

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2017

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THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

W.P. Nos. 10391 of 2015 & 21699 of 2016

&

W.M.P. No. 18564 of 2016

W.P. No. 10391 of 2015

R. Sarathy

..Petitioner

Vs.

The District Manager,
Tamil Nadu State Marketing
Corporation Limited,
TASMAC, Thiruvannamalai.

..Respondent

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Certiorarified Mandamus to call for the entire records connected with the impugned order passed by the respondent vide Na.Ka.R.V.2/867/2013, dated 16.03.2015 and quash the same and direct the respondent to reinstate the petitioner in service as Supervisor with continuity of service with backwages and all other attendant benefits.

For Petitioner :: Mr.R.D. Ashok Kumar

For Respondent :: Mr.B. Nedunchezhiyan
Special Government Pleader

W.P. No. 21699 of 2016

R. Sarathy

..Petitioner

Vs.

1. The Managing Director,
Tamil Nadu State Marketing Corporation
Limited,
TASMAC, Chennai - 8.

2. The Senior Regional Manager,
Tamil Nadu State Marketing Corporation
Limited,
TASMAC, Salem - 16.

3. The District Manager,
Tamil Nadu State Marketing Corporation
Limited,
TASMAC, Thiruvannamalai.

..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Certiorarified Mandamus to call for the entire records connected with the impugned order passed by the 2nd respondent vide Se.Mu No. 342/2016/A dated 22.03.2016 by confirming the order of the 3rd respondent passed vide Na.Ka.R.V.2/867/2013 dated 16.03.2015, and quash the same and direct the respondent to reinstate the petitioner in service as Supervisor with continuity of service with backwages and all other attendant benefits.

For Petitioner :: Mr.R.D. Ashok Kumar

For Respondents:: Mr.B. Nedunchezhiyan,
Special Government Pleader

COMMON ORDER

The writ petitioner, originally made a challenge to the order imposing punishment of dismissal from service passed by the District Manager, TASMAC, Thiruvannamalai, dated 16.03.2015 by filing W.P. No.10391 of 2015 and during the pendency of the said writ petition, made a challenge to the said order of dismissal from service by filing an appeal to the Senior Regional Manager, TASMAC, Salem - 16 and it was also dismissed and challenging the legality of the same, W.P. No. 21699 of 2016 has been filed. In the light of the order passed in the appeal, which is also sought to be challenged before this Court, nothing survives in W.P. No. 10391 of 2015 and the said writ petition is closed. No costs.

2. As far as W.P. No. 21699 of 2016 is concerned, the petitioner would state that he is a B.Com. Degree Holder and got registered his name in the District Employment Exchange, Tiruvannamalai District. In pursuance of the paper advertisement, he applied for the post of Supervisor in the respondent Corporation and was selected and appointed as a Supervisor on consolidated pay and posted at S.V. Nagaram Sales Shop. The petitioner would aver that he performed his duties sincerely and honestly to the utmost satisfaction of his superior officials.

3. According to the petitioner, the TASMAC shop bearing No. 9304 at Kalleripattu Village was shifted to Palangamoor Village in Arni to Cheyyar Road, due to public agitation and when the petitioner was serving in the said shop, on 05.03.2013, he attended the Supervisors' meeting held at Arni and it went on till 2 p.m. and thereafter, he went to have his lunch and at that time, he received a phone call from a Salesman, viz., Thiru.C.Sampath, with regard to the sale of liquor and the petitioner, immediately, went to the shop and on enquiry, he learnt that the customers were fighting with regard to sharing of liquor and in order to prevent any mishap and untoward incident within the shop premises and taking into consideration, the situation prevailing, the salesman was

compelled to sell the liquor in loose. The petitioner was making enquiry in this regard and at that juncture, the 3rd respondent came to the shop by way of a surprise inspection and questioned the loose sale of liquor and obtained his signature in the inspection note. On the very next day, the petitioner, along with two other salesmen, was issued with a charge memo alleging that they have not taken any steps to prevent the loose sales. The petitioner was called upon to submit his explanation and accordingly, he submitted his explanation denying the allegations. By proceedings dated 16.03.2013, the petitioner was kept under suspension and after a lapse of nearly 17 months, an Enquiry Officer came to be appointed and according to the petitioner, no proper procedure was followed while conducting the enquiry and the principles of natural justice was also given a go-by. In the enquiry, the charge framed against the petitioner was held to be proved and he was called upon to submit his explanation and not satisfied with the explanation submitted, the 3rd respondent passed an order dated 16.03.2015 dismissing the petitioner from service. The petitioner, aggrieved by the same, filed an appeal before the Senior Regional Manager, TASMAL, Salem and specifically took a point that without furnishing the necessary documents, the 3rd respondent had conducted the enquiry, in violation of the principles of natural justice. However, according to the petitioner, without going into the appeal memorandum/petition and without properly appreciating the relevant records, the appeal came to be dismissed vide order dated 22.03.2016 confirming the order of dismissal passed by the 3rd respondent. Challenging the same, the petitioner has come forward to file the present writ petition.

4. Mr. R.D. Ashok Kumar, learned counsel appearing for the petitioner, drawing the attention of this Court to the typed set of documents, would submit that from the date of suspension of the petitioner, by order dated 16.03.2013, till the date of dismissal of the petitioner from service, by order dated 16.03.2015, passed by the 3rd respondent, the petitioner was not paid with any subsistence allowance and therefore, he was constrained to file a writ petition in W.P. No. 10391 of 2015 and vide order dated 09.04.2015, this Court had directed the 3rd respondent to pay the subsistence allowance from 16.03.2013 to 16.03.2015 and therefore, for non-payment of the subsistence allowance, the entire disciplinary proceedings are vitiated. It is the further submission of the learned counsel for the petitioner that admittedly, it is the 3rd respondent, who had conducted surprise inspection and had issued the charge memo and he had appointed the Enquiry Officer and he was also the Disciplinary Authority and on that ground also, the impugned order of dismissal warrants interference and would also contend that though in the appeal memorandum, the petitioner has specifically raised a point that the principles of natural justice have been given a go-by, the said aspect has not been dealt with by the Appellate Authority and therefore, prays for interference.

5. Per contra, Mr.B. Nedunchezhiyan, learned Special Government Pleader, drawing the attention of this Court to the proceedings of the Enquiry Officer, the order of dismissal passed by the 3rd respondent and the order passed by the 2nd respondent, would contend that the petitioner had not raised any contention regarding non-production of documents and it is his further contention that the petitioner has been provided with reasonable opportunities to explain about the loose sales effected by the salesmen and also as to why he has advised the salesmen to sell the balance portion of the liquor in loose. With regard to the charge framed against the petitioner, he was called upon to offer his explanation and upon submitting his explanation, the 3rd respondent has taken into consideration, the materials in proper perspective and chose to dismiss the petitioner from service and the Appellate Authority, on an independent application of mind, has also chosen to confirm the same. This Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, may not interfere with the same and prays for dismissal of the writ petition.

6. This Court has considered the rival submissions and perused the materials on record.

7. Admittedly, surprise inspection was conducted by the 3rd respondent and he himself had issued the charge memo, had also appointed the Enquiry Officer and had also passed the impugned order of dismissal from service. This Court, in similar circumstances, vide order dated 09.02.2017 in W.P. No. 1934/2016 (K. Baskaran V. The Senior Regional Manager, TASMAL, Salem - 16 and another) has set aside the order of dismissal from service and ordered de novo enquiry, in the form of fresh enquiry. The said order is squarely applicable to the facts and circumstances of the case.

8. It is also very pertinent to point out, at this juncture that the petitioner was placed under suspension, vide order dated 16.03.2013 and thereafter, dismissed from service by order dated 16.03.2015 and admittedly, subsistence allowance was not paid and challenging the order of dismissal, he filed W.P. No. 10391 of 2015 and pending disposal of the writ petition, M.P. No. 1 of 2015 was filed for payment of subsistence allowance from 16.03.2013 to 16.03.2015 and vide order dated 09.04.2015, this Court had ordered payment of subsistence allowance and thereafter only, it was paid. In the considered opinion of this Court, placing the petitioner under suspension and proceeding with the enquiry, without paying subsistence allowance is, per se, unsustainable. The petitioner, being an employee, who is placed under suspension, is expected to maintain himself and also his family, with the meagre subsistence allowance and it has been paid only pursuant to the orders passed by this Court, that too, after the order of dismissal from service came to be passed. In the considered opinion of this Court, the non-payment of

subsistence allowance, during the pendency of the disciplinary proceedings, vitiates the disciplinary proceedings and warrants interference and this Court has come across very many cases, in which the procedure contemplated in regard to disciplinary proceedings has not been complied with or violated by the concerned respondents.

9. In the light of the reasons assigned above, this Court is of the considered view that the order of dismissal passed, as confirmed by the Appellate Authority, warrants interference and the same is accordingly set aside.

10. The writ petition is partly allowed and the matter is remanded to the 2nd respondent for conducting a de novo enquiry. The 3rd respondent is directed to furnish the relevant documents, upon which they may place reliance, to sustain the charge memo against the petitioner and thereafter, conduct enquiry in accordance with law and pass appropriate orders. Since the order of dismissal has been set aside by this Court, the respondents are directed to reinstate the petitioner forthwith and confer consequential benefits, if he is otherwise eligible. The petitioner is also directed to co-operate with the Enquiry Officer for expeditious conclusion of the enquiry. No costs. Connected W.M.P. is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

glp
To

1. The Managing Director,
Tamil Nadu State Marketing Corporation
Limited,
TASMAC, Chennai - 8.
2. The Senior Regional Manager,
Tamil Nadu State Marketing Corporation
Limited,
TASMAC, Salem - 16.
3. The District Manager,
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TASMAC, Thiruvannamalai.

W.P. Nos. 10391/2015 & 21699 of 2016

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