

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.07.2015

CORAM:

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.24099 of 2012
and M.P.No.1 of 2015

R.Kumaran

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Petitioner

Vs.

1. The Senior Regional Manager,
TASMAC Limited,
141 & 142, M.S.R.Complex,
Goundam Palayam,
Coimbatore - 30,

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

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Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking for the relief of issuance of writ of certiorarified mandamus to call for the records relating to the order passed by the 2nd respondent in his office ref.Na.Ka.2118/2010/R-5, dated 19.08.2011 and the order passed by the 1st respondent in his office ref.Na.Ka.No.2121/2012/A1, dated 19.06.2012, quash the same and direct the respondent to re-instate the petitioner in service with back wages, service benefits and continuity of service within the time that may be fixed by this Court.

For Petitioner : Mr.P.Mani

For Respondents : Mr.S.Muturaj

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ORDER

With the consent of the learned counsel appearing on either side, the writ petition is taken up for disposal.

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

3. The petitioner has challenged the order of removal from service passed by the 2nd respondent dated 19.8.2011 and the consequential order dated 19.6.2012 passed by the 1st respondent. The

petitioner was working as Supervisor in TASMAL retail shop No.3948, Erode Taluk and District. Alleging that the liquor sold in the said shop has been diluted, proceedings were initiated against the petitioner - Supervisor and three other salesmen of the same shop by a common proceedings and ultimately by the impugned orders, the Supervisor as well as the 3 salesmen were removed from service. One of the salesman - N.Ramaraj filed writ petition before this Court in W.P.No.22314 of 2012 and the said writ petition was allowed by order dated 17.7.2014, pursuant to which, the said N.Ramaraj has been reinstated into service. Learned counsel appearing for the petitioner submitted that the case of the petitioner is also identical and therefore the petitioner should also be treated on par with the petitioner in W.P.No.22314 of 2012.

4. The 2nd respondent has filed counter affidavit, wherein, the manner in which the disciplinary proceedings were initiated against the petitioner and three others has been set out and the modus operandi adopted has also been mentioned. Further, it is submitted that the petitioner was a supervisor whereas the other employees were only salesmen. Therefore, it is submitted that the impugned order of removal from service is justified.

5. When one of the co-delinquents approached this Court by filing writ petition in W.P.No.22314 of 2012, a stand was taken by the respondents stating that all the persons working in the shop were jointly and severally responsible for the adulteration and therefore the punishment of removal from service was proper. Another contention was raised by the respondents that the petitioner therein should have availed the alternative remedy. On the second issue, the Court rejected the plea stating that the availability of alternative remedy is not always a bar to approach this Court and since there is no dispute on facts it is not necessary to relegate the delinquent to approach the alternate forum. While allowing the said writ petition, the Court found that there was a serious violation of principles of natural justice and no opportunity was given to the delinquent before arriving at a conclusion against him.

6. Since the respondents themselves have pleaded that all the employees of the shop have to be held jointly and severally responsible for the alleged delinquency, they are naturally bound by the orders passed in the earlier writ petition, though it may be in favour of a salesman in the shop. The impugned order does not treat the petitioner/supervisor of the shop on a different pedestal. In fact, that was never the stand of TASMAL.

7. Therefore, following the earlier order dated 17.7.2014 made by this Court in W.P.No.22314 of 2012, this writ petition is allowed and the impugned order is set aside and the respondents are directed to reinstate the petitioner into service with back wages, continuity of service and all other attendant benefits within a period of two months from the date of receipt of copy of this order. The arrears of back wages and other attendant benefits shall be settled within a period of three months from the date on which the petitioner is

reinstated. Consequently, the connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

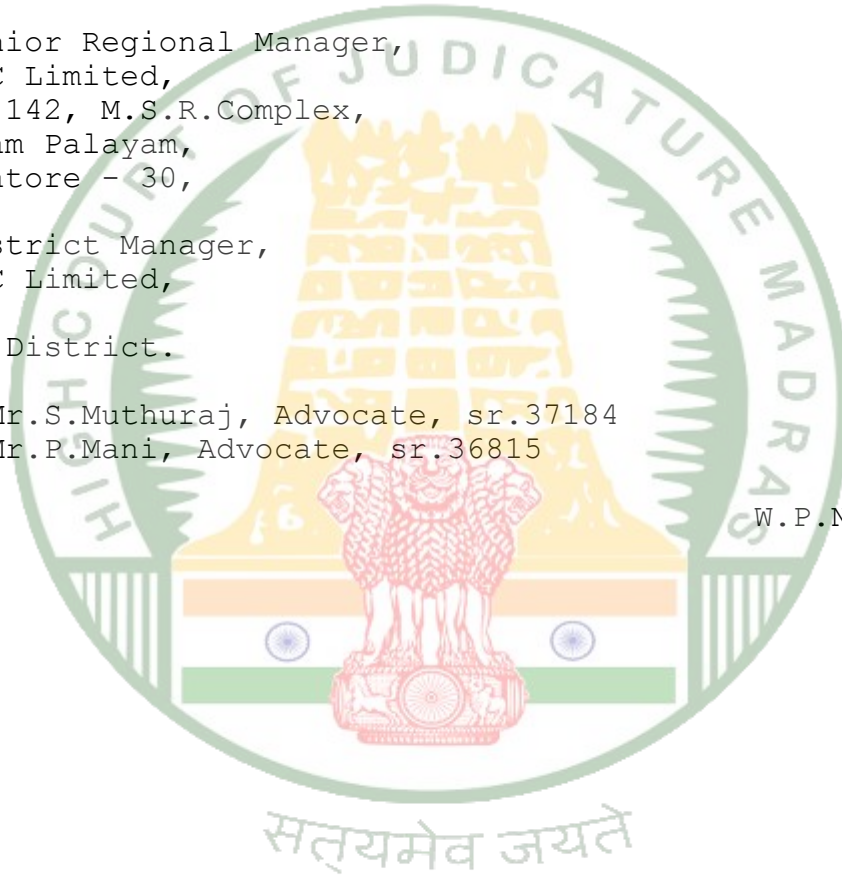
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To

1. The Senior Regional Manager,
TASMAC Limited,
141 & 142, M.S.R.Complex,
Goundam Palayam,
Coimbatore - 30,
2. The District Manager,
TASMAC Limited,
Erode,
Erode District.

+1 cc to Mr.S.Muthuraj, Advocate, sr.37184
+1 cc to Mr.P.Mani, Advocate, sr.36815

ev(co)
kra(03/08)

W.P.No.24099 of 2012



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