

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :08.01.2020

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.23998 of 2019
and WMP No.23850 of 2019

S.Mohan

... Petitioner

Vs.

The District Manager,
Tamil Nadu State Marketing Corporation Ltd.,
Gudikadu, Cuddalore
Cuddalore District.

... Respondent

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 passed by the respondent in his proceedings Se.Mu.No.A1/(RV)/3081/2515/2019 dated 21.02.2019 and quash the same, and direct the respondent to confer all the consequential benefits.

For Petitioner : Mr.C.Selvaraj, Senior Counsel
for M/s.C.S. Associates

For Respondent : Mr.K.Sathish Kumar

सत्यमेव जयते
O R D E R

This Writ Petition has been filed challenging the order passed by the respondent dated 21.02.2019, relieving the petitioner from his service and for a consequential direction to direct the respondent to reinstate the petitioner into service with all consequential benefits.

2. The case of the petitioner is that he was selected and appointed as a Supervisor by the Tamil Nadu State Marketing Corporation Ltd. (TASMAC). During the year 2017, when the petitioner was working as a Supervisor in a shop at Cuddalore District, a Criminal case came to be registered against the petitioner under the Prevention of Corruption Act, and the

petitioner was arrested and remanded to Judicial custody. The allegation made against the petitioner was that he demanded a sum of Rs.10,000/- from a co-employee and based on the complaint given by him a trap was laid and the petitioner was caught red-handed.

3. Pursuant to the Criminal case registered against the petitioner, the petitioner was remanded to judicial custody and the respondent proceeded to pass the impugned order dated 21.02.2019 relieving the petitioner from service with effect from 19.02.2019. This order has been put to challenge in the present Writ Petition.

4. Mr.C.Selvaraj, learned Senior Counsel appearing for M/s.C.S.Associates, on behalf of the petitioner submitted that the petitioner was working in the respondent Corporation from the year 2004 onwards and he has been removed from service without any opportunity and even without conducting any enquiry.

The learned Senior Counsel submitted that there are separate Service Rules, insofar as, TASMAC is concerned and a person can be removed from service only by issuing a charge memo and after conducting an enquiry. In the present case, the petitioner has been removed from service without any opportunity and therefore, the order passed by the respondent requires interference.

5. Mr.K.Sathishkumar, learned counsel appearing on behalf of the respondent submitted that the petitioner was only a temporary employee and the relieving order is not punitive in nature. The learned counsel submitted that the seriousness of the charges against the petitioner was taken into consideration and the petitioner was relieved from service. The learned counsel submitted that there are absolutely no grounds to interfere with the order passed by the respondent. As an alternative submission, the learned counsel submitted that if in case this Court comes to a conclusion that opportunity must be given to the petitioner before any orders are passed, the impugned order can be treated as a show cause notice and the petitioner can be directed to give his explanation and thereafter orders will be passed strictly in accordance with law.

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

7. In the present case, the petitioner has been working in TASMAC for nearly 13 years. Based on a Criminal case given

by a co-employee, a trap was laid and the petitioner was caught receiving money to the tune of Rs.10,000/-. The petitioner was arrested and remanded to judicial custody.

8. The respondent has proceeded to pass the impugned order dated 21.02.2019 by citing this incident and taking into consideration the arrest of the petitioner and has proceeded to relieve the petitioner from service with effect from 19.02.2019.

In the considered view of this Court, the impugned order passed by the respondent is punitive in nature, since the reason assigned in the order shows that the respondent had taken into consideration the Criminal case registered against the petitioner and the arrest of the petitioner. Therefore, obviously this has created an influence in the mind of the respondent, while passing the impugned order. The impugned order is in the nature of punishment, wherein, the petitioner has been relieved from his services. This order has been passed without issuing any charge memo or without getting any explanation from the petitioner and without giving any opportunity to the petitioner. The impugned order passed by the respondent is liable to be interfered on this ground alone.

9. It is well settled Principle of law that any order whether it is administrative or quasi judicial, can be passed only after affording opportunity to a person, if the order ultimately ends up with Civil consequences to the concerned employee. Useful reference can be made to the judgment of the Hon'ble Supreme Court in *Rajesh Kumar and others v. Deputy Commissioner of Income Tax and others*, reported in (2007) 2 SCC 181, and in *Uma Nath Pandey & Ors. v. State of Uttar Pradesh & Anr.*, reported in (2009) (2) CTC 663.

10. In view of the above discussion, this Court has no hesitation to interfere with the impugned order passed by the respondent and accordingly, the same is quashed. The respondent is directed to reinstate the petitioner with all consequential benefits (service and monetary benefits). Necessary orders shall be passed in this regard within a period of four weeks from the date of receipt of a copy of this order. If in case, the respondent wants to proceed further against the petitioner, a charge memo shall be issued against the petitioner and his explanation shall be called for and after affording due opportunity to the petitioner, further orders can be passed by the respondent.

11. In the result, this Writ Petition is allowed with the above directions. No costs, Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

jv

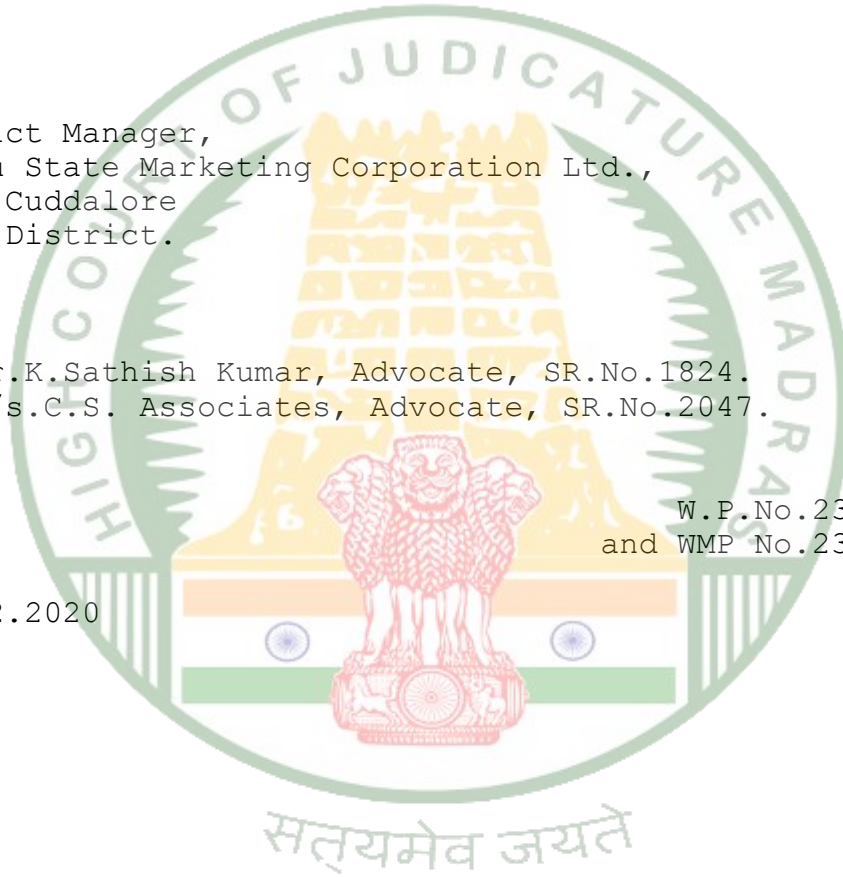
To

The District Manager,
Tamil Nadu State Marketing Corporation Ltd.,
Gudikadu, Cuddalore
Cuddalore District.

+1cc to Mr.K.Sathish Kumar, Advocate, SR.No.1824.
+1cc to M/s.C.S. Associates, Advocate, SR.No.2047.

W.P.No.23998 of 2019
and WMP No.23850 of 2019

BP (CO)
CSR: 25.02.2020



WEB COPY