IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2015

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.25354 of 2010
and
M.P.Nos.1 and 2 of 2010

P.Shanmugam ...Petitioner

Vs

1. The Senior Divisional Manager,
   TASMAC Limited,
   Goundampalayam,
   Coimbatore.

2. The District Manager,
   TASMAC Limited,
   Erode,
   Erode District. ...Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order dated 16.12.2009 passed by the 2nd respondent in his office Ref.Na.Ka.No.269/2009/R-5 and the orders dated 01.07.2010 passed by the 1st respondent in his office Ref: Pa.Mu.981/2010/A1 and quash the same and direct the respondents to reinstate the petitioner as Supervisor with continuity of service and all service benefits.

For Petitioner : Mr.P.Mani

For Respondents : Mr.S.Muthuraj

WEB COPY

O R D E R

Heard Mr.P.Mani, learned counsel for the petitioner and Mr.S.Muthuraj, learned counsel for the respondents.

2. The petitioner seeks to quash the orders dated 16.12.2009 and 01.07.2010 passed by the respondents respectively

https://hcservices.ecourts.gov.in/hcservices/

and to direct the respondents to reinstate the petitioner as Supervisor with continuity of service with all service benefits.

3. The petitioner was appointed as Shop Supervisor of TASMAC Retail Shop No.3814, Mailampadi, Bhavani Taluk, Erode District. Apart from the petitioner, there were two salesmen by name C.Moorthy and P.Saravanan were working in the said Shop. The order impugned in this writ petition is an order of dismissal of the petitioner from service, which has been confirmed by the Appellate Authority, the first respondent herein. The petitioner was placed under suspension, vide order dated 26.02.2009 on the ground that he was not present at the time when the Shop was inspected by the Inspection Team and there were other discrepancies also. Pursuant to which, a charge memo dated 12.03.2009 was issued containing nine articles of charges. Infact, the charge memo was a common charge memo for the petitioner as well as two other salesmen, namely C.Moorthy and P.Saravanan. First charge states that the petitioner and the salesman C.Moorthy were not present in the Shop at the time of inspection and only the salesman P.Saravanan was present. Second charge states that though in the movement register, it has been stated as if the petitioner had gone to the hospital, the fact remains that the petitioner did not report for duty on 26.02.2009. Third charge is regarding shortage of cash with regard to the daily collection. Fourth charge pertains to improper maintenance of the records. Fifth charge is against one T.Velliangiri, in-charge Supervisor that he has made certain arrangements of boxes with empty bottles. Sixth charge alleges deficit in the stock to the tune of Rs.20,338/-, when the stock taking was done on 27.02.2009. Seventh charge alleges violation of office orders. Eighth charge alleges insubordination and Ninth alleges violation of the terms and conditions of the appointment.

4. As noticed above, the charge memo was common to all the three employees, including the petitioner herein. So far as Charge No.1 is concerned, it is specific against the petitioner and the salesman C.Moorthy alleging that they were not present in the Shop at the time of the inspection on 26.02.2009. Charge No.2 is also specific against the petitioner, since he did not report for duty on the said date. Charge No.3 is common to all the three employees, which is a major allegation pertaining to shortage of cash to tune of Rs.13,853/-. Charge No.4 is regarding non-maintenance of the records. Charge No.5 deals with some other person. Charge Nos.6 to 9 are common to all the three employees. Thus, if, Charge No.1 is established and proved that the petitioner was not present on 26.02.2009, when the inspection taken place, obviously, the petitioner could not have been held responsible for the shortage of cash on the said date, since admittedly, even as

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

per the respondents version, the petitioner was not available in the Shop on 26.02.2009. Equally, the same would also be made applicable with regard to deficit of stocks. In this regard, it is to be noted that the salesman has accepted that he has kept aside few bottles for his personal gain and this statement appears to have not been taken into consideration.

5. The petitioner submitted his explanation denying the charges. It appears that enquiry was conducted, pursuant to which, a common order of was passed, by which, the petitioner was imposed punishment of dismissal from service. The Enquiry Officer reported as if the petitioner was habitually taking money from the Shop. However, this is not one of charge framed against the petitioner. The order of punishment was passed dismissing the petitioner from service and imposing fine of Rs.5000/- to each of the salesmen. Aggrieved over the punishment, the petitioner has preferred an appeal to the Appellate Authority and the Appellate Authority has concurred with the findings of the Disciplinary Authority and rejected the appeal.

6. From the above stated facts, it is seen that a common charge memo was issued to all the three employees and common enquiry was conducted and common order of punishment has been imposed. It is true that the petitioner is held to be responsible for the shortage of cash and also deficit in stocks. According to the petitioner, he was not present in the Shop on the date of inspection. In fact, that is also one of the charge against the petitioner. In such circumstances, all the three employees, who were charged together ought to have been treated on par and there should be parity among all three even in the manner of imposing penalty. Though the petitioner being the Supervisor of the Shop has more responsibility, but for that reason alone, punishment of dismissal from service imposed is appears to be disproportionate considering the nature of allegations and in the absence of any proof of misappropriation. Though the Enquiry Officer said to have filed the report stating that the petitioner was habitually taking money from the shop, there was no such allegation in the charge memo. Further, the petitioner stated that all three of them i.e. himself and two salesmen jointly remitted the amount towards stocks deficit and such statement would clearly made in the appeal petition and the Appellate Authority has not taken into consideration of the same.

7. In the light of the above, this Court, is of the view that the respondents should consider imposing any other lesser punishment instead of dismissal from service on the petitioner, in view of the fact that two other salesmen, who were also charge sheeted along with the petitioner vide the same charge memo have

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

been imposed a lesser punishment of fine.

8. In the result, the writ petition is partly allowed and the impugned order passed by respondent No.2, as confirmed by respondent No.1 insofar as the punishment of dismissal from service alone is set aside and the matter is remitted back to respondent No.2 for fresh consideration for imposing some other lesser punishment instead of dismissal from service, taking note of the observations made above. The above direction shall be completed by respondent No.2 within a period of three months from the date of receipt of the order. No costs. Consequently, all connected M.Ps. are closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

bbr

To

1. The Senior Divisional Manager,
TASMAC Limited,
Goundampalayam,
Coimbatore.

2. The District Manager,
TASMAC Limited,
Erode,
Erode District.

1 CC to Mr.P.Mani, Advocate SR.No. 20890

1 CC to Mr.S.Muthuraj, Advocate SR.No. 20848

WEB COPY

W.P.No.25354 of 2010

JP (CO)
PSI (29.04.2015)

https://hcservices.ecourts.gov.in/hcservices/