



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **24.08.2020**

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THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.(MD)No.7794 of 2020

and

WMP(MD)No.7277 of 2020

R.Kanagavel

... Petitioner

-Vs-

The District Manager,
The Tamil Nadu State Marketing
Corporation Limited,
Madurai South,
Madurai District.

... Respondent

Prayer: Writ Petition - filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the respondent in his proceedings in Na.Ka.No.000106/2018/A dated 26.02.2020 and quash the same as illegal, arbitrary, violation of law and further direct the respondent to reinstate the petitioner in service with full back wages from 27.02.2020 within the stipulated period.

For Petitioner : Mr.M.Jothibasu

For Respondent : Mr.H.Arumugam
Standing Counsel

ORDER

The prayer sought for in this writ petition is for a Writ of Certiorarified Mandamus, to call for the records of the respondent in his proceedings in Na.Ka.No.000106/2018/A, dated 26.02.2020 and quash the same as illegal, arbitrary, violation of law and further direct the respondent to reinstate the petitioner in service with full back wages from 27.02.2020 within the stipulated period.

2.Heard Mr.M.Jothibasu, learned counsel appearing for the petitioner and Mr.H.Arumugam, learned Standing Counsel appearing for the respondent.

<https://hcservices.ecourts.gov.in/hcservices/>



3. The petitioner was working as Salesman at the TASMAL shop No.5410 at Madurai South District. While so, pursuant to surprise inspection taken place on 22.12.2019, allegedly, it was found that the petitioner sold an IMFL item beyond the MRP rate. Pursuant to which, the impugned order dated 26.02.2020 was passed stating that despite the instructions, the petitioner did not pay the fine amount inflicted against him, therefore, he was relieved from service on 26.02.2020. Challenging the same, the present writ petition has been filed.

4. During the last hearing, the learned Standing Counsel appearing for the respondent would submit that, though the language used in the impugned order to show that the petitioner is relieved from duty, that cannot be construed as a removal or dismissal from service and it can only be construed as an order of suspension following which, disciplinary proceedings would be initiated against the petitioner. Accordingly, the learned Standing Counsel appearing for the respondent, in order to get further instructions, requested time, that is why, the matter is posted today and its taken up for hearing.

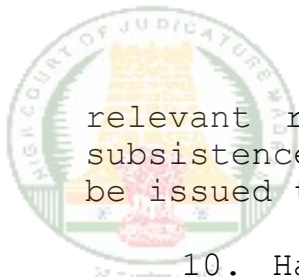
5. Today, the learned counsel appearing for the petitioner would submit that, subsequently on 29.07.2020 a fresh order has been passed by the respondent, whereby, the petitioner has been placed under suspension with effect from 26.02.2020.

6. In view of the said order having been passed, the effect of the present impugned order, where it has been stated as if that the petitioner has been permanently relieved from duty on 26.02.2020, has gone, accordingly. Recording the aforesaid development, suitable orders can be passed.

7. Mr.H.Arumugam, learned Standing Counsel appearing for the respondent would submit that, on 29.07.2020 not only the order of suspension was passed, which is a corrective order in lieu of the impugned order also, the respondent/TASMAL also issued a charge memo against the petitioner and an explanation also was sought for from him.

8. He would further submit that, once the explanation or defence is given to the said charge-memo dated 29.07.2020 by the petitioner, thereafter, on considering the same, the disciplinary proceedings would be concluded by conducting an enquiry within a period of one month and thereafter, final order would be passed, till such time, the petitioner would be placed under suspension.

9. In this regard, the learned counsel appearing for the petitioner would submit that, if at all the petitioner is continued to be placed under suspension till the disciplinary proceedings is



relevant rules, accordingly, he may be permitted to receive the subsistence allowance and suitable directions to that effect shall be issued to the respondent/TASMAC.

10. Having regard to the said submissions made by both sides and in view of the subsequent development, where on 29.07.2020 a corrective order of suspension, instead of the present impugned order, since has been issued to the petitioner and on that date i.e., on 29.07.2020 a charge-memo also has been issued to the petitioner seeking explanation from him, this Court is inclined to dispose of this writ petition, with the following direction:

" i) in view of the issuance of corrective order of suspension dated 29.07.2020 nothing survives in the impugned order, therefore, the same has become infructuous.

ii) Insofar as the charge memo dated 29.07.2020 is concerned, the petitioner shall be at liberty to respond the same, within a period of two weeks from the date of receipt of a copy of this order and thereafter, on receipt of the explanation from the petitioner, the respondent shall complete the disciplinary proceedings within a period of one month and final order shall be passed thereon. Till such time, since the petitioner has been placed under suspension by virtue of the present order dated 29.07.2020 with effect from 26.02.2020, from that date onwards the petitioner shall be entitled to get the subsistence allowance which shall be calculated and be paid by the respondents to the petitioner immediately and shall continue to pay till the suspension is revoked or otherwise.

11. With these directions, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P & A)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

The District Manager,
The Tamil Nadu State Marketing
Corporation Limited,
Madurai South,
Madurai District.

+1 CC to M/s.M. JOTHI BASU, Advocate (SR-14839[F] dated
25/08/2020)

Order made in
W.P. (MD) No. 7794 of 2020
Dated: **24.08.2020**

Am
SDS (13.10.2020) 4P-3C