

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 19.09.2016

Delivered On : 29.09.2016

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBBIAH

W.P.No.31356 of 2015
and M.P.No.1 of 2015

N.Selvaraju .. Petitioner
vs.

- 1.The Senior Regional Manager,
Regional Office,
TASMAC, Salem.
- 2.The District Manager,
TASMAC, Tiruvanamalai,
Thiruvanamalai District.
- 3.The Enquiry Officer/Godown Manager,
TASMAC,
Thiruvanamalai,
Thiruvanamalai District.
- 4.The District Manager,
(Retail Division),
TASMAC, Thiruvanamalai,
Thiruvanamalai District. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the entire records in pursuant to the impugned order dated 08.04.2015 in Na.Ka.R.V2/1920/2014 issued by the second respondent confirmed by the first respondent in Sa.Mu.No.3270/2015/a dated 04.09.2015 and quash the same and direct the second respondent to reinstate the petitioner into service with backwages and all other attendant benefits.

For Petitioner : Mr.M.Sathish Kumar

For Respondents : Mr.B.Nedunchezhiyan
Standing Counsel for TASMAC

O R D E R

This Writ Petition has been filed praying for issuance of a Writ of Certiorari calling for the entire records in pursuant to the impugned order dated 08.04.2015 in Na.Ka.R.V2/1920/2014 issued by the second respondent confirmed by the first respondent in Sa.Mu.No.3270/2015/a dated

04.09.2015 and quash the same and direct the second respondent to reinstate the petitioner into service with backwages and all other attendant benefits.

2. The petitioner was initially selected for appointment as Salesman in Shop No.9284 situated at No.17C, Acharapakkam Road, Vandhavasi and was rendering sincere, meritorious and unblemished service in the said post. While so, on 17.03.2014 a flying squad headed by the respondent respondent raided Shop No.9284 and noticed certain irregularities such as loose sales and mixing water by opening the seal of the liquor bottles. Hence the petitioner was placed under suspension by the second respondent vide order dated 14.06.2014 in Sa.Mu.Order No.R.V.2/1920/2014 and the third respondent also issued show cause notice to the petitioner directing him to appear personally before him on 25.06.2015 in Na.Ka.No.R.V.2/1920/2013 dated 20.06.2014. The petitioner also submitted his explanation and however, the second issued order of dismissal dated 08.04.2015 and aggrieved by the same, the petitioner preferred an appeal before the first respondent and also submitted his explanation. However, without considering his explanation, the first respondent had rejected the petitioner's explanation and confirmed the order of the second respondent. Hence, the petitioner has come forward with this writ petition.

3. When the matter is taken up for consideration, the learned counsel appearing for the petitioner submitted that at the time of inspection, the District Manager has acted as an eyewitness to the incident since there was no independent witness and having acted as an eyewitness, he should not have passed the order of dismissal against the petitioner and the alleged report relied on by the Enquiry Officer was not served on the petitioner and therefore, there is a clear violation of the principles of natural justice and absolutely there is no admission of the alleged guilt whatsoever by the petitioner and hence, prays for quashing the impugned order.

4. Per contra, Mr.B.Nedunchezhiyan, learned Standing Counsel appearing for the respondents/TASMAC has drawn the attention of this Court to the counter affidavit filed by the first respondent and would submit that enquiry was conducted in a fair manner and only on the basis of enquiry officer's findings, the petitioner was terminated from service by the first respondent and there is no violation of the principles of natural justice and prays for dismissal of the writ petition.

5. Keeping the submission made on either side, I have gone through the entire materials available on record.

6. The main submission of the learned counsel appearing for the petitioner is that the District Manager is the complainant and he himself has assumed the role of judge and

passed the order of dismissal from service and therefore, the impugned order is liable to be set aside. This Court, in an identical situation in W.P.No.28066 of 2014 dated 05.03.2015, has set aside the order of dismissal for the simple reason that the respondent in that case who detected the irregularities himself passed the ultimate order of dismissal and thus directed the respondent therein to reinstate the petitioners therein into service forthwith without backwages and further granted liberty to the respondents to conduct fresh enquiry in accordance with the Regulations, if so advised. The above cited order is squarely applicable to the facts of the present case.

7. In the light of the above cited order dated 05.03.2015 made in W.P.No.28066 of 2014, this Writ Petition is allowed and the impugned order dated 08.04.2015 in Na.Ka.R.V2/1920/2014 issued by the second respondent, as confirmed by the first respondent in Sa.Mu.No.3270/2015/a dated 04.09.2015, are set aside and the respondents are directed to reinstate the petitioner into service forthwith without backwages and it is open to the respondents to conduct fresh enquiry in accordance with the Regulations, if they are so advised. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

jvm

To

- 1.The Senior Regional Manager,
Regional Office,
TASMAC, Salem.
- 2.The District Manager,
TASMAC, Tiruvanamalai, Thiruvanamalai District.
- 3.The Enquiry Officer/Godown Manager,
TASMAC,
Thiruvanamalai,
Thiruvanamalai District.

4.The District Manager,
(Retail Division),
TASMAC, Thiruvanamalai,
Thiruvanamalai District.

1 cc to Mr.C. Kasirajan, Advocate, Sr. 56264
1 cc to Mr.B. Nedunchezhan, Advocate, Sr. 56173

W.P.No.31356 of 2015

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