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W.P.No.19232 of 2012



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2022

CORAM:

THE HON'BLE MR.JUSTICE K. KUMARESH BABU

W.P.No.19232 of 2012

and W.M.P.No.2 of 2012

A.Sathiskumar

... Petitioner

Vs

1.The Senior Regional Manager,
TASMAC Ltd.,
Coimbatore – 30.

2.The District Manager,
TASMAC (Retail selling),
Angariplalayam,
Tiruppur & District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus, calling for the entire records connected with the proceedings of the 2nd respondent in Na.Ka.No.844/2006/A dated 29.12.2006 and quash the same.

For Petitioner : Ms.Muthu Yazhini
for Ms.M.Subha

For Respondents : Mr.K.Sathish Kumar



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ORDER

The above Writ Petition has been filed challenging the order of dismissal passed by the 2nd respondent herein dated 29.12.2006.

2.Heard Ms.Muthu Yazhini, learned counsel appearing for the petitioner and Mr.K.Sathish Kumar, learned counsel appearing for the respondents.

3.The case of the petitioner is that the petitioner was working as a Bar Attender. While so, he was placed under suspension and was issued with a charge memo dated 23.07.2006, calling for explanation of the above charges that the petitioner had adulterated the liquor with water. The petitioner had submitted his explanation on 18.08.2006, for which an enquiry was conducted and the Enquiry Officer had submitted a report on 29.12.2006. Thereafter, the 2nd respondent herein, by his order dated 29.12.2006 has dismissed the petitioner from service.



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4.Ms.Muthu Yazhini, learned counsel appearing for the petitioner would vehemently contended that the report of the Enquiry Officer was not furnished to the petitioner and no show cause notice was issued, thereafter, calling for his explanation as regards to the findings of the Enquiry Officer. Therefore, she submitted that there was a clear violation of principles of natural justice and on this ground along she sought to set aside the order of dismissal passed by the 2nd respondent.

5.She would further contend that eventhough, there was appeal remedy to the 1st respondent herein, she had not exhausted the same as the impugned order is in clear violation of principles of natural justice for which she is entitled to approach this Court under Article 226 of Constitution of India.

6.Countering her arguments, the learned counsel appearing for the respondents would submit that the adulterated bottles were sent to the Forensic Department, Chennai and it has submitted its report, confirming the adulteration committed. Therefore, there was no necessity for issuance of 2nd show cause notice. Hence, the same was dispensed with. He would



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further submit that the impugned order was passed on 29.12.2006 and the petitioner was given an opportunity to file an appeal within 30 days from the date of receipt of the order. The appeal remedy has not been exhausted by the petitioner and therefore, the Writ Petition will have to be dismissed as there was an appeal remedy.

7.He would further contend that the impugned order was passed in December, 2006 and the petitioner approached this Court only in July, 2012. There has been an exorbitant delay on the part of the petitioner in approaching this court and hence, prayed this Court to dismiss the Writ Petition both in alternative remedy and also on the ground of natural justice.

8.I have considered the arguments placed by both the learned counsels appearing on either side and perused the materials available on record before this Court.

9.As rightly pointed out by the learned counsel appearing for the respondents, the impugned order was passed in the year 2006 and the



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petitioner has approached this Court only in the month of July, 2012, after delay of nearly six years which has not been explained in the affidavit filed in support of the Writ Petition.

10.In view of the above, this Court is not inclined to exercise the power under Article 226 of the Constitution of India to interfere with the order of dismissal, as the petitioner has not been diligent enough . In view of the above, this Writ Petition is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

31.10.2022

*Index: Yes/no
Speaking/non-speaking
gba*

To

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K. KUMARESH BABU, J.

gba

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