



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 19.11.2019

CORAM :

THE HONOURABLE **MS.JUSTICE V.M.VELUMANI**

W.P(MD)No.5551 of 2019

S.Sathishkumar

... Petitioner

Vs.

1.The Managing Director

TASMAC

Tamilnadu State Marketing Corporation Ltd.,

CMDA Tower -2

4th Floor, Egmore

Chennai -8

2.Senior Regional Manager

TASMAC

Tamilnadu State Marketing Corporation Ltd.,

Trichirappalli

3. Divisional Manager

TASMAC

Tamilnadu State Marketing Corporation Ltd.,

Tanjavur

....Respondents

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 passed by the respondents in proceedings on the file of the first respondent in Se.Mu.Na.Ka.No.R1/15642/2018 dated 08.03.2018 and quash the same and consequently direct the first respondent to reinstate the writ petitioner to his destined/designated job.

For Petitioner : Mr.S.Senthil Vadivelan

for Mr.D.Nallathambi

For R1 & R2

: Mr.H.Arumugam

ORDER

The petition has been filed to call for the records pertaining to the impugned order passed by the respondents in proceedings on the file of the first respondent in Se.Mu.Na.Ka.No.R1/15642/2018 dated 08.03.2018 and quash the same and consequently, direct the first respondent to reinstate the writ petitioner to his destined/designated job.

2.The petitioner was working as Salesman in TASMAC Shop No.8003 on 17.03.2015. Inspection was conducted by the second respondent and he recorded certain defects in the administration. Based on the



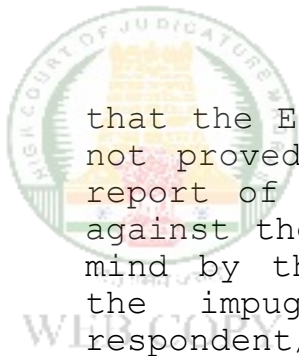
inspection, dated 17.03.2015, the second respondent initiated disciplinary proceedings, by issuing charge memo dated 17.03.2017, containing four charges. The petitioner submitted his explanation. The third respondent appointed an Enquiry Officer for conducting enquiry. After receipt of the enquiry report, the third respondent issued second show cause notice dated 30.06.2017 and dismissed the petitioner from service. The appeal and the revision filed by the petitioner were rejected by orders dated 16.11.2017 and 08.03.2018 respectively. Challenging the orders of the respondents 1 and 2, the petitioner has filed this present Writ petition.

3.The learned counsel appearing for the petitioner submitted that the first charge is that the petitioner failed to sell 23 bottles (Le Charntee XO French Brandy) for more than 90 days. The cost of said bottle is Rs.270/- and the shop is in Village. Hence, the villagers did not purchase the same. As far as charges 2 and 3 are concerned, the respondents seized the bottles and took the same in open condition for inspection. At the time of inspection, they checked the contents of the bottles and it was found to be correct. In view of the same, the petitioner suspected whether the same bottles were supplied for test and requested to furnish the lab report. Without furnishing the lab report, the enquiry was proceeded. The persons, who have tested the bottles, were not examined. In view of the same, the petitioner was denied the opportunity of cross-examination of the persons, who alleged to have tested the bottles. The third respondent without properly appreciating the report of the Enquiry Officer, by an impugned order, dismissed the petitioner from service. According to the petitioner, the respondents 1 and 2 also failed to properly appreciate the materials on record. The third respondent failed to prove the charges levelled against the petitioner. Hence, the impugned orders of the respondents are invalid and prayed for allowing the Writ petition.

4.Mr.H.Arumugam, learned counsel appearing for the respondents filed a counter affidavit and contended that the respondents followed the procedure and conducted the enquiry as per rules and regulations. The charges levelled against the petitioner were proved. The respondents have properly appreciated the materials on record, passed the impugned orders, which are valid and legal and hence, prayed for dismissal of the writ petition.

5.Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents.

6.From the materials on record, it is seen that the charge memo was issued on 17.03.2017 for misconduct alleged to have been committed by the petitioner in the month of March-2015. The respondents have not given any reason for delay in issuing the charge memo, even though the petitioner was suspended from service



that the Enquiry Officer has given report that charges 1 and 2 were not proved. The third respondent without properly considering the report of the Enquiry Officer, held that all the charges levelled against the petitioner were proved. It shows the non-application of mind by the third respondent/Disciplinary Authority. This vitiates the impugned order of the dismissal passed by the third respondent/Disciplinary Authority. From the order passed by the second respondent in the appeal, it is seen that the second respondent has taken note of the fact that the Enquiry Officer has given finding that the charges 1 and 2 were not proved. The second respondent failed to see that the charges 2 and 3 are interlinked. Once the 2nd charge held to be not proved, the 3rd charge fails and the petitioner cannot be held to be guilty of 3rd charge. Similarly, the 4th charge depends upon proving the charges 1 to 3. Once the charges 1 to 3 are not proved, for the reasons stated above, the 4th charge also fails. The first respondent in revision has held that all the charges levelled against the petitioner were proved. This action shows the non application of mind and the first respondent has not aware of the findings of the second respondent that the Enquiry Officer has held that charges 1 and 2 levelled against the petitioner were not proved.

7.Considering all the materials in its entirety, it is clear that the four charges levelled against the petitioner were not proved and the third respondent without properly considering the materials on record and report of the Enquiry Officer, passed the order of dismissal, which is erroneous. The order of the second respondent, by confirming the order of the first respondent in the revision and the appeal, are perverse and without any basis.

8.For the above reasons, the order passed by the respondents are set aside and accordingly, this Writ petition is allowed. No costs.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

msa

+1 CC to Mr.H. ARUMUGAM, Advocate (SR-99706[F] dated 20/11/2019)

+1 CC to Mr.V. MEENAKSHI SUNDRAM, Advocate (SR-100037[F] dated 21/11/2019)

W.P(MD)No.5551 of 2019

19.11.2019

VB(17.12.2019) 3P 3C