



W.P(MD)No.14286 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.06.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.14286 of 2023

and

W.M.P.(MD)Nos.12086 & 12088 of 2023

N.Sampath

... Petitioner

Vs.

The Managing Director,
Tamil Nadu State Marketing Corporation Limited,
4th Floor, CMDA Tower-2,
Egmore, Chennai-600008.

... 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 of the respondent in his proceedings in Na.Ka.No.M. 3/1132/2019, dated 23.01.2023 and received by the petitioner on 06.04.2023 and quash the same.

For Petitioner : Mr.N.Balamuralikrishnan

For Respondent : Mr.S.Sivanesan
Standing Counsel



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ORDER

Heard the learned counsel on either side.

2. The petitioner was working as Assistant Manager in the respondent corporation. He has since reached the age of superannuation. He was not allowed to retire. The petitioner was implicated in a vigilance case in the year 2018. DVAC instead of filing of final report chose to recommend departmental action against the petitioner. Thereafter, the impugned charge memo dated 23.01.2023 came to be issued. Challenging the same, the present writ petition has been filed.

3. The learned counsel appearing for the petitioner submitted that the petitioner was found in possession of Rs.37,650/- on 26.10.2018 when there was a surprise inspection by V & AC, Kanyakumari Detachment. Crime No.2 of 2019 was registered. However, DVAC filed closure report and dropped the criminal case. In the said breadth, they had recommended initiation of departmental action against the petitioner. Only pursuant to the said direction, the respondent issued the impugned charge memo. The petitioner's counsel would argue that there has been



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no independent application of mind. It has been held time and again that departmental action can be parallelly conducted during the pendency of the criminal case. The petitioner was not arrested or suspended. The disciplinary authority did not choose to initiate action against the petitioner immediately after his implication in the criminal case. Only because DVAC gave direction, the respondent has chosen to issue the impugned charge memo. According to the learned counsel appearing for the petitioner, the respondent cannot act under dictation. If the respondent has chosen to go-by the dictates of DVAC, there will not be fair enquiry. The learned counsel submitted that the impugned proceedings are clearly vitiated. He wants this Court to quash the charge memo.

4. I am not persuaded by the submission of the learned counsel appearing for the petitioner. It is well settled that vigilance can recommend initiation of departmental action if the investigation officer comes to the conclusion that materials are not sufficient to sustain criminal prosecution. The standard of proof obtaining in the departmental case is lesser compared to that of the criminal case where the proof has to be beyond reasonable doubt. However, in departmental



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proceedings, some evidence is sufficient. The vigilance can very well call upon the employer to take departmental action even while dropping criminal prosecution.

5. I endorse the stand of the learned counsel for the petitioner that the employer cannot be dictated by the prosecuting agency. The employer will have to take an independent decision. Merely because the vigilance has registered a case and subsequently, they have made recommendation, it cannot have any bearing on the departmental proceedings. The case against the petitioner will have to be independently established in the departmental proceedings. The employer has to decide the issue independently uninfluenced by the report of the vigilance. All the contentions and defence of the petitioner are left open.

6. With this observation and clarification, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

16.06.2023

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

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