

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2017

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE RMT.TEEKAA RAMAN

W.A.No.925 of 2014

M.Lakshmanan

... Appellant

-vs-

- 1.The Tamil Nadu State Marketing Corporation Ltd.,
represented by its Managing Director,
Thalamuthu Natarajan Buildings,
4th Floor, Egmore, Chennai-600 008.
 - 2.The Senior Regional Manager,
Tamil Nadu State Marketing Corporation Ltd.,
Coimbatore.
 - 3.The District Manager (Retail Vending),
Tamil Nadu State Marketing Corporation Ltd.,
Erode.
- Respondents

Appeal filed under Clause 15 of the Letters Patent, against the order passed by this Court in W.P.No.2662 of 2009 dated 28.04.2014. Writ petition filed under Article 226 of the Constitution of India to issue an Order of Writ of Certiorari mandamus, calling for the records relating to the order passed by the 3rd respondent in proceedings Na. Ka. No.831/2006/R1 dt 13.11.2006 and consequential proceedings confirming the same passed by the 2nd respondent in Pa.Mu. 4048/2006/A1 dt 28.12.2007 and quash the same consequently direct the respondents to reinstate the petitioner in service in any of the TASMAC Wine Shop under the control of the respondents with continuity of service backwages and all other attendant benefits.

For Appellant :: Mr.P.Suresh Kumar for
Ms.D.Saraswathi

For Respondents :: Mr.K.Sathishkumar

JUDGMENT
(Judgment of the Court was delivered by
HULUVADI G.RAMESH, J.)

The appellant was appointed as Bar Assistant by order dated 29.01.2004 of the third respondent and was posted in TASMACH Shop No.3584 Narayana Valasu. On a surprise inspection conducted by the Branch / Regional Supervisor on 01.06.2006, it was found that the appellant and another salesman have mixed water into the bottles of liquor and thereby they made the liquor unfit for consumption. Show cause notice was issued for which the appellant submitted his explanation and ultimately, on confirmation of the charges alleged, the appellant was dismissed from service by the third respondent by order dated 13.11.2006. The appellant filed an appeal before the second respondent and the same was also dismissed by order dated 28.12.2007. Hence, the appellant filed a writ petition before this Court in W.P.No.2662 of 2009.

2.The learned counsel for the appellant submitted before the writ Court that in the order passed by the second respondent in the appeal filed against the termination order, no reason has been assigned. Further it was submitted that conducting enquiry without issuing any valid suspension order is unfair and tainted with mala fide and hence the dismissal order is liable to be set aside.

3.On hearing the submissions and also perusing the materials available on record, this Court dismissed the writ petition on the ground of delay in approaching this Court. Further it was held that when the disciplinary authority and appellate authority have passed orders losing confidence on the appellant to continue him in service, this Court is unable to interfere with the said orders.

4.Challenging the order passed in the writ petition, the present writ appeal has been filed.

5.The learned counsel for the appellant has submitted that when no counter was filed as to the averments raised in the writ petition by the respondents and no document was marked or any witness examined in the enquiry said to have been conducted, the learned single Judge has erred in dismissing the writ petition. He also submitted that the delay in filing the writ petition, was only for a period of one year. Stating so, the learned counsel prayed for quashing the order passed by this Court in W.P.No.2662 of 2009 dated 28.04.2014 and to consequently direct the respondents to reinstate the appellant into service.

6.The learned counsel for the respondents has submitted that the appellant pleaded guilty of the charges framed against him and hence that itself is sufficient to state that the

charges have been proved.

7.We have heard the learned counsel on either side and perused the materials available on record.

8.It appears that the appellant joined service in the year 2004. With regard to the charge of mixing water into the liquor bottles, the appellant was dismissed from service by the order of the third respondent dated 13.11.2006 and the appeal filed by him against the dismissal order also came to be dismissed. Thereafter, the writ petition in W.P.No.2662 of 2009 was filed and the learned single Judge has dismissed the writ petition on the ground that there was delay in approaching this Court.

9.The fact remains that the appellant joined the service in the year 2004 and having worked for about two years, he was removed from service on the charge that he mixed water with the liquor bottles. As per the submission made by the learned counsel for the respondents, the appellant has pleaded guilty. But having regard to the nature of the charge, this Court feels that the very dismissal of the appellant from service is not in consonance with the charge levelled against him.

10.In view of the above stated circumstances, this Court directs the respondents to reinstate the appellant within a period of two months from the date of receipt of a copy of this judgment. However, it is made clear that the appellant is not entitled for backwages from the date of dismissal till the date of reinstatement on the basis of 'no work no pay'. But there will be continuity of service for the said period, for the purpose of pension and terminal benefits.

11.The writ appeal is disposed of accordingly. No costs.

Sd/-

Assistant Registrar(CS III)

//True copy//

Sub Assistant Registrar

KM

To

1.The Managing Director,
Tamil Nadu State Marketing Corporation Ltd.,
Thalamuthu Natarajan Buildings,
4th Floor, Egmore, Chennai-600 008.

2.The Senior Regional Manager,
Tamil Nadu State Marketing Corporation Ltd.,
Coimbatore.

3.The District Manager (Retail Vending),
Tamil Nadu State Marketing Corporation Ltd.,
Erode.

+1cc to Mr.D.Saraswathi, Advocate SR.No.81623
+1cc to Mr.K.Sathish Kumar, Advocate SR.No.81634

W.A.No.925 of 2014

KGK (CO)
GN (05/12/2017)



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