



W.P(MD)Nos.25250 & 24756 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.11.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)Nos.25250 & 24756 of 2022

and

W.M.P(MD)Nos.19343 & 18843 of 2022

W.P(MD)No.24756 of 2022:

T.Selvakumar

... Petitioner

Vs

- 1.The Managing Director,
Tamil Nadu State Marketing
Corporation Limited (TASMAC),
CMDA Tower – II, 4th Floor,
Egmore,
Chennai – 600 008.
- 2.The Senior Regional Manager,
Tamil Nadu State Marketing
Corporation Limited (TASMAC),
Plot No: 100,
Anna Nagar,
Madurai – 20.
- 3.The District Manager,
Tamil Nadu State Marketing
Corporation Limited (TASMAC),
TASMAC IMFS DEPOT,



W.P(MD)Nos.25250 & 24756of 2022

Bethal Nagar,
Chenbagaramanputhur,
Aralvaimozhi,
Kanyakumari District.

4.N.Vijaya Shanmugam

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records pertaining to the impugned order passed by the third respondent herein vide Na.Ka.No. A1/7446/2022 dated 14.10.2022 as against the petitioner and quash the same as illegal.

For Petitioner : Mr.K.Govindarajan
for B.Brijesh Kishore

For Respondents : Mr.S.Sivanesan
Standing Counsel for R.1 to R.3

W.P(MD)No.25250 of 2022:

1.S.Barnabas
2.A.Jeeva Adaikkalam
3.G.Deva Thas
4.P.Vennu

... Petitioners

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For Petitioners : Mr.K.Govindarajan
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For Respondents : Mr.S.Sivanesan
Standing Counsel for R.1 to R.3

COMMON ORDER

Heard the learned counsel on either side.



W.P(MD)Nos.25250 & 24756of 2022

2. The writ petitioners are working as salesman / supervisor in TASMAL Shop No.4844 located in Thiruvattar Post, Kanyakumari District. By the impugned order dated 14.10.2022 they were suspended from service. Questioning the same, they filed these writ petitions.

3. The learned counsel appearing for the petitioners reiterated all the contentions set out in the affidavits filed in support of the writ petitions and called upon this Court to set aside the impugned orders and direct their reinstatements.

4. The respondents filed counter affidavit. The District Manager who issued suspension order has been arrayed in person and he has also offered his response. The learned Standing Counsel submitted that since improper bulk sales came to be reported in media, the authority could not have ignored the same and rightly issued the suspension orders. He would add that an order of suspension cannot be construed as punishment. Whenever an allegation of misconduct is made, it is the duty of the employer to enquire into the same. Pending enquiry, the employee has to be kept away from service. It is not as if the petitioners are under prolonged suspension. The order itself was passed only a month back. According to him, the impugned order does not call for interference. In the counter affidavit, the allegations made against the fourth



W.P(MD)Nos.25250 & 24756of 2022

respondent have been strongly denied. The learned Standing Counsel remarked that in order to escape from the consequences of their action in having made improper sales, the petitioners are taking umbrage behind such allegations. He pressed for dismissal for writ petitions.

5. I carefully considered the rival contentions and went through the materials on record.

6. The petitioners as employees in the liquor shop run by TASMAL are bound by the Code of Prevention and Detection of Fraudulent Acts in Tamil Nadu State Marketing Corporation Limited – 2014 (the “Code”). Any fraudulent act committed by the employees would invite disciplinary action. The expression “Fraud” has been defined in Clause 2(e) of the Code. If the employee has done any act so as to make wrongful gain for himself or any other entity or causes injury to TASMAL's interest, then it would amount to “Fraud”. In the case on hand, there is no injury to TASMAL. The allegation is that by making improper bulk sales, the petitioners have made wrongful gains for themselves. The impugned action was triggered by telecast of a video taken on the evening of 12.10.2022. From the video, one can see that liquor bottles were sold across the counter and two customers are seen carrying bags containing a number of bottles. The question is whether on this score, the petitioners could



W.P(MD)Nos.25250 & 24756of 2022

have been suspended. Transport and possession of liquor is governed by the provisions of Tamil Nadu Prohibition Act, 1939. The Government of Tamil Nadu has issued G.O(Ms)No.14 Home, Prohibition and Excise (VI) Department dated 09.06.2017 prescribing the quantity that can be in one's possession for personal consumption. The table reads as under:

<u>Liquor</u> (1)	<u>Quantity</u> (in litres) (2)
Indian Made Foreign Spirits.	4.5
Imported Foreign Liquor.	4.5
Beer.	7.8
Wine.	9."

7. It is not the case of the employer that the petitioners sold quantities to a single customer in excess of the limit prescribed in the aforesaid G.O(Ms)No. 14 Home, Prohibition and Excise (VI) Department dated 09.06.2017. In the typedset filed by the respondents, copy of FIR in Crime No.264 of 2022 registered on the file of Thiruvattar Police Station has been enclosed. The case set out therein is that an individual was found in possession of 15 quarter bottles each containing 180 ml. A simple calculation would indicate that this would come to 2.7 litres. This is very much within the permissible limit. While sitting in jurisdiction for handling cases under Section 482 Cr.P.C, I have



W.P(MD)Nos.25250 & 24756of 2022

quashed a large number of FIRs wherever possession of the quantity was within the permissible limit. Of course, a private individual can possess the prescribed quantity only for personal consumption. He or she cannot engage in sale. In the case on hand, the sale across counter alone has taken place. It is not as if the petitioners were found or even alleged to have sold bulk quantities beyond the prescribed limit outside the shop. In any event, if a customer illegally sells liquor purchased from TASMAL outlet, the shop salesman cannot be fastened with liability.

8. What clinches the case in favour of the writ petitioner is the direction given by the District Manager himself. The District Manager, TASMAL, Kanyakumari District had issued tabulated statement which indicates negative growth seen in respect of some shops for the month of September 2022. Shop No.4844 in which the petitioners are working is one of the shops, which witnessed negative growth in the month of September 2022. The District Manager also sent Whatsapp instruction calling upon the Supervisors to appear on 12.10.2022 by 11.00 a.m to explain such shortfall in sales. The clear and categorical instruction of the District Manager was that shops must show good sales and that they must come under the list of shops indicating positive growth. That is the specific averment in the affidavit filed in support of the writ petitions.



W.P(MD)Nos.25250 & 24756of 2022

9. The petitioners, by no stretch of imagination, can be said to have committed any kind of misconduct. Only if any misconduct has been detected, they can be suspended. The impugned order of suspension, on the face of it, is without jurisdiction.

10. Another aspect also seriously disturbs me. Serious allegation has been made against the fourth respondent who was the then District Manager. The petitioner alleged that the District Manager / N.Vijaya Shanmugam demanded illegal gratification from the petitioners and that the petitioners refused and that is why, they have been visited with the impugned suspension order. Of course, the fourth respondent has denied the said allegation. I refrain from going into the said controversy. However, it is beyond dispute that N.Vijaya Shanmugam is figuring as accused in Crime No.6 of 2022 registered on the file of Vigilance and Anti-Corruption, Kanyakumari Detachment. This FIR was registered on 15.10.2022. The specific case of the Vigilance Wing is that N.Vijaya Shanmugam has been collecting what is called in colloquial terms as “Mamool” through one salesman by name Rejin. In fact, N.Vijaya Shanmugam's car was parked near the house of Rejin. Vijaya Shanmugam would come out with an explanation that since there was no parking facility in the hotel in which he was staying, he had parked the vehicle near the house of Rejin. The fact remains that a sum of Rs.1,77,000/- (Rupees One Lakh and



W.P(MD)Nos.25250 & 24756of 2022

Seventy Seven Thousand only) was recovered from the house of Rejin. Rejin would claim that he had borrowed the said amount from private sources by pledging jewels for the purpose of paying his son's College and mess fees. Even though N.Vijaya Shanmugam is figuring as A.1 in a vigilance case (in crime No.6 of 2022), he has been rewarded with transfer to Coimbatore Region. It is relevant to note that N.Vijaya Shanmugam's native place is Udumalpet. Of course, the learned Standing Counsel would claim that he has been reverted to the post of Assistant Manager. The fact remains that a person implicated as A.1 in vigilance case has not been suspended.

11. I quash the impugned order of suspension. These writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

17.11.2022

Index : Yes / No
Internet : Yes/ No
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