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Saravanan Vs. the District Manager,

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Court : Chennai

Decided On : Aug-27-2014

Judge : K.K.Sasidharan

Appellant : Saravanan

Respondent : The District Manager,

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

27. 08.2014 CORAM THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN W.P.(MD)No.14223 of 2014 and M.P.(MD)No.1 of 2014 Saravanan : Petitioner Vs. The District Manager, Tamil Nadu State Marketing Corporation Limited, (TASMAC), Thanjavur District, Thanjavur. : Respondent Prayer Writ Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Certiorarified Mandamus, to call for the records of the impugned order passed by the respondent in Na.Ka.1271/RV- 2/2013, dated 16.12.2013 and quash the same and consequently, direct the Respondent to reinstate the Petitioner in service. !For Petitioner : Mr.S.Rajaprabu ^For Respondent : Mr.M.Muniyasamy, Standing Counsel ******** :

ORDER

****** The petitioner was appointed as Salesman by the Tamil Nadu State Marketing Corporation Limited (hereinafter referred to as 'the TASMAC), in respect

of Shop No.7849 at Papanasam, Thanjavur District. While so, the higher officials conducted a surprise inspection on 15 December, 2013 and found that there was mixing of water in the liquor bottles. The respondent, vide his proceedings dated 16 December, 2013, suspended the petitioner from service. The said order is challenged in this Writ Petition. SUBMISSIONS:

2. The learned counsel for the petitioner, by placing reliance on the order dated 04.08.2014, in W.P.(MD)Nos.12465, 12466, 12467, 12491, 12492, 12493, 12494, 12495, 1340, 1670, 1672, 1673, 1674 and 1675 of 2014, submitted that similar Writ Petitions were disposed of by this Court with a direction to the TASMAC to conduct enquiry and pass final orders.

3. The learned Standing Counsel for TASMAC submitted that though the impugned order is in the nature of dismissal order, it was only order of suspension. DISCUSSION:

4. The impugned order was passed on the basis of surprise inspection conducted by the higher officials of TASMAC. The respondent has now made it clear that the impugned order is nothing but suspension order, whereby and whereunder, the petitioner was suspended pending enquiry. The respondent proposes to conduct an enquiry in the matter. THE PRECEDENT:

5. The Constitutional Bench of the Supreme Court in R.P.Kapur v. Union of India [AIR 1964 SC787 made it very clear that the appointing authority is entitled to suspend the employee pending departmental enquiry. The observation reads thus: ".11. The general principle therefore is that an employer can suspend an employee pending an enquiry into his conduct and the only question that can arise on such suspension will relate to the payment during the period of such suspension. If there is no express term in the contract relating to suspension and payment during such suspension or if there is no statutory provision in any law or rule, the employee is entitled to his full remuneration for the period of his interim suspension; on the other hand if there is a term in this respect in the contract or there is a provision in the statute or the rules framed thereunder providing for the scale of payment during suspension, the payment would be in accordance therewith. These general principles in our opinion apply with equal force in a case

where the government is the employer and a public servant is the employee with this modification that in view of the peculiar structural hierarchy of Government, the employer in the case of government, must be held to be the authority which has the power to appoint a public servant. On general principles therefore the authority entitled to appoint a public servant would be entitled to suspend him pending a departmental enquiry into his conduct or pending a criminal proceeding, which may eventually result in a departmental enquiry against him. This general principle is illustrated by the provision in Section 16 of the General Clauses Act, No.X of 1897, which lays down that where any Central Act or Regulation gives power of appointment that includes the power to suspend or dismiss unless a different intention appears. Though this provision does not directly apply in the present case, it is in consonance with the general law of master and servant. But what amount should be paid to the public servant during such suspension will depend upon the provisions of the statute or rule in that connection. If there is such a provision the payment during suspension will be in accordance therewith. But if there is no such provision, the public servant will be entitled to his full emoluments during the period of suspension. This suspension must be distinguished from suspension as a punishment which is a different matter altogether depending upon the rules in that behalf. On general principles therefore the Government, like any other employer, would have a right to suspend a public servant in one of two ways. It may suspend any public servant pending departmental enquiry or pending criminal proceedings; this may be called interim suspension. Or the Government may proceed to hold a departmental enquiry and after his being found guilty order suspension as a punishment if the rules so permit. This will be suspension as a penalty. These general principles will apply to all public servants but they will naturally be subject to the provisions of Art.314 and this brings us to an investigation of what was the right of a member of the former Secretary of State's Services in the matter of suspension, whether as a penalty or otherwise.".

6. The Supreme Court in B.R.Patel v. State of Maharashtra [AIR 1968 SC800, reiterated the power of the employer to suspend the employee pending disciplinary proceedings. ".4. The general principle therefore is that an employer can suspend an employee pending an inquiry into his misconduct and the only question that can

arise in such suspension will relate to payment during the period of such suspension. If there is no express term relating to payment during such suspension or if there is no statutory provision in any enactment or rule the employee is entitled to his full remuneration for the period of his interim suspension. On the other hand, if there is a term in this respect in the contract of employment or if there is a provision in the statute or the rules framed thereunder providing for the scale of payment during suspension the payment will be made in accordance therewith. This principle applies with equal force in a case where the Government is an employer and a public servant is an employee with this qualification that in view of the peculiar structural hierarchy of Government administration, the employer in the case of employment by Government must be held to be the authority which has the power to appoint the public servant concerned. It follows therefore that the authority entitled to appoint the public servant is entitled to suspend him pending a departmental enquiry into his conduct or pending a criminal proceeding, which may eventually result in a departmental enquiry against him. But what amount should be paid to the public servant during such suspension will depend upon the provisions of the statute or statutory rule in that connection. If there is such a provision the payment during suspension will be in accordance therewith. But if there is no such provision, the public servant will be entitled to his full emoluments during the period of suspension. On general principles therefore the Government, like any other employer, would have a right to suspend a public servant in one of two ways. It may suspend any public servant pending departmental enquiry or pending criminal proceedings; this may be called interim suspension. The Government may also proceed to hold a departmental enquiry and after his being found guilty order suspension as a punishment if the rules so permit. This will be suspension as a penalty. As we have already pointed out, the question as to what amount should be paid to the public servant during the period of interim suspension or suspension as a punishment will depend upon the provisions of the statute or statutory rules made in that connection.".

7. This Court has passed a common order in W.P(MD)Nos.12465, 12466, 12467, 12491, 12492, 12493, 12494, 12495, 1340, 1670, 1672, 1673, 1674 and 1675 of 2014, on 04.08.2014, directing the respondent therein to conduct enquiry and pass final orders, within a period of four weeks.

8. Accordingly, by following the order dated 04.08.2014 in W.P.(MD)Nos.12465, 12466, 12467, 12491, 12492, 12493, 12494, 12495, 1340, 1670, 1672, 1673, 1674 and 1675 of 2014, there shall be a direction to the respondent to initiate enquiry proceedings as expeditiously as possible and conclude the same, within a period of two months from the date of receipt of a copy of this order. In case of any delay in concluding the disciplinary proceedings, subsistence allowance should be paid to the petitioner till the disposal of such proceedings.

9. The Writ Petition is disposed of with the above direction. Consequently, the connected miscellaneous petition is closed. No costs. 27.08.2014 Index:Yes/No Internet:Yes/No sj K.K.SASIDHARAN, J.

sj To The District Manager, Tamil Nadu State Marketing Corporation Limited, (TASMAC), Thanjavur District, Thanjavur. Order made in W.P.(MD)No.14223 of 2014 and M.P.(MD)No.1 of 2014 Dated:- 27.08.2014

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