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W.P.No.4978 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2024

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.4978 of 2024

and

W.M.P.Nos. 5466 & 5468 of 2024

Sivaprakasam

.... Petitioner

Vs

1. The Managing Director,
Tamil Nadu State Marketing Corporation Limited,
TASMAC,
CMDA Building,
Egmore, Chennai – 600 018.

2. The Senior Regional Manager,
The Senior Regional Manager Office,
District Collector Office Campus,
Trichy.

3. The District Manager,
Tamil Nadu State Marketing Corporation (TASMAC),
Villupuram District.

.... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order dated 14.02.2024 vide Na.Ka.No.A1/527/2023 and quash the same and consequently directing the respondents to reinstate the petitioner into service along with back wages within the time stipulated by this Court.

For Petitioner

: Mr.S.Paul Muruges



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ORDER

This Writ Petition has been filed challenging the order dated 14.02.2024 passed by the third respondent, thereby suspended the petitioner from service.

2. Heard the learned counsel appearing for the petitioner and perused the materials available on record.

3. The petitioner was appointed as a Salesman in the third respondent on 28.11.2003 at Shop No.11442 situated at Thiyakal, Villupuram District. While being so, the officials inspected the petitioner's shop and found that the petitioner was selling liquor bottle in excess of the maximum retail price fixed for the liquor bottle. On the said allegation, the petitioner was suspended from service with effect from 14.02.2024. The petitioner raised a ground that as per the Code of Prevention and Detection of Fraudulent Acts in Tamil Nadu State Marketing Corporation Limited – 2014 (hereinafter referred as the “Code”) and as per the Circular dated 21.01.2019, if the Salesman commits this fault for the first time, he would be punished only with a fine, whereas, though the petitioner has committed this fault for the first time, he was suspended from service. The learned counsel would also



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add that before passing the order of suspension, no enquiry was conducted and no opportunity of hearing was accorded to the petitioner and as such, it is a clear violation of principles of natural justice.

4. He also drew the attention of this Court to the Code in Clause VI (n), which says that before imposing any punishment, consequent upon the charges proved at the enquiry, the person shall be given an opportunity to make his representation against the punishment proposed to be imposed on him. He also pointed out that Clause VI (d) says that if the charges are grave and if it is found that the continuance of the employee in service is injurious to the interest of fair investigation/disciplinary proceedings, he may be suspended pending enquiry. In such event, he shall be paid subsistence allowance as per Rules.

5. As far as the petitioner is concerned, he had sold the liquor bottles with an excess amount of Rs.10/-. Therefore, it is not grave and his employment is not injurious to the fair investigation/disciplinary proceedings. In support of his contention, he relied upon the Judgement of this Court in W.P.No.6296 of 2020 etc., batch, dated 22.12.2020, held



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that when a person does not admit the charges or the Management is not satisfied with the explanation offered by the person and the charges are sufficiently grave and serious to warrant a punishment other than censure, reprimand or warning, the Management shall conduct a domestic enquiry by any person of its choice.

6. The materials available on record shows that the petitioner had sold the liquor bottle with excess of charge of Rs.10/- than the maximum retail price. Therefore, the petitioner was suspended from service. The Code relied upon by the petitioner in Clause VI(n) pertains to before imposing punishment, the person shall be given an opportunity of hearing to make his representation against the punishment proposed to be imposed on him. Therefore, the order of suspension is first limb of disciplinary proceedings. After the order of suspension, the petitioner will be served with a charge memo, if any and an opportunity will be given to submit his explanation for the charge memo. If not satisfied with the explanation submitted by the petitioner, the Disciplinary Authority may order for domestic enquiry. Therefore, the order of suspension cannot be termed as final end of punishment. The Judgment relied upon by the learned counsel for the petitioner pertains to the final order of



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punishment. Therefore, it is not applicable to the case on hand.

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7. Hence, this Court finds no infirmity or illegality in the order of suspension passed by the third respondent on 14.02.2024. Thus, the writ petition is devoid of merits and is liable to be dismissed.

8. Accordingly, this Writ Petition stands dismissed. However, the respondents are directed to complete the disciplinary proceedings by imposing fine or other punishment within a period of twelve weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed. No costs.

27.02.2024

Index : Yes/No
Neutral citation : Yes/No
Speaking/Non Speaking order
Lpp

G.K.ILANTHIRAIYAN, J.

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