



W.P(MD)No.5346 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 18.04.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.5346 of 2023
and
W.M.P.(MD)Nos.5001 and 5002 of 2023

B.Thilagaraj

... Petitioner

Vs.

The District Manager,
Madurai North,
Tamil Nadu State Marketing Corporation Ltd.,
(TASMAC)
Having Office at Ramanathapuram Main Road,
Manalur, Madurai District.

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records pertaining to the impugned order passed by the respondent in Na.Ka.No.322/2020/A1 dated 10.01.2022 and consequent impugned order dated 26.12.2022 and quash the both.

For Petitioner : Mr.R.V.Ramkumar

For Respondent : Mr.H.Arumugam,
Standing Counsel.



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ORDER

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Heard the learned counsel for the writ petitioner and the learned standing counsel for the corporation.

2.The petitioner was appointed as Salesman in the respondent corporation in the year 2003. He was working in Shop No.5213. On 08.03.2020, inspection was conducted and the report of the inspecting officer was that the petitioner had sold the liquor bottles for higher prices and pocketed the difference. On 19.06.2020 an order was passed imposing penalty on the petitioner. Since this order was passed without holding any enquiry, the petitioner successfully challenged the same in W.P.(MD)No.14468 of 2020. Following the order dated 15.09.2020 passed by this Court, the matter was remitted to the file of the respondent to initiate proceedings afresh.

3.Pursuant to the liberty given by this Court, on 12.08.2022, charge memo was issued. It contains as many as eight charges. The sum and substance of the charges is that the petitioner sold the liquor bottles for higher price. The petitioner denied the charges. Enquiry was conducted.



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The enquiry officer came to the conclusion that the charges stood proved.

After serving a copy of the enquiry report, the impugned order dated 10.01.2022 came to be passed directing the petitioner to remit a sum of Rs.11,800/- as fine. Challenging the same, this writ petition came to be filed.

4.The learned counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned order and allow the writ petition as prayed for.

5.The respondents have filed counter affidavit and the learned standing counsel took me through the same. The contentions advanced by the learned standing counsel are two fold. (a) The petitioner after being visited with impugned order, submitted a letter calling upon the employer to grant sufficient time to pay the fine amount. According to the learned standing counsel, the petitioner has waived the right to question the impugned order. (b) The authority followed the due process fully. Following the direction passed by this Court, charge memo was



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issued, the petitioner's explanation was obtained, enquiry was conducted, the enquiry report was served, the petitioner's further representation was also obtained and only thereafter, the impugned order came to be passed. The inspection report completely indicts the petitioner and according to the learned standing counsel, the issue does not call for interference. He pressed for dismissal of the writ petition.

6.The petitioner is after all working as a Salesman in the respondent corporation. When he questions the impugned order on substantive grounds, the employer must defend the case by pointing out that there is some acceptable evidence against the petitioner to sustain the finding of guilt. It is true that the petitioner had given a letter seeking time to make the payment. But such a letter will not operate as estoppel against the petitioner. The writ petitioner can be non-suited by invoking the principle of waiver only if the authority has suffered some prejudice and there has been change in the position of the parties in the meanwhile. Such is not the case here. I, therefore, reject the objection founded on waiver and proceed to examine the case on merits.



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7.The only question that calls for consideration is whether there is some acceptable evidence against the petitioner in support of the charges.

As already noted, the charge against the petitioner is that he sold the liquor bottles for higher price and pocketed the difference. I called upon the learned standing counsel to draw my attention to the proof in support of the charges. I also went through the contents of the enquiry report. It is obvious that the entire finding of the enquiry officer hinges on the inspection report and nothing else. Even the inspecting official had not been examined. I wanted to know if the customer who is alleged to have paid higher price for the liquor bottles was examined. The answer is in the negative. If the inspecting official had been examined, the petitioner would have submitted his cross-examination and probably demonstrated that the finding set out in the inspection report is unsustainable. Because of the non-examination of the inspecting official, the petitioner has suffered grave prejudice. It is well settled that even though the technical rules of evidence law are not applicable to departmental proceedings, the essential feature of principles of natural justice cannot be lost sight of. A document has to be marked only through its maker or author. Only then, the petitioner would be able to demonstrate as to why the report cannot



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be relied upon. If the author of the document is not examined and the document is marked is straightaway, the delinquent would definitely be put to grave disadvantage. I, therefore, hold that non-examination of the inspecting official and marking the inspection report alone vitiates the impugned proceedings.

8. There is yet another aspect of the matter. If on the strength of the inspection report alone the delinquent can be found guilty, then there is no need to even hold enquiry as the inspection report itself is sufficient to knock him down. I, therefore, hold that the impugned proceedings are bad in law. The impugned order is set aside. I do not propose to remand the matter. The employer cannot be given opportunity after opportunity to make good the lacuna.

9. The writ petition is allowed accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

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NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN, J.

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