

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

WP.No.7155 of 2013

M.Kamaldass

Petitioner

Vs

1.The Senior Regional Manager, TASMAC, Salem

2.The District Manager, TASMAC, Vellore Respondents

Prayer:- This Writ Petition is filed to issue a Writ of Certiorarified Mandamus to call for the records of the 1st Respondent in Sa.Mu.No.787/2011/E, dated 3.10.2011, confirming the order of the 2nd Respondent dated 12.4.2011 in Sa.Mu.Na.Ka.A2/945/C.V/2010, dated 12.04.2011 and to quash the same and to direct the Respondents to reinstate the Petitioner in service as Salesman at Vellore with continuity of service, back wages and all other attendant benefits.

For Petitioner : Mr.P.R.Thiruneelakandan
For Respondent : Mr.C.Kasirajan,
Standing Counsel

ORDER

This Writ Petition has been filed challenging the impugned order of termination and for a direction to the Respondents to reinstate the Petitioner in service as Salesman at Vellore with continuity of service, back wages and all other attendant benefits.

2. The learned counsel for the Petitioner would contend that the Petitioner was employed in the Respondent Corporation and he was not at all involved in the offence. The Petitioner along with other two persons were alleged to have mixed water with the liquor and sold the same in the loose bottles and in the enquiry, the Petitioner alone has been held to be guilty of the offence. In respect of other two other persons, they filed WP.Nos.17364 and 17365 of 2013, which were allowed by this court by order dated 25.3.2015 on the ground that it was not proved by valid evidence and no enquiry was not at all conducted and not even an evidence from an expert evidence has been obtained.

Accepting the same, the Government has also passed further orders reinstating them in service. In such view of the matter, when similarly placed persons in respect of the very same offence have been allowed to join duty, there cannot be any discrimination as against the Petitioner. Further, in the case on hand also, no enquiry was conducted and not even an expert opinion was obtained and under these circumstances, the impugned orders are liable to be set aside.

3. On the other hand, the learned standing counsel for the Respondents, by filing a counter, would contend that the Petitioner himself by letter dated 29.10.2010 had accepted the guilty and therefore, there is no question of conducting any enquiry and hence, he would contend that the earlier orders passed by this court will not be applicable to the case on hand.

4. This court heard the learned counsel on either side and considered their submissions and also perused the materials placed on record.

5. On a careful consideration of the entire proceedings, one thing is clear, as rightly pointed out by the learned counsel for the Petitioner, that there was no enquiry conducted at all. Further, expert opinion has also not been obtained and no evidence of an expert was obtained. In respect of the very same occurrence, the other two persons were relieved by this court. Even in his admission, the Petitioner has stated that he had come to know of the suspension and that he will not do any such wrong in future, but that will not amount to total admission as claimed by the Respondents.

6. Further, this court also in WP.Nos.17364 and 17365 of 2013 filed by the two other persons, who were alleged to have involved in the same occurrence, by order dated 25.3.2015 has held as under:-

"10. The common counter affidavit filed by the District Manager, TASMAL clearly shows that enquiry was not conducted and witnesses were not examined. Even the Forensic Report was not marked in the enquiry proceedings. The experts were not examined to prove the collection of sample and analysis report. The report submitted by the Forensic Expert was not marked with opportunity to the petitioners. The petitioners are therefore perfectly correct in their contention that fair enquiry was not conducted before dismissing them from service.

11. The orders dismissing the petitioners from service would involve serious civil consequences to

them. Since TASMAL alleged commission of serious acts of misconduct against the petitioners, it is their bounden duty to prove those allegations. The Disciplinary Authority simply followed the procedure of examining the delinquents and passing final orders dismissing them from service. The counter affidavit filed by the District Manager, TASMAL and more particularly, Paragraph 9 supports the case pleaded by the petitioners. I am therefore of the view that proper enquiry was not conducted by TASMAL and as such, the petitioners must succeed.

12. In the result, the impugned orders are set aside and respondents are directed to reinstate the petitioners into service forthwith. The petitioners are not entitled for back wages. However, they should be given the benefits of earlier service for all other purpose. The petitioners should be permitted to join service as expeditiously as possible and in any case within a period of two weeks from the date of receipt of a copy of this order.

13. In the upshot, I allow the writ petitions. No costs. Connected miscellaneous petitions are closed.

7. In view of the above said reasons and following the above said order of this court passed in respect of the very same occurrence, the impugned orders are set aside. However, it is made clear that the Petitioner shall be reinstated in service without any back wages. The Petitioner shall be given the benefits of earlier service for all other purpose and he should be permitted to join service as expeditiously as possible and in any case within a period of two weeks from the date of receipt of a copy of this order.

8. With the above directions, this Writ Petition is allowed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

Srcm

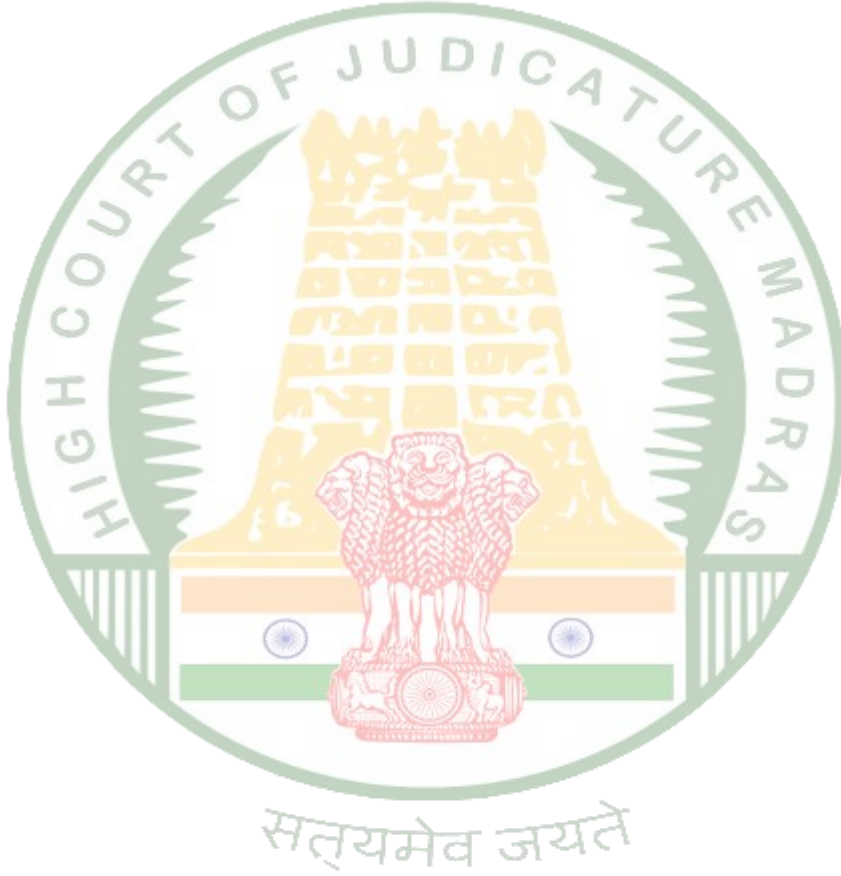
To:

- 1.The Senior Regional Manager, TASMAC, Salem
- 2.The District Manager, TASMAC, Vellore

+1 CC to Mr. P.R. Thiruneela Kandan, Advocate, Sr.No.47207
+1 CC to Mr. C. Kasirajan, Advocate Sr.No.47212

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SV (CO)
MD : 14/09/2016



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