



W.P.(MD).No.7389 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

W.P.(MD).No.7389 of 2019

and

WMP.(MD).No.5906 of 2019

K.Sivapirakasam

.. Petitioner

Vs.

- 1.The Managing Director,
Tamil Nadu State Marketing,
Corporation Ltd.,
CMDA Tower II,
IV Floor, Gandhi Irwin Road,
Egmore, Chennai – 600 008.
- 2.The Senior Regional Manager,
Tamil Nadu State Marketing,
Corporation Ltd., Dindigul Region,
Dindigul District.
- 3.The District Manager,
Tamil Nadu State Marketing,
Corporation Ltd., (Dindigul Region),
Dindigul District.

.. Respondents



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Prayer: Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus to quash the impugned order of dismissal passed by 2nd respondent herein in his proceedings in Na.Ka.No.006/2018/C.V.-4 dated 08.02.2019 and to direct the 1st respondent to reinstate the petitioner as a sales man in TASMAL Shop No.3393, Dindigul District.

For Petitioner : Mr.Karthik
For Respondents : Mr.G.V.Vairam Santhosh
Additional Government Pleader

ORDER

Under assail an order of dismissal from service, passed by the 1st respondent dated 08.02.2019.

2. It is the case of the writ petitioner that the petitioner was appointed and served as a salesman in a TASMAL outlet on 27.11.2003 on consolidated pay, in the year 2018. The petitioner made certain allegations against the higher officials in connection with illegal sales of liquor and even he made representation to the Hon'ble Chief Minister Cell having vengeance over him for the same complaint made. He was issued with a charge memo dated 29.11.2018 with false allegation against him.



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2.(i). He submitted his explanation as there was no response from the third respondent for the explanation given thereafter, the third respondent issued a letter dated 06.12.2018 with some false charges and suspended him from service on the same day. In earlier charge-memo, though he had sent the explanation, there was no communication from the third respondent and also for the charge levelled against him in the memo dated 29.11.2018.

2(ii). The third respondent intimated the petitioner to attend department enquiry before the Enquiry Officer on 04.01.2019. The Enquiry Officer who was appointed on 04.01.2019 in urgency conducted enquiry on the same day and concluded the enquiry even though the petitioner denied the charges and claimed for document to defend. But he was not supplied with the documents, the copy of the Enquiry Report was furnished and explanation was also submitted by him, the third respondent was not satisfied with the explanation submitted by him and passed impugned order dismissing from service. Hence, this writ petition.



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2(iii). During the pendency of the writ petition, the petitioner has preferred a statutory appeal as against the order impugned dated 08.02.2019 before the first and second respondents, the first and second respondents have dismissed the statutory appeal filed by the petitioner. Aggrieved by the same, the petitioner has chosen to file two W.M.P. (MD).Nos.17164 & 17165 of 2024 for seeking to amend the prayer to include the challenge of the orders passed by the respondents 1 and 2 and to dispense with the production of the original orders passed by the respondents 1 and 2. The above said miscellaneous petitions were allowed.

3. The learned counsel for the petitioner would submit that the order impugned is illegal, perverse and against the principles of Natural Justice. The enquiry was conducted in a hurried manner without providing reasonable opportunity to the petitioner and even not furnished the documents sought by the petitioner at the time of the enquiry to defend himself. He would submit that the third respondent is silent about the show cause notice issued dated 06.12.2018. Thereafter, suddenly second charge memo was issued to the petitioner.



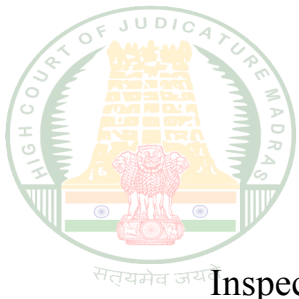
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4. He would submit that the charges levelled against the petitioner are not serious in nature as per “the Code of Prevention and Detection of Fraudulent Acts in Tamil Nadu State Marketing Corporation Limited – 2014” (hereinafter referred as “The Code”). The punishment must be imposed by the Authorities concerned is disproportionate to the alleged misconduct committed by the writ petitioner.

5. He would submit that the Appellate Authority was not properly considered the Enquiry Officer's report in proper perspective manner and in a manner known to law.

6. *Per-contra*, the learned counsel for the respondents would submit that while the petitioner was working as salesman, the Inspection Team conducted a surprise inspection on 17.11.2018 and found that the petitioner was selling *Zingaro* Beer 650 ml Bottle for Rs.130/-. While Maximum Retail Price was Rs.120/- and the inspection report was submitted but the petitioner was refused to sign the same at that point of time. The person who was working as a supervisor who came along with the Inspection Team made allegation against the petitioner. Based on the



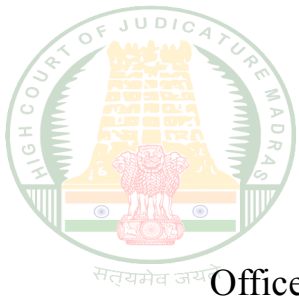
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Inspection Report dated 17/11/2018, a show cause notice dated 29.11.2018 was issued and after receiving the notice the petitioner had submitted his reply denying his allegations.

7. He would submit that during his working hours, he has committed certain misconduct in his workplace, as a consequence the respondent has chosen to issue another charge-memo dated 06.12.2018 and suspended the petitioner from service, on the same day. In the charge-memo dated 06.12.2018, as many as, there were 18 charges levelled against the petitioner, for which he had submitted his explanation and the same was not satisfactory nature, the Authority appointed an Enquiry Officer to conduct enquiry.

8. He would submit that the Enquiry Officer, has conducted detailed enquiry after examining the witness from the Department concerned and considering the witness, the Enquiry Officer submitted the report dated 08.12.2018. Wherein, he has been held that the charges against the petitioner stands proved. Thereafter a show cause notice dated 06.12.2018 was issued seeking his explanation on the Enquiry



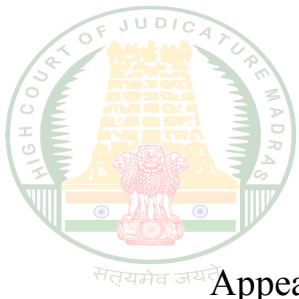
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Officer's Report, the petitioner had also submitted his representation dated 07.02.2019. Thereafter, the third respondent has passed the order impugned dated 08.02.2019 dismissing the petitioner from service, after considering the relevant materials and the report submitted by the Enquiry Officer.

9. The learned counsel further submitted that aggrieved over the dismissal from service, he preferred an appeal before the Senior Regional Manager TASMAL, Madurai on 13.02.2019. While the appeal is pending before the authorities concerned, the present writ petition came to be filed. During the pendency of this writ petition, an appeal was preferred by the writ petitioner, came to be dismissed on 06.05.2019. Thereafter, he filed revision before the first respondent on 03.06.2019 and the same was also dismissed on 23.07.2019, thereafter, the petitioner preferred a review petition before the first respondent and the same was also dismissed on 30.08.2019.

10. He would submit that there is no violation of procedures, while conducting the disciplinary proceedings before the Enquiry Officer, the



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Appeal and the Revisionary Authority have also considered the case of the writ petitioner. In accordance with Rules, applicable to the writ petitioner.

11. This Court has considered the rival submissions advanced by the learned counsel for the petitioner and the learned counsel for the respondents and perused all the materials available on record.

12. It is seen from the records that the petitioner joined as a Salesman in one of the retail outlet's of TASMAC in Dindigul District on 27.11.2003. While, he was in service, the Inspection Team of the Tamil Nadu State Marketing Department had conducted a surprise inspection on 17.11.2018 and found that the petitioner was selling *Zingaro* Beer 650 ml Bottle for Rs.130/- while Maximum Retail Price was Rs.120/- to that effect the Inspection team submitted its report. Based on the inspection report, a Show Cause Notice dated 29.11.2018 for which the petitioner had submitted his explanation on 04.01.2019.



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13. It is also seen that during his working hours, the petitioner was found with other allegations and therefore, the respondent have issued another charge-memo dated 06.12.2018 as stated as many as eight (8) charges, the charges levelled against the petitioner have been mentioned in the counter filed by the third respondent. Thereafter, the Enquiry Officer was appointed and the Enquiry Officer has also submitted that according to the Enquiry Report all the charges levelled against the petitioner are proved, it has been narrated in paragraphs Nos.7 and 8, which reads as follows:

“7. I submit that charges are very serious in natures, which are as follows:-

(1) Consuming liquor while on duty.

(2) Scolding the officials of TASMAC and prohibition department with filthy and more disrespectful words and criticizing the department in a drunken mode while on duty.

(3) Spreading false news through WhatsApp number 80726 50651 and social media against interest and better administration of TASMAC in a drunken mode while on duty.

(4) Spreading false news through WhatsApp number 80726 50651 and social media against interest and better administration of TASMAC in a drunken mode while on duty and preventing the shop personnel from performing the duty.

(5) Scolding the customers with filthy language and criticizing the customers in a drunken mode while on duty.



(6) Disobedient to the Higher Officials and not giving reply for the charges of selling liquor above the MRP.

(7) Selling liquor in violation of "Clause 7(xiv)" of the Code of Prevention and Detection of Fraudulent Acts in Tamil Nadu State Marketing Corporation Limited, 2014 and not paying the fine amount, even after passing order.

(8) Misbehaving with the person deputed by the Senior Regional Manager for preventing sale in violation of MRP."

"8. I submit that the petitioner's explanation was not satisfactory, hence an Enquiry Officer was appointed and enquiry was conducted and Enquiry Officer submitted his report dated 18-01-19 stating that all the charges are proved. The report of the Enquiry Officer categorically confirms that the charges are proved, which reads are as follows:-

(1) Charge No.1 – Consuming liquor while on duty was proved by examining independent witness.

(2) Charge No.2 - The Petitioner has admitted his voice in the audio record, wherein he had scolded the higher officials with filthy and abusive language and thus the same is proved.

(3) Charge No.3 - The Petitioner has stated that income of TASMAL in the year 2003 is Rs.2,000/- crore but now Rs.26,000/- crore and therefore the name of the department can be changed as Liquor Development Department instead of Prohibition Department. Further he has also admitted the charge in his explanation and during enquiry and thus charge is proved.

(4) Charge No.4 - The Petitioner has stated that he has every right to speak about the conduct of TASMAL in selling liquor for 15 years by printing quote that "consuming liquor is injury to health, life and country" and thereby cheating the public. Since he has categorically admitted the charges and the charge is proved.



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(5) Charge No.5 - Though the petitioner denied the charge stated that he has not scolded any customers, but in view of conduct of the petitioner the same also proved.

(6) Charge No.6 - Though the petitioner denied the charge, the sale of liquor above MRP on 17-11-18 was proved.

(7) Charge No.7 - The Petitioner has admitted the charge of making comment against the Managing Director, TASMAC stating that instead of appointing squad by spending the amount, they can install CCTV Camera on that cost and according to him the discretions of the flying squad is mixing force. Thus, the charge was proved.

(8) Charge No.8 - Though the petitioner has denied the purchase of liquor bottle, the previous conduct confirms and the record of inspection would confirm that the charge is proved.”

14. It is relevant to cite the judgment of the Hon'ble Supreme Court of India reported in [2011 (4) SCC 584] in the case of **State Bank of Bikaner and Jaipur Vs. Nemi Chand Nalwaya** wherein it has been held as under

“ It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable



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nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse.”

15. It is further relevant to cite the judgment of the Hon'ble Supreme Court of India reported in [2022 Live Law (SC) 998] in the case of **Union of India and Ors. Vs. Subrata Nath** wherein it is held as under:-

It is well settled that courts ought to refrain from interfering with findings of facts recorded in a departmental inquiry except in circumstances where such findings are patently perverse or grossly incompatible with the evidence on record, based on no evidence. However, if principles of natural justice have been violated or the statutory regulations have not been adhered to or there are malafides attributable to the Disciplinary Authority, then the courts can certainly interfere.”

16. After furnishing the copy of the Enquiry Report, the petitioner was called for his further explanation *vide* representation dated 06.02.2019, the petitioner had submitted his explanations on 06.02.2019 and 14.02.2019. After considering the explanations submitted by the



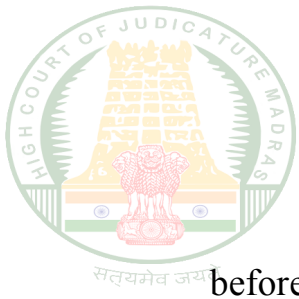
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petitioner which was not satisfactory and considering the Enquiry Report of the Enquiry Officer, the impugned order was passed by the third respondent that the petitioner was being dismissed from service.

17. It is seen from the Enquiry Officer's Report that the Department side witness, one "Kannadasan" has been examined as one of the witnesses and it also reflects that in the Charge No.1, though the petitioner is denying in some of the allegations, he has admitted some of the charges and in the report it is stated that the petitioner has violated the Rule 2 (i) of the Code and similarly the other charges also dealt with and the misconduct has been attracted as per the Code. Thereafter, challenging the impugned dismissal order dated 08.02.2019, the petitioner has preferred an appeal before the Senior Regional Manager, TASMACH on 13.02.2019, at this stage, the present writ petition came to be filed.

18. It is also pertinent to mention that during the pendency of the writ petition, the Senior Regional Manager, dismissed the appeal filed by the petitioner before him on 06.05.2019. Thereafter, a revision was filed



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before the Managing Director of the Tamil Nadu State Marketing Corporation Ltd. on 06.05.2019 and was also dismissed on 23.07.2019. As aggrieved over the same he had preferred a review petitioner once again before the managing director of the Tamil Nadu State Marketing and the same was also dismissed on 30.08.2019.

19. The learned counsel appearing for the petitioner has vehemently contended that the punishment imposed by the authorities concerned, it is disproportionate to the misconduct and he sought for certain information under RTI Act which reveals that proper opportunity was not provided to the petitioner to defend its case before in the enquiry proceedings as well as before the appellate authority. To strengthen his contentions, he has relied upon the judgment of this Court in W.P.No. 27713 of 2018 dated 04.02.2025, to show that in view of the affidavits submitted by the petitioners therein was directed to reinstate the petitioner with back-wages.

20. The learned counsel for the petitioner submits that no independent witnesses have been examined and relevant documents were



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marked to allege the misconduct of the writ petitioner.

21. *Per-contra*, the learned counsel appearing for the respondent would oppose by stating that the case and the nature of allegation levelled against thereunder, the writ petition was different from the present writ petitioner.

22. Considering the orders passed by the enquiry officer as well as the appellate authority would reveal that the petitioner ought to have participated in the enquiry proceedings and he has submitted his explanations before the authorities concerned and it was found that the misconduct of the petitioner is violating the Code and passed the order in detail, there is no reason to interfere with order impugned which is passed by them. There is no merit in this writ petition and is liable to be dismissed.

25.02.2025

NCC : Yes/No
Index : Yes/No
Internet : Yes
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M.JOTHIRAMAN, J.

nst

To:

- 1.The Managing Director,
Tamil Nadu State Marketing,
Corporation Ltd.,
CMDA Tower II,
IV Floor, Gandhi Irwin Road,
Egmore, Chennai – 600 008.
- 2.The Senior Regional Manager,
Tamil Nadu State Marketing,
Corporation Ltd., Dindigul Region,
Dindigul District.
- 3.The District Manager,
Tamil Nadu State Marketing,
Corporation Ltd., (Dindigul Region),
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