



WP.(MD).No.3054 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 06.03.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.3054 of 2024

and

W.M.P.(MD)Nos.3033 and 3034 of 2024

1.D.Pandiyan
2.K.Ganesan

... Petitioners

Vs.

1.The Senior Regional Manager,
The Senior Regional Manager office,
Tamil Nadu State Marketing Corporation (TASMAC),
Trichy District.

2.The District Manager,
Tamil Nadu State Marketing Corporation (TASMAC),
Trichy District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order issued by the second respondent vide Na.Ka.No.C.V-2/00043/2024 dated 01.02.2024 and quash the same and consequently directing the respondents to reinstate the petitioners into service along with backwages.

For Petitioners	: Mr.K.P.S.Palanivel Rajan, Senior Counsel
	For Mr.K.Rajesh
For Respondents	: Mr.S.Sivanesan Standing Counsel



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ORDER

This Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order issued by the second respondent vide Na.Ka.No.C.V-2/00043/2024 dated 01.02.2024 and to direct the respondents to reinstate the petitioners into service along with backwages.

2.The brief facts which are necessary for the disposal of this Writ Petition is as follows:-

(i)The first petitioner was initially appointed as a Supervisor by the second respondent vide proceedings dated 04.12.2023 at TASMACH Shop No.10378. Presently he is working at Shop No. 10380 situated at Trichy District. The second petitioner was appointed as a Salesman by the second respondent vide proceedings dated 04.12.2003 and posted as a Salesman at Shop No.10284. Having worked at various shops, now the second petitioner is working at Shop No.10380 along with the first petitioner.

(ii)While so, one person named Logeswaran and others were



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involved in illegal transportation of liquor bottles from one place to another selling those liquor bottles at higher prices and got enriched more fully by transporting the same through Cars. In such circumstances, on 30.01.2024 at about 10.30 p.m., when the said Logeswaran and other persons were carrying the liquor bottles of huge quantity of about 1320 bottles in a TATA Sumo Gold bearing registration No.TN-50-V-9155, which proceeded from Mullaikudi Village to Koodalnanal, the Sub Inspector of Police, Tirukattupatti Police Station, Thanjavur District and other police Officials intercepted the said car and on checking the same, recovered 1320 bottles of liquor. After enquiry, a criminal case was registered as against them and on the basis of the confession given by the said Logeswaran, that those bottles were purchased from the liquor shop situated at Mangavanam, Trichy District. The Superintendent of Police had sent a communication to the second respondent informing about the illegal transportation of the liquor bottles. Based on the said communication, the second respondent without conducting any enquiry or giving any opportunities to the petitioners, suspended the petitioners mechanically vide proceedings dated 01.02.2024. Challenging the same, this Writ Petition came to be filed.



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3.The learned Senior Counsel appearing for the petitioners submitted that the impugned order of suspension is issued in violation of the principles of natural justice without affording the petitioners with opportunities of hearing. He contended that the first respondent without issuing any charge memo or conducting any enquiry issued the impugned punishment of suspension from service and the same is certainly a violation of principles of natural justice. He further submitted that the well established procedures existing for punishing any employee working in the TASMAC warrants disciplinary proceedings by giving a show cause notice. If any violation of discharge of duties of any employee is noticed, calling for the explanation and if not satisfied, to conduct enquiry and based on enquiry report, thereafter any punishment shall be imposed as per provisions under the TASMAC Code Rule 7(b)(iv) of Prevention and detection of fraudulent Acts in Tamil nadu State Marketing Corporation Limited, 2014. The suspension from service is a punishment as per the aforesaid Code. The petitioners concerned are subjected to punishments straightaway without conducting any enquiry violating the Corporation's own Rules by the respondents.



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4.He further submitted that no evidence whatsoever to prove that the petitioners have sold such liquor bottles to the said Logeswaran or his men from the petitioners' shop No.10380. In the absence of such evidence, the impugned order of suspension is liable to be set aside.

5.Relying upon Section 6(d) of the Code of Prevention and Detection of Fraudulent Act in Tamil Nadu State Marketing Corporation (TASMAC) 2014, herein after to be mentioned as Code, the learned Senior counsel submitted that the petitioners were suspended vide impugned order dated 01.02.2024 only under the provisions of the code. However, the respondents are entitled to keep the person concerned be informed in writing of the alleged fraud giving necessary details to enable him to understand the fraud alleged against him and he should be given an opportunity to explain the charges levelled as against him. However, the mandates of Section 6(b) of the Code has been given a complete go-by by the respondent authorities and in view of the same, the impugned suspension should necessarily be quashed.



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6.He further drew my attention to Section 7(b)(I)(IV) and submitted that any TASMALC employee for misconduct proved or admitted by him depending upon the gravity of the misconduct proved or admitted may be inflicted with certain punishments categorized in Section 7(b) and suspension from service as punishment is one of the punishment contemplated under the Code. In view of the same, the suspension which is inflicted on the petitioners as punishment without giving them an opportunity of hearing as mandated under Section of the Code is *per se* illegal and the impugned suspension order is liable to be quashed and on that basis, pressed for allowing the Writ Petition.

7.Per contra the second respondent has filed a counter and the learned Standing Counsel appearing for the respondents submitted that the Superintendent of Police, Thanjavur addressed a communication to TASMALC vide proceedings dated 31.01.2024 informing the case in Crime No.66 of 2024 registered by Thirukattupalli Police station on 30.01.2024 and elaborated the details of confession obtained from the accused of the aforesaid Crime and requested for suitable action to be taken to prevent tragedies involving spurious liquor and illegal sale of liquor by such



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parties. Only on the said communication, the respondent office immediately issued suspension orders to the petitioners, pending investigation into the said communication regarding the sale of liquor in bulk vide proceedings dated 01.02.2024, suspending both the petitioners due to the suspected involvement in the Crime. He further submitted that TASMAC is now in the process of issuing charge memos to the petitioners for proceeding with the enquiry. He further contended that the suspension is inevitable in cases where there is strong *prima facie* case against the delinquent employee and the allegations involving moral turpitude, grave misconduct or indiscipline or in case there is a strong prima facie case against him, suspension pending enquiry is not something unheard of. On that basis, he pressed for dismissal of the Writ Petition.

8.Heard the learned Senior Counsel appearing for the petitioners, the learned Standing counsel appearing for the respondents and carefully perused the entire materials available on record.



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9.As a consequence to the registration of FIR in Crime No.66 of 2024 on the file of Thirukattupalli Police Station, pursuant to the seizure of 1320 bottles of brandy from a group of people illegally transporting the same with an intention to sell at higher price and on the basis of the confession obtained from the accused of the aforesaid Crime, the Superintendent of Police, Thanjavur vide communication dated 31.01.2024 had informed about the said case and confession requesting suitable action to be taken to prevent tragedies involving spurious liquor and illegal sale of liquor to the second respondent. Following which, the impugned order of suspension came to be issued by the second respondent as against the petitioners on 01.02.2024. Challenging the same, this Writ Petition came to be filed.

10.The investigation procedure contemplated under Section 6(b) of the Code is extracted herein.

“6.(b)The person concerned shall be informed in writing of the alleged fraud giving necessary details to enable him to understand the fraud alleged against him and he should be given an opportunity to explain the charges levelled against him.”



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11.The learned Senior Counsel appearing for the petitioners submitted that unless and until the employee concerned is informed in writing of the alleged fraud giving necessary details to enable him to understand the fraud alleged against him and unless and until he was given with an opportunity to explain the charges levelled against him, the punishment contemplated Clause 7(b) of the Code shall not be inflicted on the petitioners and such an arbitrary exercise of power by the second respondent should go. Contending that only if the charges are grave, an employee could be suspended pending enquiry as contemplated under Clause 6(d) and in this case, the charges have not been framed by the Department as against the employees and even before framing of charges as against the employees subjecting them to suspension is *per se* illegal.

12.However, the second respondent has initiated action against the petitioners only on receipt of a concrete information from the Superintendent of Police, Thanjavur vide communication dated 31.01.2024 elaborating the confession obtained from the prime accused namely Logeswaran @ Logeswaran S/o.



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Anbucheliyan, in FIR in Crime No.66 of 2024 of Thirukattupalli Police Station on 30.01.2024, wherein he had admitted purchasing liquor bottles in bulk from TASMAL shop No.10380 with an intention to sell the same at higher price. The impugned order of suspension was not issued against the petitioners on surmises or conjectures but on a concrete information from a responsible Superintendent of Police Thanjavur vide his communication dated 31.01.2024. In terms of Clause 2(e) of the Code, fraud includes the wrongful and willful acts of the employees with intend to cause wrongful gain to self or to any other entity. The said definition of 'fraud' would certainly cover the information received from the Superintendent of Police, Thanjavur as against the employees of shop No.10380. The information received would have serious implications and impact in the Society and hence, necessarily the petitioner's were immediately put on suspension vide the impugned proceedings dated 01.02.2024. The respondents have confirmed that the TASMAL is in the process of issuing charge memo to the petitioners to proceed with the enquiry and pursuant to the same, the impugned suspension order has been passed.



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13.The power to suspend would also include the power to suspend pending enquiry as an interim measure. The suspension pending departmental enquiry in a disciplinary matter is within the meaning of Article 314. Hence, on general principles, the authority entitled to appoint a public servant would be entitled to suspend him pending departmental enquiry into his conduct which may eventually result in departmental enquiry against him. In this case, it is duly admitted by the petitioners that they were appointed by the second respondent and hence, the impugned suspension order issued pending departmental enquiry as asserted by the respondents in their counter affidavit cannot be termed illegal. The power to suspend pending enquiry is inherent to employer and the consequences of such pending enquiry is such the employee is entitled to subsistence allowance.

14.The allegations as against the petitioners is based on the information of the Superintendent of Police, Thanjavur vide his official communication dated 31.01.2024. Though the learned Senior Counsel for the petitioner relied upon the order passed by this Court in W.P(MD)No.10355 of 2020 dated 18.12.2020, I have no hesitation to observe that the said case is not applicable to the



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facts and circumstances of this case. Though the Code under the head Disciplinary action under Clause 7(b)(iv) contemplates the punishments 'suspension from service as punishment'. I can clearly distinguish that the impugned order of punishment is not inflicted as a measure of punishment on the petitioners. On the other hand this is a clear case of suspension pending enquiry against the petitioners. Since an enquiry into grave charges is under contemplation as against the petitioners, placing them under suspension pending enquiry cannot be eschewed.

15. In view of the same, this Court hereby direct the second respondent to issue charge memo against the petitioners in this regard forthwith within a period of one week from the date of receipt of copy of this order and proceed with the departmental enquiry by appointing an Enquiry Officer as contemplated under Code after giving full opportunity to the petitioners as contemplated under the Code and pass appropriate order within a period of six weeks thereafter. It is made clear that the petitioners are entitled to subsistence allowance till then. Accordingly, there is no merits in the case of the petitioners.



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16.In view of the above, this Writ Petition stands dismissed.

There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

06.03.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
Mrn

To

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Trichy District.
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L.VICTORIA GOWRI, J.

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