

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2015

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.27837 of 2015
and
M.P.Nos.1 & 2 of 2015

R.Balaji

...Petitioner

Vs.

1. The Senior Regional Manager,
Tamil Nadu State Marketing Corporation (TASMAC),
Salem.

2. The District Manager,
Tamil Nadu State Marketing Corporation (TASMAC),
SIPCOT, Ranipet,
Vellore District.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records on the file of the 2nd respondent in connection with his proceedings in (i) Se.Mu.Na.Ka.A2/507/C.V/2014 dated 29.08.2014 passed by the second respondent and (ii) Se.Mu.Na.Ka.464/2015/A dated 24.07.2015 passed by the first respondent and quash the same and consequently direct the respondents to reinstate the petitioner in service with all service, monetary and attendant benefits.

For Petitioner : Mrs.Lesi Saravanan

For Respondents : Mr.C.Kasirajan

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O R D E R

By consent, this writ petition is taken up for final disposal.

2. The petitioner was initially selected and appointed as Supervisor in the services of the Tamil Nadu State Marketing Corporation (TASMAC) on a consolidated pay of Rs.5,000/- per month

and he was posted at Shop No.11107, Vellore District. The petitioner would further state that he was suffering from viral fever from 01.04.2014 to 03.04.2014 and he informed the second respondent over phone that he was on leave on those days. However, the flying squad of the respondents attached to the Salem Zone as well as the second respondent conducted a surprise inspection on 02.04.2014 and found irregularities like mixing waters to liquors and in this regard, a police complaint was also lodged on 02.04.2014 and the petitioner was placed under suspension, vide order of the second respondent dated 03.04.2014 and thereafter a charge memo was issued by the second respondent on 21.07.2014, for which, the petitioner has also submitted his explanation. The second respondent, not being satisfied with the explanation offered by the petitioner, appointed an Enquiry Officer, who, after conducting enquiry, submitted his report dated 17.10.2014, holding that the charges framed against the petitioner have not been proved especially with regard to the fact that the Chemical Analyst Report has not been placed before him. The second respondent, however, disagreed with the Enquiry Officer's report and issued a show cause notice dated 27.08.2014, for which the petitioner has also submitted his explanation on 28.08.2014. The second respondent, on consideration of the materials placed before him, has imposed the punishment of removal from service, vide order dated 29.08.2014. Being aggrieved by the same, the petitioner preferred an appeal to the first respondent, who, vide order dated 24.07.2015, has dismissed the appeal and confirmed the order of removal from service passed by the second respondent and challenging the legality of the same, the present writ petition is filed.

3. The learned counsel appearing for the petitioner would submit that admittedly the second respondent did accompany with the raiding party and he fully participated in the proceedings and he himself assumed the role of the Disciplinary Authority and issued the charge memo dated 01.07.2014 and though the Enquiry Officer held that the charges framed against the petitioner have not been proved, the second respondent disagreed with the findings of the Enquiry Officer who concluded that the Chemical Analyst Report, which has been obtained behind the back of the petitioner, has not been supplied to him and passed the impugned order of removal from service and the first respondent/Appellate Authority, without proper application of mind, has confirmed the order of removal from service. The learned counsel appearing for the petitioner has drawn the attention of this Court to the order dated 05.03.2015 made in W.P.No.28066 of 2014 and the order dated 03.08.2015 made in W.P.No.23320/2015 and would submit that in similar facts and circumstances, this Court has quashed the impugned order of removal from service and consequently ordered the reinstatement of the petitioners therein with liberty to the Disciplinary Authority to

proceed further in accordance with rules/regulations and prays for appropriate orders.

4. Per contra, Mr.C.Kasirajan, learned Standing Counsel appearing for the respondents would contend that the Disciplinary Authority accompanied with the raiding party and he did not participate in the proceedings and the Disciplinary Authority disagreed with the findings of the Enquiry Officer and after affording due and fair opportunity to the petitioner, reached the conclusion that the charges framed against the petitioner has been proved and accordingly imposed the punishment of dismissal from service and the first respondent/Appellate Authority, on proper appreciation and consideration of the materials, has rightly reached the conclusion to confirm the order of the second respondent/Disciplinary Authority and therefore, this Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, may not interfere with the decision taken by the Disciplinary Authority, as confirmed by the Appellate Authority and prays for dismissal of this writ petition.

5. This Court has carefully considered the rival submissions and also perused the materials placed before it.

6. It is an admitted fact that the Disciplinary Authority, namely the second respondent has accompanied with the raiding party which conducted the surprise inspection and the second respondent himself is the first informant/defacto complainant in Crime No.23/2014 registered on the file of the Arakkonam, Prohibition and Enforcement Wing. No doubt, the second respondent, on account of his participation in the surprise raid and further that he is also the Disciplinary Authority, would have recused himself and directed some other authority to issue the charge memo; however he himself has issued the charge memo. Though the Enquiry Officer held that the charges framed against the petitioner have not been proved for want of Chemical Analyst Report, which was later obtained behind the back of the petitioner, the second respondent disagreed with the findings of the Enquiry Officer and imposed the punishment of removal from service. In the considered opinion of the Court, the first respondent/Appellate Authority had failed to advert to the material facts while confirming the order of removal from service passed by the second respondent/Disciplinary Authority.

7. This Court, in the above cited orders, in similar facts and circumstances, has interfered with the order of punishment and directed the respondents to reinstate the concerned person into service with liberty to the authorities to initiate fresh disciplinary action, if situation warrants.

8. In the light of the above said infirmities, this Court is of the considered view that the order of removal from service passed by the second respondent/Disciplinary Authority, as confirmed by the first respondent/Appellate Authority warrants interference and the matter may be remanded to the first respondent and consequently the petitioner may be directed to be reinstated into service with liberty to the concerned authorities to conduct disciplinary enquiry/de novo enquiry if situation warrants.

9. In the result, this Writ Petition is partly allowed and the impugned order of dismissal from service passed by the second respondent in Se.Mu.Na.Ka.A2/507/C.V/2014 dated 29.08.2014, as confirmed by the first respondent in Se.Mu.Na.Ka.464/2015/A dated 24.07.2015 are set aside and the petitioner is ordered to be reinstated into service forthwith with consequential benefits. It is also open to the respondent Corporation to initiate disciplinary enquiry afresh/de novo enquiry in accordance with law, if the facts and circumstances, warrants so. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

jvm

To

1. The Senior Regional Manager,
Tamil Nadu State Marketing Corporation (TASMAC),
Salem.
2. The District Manager,
Tamil Nadu State Marketing Corporation (TASMAC),
SIPCOT, Ranipet,
Vellore District.

1 CC to Mrs.Lesi Saravanan, Advocate SR.No. 51952

1 CC to Mr.C.Kasirajan, Advocate SR.No. 51920

W.P.No.27837 of 2015

KSJ (CO)

PSI (06.10.2015)