

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.09.2016

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBBIAH

W.P.No.20653 of 2016
and
WMP.Nos.17728 and 17729 of 2016

C.Arumugam

... Petitioner

Vs.

1. The Senior Regional Manager,
Tamil Nadu State Marketing Corporation Ltd.,
(TASMAC),
Salem-16.

2. The District Manager,
Tamil Nadu State Marketing Corporation Ltd.,
(TASMAC),
Tiruvannamalai.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the entire records in connection with the proceedings in (i) Na.Ka.R.V2/1920/2014 dated 17.04.2015 passed by the second respondent and (ii) Se.Mu.No.4517/2015/A dated 21.12.2015 passed by the first respondent and quash the same and consequently direct the respondents to reinstate the petitioner in service with all service, monetary and attendant benefits.

For Petitioner : M/s.Lesi Saravanan

For Respondents : Mr.C.Kasirajan
Standing Counsel for TASMAC

O R D E R

This Writ Petition has been filed praying for issuance of a Writ of Certiorarified Mandamus calling for the entire records in connection with the proceedings in (i) Na.Ka.R.V2/1920/2014 dated 17.04.2015 passed by the second respondent and (ii) Se.Mu.No.4517/2015/A dated 21.12.2015 passed by the first respondent and quash the same and consequently direct the respondents to reinstate the

petitioner in service with all service, monetary and attendant benefits.

2. The petitioner was initially appointed as Supervisor in TASMACH on 27.12.2003 on a consolidated salary of Rs.5,000/- and he was working in Shop No.9285. While so, on 05.10.2014 the District Manager along with internal auditor inspected Shop No.9285 and noticed certain irregularities such as loose sales and mixing water by opening the seal of the liquor bottles. Subsequently the petitioner was placed under suspension by the second respondent, vide order dated 07.10.2014 and he was served with a charge memo dated 07.10.2014, for which the petitioner has submitted his explanation denying the charges. An Enquiry Officer was appointed and enquiry was conducted and all the charges are held proved against him but during the enquiry, no witness was examined and no documents were marked and the Lab Report, based on which findings were rendered, was not served to the petitioner and the explanation submitted by the petitioner was also not considered. Thereafter, based on the Enquiry Officer's Report, the impugned order of removal from service dated 17.04.2015 was issued by the second respondent, against which the petitioner preferred an appeal on 08.06.2015 before the first respondent. However, the first respondent, vide order dated 21.12.2015, confirmed the order of removal passed by the second respondent dated 17.04.2015. Challenging the same, the present writ petition has been filed.

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 removal against the petitioner and the alleged Lab 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.C.Kasirajan, learned Standing Counsel appearing for the respondents/TASMACH would submit that enquiry was conducted in a fair manner and only on the basis of enquiry officer's findings, the petitioner was removed from service by the second 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 removal 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 who detected the irregularities himself passed the ultimate order of dismissal and 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 of the second respondent in Na.Ka.R.V2/1920/2014 dated 17.04.2015 as confirmed by the first respondent in Se.Mu.No.4517/2015/A dated 21.12.2015, 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 petitions are closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

jvm

To

1. The Senior Regional Manager,
Tamil Nadu State Marketing Corporation Ltd.,
(TASMAC),
Salem-16.
2. The District Manager,
Tamil Nadu State Marketing Corporation Ltd.,
(TASMAC),
Tiruvannamalai.

+1cc to M/s.Lesi Saravanan, Advocate, S.R.No.56296
+1cc to Mr.B.Nedunchezhiyan, Advocate, S.R.No.56198

W.P.No.20653 of 2016

KGK(CO)

CA/07/11/2016