

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.10.2016

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBBIAH

WRIT PETITION No.25361 of 2015

A.Loganathan

... Petitioner

vs.

1. The Managing Director,
Tamil Nadu State Marketing Corporation Ltd. (TASMAC)
Chennai 600 008.
2. The Senior Regional Manager,
TASMAC Regional Office,
Salem - 636 016.
3. The District Manager,
Tamil Nadu State Marketing Corporation Ltd. (TASMAC)
Arakonam, Vellore District. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus calling for the records of the District Manager, TASMAC, Arakonam, Vellore District, the 3rd respondent herein passed in Se.Mu.Na.Ka.A2/507/CV/2014, dated 29.08.2014 and the consequential order of the Appellate Authority viz. the Senior Regional Manager, TASMAC, Salem, the 2nd respondent herein Se.Mu.No.551/2015/A, dated 24.07.2015 and to quash the same, directing the respondents to reinstate the petitioner in service with effect from the date of dismissal viz. 29.08.2014 with continuity of service, backwages and other attendant benefits till the petitioner is reinstated in service.

For Petitioner : Mr.S.Sathiamurthi
For Respondents : Mr.C.Kasirajan

O R D E R

The petitioner has come up with this Writ Petition seeking to call for the records of the 3rd respondent herein passed in Se.Mu.Na.Ka.A2/507/CV/2014, dated 29.08.2014 and the consequential order of the Appellate Authority viz. the Senior Regional Manager, TASMAC, Salem, the 2nd respondent herein Se.Mu.No.551/2015/A, dated 24.07.2015 and to quash the same and

for a consequential direction to the respondents to reinstate him in service with effect from the date of his dismissal viz. 29.08.2014 with continuity of service, backwages and other attendant benefits, till he is reinstated in service.

2. According to the petitioner, he was selected to the post of Salesman in the Tamil Nadu State Marketing Corporation Ltd. (TASMAC), the 3rd respondent herein, on contract basis, by an order dated 27.11.2003. He was working as a Salesman in various retail vending shops in Vellore Region of TASMAC for the past 10 years without any remarks. Lastly, he was working in Vochery Retail Vending Shop No.11219. As there was no Salesman in Panapakkam Retail Vending Shop No.11017, he was orally asked to work in the said shop from 14.01.2014 for three months before inspection.

3. While so, on 03.04.2014, the Special Flying Squad of Salem Region, inspected the above Shop No.11017 and found certain irregularities. However, from 31.03.2014 onwards, the petitioner was on leave due to fever and gave a letter to that effect to the Supervisor of the said Shop. The petitioner was not physically present at the time of inspection on 02.04.2014 and even in the Attendance Register maintained by the above Shop No.11017, the petitioner has not signed the Register from 31.03.2014 till 06.04.2014 and he had also submitted a Medical Certificate to the effect that he was suffering from viral fever.

4. It is further stated by the petitioner that the 3rd respondent, by an order dated 03.04.2014, suspended the following employees of the said shop pending enquiry.

S.No.	Name of the Employee	Designation
1	R.Balaji	Supervisor
2	A.Loganathan (petitioner)	Salesman
3	M.Soundarrajan	Salesman

Subsequently, by an order dated 01.07.2014, the 3rd respondent issued Memorandum of charges. The charges framed against the petitioner and others are as under:

- (i) Shortage of Rs.28,000/-
- (ii) Old Secret Rum, 180 ml - 7 bottles
- (iii) Golden Eagle Deluxe Brandy, 180 ml - 4 bottles
- (iv) Triple Crown VSOP Brandy, 180 ml - 14 bottles

5. The petitioner submitted his explanation denying the charges. The Assistant Manager of TASMAC was appointed as

Enquiry Officer and to the questions put by him during enquiry, the petitioner has categorically stated that he was not present on the date of inspection and he has nothing to do with the charges. No Lab Report with regard to the percentage of alcohol was filed before the Enquiry Officer. One Soundarrajan, Salesman stated in the enquiry that he alone was present on the date of inspection. In the report of the Enquiry Officer furnished to the petitioner, he has correctly held that only M.Soundarrajan was present during inspection. The Lab Report was not filed in the Enquiry and hence, ultimately, the Enquiry Officer held that the charges against the petitioner were not proved.

6. The 3rd respondent issued a second show cause notice to the petitioner calling upon him to submit his explanation and accordingly, the petitioner submitted his explanation. The 3rd respondent found that the Enquiry Officer held that the charges were not proved since the Lab Report was not produced for enquiry and marked as document. Thereafter, the 3rd respondent called for the Lab Report from the Police Department and referred to the Lab Report and gave his own reasoning that the charges were proved and passed an order of dismissal from service, on 29.08.2014 vide proceedings in Se.Mu.Na.Ka.A2/507/CV/2014. However, the petitioner received the dismissal order only on 26.12.2014 through Registered Post.

7. Pursuant thereto, the petitioner preferred an appeal before the 2nd respondent on 26.01.2015 and the 2nd respondent called the petitioner for enquiry on 16.03.2015 and the petitioner submitted his explanation. However, the 2nd respondent, without considering the vital defect in the order of dismissal, concurred with the findings of the 3rd respondent and confirmed the order of dismissal of the 2nd respondent, vide order dated 24.07.2015. Seeking to quash the said orders, the petitioner is before this Court.

8. The 3rd respondent filed a detailed counter, wherein, he has stated as follows:

8.1. The petitioner was appointed as a Salesman on contract basis by the 3rd respondent. Initially, the petitioner was working in Shop No.11219 and later in Shop No.11017 till 14.01.2014. It came to the notice of the respondents that there were irregularities in Shop No.11017 and thereby, they decided to conduct a surprise inspection on 02.04.2014. During the inspection, it was found that there was a shortage of Rs.28,200/- and the raiding party seized Old Secret Rum, Golden Eagle Deluxe Brandy and Triple Crown VSOP Brandy bottles on suspicion that they were adulterated. Therefore, the bottles so seized were sent for chemical analysis to the Forensic

Laboratory for analysis. In the meanwhile, the 3rd respondent issued a Show cause notice to the Supervisor and two Salesman, including the petitioner. Though the petitioner has stated that the Enquiry Officer held enquiry and submitted his report that the charges were not proved, subsequently, when the Report was received from the Police Department, the 3rd respondent came to the conclusion that the charges were proved and thereby issued a termination letter dated 29.08.2014, received by the petitioner on 26.12.2014.

8.2. According to the 3rd respondent, though the petitioner was appointed as a Salesman on temporary basis and he continued to work for more than 10 years, that does not confer any right on him to seek reinstatement. According to him, in view of the law laid down by the Supreme Court of India in the case of State of Uttar Pradesh and another vs. Kaushal Kishore Sukla (JT (1) SC 108), no reason need to be assigned for such termination.

8.3. Inasmuch as the petitioner exhausted his appellate remedy, he should have gone to Labour Court. The Industrial Disputes Act not only confers the right on the worker for reinstatement and backwages, if the order of termination or dismissal is not in accordance with the Standing Orders, but also provides a detailed procedure and machinery for getting the relief. The 3rd respondent has also stated that he is willing to conduct a denovo enquiry before the Labour Court, if any such proceedings are initiated before the Labour Court.

9. Learned counsel for the petitioner contended that though the Enquiry Officer held that the charges against the petitioner were not proved, the 3rd respondent has mechanically differed from the findings of the Enquiry Officer without assigning any reasons to hold that the petitioner is guilty of the charges, more particularly, when no witness in support of the charges were examined and no documents were marked during the enquiry. He further submitted that insofar as the other Salesman are concerned, this Court has already set aside the dismissal order passed against them and ordered reinstatement into service with consequential benefits. He also produced a copy of the order dated 22.09.2015 made in W.P.No.27837 of 2015 in respect of the Salesman, viz. R.Balaji and a copy of the order dated 23.09.2016 made in W.P.No.17486 of 2015 in respect of the other Salesman, viz. M.Soundararajan.

10. On the other hand, learned counsel appearing for the 3rd respondent, vehemently opposed to reinstate the petitioner, as the petitioner has not exhausted his appellate remedy available before the Labour Court.

11. Considering the facts and circumstances of the case as also the submissions made on either side, as the petition enquiry was conducted without furnishing the forensic report, I find that the matter could be remitted back to the respondents to conduct fresh enquiry.

12. Accordingly, the impugned orders passed by the 2nd and 3rd respondents are set aside and consequently, the matter is remitted back to the 3rd respondent directing him to conduct fresh enquiry by considering all the aspects including the fact that the petitioner was on leave on the date of inspection and pass fresh orders in accordance with law within a period of eight weeks from the date of receipt of a copy of this order. So far as the subsistence allowance of the petitioner is concerned, he is at liberty to make a representation to the 3rd respondent and on receipt of the same, the 3rd respondent is directed to pass appropriate orders regarding payment of subsistence allowance.

With the above direction, this Writ Petition is disposed of.
No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To:

1. The Managing Director,
Tamil Nadu State Marketing Corporation Ltd. (TASMAC)
Chennai 600 008.
2. The Senior Regional Manager,
TASMAC Regional Office,
Salem - 636 016.

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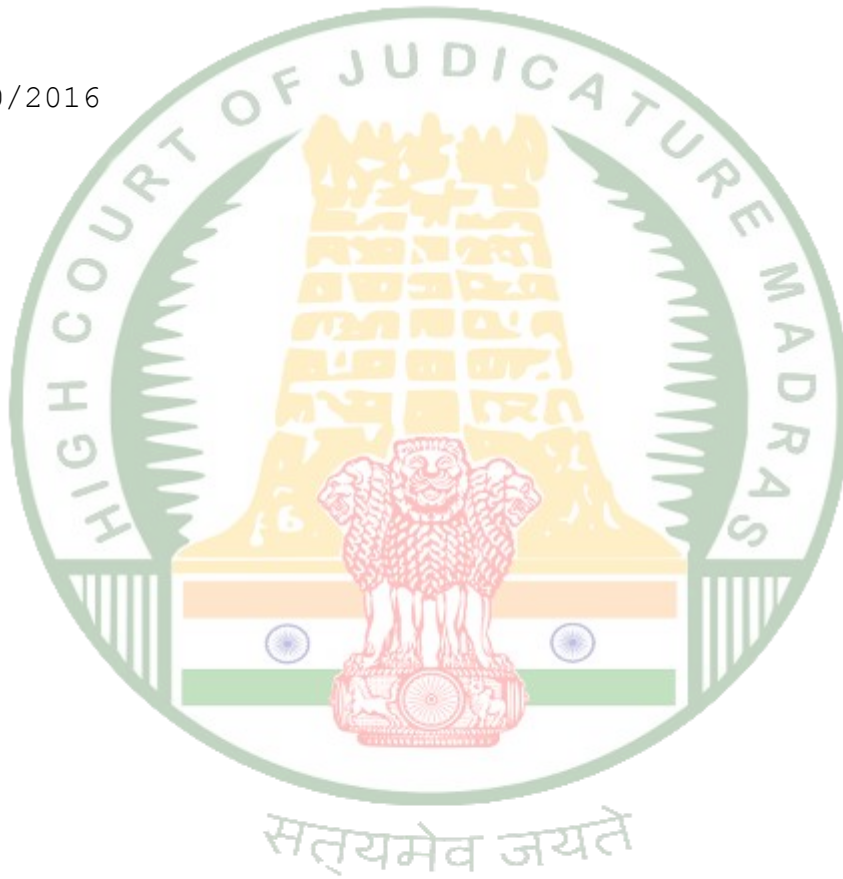
3. The District Manager,
Tamil Nadu State Marketing Corporation Ltd. (TASMAC)
Arakonam, Vellore District.

+2 CC to Mr. C. Kasirajan, Advocate Sr.No.59695

+1 CC to Mr. Syed Izzoth, Advocate Sr.No.59274

W.P.No.25361 of 2015

MSM (CO)
MD : 24/10/2016



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