

(2014) 08 MAD CK 0265

In the Madras High Court

Case No : W.P. (MD) Nos. 12663, 12668, 12682 to 12685, 12703, 12704, 12713 to 12715 of 2014 and M.P. (MD) Nos. 1, 1, 1, 1, 1, 1, 1, 1, 1, 1 and 2, 2, 2, 2, 2, 2, 2, 2, 2, 2 of 2014 W.P. (MD) No. 12663 of 2014

S. Chokkalingam

APPELLANT

Vs

The Senior Regional Manager

RESPONDENT

Date of Decision : 04-08-2014

Acts Referred:

Citation : (2014) 08 MAD CK 0265

Hon'ble Judges : T.S. Sivagnanam, J

Bench : Single Bench

Judgement

T.S. Sivagnanam, J.—By Consent, all the writ petitions itself are taken up for final disposal and since the issue involved in the writ petitions are one and the same, a common order is passed.

2. Heard Mr. P. Andiraj, learned counsel for the petitioner and Mr. Muniyasamy, learned standing counsel appearing for TASMAL.

3. In all the writ petitions, the petitioners challenge the common order dated 14.07.2014.

4. All the petitioners are working in the TASMAL shops running by the respondent Corporation bearing shop Nos. 9986, 10101 and 10062. The petitioners are working in various positions such as Shop Supervisor and Salesman etc.

5. The allegation against the petitioners is that the vigilance squad of the respondent Corporation made a surprise inspection of the shops on 29.01.2014 and in which, discrepancies were found and there was an allegation that the liquor was sold in excess of the amount fixed by the TASMAL.

6. According to the petitioners, they are all innocent and they have not committed any delinquency and they have not sold the liquor over and above the

price fixed by TASMAL. It is stated by the learned counsel for the petitioners that immediately after the vigilance squad inspected the shops, all the petitioners have given written explanation to the authorities and subsequently, an audit was also conducted on 04.02.2014. The petitioners were led to believe that their explanation was accepted by the respondent, since no action was taken. However, they were all shocked to receive the impugned order dated 14.07.2014, placing them under suspension on the basis of the report submitted by the vigilance squad to the first respondent, pursuant to the inspection conducted by them in January 2014.

7. The learned counsel appearing for the petitioner challenges the impugned order on the ground that they have not been paid subsistence allowance and there is no proposal even to conduct an enquiry and for all the seven months, no charge memo was issued and there was no opportunity of hearing to the petitioners to prove their innocence.

8. The learned standing counsel appearing for TASMAL vehemently contended that all the petitioners have committed serious delinquency and they have been placed under suspension on the report of the vigilance squad and other proceedings are being taken and enquiry will shortly be conducted.

9. In the light of the above facts, since already the second respondent has commenced further proceedings, pursuant to the order of suspension and the suspension cannot be construed as an order of punishment, there will be a direction to the second respondent to issue charge memo to all the petitioners, within a period of two weeks from the date of receipt of a copy of this order. Thereafter, the petitioner shall be entitled to submit their explanation to the charge memo, within a period of two weeks thereafter. After receiving such explanation, the second respondent shall conduct an enquiry and conclude the entire proceedings, within a period of four weeks after giving opportunity of personal hearing to the petitioners. If the second respondent proposes to rely upon any document in support of the charge memo, the same shall be furnished to the petitioners so as to enable them to raise their defence. The entire proceedings shall be completed within a period of four weeks from the date on which, the enquiry is conducted by the second respondent.

10. The learned counsel for the petitioners submitted that till the enquiry is concluded and final orders are passed, the petitioners, who have been placed under suspension shall be paid subsistence allowance.

11. The learned counsel for respondent Corporation would submit that the petitioners are only temporary employees and their terms and conditions of employment does not provide for payment of subsistence allowance.

12. The contention raised by the learned counsel for the respondent Corporation is not tenable and deserves to be rejected. Though there is no provision under the terms and conditions of employment, when the employer exercised his right to suspend the employee, the employee concerned is entitled for payment of

subsistence allowance as a matter of right. The suspended employee cannot be allowed to starve and the order of suspension does not mean cessation of employment. It only means that he is kept out from discharging his normal duties of functions.

13. Therefore, the petitioners are entitled to subsistence allowance, which shall not be less than 50% of the wages paid to the petitioners, during the period of suspension i.e. from 14.07.2014 till the conclusion of the enquiry and passing of final orders.

14. The writ petitions are disposed of with the above observation and directions. No costs. Consequently, connected miscellaneous petitions are closed.