

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 27.11.2015

CORAM

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

W.P. No.37601 of 2015 &
M.P.No.1 of 2015

S.Sakthivel

.. Petitioner

Vs.

1.The Senior Regional Manager,
Tamil Nadu State Marketing
Corporation Ltd., [TASMAC],
Salem Region, 56, Brindhavan Road,
Fairlands, Salem - 16.

2.The District Manager,
Tamil Nadu State Marketing
Corporation Ltd., [TASMAC],
TANCOF Complex, No.52, Anna Salai,
Thiruvannamalai.

.. Respondents

PRAYER : Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of order of the second respondent bearing proceedings in Na.Ka.R.V.2/1920/2014, dated 17.04.2015, which is confirmed by the first respondent in Se.Mu.No.3951/2015/A dated 25.09.2015 and quash the same and consequently direct the respondents herein to reinstate the petitioner into service.

For Petitioner : Mr.K.Sasindran

For Respondents : Mr.S.Muthuraj

ORDER

By consent, the Writ Petition is taken up for disposal at the admission stage itself.

2.The case of the petitioner is that while he was working as a salesman in Shop No.9483 at Naidu Mangalam Village, Thiruvannamalai District, the 2nd respondent issued a suspension order dated 15.10.2014 to the petitioner relieving him from the services. The charges against the petitioner is that while conducting surprise checking in the shop, it was found out that

the petitioner mixed water with brandy. After relieving the petitioner from the services, by order dated 15.11.2014, the 2nd respondent appointed an enquiry officer and the enquiry officer, after considering the materials, during the enquiry, submitted a report on 25.03.2015 stating that the charges against the petitioner are not proved.

3.It is further stated that the respondent issued 2nd show cause notice dated 04.04.2015 for which the petitioner had submitted his explanation on 13.04.2015. However, the petitioner was dismissed from the services vide termination order dated 17.04.2015. Thereafter, the petitioner preferred appeal before the Appellate Authority which was dismissed on 25.09.2015. Hence, the petitioner is before this court by way of this Writ Petition.

4.Heard Mr.K.Sasindran, learned counsel appearing for the petitioner and Mr.S.Muthuraj, learned counsel who accepts notice on behalf of the respondents.

5.The impugned order is challenged mainly on the ground that the 2nd respondent, who has differed from the finding of the enquiry officer, without issuing a notice for deffering his view, has passed the impugned order. The learned counsel for the petitioner further submitted that the petitioner is ready to give up his claim with regard to backwages.

6.The learned counsel for the petitioner as well as the respondents submitted that the issued involved in this case is already covered by the decision of this court made in W.P.No.22092 of 2015. The relevant portion of the said order is usefully extracted as follows: -

'5. No doubt that when the earlier enquiry officer held that the charges were not proved, the disciplinary authority could very well differ with the findings of the enquiry officer and could hear the delinquent on such findings. But, in the instant case, no such procedure was followed and on the other hand, the respondent in gross violation of the procedures established by law, appointed another enquiry officer who ultimately held that the charges were proved. In my considered view, such procedure is illegal and thus, the order of dismissal of the petitioner from service, based on such finding, is liable to be interfered with.

6. Yet another infirmity noticed is that when the inspection was carried out by the

respondent, he could not have acted as disciplinary authority in view of the judgment of this court in W.P.No.28066 of 2014 dated 05.03.2015 (A.Sreenivasan and others v. The District Manager, TASMAL, Tiruvallur District). On this ground also the impugned order requires interference at the hands of this court.

7. At this juncture, the learned counsel for the petitioner brought to the notice of this court an order dated 13.07.2015 made in W.P.No.20745 of 2015 and would submit that taking into account the peculiar facts and circumstances of the case, more particularly, the nature of allegations, in this case also, a direction could be issued for reinstatement of the petitioner.

8. In the normal course, I could have permitted the respondent to proceed with the departmental action by curing the defects pointed out supra. But, in the instant case, I do not want to adopt such a course, since the learned counsel for the petitioner, during the course of this writ petition, on instructions from the petitioner, submitted that the petitioner is prepared to give up the claim with regard to back wages.

9. In the result, this writ petition is disposed of and the impugned order is set aside and the respondent is directed to reinstate the petitioner in service with continuity of service and attendant benefits, but without back wages. No costs. Consequently connected MP is closed.'

7.It is settled law that if the Disciplinary Authority differs with the view taken by the Enquiry Officer, he is bound to give a notice setting out his conclusions to the delinquent officer. It is only after hearing the delinquent, the disciplinary authority would at all arrive at a final finding of guilt. However in the instant case, the disciplinary authority admittedly has not followed the procedure.

8.In the light of decision cited supra and my findings, the impugned order is liable to be set aside and the same is set aside. The Writ Petition is allowed with a direction to the

second respondent to reinstate the petitioner into service, within a period of three weeks from the date of receipt of copy of this order with continuity of service and attendant benefits, but without back wages. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

- 1.The Senior Regional Manager,
Tamil Nadu State Marketing
Corporation Ltd., [TASMAC],
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- 2.The District Manager,
Tamil Nadu State Marketing
Corporation Ltd., [TASMAC],
TANCOF Complex, No.52, Anna Salai,
Thiruvannamalai.

+1cc to Mr.S.Muthuraj, Advocate Sr.64691

W.P. No.37601 of 2015 &
M.P.No.1 of 2015

kk(CO)
srg(11/03/2016)

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