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W.P. No. 8173 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.04.2023

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THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 8173 of 2023

P.Vijaya Babu

... Petitioner

-VS-

1. The Government of Tamil Nadu
Rep. by its Secretary
Prohibition and Excise Department
Fort St. George, Chennai - 600 009.
2. The Managing Director
Tamil Nadu State Marketing Corporation
Limited (TASMAC)
Thalamuthu Natarajan Buildings
Egmore Chennai-600 008.
3. The Senior Regional Manager
TASMAC Limited
Anna Salai Chennai-600 002.
4. The District Manager
Tamil Nadu State Marketing Corporation
Limited (TASMAC)
Kancheepuram (South).

...

Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus directing the Respondents,



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particularly, the Managing Director (TASMAC) Thalamuthu Natarajan Building Egmore Chennai-600 008 and the District Manager TASMAC Kancheepuram (South) /the Fourth Respondent herein to consider the representation of the Petitioner dated 11.02.2023 the same relates to revoke the suspension order in Na. Ka. No. 1577 / A1 / 2022 dated 24.01.2023 and consequently direct the Second and Fourth Respondents to reinstate the Petitioner as Salesman in TASMAC Shop No. 4333 Gokulapuram Village Kancheepuram (South) with all attendant benefits to the Petitioner.

For Petitioner : Mr. L.Ramkumar
For Respondents : Mr. S.Rajesh
Government Advocate (for R1)
Mr. K.Balakrishnan
(for R2 to R4)

ORDER

Heard Mr. L.Ramkumar, Learned Counsel appearing for the Petitioner, Mr. S.Rajesh, Learned Government Advocate appearing for the First Respondent, Mr. K.Balakrishnan, Learned Counsel for the Second to Fourth Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner is working as Salesman in Shop No.4333 at Gokulapuram of the Second Respondent, viz., Tamil Nadu State Marketing Corporation



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Limited. According to the Petitioner, on receipt of information that an outsider had been engaged in the said shop for selling liquor, the Petitioner along with certain other employees of that shop had been suspended by proceedings in Na.Ka.No.1577/A1/2022 dated 24.01.2023. The grievance ventilated by the Petitioner is that despite representation dated 11.02.2023 made by him to revoke the said order of suspension, the Second and Fourth Respondents have not taken any action, which has necessitated him to file this Writ Petition.

3. In this context, reference must be made at once to the decision of the Hon'ble Supreme Court of India in ***Ajay Kumar Choudhary -vs- Union of India*** [(2015) 7 SCC 291] where it has been laid down as follows:-

“21. We, therefore, direct that the currency of a suspension order should not extend beyond three months if within this period the memorandum of charges/charge-sheet is not served on the delinquent officer/employee; if the memorandum of charges /charge-sheet is served, a reasoned order must be passed for the extension of the suspension. As in the case in hand, the Government is free to transfer the person concerned to any local or personal contact to any department in any of its offices within or outside he State so as to sever any local or



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personal contact that he may have and which he made misuse for obstructing the investigation against him. The Government may also prohibit him from contacting any person, or handling records and documents till the stage of his having to prepare his defence. We think this will adequately safeguard the universally recognised principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognise that the previous Constitution Benches have been reluctant to quash proceedings on the ground of delay, and to set time-limits to their duration. However, the imposition of a limit on the period of suspension has not been discussed in prior case law, and would not be contrary to the interests of justice. Furthermore, the direction of the Central Vigilance Commission that pending a criminal investigation, departmental proceedings are to be held in abeyance stands superseded in view of the stand adopted by us.”

The Full Bench of this Court in ***P.Kannan -vs- Commissioner of Municipal Administration*** [(2022) 2 CTC 353] has explained the legal position in the



following words:-

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- “(i) *The judgment of the Apex Court in the case of **Ajay Kumar Choudhary -vs- Union of India** [(2015) 7 SCC 291], does not lay down absolute proposition of law that an order of suspension cannot be continued beyond the period of three months if the memorandum of charges/charge-sheet has not been served within three months, or if memorandum of charges/charge-sheet is served without reasoned order of extension.*
- (ii) *The judgment in **Chairman-cum-Managing Director, TANGEDCO -vs- R. Balaji** (Judgment dated 27.8.2021 passed in W.A. No. 68 of 2021), has no reference to the earlier judgments of co-equal strength and is thereby rendered per incuriam.*
- (iii) *The issue of challenge to the order of suspension should be analyzed on the facts of each case, considering the gravity of the charges and the rules applicable.*



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- (iv) *Revocation of suspension with a direction to the employer to post the delinquent in a non-sensitive post cannot be endorsed or directed as a matter of course. It has to be based on the facts of each case and after noticing the reason for the delay in serving the memorandum of charges/charge-sheet.”*

The Government of Tamil Nadu in G.O. Ms. No. 81, Human Resources Department, dated 04.08.2022, after referring to the aforesaid binding decision, has issued a compendium of instructions to be followed for review of suspension pending enquiry into grave charges against Government servants and the directions therein relevant to this case are extracted below:-

“11. The Government, after careful examination, reiterates the guidelines issued in the Government Order second read above with slight modification as follows:-

- (i) *The power of ordering suspension should be exercised carefully and with restraint. Before a suspension order is issued, the authority concerned must be clear in mind that it is necessary. Prolonged suspension means that Government pays a Government Servant without*



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extracting any work from him. In view of the above position, the suspension should not be resorted to unless the concerned authority has considered all the relevant factors and recorded his reasoned conclusion that it is in the public interest to place the Government Servant under suspension.

- (ii) *Where a Government Servant has been suspended on disciplinary proceedings contemplated, such proceedings should be initiated immediately and finalized normally within a period of six months.”*

This would obviously mean that it is incumbent upon the concerned authority to immediately review the suspension of the Petitioner with reference to the said instructions.

4. In such circumstances, the Writ Petition is disposed on the following terms:-

- (i) the concerned authority shall immediately examine the representation dated 11.02.2023 made by the Petitioner including ascertaining as to whether the Petitioner would be entitled for the relief claimed;
- (ii) if it is found that any other details or supporting documents is necessary,



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the deficiencies in that regard shall be informed in writing to the Petitioner requiring the same to be furnished within a time frame of not less than 15 days for the same;

- (iii) in the event of not being satisfied with the requirements even thereafter, an enquiry shall be conducted affording full opportunity of personal hearing to the Petitioner and all other persons concerned to explain their position in that regard;
- (iv) a reasoned order shall be passed dealing with each of the contentions raised on merits and in accordance with law and the decision taken communicated by 31.08.2023 under written acknowledgment;
- (v) the report of such compliance shall be filed before the Registrar (Judicial) of this Court; and
- (vi) there shall be no order as to costs.

kst

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Index: Yes/No

Neutral Citation: Yes/No

Note: Issue order copy by 26.07.2023.

To



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Prohibition and Excise Department
Fort St. George, Chennai - 600 009.



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Copy to

The Registrar (Judicial),
Madras High Court,
Chennai – 600 104.



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P.D. AUDIKESAVALU, J.

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