The District Manager,
Tamil Nadu State Marketing Corporation Ltd.,
(TASMAC), Karur District, Karur.

+ 1 CC TO Mr.H.Arumugam, ADVOCATE IN SR No.70105
+ 1 CC TO Mr.S.Deenadhayan, ADVOCATE IN SR No.69914

W.P. (MD) No.13714 of 2019

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