BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.03.2024

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).Nos.4819, 4820, 4900, 4938, 5021, 5131, 5241 to 5248, 5399, 5515 to 5517, 5673, 5811, 6289, 6611, 6617, 6622, 6756, 6786, 6807 and 6939 of 2024
and WMP(MD) Nos.4621, 4627, 4709, 4731, 4732, 4802, 4909, 5025, 5026, 5027, 5030, 5031, 5032, 5034, 5037, 5163, 5249, 5250, 5251, 5363, 5365, 5483, 5485, 5889, 5890, 6160, 6162, 6225, 6168, 6180, 6273, 6303, 6325, 6461 and 6462 of 2024

In WP(MD) No.4819 of 2024:

S.M.Srinivasagam

... Petitioner

Vs

1. The Managing Director,
   Tamilnadu State Marketing Corporation Limited,
   4th Floor, CMDA Building Tower II,
   Ganthi Irwin Bride Road,
   Egmore, Chennai – 600 008.

2. The Senior Regional Manager,
   Tamilnadu State Marketing Corporation Limited,
   No.100, Anna Nagar, Madurai - 20.

3. The District Manager,
   Tamilnadu State Marketing Corporation Limited,
   TASMAC, Sivagangai District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned suspension order issued by the 3rd respondent, dated 21.02.2024 vide Na.Ka.No. A1/269/2024 and quash the same and consequently directing the respondents to reinstate the petitioner into service along with backwages within the time stipulated by this Court.

For Petitioner : Mr. K.Rajesh

For Respondents : Mr.H.Arumugam
Standing Counsel

COMMON ORDER

The issue involved in all the Writ Petitions is one and the same and therefore, they are heard together and disposed of by way of this common order.

2.All the petitioners in this batch of writ petitions are either Salesmen or Supervisors working in various TASMAC shops. During the month of February, 2024, a Special Squad from Madurai had conducted a surprise raid in the shops, wherein, the petitioners are working. During such inspection, the said Squad noticed widespread irregularities in the conduct of the administration of all the shops manned by the petitioners herein. The petitioners are found selling liquor bottles by excess price than that has been fixed as MRP (maximum retail price) in the said liquor bottles. Based on such raid and occurrence, the Special Squad has submitted separate report with respect to the irregularities/illegalities noted in each and every shop, wherein, the petitioners are working and submitted the same to the third respondent on various dates. Based on the said report with immediate effect, the third respondent vide impugned proceedings suspended the petitioners from service on various dates. Challenging the same and seeking reinstatement back to the service, all these writ petitions came to be filed.

3.Heard the learned counsels for the petitioners and the learned Standing Counsel for the respondents and carefully perused the materials available on record.

4.The contention of the petitioners is that the impugned order of suspension came to be issued without issuing any charge memo or conducting any enquiry. Few of the petitioners, who are working as Supervisors claimed that at the time of inspection after recording in the Movement Register maintained in their respective TASMAC shops, they have left for lunch / dinner or to the bank to deposit the sale amount of the TASMAC shop. Those Supervisors claimed that they were unaware as to what transpired in the shop during their absence, when the alleged raid was conducted by the Squad. It was further claimed by the petitioners that there is a well established procedure existing for punishing any employee working in the TASMAC and the same could be commenced only by issuance of a show cause notice, if any violation in discharge of duties of any employee is noticed, calling for the explanation, if not satisfied, to conduct enquiry and based on the enquiry report only any punishment can be imposed that too, as per the provisions of Clause 6(b) of the Code of Prevention and Detection of Fraudulent Acts in Tamil Nadu State Marketing Corporation Limited, 2014 (hereinafter shortly referred to as 'the Code'). Without issuing any charge memo or calling for their explanation straight away each and every one of them have been suspended from service, which is against the provisions of the TASMAC Code. Clause 7(b) of the Code provides for suspension from service as punishment and hence, infliction of punishment on the employees without appropriate enquiry and without putting them on notice is per se illegal and on that basis, all the petitioners sought for quashing the impugned orders of suspension and allowing the writ petition directing the respondents to reinstate them back into service.

5.For the purpose of convenience the details of the various petitioners are extracted hereunder in the following tabulation.

S.No.	WP(MD) No. and name	Designation of petitioner & Shop number	Remarks	Date of suspension	Date of impugned order
1	5131 of 2024 R. Suresh	Supervisor, 5134	While the petitioner was working asSupervisor in Shop No. 5134, the Inspection Team Headed by District Manager, TASMAC, Virudhunagar conducted surprise inspection on 13-02-2024 and found that the Salesman Chellapandi was selling the "Spiel Beer 650 ml" bottle for Rs.190/- while Maximum Retail Price was Rs. 180/- and submitted the report.	7/18/2023	21.02.2024 Na.Ka. No. 191/2024/A1
2	5673 of 2024 S. Selvakumar	Supervisor, 4908	while the petitioner was working as Supervisor in Shop No.4908, the Inspection Team Headed byDistrict Manager, TASMAC, Erode conducted surprise inspection on12-02-2024 and found that the Salesman Duraisamy was selling the"Old Monk Premium XXX Rum 180 ml" bottle for Rs.210/- whileMaximum Retail Price wasRs. 200/- and submitted the report.	7/18/2023	21.02.2024 Na.Ka.C.V.No. 2/239/2024
3	4938 of 2024 K. Ponmuthumari	Supervisor, 5413	while the petitioner was working as Supervisor in Shop No. 5413, the Inspection Team Headed by 2nd respondent conducted surprise inspection on 13-02-2024 and found that the Salesman Tulasirajan was selling the "King Fisher Strong Beer 650 ml" bottle for Rs.180/- while Maximum Retail Price was Rs. 170/- and submitted the report.	7/18/2023	21.02.2024 Na.Ka.No. 191/2024/A1

4	5021 of 2024 K. Lakshmanar	Supervisor, 6805	The petitioner was found selling Amstel Strong Beer 650 ml Bottle at Rs.190/- when its MRP was Rs. 180/- as per TASMAC rate chart. However, the said Govindarajan was selling the said liquor bottle at the rate of Rs.190/- i.e. an excess of Rs.10/- per bottle.	7/18/2023	21.02.2024 Na.Ka.No. A1/6805/2024
5	5248 of 2024 M.Varghees Alwin Raj	Supervisor, 4807	The petitioner was found selling Diamond Rum 375 ml Bottle at Rs. 310/- when its MRP was Rs. 290/- as per TASMAC rate chart. The MRP was fixed atRs. 280/- and under the Buyback Scheme to facilitate return of empty liquor bottles, an additional Rs. 10/- was charged to the said bottle making the totalsale price at Rs. 290/ -. Any person who returns the empty liquor bottle will be paid Rs. 10/- back for each bottle. However, the petitioner was selling the said liquor bottle at the rate of Rs. 310/- i.e. an excess of Rs. 20/per bottle.	7/18/2023	21.02.2024 Na.Ka.No.A1/1 18/2024
6	4900 of 2024 K. Sasikumar	Salesman, 4807	The petitioner was found selling Diamond Rum 375 ml Bottle at Rs. 310/- when its MRP was Rs. 290/- as per TASMAC rate chart. The MRP was fixed atRs. 280/- and under the Buyback Scheme to facilitate return of empty liquor bottles, an additional Rs. 10/- was charged to the said bottle making the totalsale price at Rs. 290/ -. Any person who returns the empty liquor bottle will peticiones be paid Rs. 10/- back for each bottle. However, the petitioner was selling the said liquor bottle at the rate of Rs. 310/- i.e. an excess of Rs. 20/per bottle.	7/18/2023	15.02.2024 Na.Ka.No.A1/1 18/2024

7	5244 of 2024 A. Pandi	Supervisor, 8521	The petitioner was found selling Diamond Rum 375 ml Bottle at Rs. 310/- when its MRP was Rs. 290/- as per TASMAC rate chart. The MRP was fixed at Rs. 280/- and under the Buyback Scheme to facilitate return of empty liquor bottles, an additional Rs. 10/- was charged to the said bottle making the total sale price at Rs. 290/ -. Any person who returns the empty liquor bottle will be paid Rs.10/- back for each bottle. However, the Petitioner was selling the said liquor bottle at the rate Rs. 310/- i.e. an excess of Rs. 20/- per bottle.	7/18/2023	21.02.2024 Na.Ka.No. 155/2023/A1
8	5241 of 2024 A.Loganathan	Supervisor, 8543	The petitioner was selling liquor bottles over and above the MRP price. The said Katturaja was selling MGM No. 1 VSOP Brandy of 375 ml. bottles at Rs. 360/ -. The MRP was fixed at Rs. 340/- and under the Buyback Scheme to facilitate return of empty liquor bottles, an additional Rs. 10/-was charged to the said bottle making the total sale price at Rs. 350/-. Any person who returns the empty liquor bottle will be paid Rs. 10/- back for each bottle. The said Shop had been found selling liquor bottles at an excess of Rs. 10/- per bottle.	7/18/2023	21.02.2024 Na.Ka.No. 155/2023/A1
9	5242 of 2024 R.Ramadoss	Supervisor, 8567	The petitioner was found selling Kingfisher Strong Beer 650 ml priced at MRP of Rs. 170/- at the rate of Rs. 180/ -.	7/18/2023	21.02.2024 Na.Ka.No. 155/2023/A1
10	5243 of 2024 D.Sasikumar	Supervisor, 8617	The petitioner was found selling Black Pearl Brandy 350 ml priced at MRP of 290/- at the rate of @300/ -. The MRP was fixed at Rs. 280/- and under the Buyback Scheme to facilitate return of empty liquor bottles, an additional @ Rs. 10/- was charged to the said bottle making the total sale price at Rs. 290/ -. Any person who returns the empty liquor bottle will be paid Rs. 10/- back for each bottle. The said Shop had been found selling liquor bottles at an excess of Rs.10/- per bottle.	7/18/2023	21.02.2024 Na.Ka.No. 155/2023/A1

11	6939 of 2024 C.Kathiravan	Salesman, 8160	Collecting extra ? 10/- against fixed price	2/15/2023	15.02.2024 Na.Ka.No. 484/A-1/20204
12	5247 of 2024 N.Subramanian	Supervisor, 5287	selling liquor with Rs.10/- as margin	21-02.2024	21.02.2024 Na.Ka.No. 0416/2024/A1
13	5245 of 2024 P.S. Murugan	Supervisor, 3166	The petitioner failed to supervise the sale of liquor with margin by salesman.	2/21/2024	21.02.2024 Na.Ka.No. 006/2022/A2
14	6786 of 2024 T. Muthukrishnan	Supervisor, 7806	The petitioner was found selling No. 1 Mc Dowell's Br 375 ml priced at MRP of 340/- at the rate of 350/ -.	2/15/2024	15.02.2024 Na.Ka.No. 484/A-1/2024
15	6807 of 2024 K.Senthil	Supervisor, 8160	The petitioner was found selling No. 1 Mc Dowell's Br 375 ml priced at MRP of 340/- at the rate of 350/ -.	2/15/2024	15-02-2024 Na.Ka.No. 484/A-1/2024
16	5246 of 2024 R. Sakthi Mohan	Supervisor, 5569	failed to supervise the sale of liquor with margin of Rs. 10/- by salesman	2/21/2024	21.02.2024 Na.Ka.No. 0417/2024/A1
17	5515 of 2024 M. Ganeshkumar	Sales Supervisor, 7881	The petitioner was found selling British Empire premium super strong beer 650 ml priced at MRP of 170/- at the rate of 180/ -	3/13/2024	15-02-2024 Na.Ka.No. 484/A-1/2024
18	5516 of 2024 S. Prabakar	Sales Supervisor, 7881	The petitioner was found selling British Empire premium super strong beer 650 ml priced at MRP of 170/- at the rate of 180/ -	2/15/2024	15-02-2024 Na.Ka.No. 484/A-1/2024
19	5517 of 2024 K. Kaliyamoorthy	Supervisor, 7881	The petitioner was found selling British Empire premium super strong beer 650 ml priced at MRP of 170/- at the rate of 180/ -	3/13/2024	15-02-2024 Na.Ka.No. 484/A-1/2024
20	6622 of 2024 A. Jeya Kandan	Supervisor, 7806	The petitioner was found selling No. 1 Mc Dowell's Br 375 ml priced at MRP of 340/- at the rate of 350/ -.	2/15/2024	15-02-2024 Na.Ka.No. 484/A-1/2024
21	6617 of 2024 G. Chelladurai	Salesman, 7806	The petitioner was found selling No. 1 Mc Dowell's Br 375 ml priced at MRP of 340/- at the rate of 350/ -.	2/15/2024	15-02-2024 Na.Ka.No. 484/A-1/2024
22	6611 of 2024 Gopalakrishnan	Supervisor, 8160	The petitioner was found selling No. 1 Mc Dowell's Br 375 ml priced at MRP of 340/- at the rate of 350/ -.	2/15/2024	15-02-2024 Na.Ka.No. 484/A-1/2024
23	5811 of 2024 G. Senthil Kumar	Salesman, 11887	Collecting extra ? 10/- against MRP price	2/15/2024	15-02-2024 Na.Ka.No.A1/1 047/2024
24	6289 of 2024 Ilayaraja	Salesman, 4923	The petitioner was found selling liquor bottles excessively @ Rs. 5/- and Rs.8/-	2/21/2024	21-02-2024 Na.Ka.C.V.No. 2/261/2024

25	5399 of 2024 C. Murugan	Salesman, 3166	Collecting extra ?10/- against MRP price	2/14/2024	14-02-2024 Na.Ka.No. 006/2021/A-2
26	6756 of 2024 R. Raghunathan	Supervisor, 8160	The petitioner was found selling No. 1 Mc Dowell's Br 375 ml priced at MRP of 340/- at the rate of 350/ -.	2/15/2024	15-02-2024 Na.Ka.No. 484/A-1/2024
27	4819 of 2024 S.M. Srinivasagam	Supervisor, 7525	Failed to supervise the sale of liquor with margin of Rs. 10/- by salesman	2/21/2024	21-02-2024 Na.Ka.No.A1/ 269/2024
28	4820 of 2024 S.Sathik Batcha	Supervisor, 7556	Failed to supervise the sale of liquor with margin of Rs. 10/- by salesman	2/21/2024	21-02-2024 Na.Ka.No.A1/ 269/2024

6.The third respondent has filed counter in almost each of the writ petitions. The learned Standing Counsel for the respondent corporation submitted that the various shops manned by the petitioners were subjected to surprise inspection on various dates during February, 2024 and it was found that in all the shops liquor has been sold in violation of MRP, that is, maximum retail price and on the irregularities identified the inspection team submitted a report. The said conduct of the petitioners is against the ethics and Code of conduct of the employees and it has diminished the name, interest and goodwill of the TASMAC. Hence, based on the said report the said Salesmen / Supervisors were suspended from service pending enquiry.

7.Keeping this type of employees engaged on contract basis when they consciously act against the interest of TASMAC is not good to the interest of the institution. He further submitted as per Clause 6D of the Code, suspension can be ordered pending enquiry if the charges are grave in nature and the continence of the employee in service is injurious to the interest of fair investigation. Hence, the impugned orders of suspension, came to be passed during pendency of the enquiry.

8.The learned Standing Counsel further submitted that, charge memos have been issued in all the cases to the petitioners herein. He further submitted that the petitioners can submit their explanation and the departmental enquiry initiated as against them would be concluded at the earliest and on that basis, pressed for dismissal of the writ petitions.

9.It is brought to the attention of this Court by the learned Standing Counsel for the respondents that, originally the proceedings against the sale in violation of MRP was taken against the shop personnels by imposing fine, transfer to low sale shop and suspension as a last measure for continuous misdeeds. However, this court in W.P(MD) No. 625 of 2023 advised to take stringent action against shop personnel involved in violation of MRP cases. Following the same, a circular, dated 18.07.2023 was issued directing to suspend the shop personnel involving in the case of selling liquor in violation of MRP. Obviously, all the petitioners herein were caught red handed in a surprise inspection conducted by the third respondent for selling liquor at a price more than fixed maximum retail price. Only on the basis of the report submitted by the Inspection Squad, the third respondent passed the impugned orders of suspension as against each and every petitioners. The cry of the petitioners is that they have been suspended without putting them on notice and without giving an opportunity of hearing. That apart, the argument that suspension is also a mode of punishment as provided by the Code and hence, visiting the petitioners with an order of suspension is per se illegal.

10.The precise issue, which has to be decided now in the cases in hand is that whether the third respondent is legally correct in passing the impugned orders of suspension as against the petitioners pending enquiry, without putting them on notice?.

11.This Court in the case of ***R. Anbukarasu versus State of Tamil Nadu and others*** reported in Manu / TN / 0602 / 2002, dated 24.04.2002 has dealt with a similar matter and has held that the Court should not exercise power under Article 226 to revoke suspension order, which has been issued during pendency of departmental enquiry by competent authority, unless the said order is passed by an incompetent authority or the same has been exercised malafide.

12.The Hon'ble Apex Court in the case reported in ***Manu / Supreme Court/0659/1997 in the case of Secretary to Government Vs K.Muniappan***, while considering Rule 17(E1) of Tamil Nadu Civil Services (Classification Control and Appeal) Rules held that, actual pendency of enquiry is not a precondition to suspend an officer. Hence, it is needless to state that an order of suspension can be made even before the actual initiation of a disciplinary proceeding. However, it cannot be ignored that suspension prior to the framing of charges is basically a temporary one and the same may not be for an indefinite duration.

13.In the instant cases, the learned Standing Counsel has submitted that, charge memo has been issued to each and every petitioner herein. A Code to facilitate the development of controls that will aid in the prevention and detection of fraud against Tamil Nadu State Marketing Corporation Limited and to promote consistent organizational behaviour by providing guidelines and assigning responsibility for the development of controls for anti-fraud activities, conduct of investigations on fraud or suspected fraud activities and to prescribe appropriate disciplinary action has been introduced by the Government. The said Code is called as the Code of Prevention and Detection of Fraudulent Acts in Tamil Nadu State Marketing Corporation Limited, 2014.

14.The Clause 2(b) of the Code defines "employee", which includes full-time employees, part-time employees, persons engaged on ad-hoc or temporary or casual or contract basis including employees from TEXCO, individuals on deputation from the Government and other organizations and individuals on probation or under training including ex-employees.

15.Clause 2(e) of the Code defines the word "fraud" as follows:

> *"(e) Fraud" includes wrongful or criminal deception, willful acts, omissions, concealments of fact, abuse of power or any other acts fitted to deceive committed by a Person (either acting individually or in combination with other Persons) with intent to cause wrongful gain to self or to any other entity and/or loss to TASMAC or injury to TASMAC's interests (including TASMAC's reputation). Abetment of any act mentioned above is also "Fraud". The above acts constitute Fraud irrespective of whether they actually result in any wrongful gain or loss."*

16.Clause 6(d) of the Code provides 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 inquiry. In such event, he shall be paid subsistence allowance as per rules. Failure to comply with this Code would attract disciplinary action, if the employees are engaged in any form of fraud. Obviously, the sale of liquor more than the maximum retail price as fixed by the Government would fall within the category of fraud. Though Clause 7(b)(iv) of the Code contemplates suspension from service as punishment, in the instant cases, the suspension has been issued as against the employees, that is, the petitioners herein only as a preliminary measure pending inquiry. Since the learned Standing Counsel has submitted that charge memos have been issued in all the cases, as against each and every petitioner, this Court is of the considered view that the disciplinary proceedings initiated as against the petitioners by issuance of charge memo should be completed as expeditiously as possible.

17.In view of the same, this Court hereby issue the following directions to the third respondent as follows:

- *The third respondent is directed to forthwith provide each and every petitioner with subsistence allowance from the date of suspension;*
- *If charge memo has not been issued as against any of the petitioners the same has to be issued forthwith;*
- *On receipt of the charge memo, the petitioners are directed to submit their explanation elaborately within a period of 15 days from the date of receipt of charge memo;*
- *The third respondent is thereafter, directed to appoint an inquiry officer in each of the case and deal with the petitioners' case in a case to case basis, after giving proper opportunity of hearing to the petitioners and after receiving appropriate explanation from each of the petitioners;*

- *The third respondent is directed to complete the disciplinary proceedings within a period of two (2) months from the date of receipt of copy of this order;*
- *Pointing out that if suspension is for an indefinite period the same may cause undue stress, mental agony and irreparable injury for the petitioners / delinquents. In view of the same, if the third respondent does not conclude the disciplinary proceedings within a period of 2 months, the petitioners are entitled to be reinstated in service, on the expiry of 60 days from the date of commencement of the disciplinary proceedings. The said exercise would be automatic;*
- *In those cases where already explanation of the petitioners have been received by the respondents, the disciplinary proceedings is hereby directed to be concluded within a period of 1 month, from the date of receipt of explanation from the delinquents/petitioners.*

18.With these observations these petitions stands disposed off. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

26.03.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
PNM

To

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   Tamilnadu State Marketing Corporation Limited,
   4th Floor, CMDA Building Tower II,
   Ganthi Irwin Bride Road,
   Egmore, Chennai – 600 008.

2. The Senior Regional Manager,
   Tamilnadu State Marketing Corporation Limited,
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L.VICTORIA GOWRI, J.

PNM

COMMON ORDER IN
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