

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2015

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

W.P.No.31313 of 2015

And

M.P.Nos.1 and 2 of 2015

Mr.Balaji

... Petitioner

Vs.

The District Manager,  
The Tamil Nadu State Marketing Corporation Ltd.  
Tasmac Ltd.  
Vellore Dist - 635 042

... Respondent

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the Respondent dated 25-08-2015 and made in Se.Mu.Na.Ka.A2/711 C.V/2015 and quash the order of the Respondent and consequently direct the Respondent to reinstate the petitioner into service and monetary benefits.

For Petitioner : M/s.Lesi Saravanan  
For Respondent : Mr.C.Kasirajan

O R D E R

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

2.The petitioner was appointed as Supervisor in the service of Tamil Nadu State Marketing Corporation Limited (TASMAC) and was put incharge of shop no.11086 on a consolidated pay of Rs.5,000/-. It is further stated that the respondent has conducted a surprise inspection on 29.04.2015 and found certain irregularities such as deficiency of cash as well as loose sales by mixing water. The petitioner was placed under suspension by the respondent vide order dated 30.04.2015 and he was issued with a charge memo on 07.05.2015 for which the petitioner has offered his response. The respondent has also appointed an Enquiry Officer on 16.06.2015 who after conducting enquiry held the charges framed against the petitioner have been proved. The petitioner was issued with a second show cause

notice for which he submitted his explanation and vide impugned order dated 25.08.2015, the respondent has passed the order of removal from service and challenging the legality of the same, the petitioner came forward to file this writ petition.

3.The learned counsel appearing for the petitioner would submit that admittedly the respondent has participated in the surprise raid/ inspection and on the basis of the alleged delinquency, placed the petitioner under suspension and also issued charge memo and based on the Enquiry Officer's report, has passed the impugned order of removal from service and since on account of the active participation, he has become biased and in this regard, invited the attention of this Court to the order dated 05.03.2015 made in W.P.No.28066 of 2015 (A.Sreenivasan and three others Vs. The District Manager, Tamil Nadu State Marketing Corporation (TASMAC), Tiruvallur) wherein, the learned Single Judge set aside the impugned order of removal from service and remanded the matter to the respondent with appropriate directions and prays for similar orders.

4.Per contra, Mr.C.Kasirajan, learned counsel who accepts notice on behalf of the respondent would contend that no doubt the respondent has conducted the surprise raid/ inspection but the fact remains that he has appointed an independent officer who had thought all charges framed against the petitioner have been proved beyond all probabilities and after due and proper application of mind and after affording reasonable opportunity to the petitioner to put forth his explanation, has passed the impugned order of removal from service and hence prays for dismissal of the writ petition.

5.This Court heard the rival submissions and also perused the materials placed before it.

6.It is not in serious dispute that the respondent has formed part of the team which conducted the surprise inspection and having noted certain delinquency on the part of the petitioner, the respondent placed the petitioner under suspension and also framed charge memo and appointed an Enquiry Officer, who after enquiry submitted report holding that all the charges framed against the petitioner have been proved. The petitioner has been issued with second show cause notice and after his explanation, has passed the impugned order of removal from service.

7.In the considered opinion of this Court, the respondent having formed part of the flying squad ought not to have took part in further proceedings especially, in passing the impugned order of removal from service.

8.This Court in the order dated 05.03.2015 made in W.P.No.28066 of 2015 has considered similar issue and set aside the impugned order of dismissal passed therein and remanded the matter for fresh adjudication. In the considered opinion of this Court, the above

cited order is fully applicable to the facts of the present case also.

9. In the result, the writ petition is partly allowed and the impugned order dated 25.08.2015 is set aside. This Court directs the District Manager, Tamil Nadu State Marketing Corporation Limited, Thiruvannamalai District to take into consideration the observations made in this writ petition, and proceed further strictly in accordance with law/ relevant rules/ regulations, if he is so advised and in the light of the impugned order being set aside, the respondent is directed to reinstate the petitioner forthwith and confer with him all consequential benefits, if he is otherwise eligible. No costs. Consequently, the connected miscellaneous petitions are also closed.

-s/d-

Assistant Registrar (CO)

dt:13/10/2015

True Copy

Sub-Assistant Registrar

To

The District Manager,  
The Tamil Nadu State Marketing Corporation Ltd.  
Tasmac Ltd.  
Vellore Dist - 635 042

+1 cc to M/s.Lesi Saravanan Advocate sr.53802  
+1 cc to C.kasirajan Advocate r.53787

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