



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.01.2022

CORAM :

WEB COPY

THE HON`BLE MR.JUSTICE B.PUGALENDHI

W.P(MD) No.14909 of 2020

C.Murugesan

Petitioner

Vs.

1.The Managing Director,
Tamil Nadu State Marketing Corporation Ltd,
4th Floor,
C.M.D.A. Tower - 2,
Egmore,
Chennai - 8.

2.The Senior Divisional Manager,
Tamil Nadu State Marketing Corporation Ltd,
Tiruchirappalli District.

3.The District Manager / Deputy Collector,
Tamil Nadu State Marketing Corporation Ltd,
Thanjavur District.

Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records in se.Mu.Na.Ka.No.R1 4876/2018, dated 11.07.2018, on the file of the first respondent and in Mu.Mu.No.272/2018 (UU), dated 30.04.2018, on the file of the second respondent and in Na.Ka.No.7863/2017/R.V.2, dated 30.12.2017, on the file of the third respondent and quash the same. Consequently direct the respondents to reinstate the petitioner into service with continuity of service and all service and monetary benefits within the time frame fixed by this Court.

For Petitioner

:Mr.S.Kumar

For Respondents

:Mr.H.Arumugam

O R D E R

The petitioner, who is working as a Salesman in Shop No.7863, Athirampattinam was removed from service by order dated 30.12.2017 and the appeal preferred by this petitioner before the second respondent was also rejected, by order dated 11.07.2018 and these orders are under challenge in this writ petition.

2.The learned counsel appearing for the petitioner submits that the respondents have issued show cause notice as against the

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petitioner that the petitioner mixed water in the liquor bottles and sold the same through TASMAL outlets. On the complaint of the TASMAL Manager, a criminal case was registered on the very same set of facts in Crime No.199 of 2017, on the file of the Prohibition and Enforcement Wing, Thanjavur. The respondent Corporation conducted a separate enquiry and removed the petitioner from service and the petitioner has preferred an appeal before the first respondent and the same was rejected by the first respondent. In the meantime, the Inspector of Police, Prohibition and Enforcement Wing, Thanjavur has also conducted an investigation with regard to the complaint in Crime No.199 of 2017 and has also obtained a report from the Forensic Department. At that stage, the petitioner has preferred an application before this Court in Crl.O.P(MD) No.6252 of 2021 to quash the First Information Report in Crime No.199 of 2017 and the same was allowed by this Court on 28.06.2021 and the relevant paragraph is extracted as under:-

"6.It is seen that no report was presented by the respondent police before the concerned Court. In such, circumstances, the learned counsel for the petitioner has relied upon the judgments, which is passed by this Court in Crl.O.P(MD) No.13226 of 2020 and Crl.M.P.(MD) No.6064 of 2020, dated 27.11.2020, wherein, the FIR was quashed on the point of limitation. It is further seen that no petition is filed seeking extension of time.

7. In view of the above judgment, the petitioner is entitled to succeed. Accordingly, the impugned FIR in Crime No.199 of 2017 is quashed."

3.According to the learned counsel for the petitioner, as per the report of the Forensic Department, which was obtained by the Investigating Agency, there is no water content in the liquor bottles as claimed by the respondent. Yet another stand taken by the petitioner is that the enquiry was conducted by the third respondent and the third respondent is the complainant, who lodged a complaint as against the petitioner and the third respondent himself acted as an enquiry officer and also removed the petitioner from service, which is in violation of Circular dated 10.10.2017.

4.The learned Standing Counsel has fairly submits that as per circular dated 10.10.2017, the enquiry ought to have been conducted by a third party Enquiry Officer from the Panel. However, in this case, the enquiry was conducted by the third respondent, who set the law in motion, and who is also complainant and acted as a Disciplinary Authority.



5.This Court paid its anxious consideration to the rival submissions made and also perused the materials placed on record.

6.It is seen that the petitioner was removed from service on certain allegations made by the third respondent. The third respondent, who is the complainant in this case and he only made allegations as against the petitioner that he mixed water in the liquor bottles. However, the third respondent who set law in motion has himself acted upon as a Disciplinary Authority and has taken a decision. More so, based on the complaint of the third respondent only, a criminal case was registered in Crime No.199 of 2017 as against the petitioner and the same was quashed by this Court in Crl.O.P(MD) No.6252 of 2021, dated 28.06.2021. In view of Circular No.21 of 2017, dated 10.10.2017, the third respondent ought not to have conducted the enquiry, since he only lodged the complaint. For better appreciation, the relevant portion from the aforesaid circular is extracted as under:-

"Therefore, it is hereby instructed that in the event of a District Manager or Senior Regional Manager, as the case may be, who has formed part of the inspection team which detected irregularities /misconducts against the shop personnel, the same individual District Manager or Senior Regional Manager, as the case may be, may place the shop person under suspension pending enquiry, frame charges and appoint a third party Enquiry Officer from the Panel. After receipt of the findings of the Enquiry Officer, if the very same individual disciplinary authority happens to be continuing in the same station, he shall refer the matter to his higher authority, who is having jurisdiction over the area, for continuance of the disciplinary proceedings and for passing final orders.

The above instructions shall be strictly adhered to by all the Senior Regional Managers and District Managers without any deviation. The receipt of this circular shall be acknowledged by return of post."

7.The third respondent deliberately violated the Circular dated 10.10.2017, more over the Criminal case registered against the petitioner was already quashed by this Court.

8. In view of the foregoing reasons, this Court is inclined to allow the writ petition. The impugned orders are set aside. The respondents are directed to reinstate the petitioner into service with continuity of service and the petitioner shall be paid with all monetary benefits.



9. With the above direction, this writ petition is allowed.
No costs.

Sd/-

Assistant Registrar (AD-I)

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Sub Assistant Registrar(CS)

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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

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3. The District Manager / Deputy Collector,
Tamil Nadu State Marketing Corporation Ltd,
Thanjavur District.

+1 CC to Mr.H.ARUMUGAM, Advocate (SR-2705[F] dated 27/01/2022)

+1 CC to M/s.S.KUMAR, Advocate (SR-2506[F] dated 25/01/2022)

W.P(MD) No.14909 of 2020
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NSN(CO)
KB(18.03.2022) 4P 6C