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W.P.(MD)No.19928 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.01.2023

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THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P.(MD)No.19928 of 2018
and
W.M.P.(MD)No.17714 of 2018

R.Ganesan

... Petitioner

vs.

- 1.Tamilnadu State Marketing Corporation Limited,
represented by its Managing Director,
Head Office,
Thalaimuthu Natarajan Buildings,
Gandhi Irwin Road,
Egmore, Chennai.
- 2.Tamilnadu State Marketing Corporation Limited,
represented by its Senior Regional Manager,
Thiruchirappalli Region,
Thiruchirappalli.



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3. Tamilnadu State Marketing Corporation Limited,
represented by its Deputy Collector/
District Manager,
Thanjavur District, Thanjavur.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records of the 3rd respondent in Na.Ka.No.8016/RV-2/2014, dated 18.04.2015, confirmed in Appeal by the 2nd respondent in Na.Ka.No.2099/15 (oo), dated 12.02.2016 and the order passed by the 1st respondent in Chae.Mu.Na.Ka.No.R1/3849/2016, dated 27.07.2017, to quash the same and consequently, to direct the respondents to reinstate the petitioner back into service as Shop Salesman with continuity of service and all other benefits.

For Petitioner : Mr.V.Karthikeyan
for Mr.N.Balamurali Krishnan
For Respondents : Mr.H.Arumugam

ORDER

This writ petition is filed for issuance of writ of Certiorari, to quash the order dated 18.04.2015 passed by the 3rd respondent, confirmed in Appeal by the



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2nd respondent, dated 12.02.2016 and the order passed by the 1st respondent, dated 27.07.2017, to quash the same and consequently, to direct the respondents to reinstate the petitioner back into service as Shop Salesman with continuity of service and all other benefits.

2. The brief facts of the case are that the petitioner joined as Salesman on 08.01.2004. He was placed under suspension on 08.11.2013 and the charge memo, dated 01.09.2014, was issued containing three articles of charges

3. The contention of the respondents is that an inspection team headed by the 3rd respondent visited Shop No.8016. During the inspection, there was heavy crowd. Since the petitioner did not heed the request of the raiding party, the respondents have initiated disciplinary proceedings and placed the petitioner under suspension. After submitting an explanation to the charge memo, an



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enquiry officer was appointed. The petitioner appeared before the enquiry officer on 28.10.2014. The enquiry officer directed the petitioner to give a statement narrating the inspection and also to indicate what had transpired during the date of inspection. The enquiry officer did not consider the relevant documents nor produced any witness. According to the petitioner, enquiry was conducted for one day only and on that day also no witness was enquired and no documents were marked. None of the procedures contemplated to conduct an enquiry was followed by the enquiry officer.

4. Further, the contention of the petitioner is that the enquiry officer has come to the conclusion that the charges are proved based on the ground that criminal investigation initiated against the petitioner is pending before the Judicial Magistrate. Further, the respondents served the enquiry officer's report without enclosing the 1st page of the said report. Since there are serious violation



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in the enquiry proceedings, the same the present writ petition is filed, challenging the order of dismissal from service.

5. The respondents have filed counter affidavit stating that the charge against the petitioner is serious in nature. The petitioner has mixed water in liquor which is against the rules and regulations prescribed for selling of liquor. Moreover, the petitioner himself has accepted that the enquiry conducted by the enquiry officer is sufficient and it is not necessary to examine or peruse the documents that were submitted before the enquiry officer.

6. The learned Counsel for the respondents submitted that in the charge memo list of witness as well as the list of documents are mentioned. The petitioner has not sought for any documents at all. Moreover, the petitioner has given consent that documents need not be perused and witness need not be



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examined. Therefore, the enquiry conducted by the enquiry officer is in accordance to law. Moreover, the petitioner has not raised any such ground before the appellate authority. Hence, the respondents prayed to dismiss this writ petition.

7. Heard Mr.V.Karthikeyan, learned Counsel appearing for the petitioner and Mr.H.Arumugam, learned Counsel appearing for the respondents and perused the records.

8. The learned Counsel for the respondents submitted that the inspection report, dated 08.11.2013, wherein, it has been stated that some of the bottles were available with opened cap and water boxes were available, hence, it is proved that the petitioner has adulterated the liquor. Moreover, forensic report also confirmed the same. It is an admitted fact that criminal proceeding has been initiated by the



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petitioner and the same is pending.

9. The Learned Counsel for the petitioner submitted that the respondents have not served documents which are listed in the charge memo and hence the enquiry is violative of principles of natural justice and prayed to quash the punishment order and relied on the order passed in W.P.(MD)No.2118 of 2018, dated 13.03.2018 and the relevant portion of the order is extracted hereunder:

“6. However, as rightly pointed out by the learned standing counsel for the respondents, the matter cannot be left as such. Since the allegations made against the petitioner are serious and the enquiry was not conducted properly in the very nature of things, the matter must be remitted to the file of the Disciplinary Authority for holding a fresh enquiry in accordance with law. This submission made by the learned Standing counsel for the respondents is reasonable. The same is accepted as such. Even while quashing the orders impugned in the Writ Petition, it is made clear that the authorities are at liberty to hold enquiry against the petitioner and proceed afresh in accordance with law. It is also made clear that the charge memo issued against the petitioner is not quashed. Since the order of removal is being quashed, the petitioner has to be necessarily reinstated. However, the question of paying back wages will not arise at this stage. It will depend on the outcome of the enquiry to be held against the petitioner and the final orders to be passed by the authorities.”



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On perusing the documents, it is seen that the list of documents relied on by the enquiry officer was not served to the petitioner. None of the documents were served to the petitioner. The claim of the respondents that the petitioner has accepted that documents need not be perused cannot be accepted for a simple reason that the petitioner need not demand the copies of the documents at all. It is the bounded duty of the respondents to serve the documents even if the petitioner is not seeking any documents. Especially, if the documents listed in the charge memo and relied on by the respondents.

10. Therefore, this Court is of the considered opinion that the enquiry was not conducted as mandated in any enquiry proceedings and the same is violative of principles of natural justice. Therefore, the impugned orders are set aside. However, the charge memo is not set aside. The respondents are directed to



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conduct denova enquiry. The enquiry shall be completed within a period of six months from the date of receipt of a copy of this order. The respondents are directed to reinstate the petitioner with immediate effect.

11. As far as the backwages are concerned following the aforesaid order, dated 13.03.2018 passed in W.P.(MD)No.2118 of 2018 this Court is also of the considered opinion that the backwages shall be considered after the outcome of the enquiry.

12. The petitioner submitted that subsistence allowance was not paid from 08.11.2013 to 18.04.2015. The respondents are directed to pay the subsistence allowance for the above said period.

13. Since the respondents are directed to conduct denova enquiry, the



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S.SRIMATHY, J

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