

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.26452 of 2013
and M.P.Nos.1, 3 & 4 of 2013 and M.P.No.1 of 2014

G.E.Kanniyappan .. Petitioner
vs.

1.The District Manager,
Tamil Nadu State Marketing Corp. Ltd (TASMAC)
29-30, SIPCOT Industrial Estate,
Kakkalur,
Thiruvallur District.

2.The Senior Regional Manager,
Tamil Nadu State Marketing Corp. Ltd., (TASMAC)
No.735, LLA Building 4th Floor,
Anna Salai,
Chennai -600 002. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for he records on the file of the 1st respondent in Na.Ka.No.A2/8901/2012 dated 16.04.2013, as confirmed by the second respondent in Se.Mu.Order No.003/A3/2013 dated 25.06.2013 and quash the same and consequently direct the respondents to reinstate the petitioner.

(Prayer amended as per order dated 23.09.2014 made in M.P.Nos.2 to 2 of 2013 in W.P.Nos.26450 to 26452 of 2013)

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 records on the file of the first respondent in Na.Ka.No.A2/8901/2012 dated 16.04.2013 as confirmed by the second respondent in Se.Mu.Order No.003/A3/2013 dated 25.06.2013 and quash the same

and consequently direct the respondents to reinstate the petitioner.

2. The petitioner was initially selected for appointment as Bar Attender on temporary basis for a consolidated sum of Rs.1,000/- in the respondent organization and joined service in Shop No.13, Chittor Road, Tiruttani on 01.03.2004 and was rendering sincere, meritorious and unblemished service in the said post. Whiles, on 22.11.2012 a flying squad headed by the first respondent raided Shop No.8901 in Thiruvallur District and noticed that employees working in the said shop including the petitioner herein were engaged in loose sales and mixing water by opening the seal of the liquor bottles. Hence a suspension order was issued by the respondents against all the employees including the petitioner herein and a charge memo dated 22.11.2012 was also served on the petitioner. Aggrieved by the same, the petitioner preferred an appeal before the second respondent on 29.04.2013 and the second respondent sent a notice dated 14.05.2013 calling upon the petitioner to appear before him and the petitioner appeared before the second respondent and the second respondent sent a notice dated 29.05.2013 for filing explanation and the petitioner also filed his explanation and since it was kept pending without passing any orders, the petitioner came 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.C.Kasirajan, 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 on the file of the first respondent in Na.Ka.No.A2/8901/2012 dated 16.04.2013 as confirmed by the second respondent in Se.Mu.Order No.003/A3/2013 dated 25.06.2013 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/-

Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

jvm

To

1.The District Manager,
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Kakkalur,
Thiruvallur District.

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Anna Salai,
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1 cc to M/s. Lesi Saravanan, Advocate, Sr. 56298

W.P.No.26452 of 2013

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