

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2017

CORAM

THE HONOURABLE MR.JUSTICE M. SATHYANARAYANAN

W.P. No. 1935 of 2016
&
W.M.P. No. 1692 of 2016

B. Meganathan

..Petitioner

Vs.

1.The Senior Regional Manager,
Tamil Nadu State Marketing Corporation
Ltd., (TASMAC),
Salem Region, No.56, Brindhavan Road,
Fairlands, Salem - 16.

2.The District Manager, Arakkonam District,
Tamil Nadu State Marketing Corporation
Ltd., (TASMAC),
SIPCOT, Ranipet, Vaalaja Taluk,
Vellore District.

...Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Certiorarified Mandamus to call for the records of the order of the 2nd respondent bearing proceedings in Se.Mu.Na.Ka. A2/994-3/C.V/2014 dated 30.06.2015, which was confirmed by the 1st respondent in Se.Mu.No. 4983/2015/A dated 31.10.2015 and quash the same and consequently direct the respondents herein to reinstate the petitioner into service, with continuity of service and all attendant benefits.

For Petitioner :: Mr.K. Sasindran
For Respondents :: Mr.C. Kasirajan

O R D E R

By consent, the main writ petition itself is taken up for final disposal.

2. Mr.C. Kasirajan, learned counsel, accepts notice on behalf of the respondents.

3. The petitioner was appointed as a Salesman, on contractual basis and he was working in Shop No. 11136 at Vellore. According to him, right from the date of employment, he has been discharging his duties honestly and sincerely,

without any blemish and to the utmost satisfaction of his superior officials. The petitioner would aver that on 05.07.2014, when he was in the shop, the Salem Regional Inspection Team came to the shop and seized some of the liquor bottles and thereafter, asked him to come to the Station and the 2nd respondent, along with the complaint, handed over the custody of the petitioner to the Sub Inspector of Police, Prohibition and Enforcement Wing, Ranipet, who registered a case in Crime No.251/2014 for the alleged offences under Sections 24(A) of TNP Act read with 420 IPC and later on, the petitioner came out on bail. The petitioner came to be placed under suspension. The criminal case, after investigation, culminated in the charge sheet, which was taken on file by the Judicial Magistrate Court, Ranipet, Vellore, in C.C. No. 7 of 2015 and after a full-fledged trial, the petitioner and another accused, namely, K. Ravindran, were acquitted, vide judgment dated 30.09.2015 and no further challenge has been made, in the form of appeal.

4. The petitioner was also issued with a charge memo dated 08.08.2014 alleging mixing of water with liquor and the petitioner was called upon to offer his explanation in respect of the said charge. The petitioner submitted his explanation on 27.08.2014 denying the charge. Not being satisfied with the explanation, enquiry notice was served on the petitioner and pursuant to the enquiry notice, the petitioner appeared before the Enquiry Officer and submitted his detailed explanation. According to the petitioner, the Enquiry Officer, without considering the explanation submitted by him, concluded that the charges framed against him were proved and submitted his report on 13.05.2015, based on which he was called upon to submit his explanation and accordingly, submitted the same to the 2nd respondent, who, in turn, passed an order dated 30.06.2015 dismissing the petitioner from service. The petitioner made a challenge to the said order by filing W.P. No. 22790 of 2015 and later on, withdrew it and accordingly, the writ petition came to be dismissed as withdrawn on 01.12.2016. The petitioner had already filed an appeal before the 1st respondent, who, vide impugned order dated 31.10.2015, dismissed the said appeal and thereby confirmed the order of dismissal from service. Therefore, challenging the legality of the said order, the petitioner came forward to file the present writ petition.

5. Learned counsel for the petitioner would submit that the 2nd respondent, at the time of lodging the complaint on 05.07.2014 with Prohibition and Enforcement Wing Police itself, had handed over all the incriminating articles, which included the liquor bottles, and during the course of investigation, the liquor bottles were also subjected to chemical analysis and the Analyst's Report was also filed and marked as Ex-P4 and the bottles (48 nos.) were marked as M.O.1 series. The Trial Court, on a thorough scrutiny of oral and documentary evidence,

concluded that the charge against the petitioner and the other accused has not been established and acquitted them by judgment dated 30.09.2015 and no further challenge has been made to the same and it has become final. While so, the Disciplinary Authority as well as the Appellate Authority, behind the back of the petitioner, have placed reliance upon a forensic lab report dated 18.06.2014, which disclosed that the percentage of alcohol in the sample was only 32.15% and solely based on the said report, concluded that the petitioner is guilty of misconduct, which is not sustainable and therefore, prays for appropriate orders.

6. Per contra, Mr.C. Kasirajan, learned counsel for the respondent has drawn the attention of this Court to the counter affidavit and would submit that the charges framed against the petitioner have been reduced in the form of report and he was called upon to submit his explanation and that requisite procedure was followed while conducting the enquiry. The Disciplinary Authority, taking into consideration, the nature and gravity of the offence, thought it fit to impose the punishment of dismissal from service and the Appellate Authority, on an independent application of mind, has also confirmed the same and therefore, 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.

7. This Court paid its best attention to the rival submissions and perused the materials placed before it.

8. Admittedly, the 2nd respondent, at the time of lodging the complaint itself, has handed over all the incriminating articles to the custody of Prohibition and Enforcement Wing Police and they were also subjected to chemical analysis and the report, in regard thereto, has been marked as Ex-P4 in C.C. No. 7/2015 on the file of Judicial Magistrate, Ranipet, Vellore. So also, the seized liquor bottles (48 nos.) have been marked as M.O.1 series. The Trial Court concluded that the charges framed against the petitioner and the other accused have not been proved. A perusal of the orders passed by the 1st and 2nd respondents would disclose that for reaching the conclusion of delinquency on the part of the petitioner, prima facie, reliance has been placed on the Lab Report dated 18.06.2014. It is not made clear as to whether the said articles were returned from the custody of the Court and even otherwise, the said lab report has not been furnished to the petitioner and the petitioner has also made a specific plea in this regard. The Disciplinary Authority as well as the Appellate Authority have reached their conclusion solely based on the said report. In fact, the Trial Court has considered Ex-P4 and the material objects and concluded that the charges framed against the petitioner have

not been proved. In the considered opinion of this Court, the reliance placed by the Disciplinary Authority and the Appellate Authority, on a document, copy of which has not been furnished to the petitioner and in respect of which, he has not been offered any opportunity to refute the same, the impugned order of dismissal passed by the Disciplinary Authority, as confirmed by the Appellate Authority, warrants interference.

9. At this juncture, learned counsel for the respondent prays for remanding the matter once again, for conducting a de novo enquiry .

10. In the considered opinion of this Court, in the light of the above facts and circumstances, de novo enquiry need not be conducted for the reason that the criminal prosecution as well as the departmental proceedings have been initiated on the same set of allegations and the Criminal Court has reached the conclusion of acquittal and it has become final and further, in the light of serious lapses and infirmities in the procedure adopted by the respondents, while conducting the enquiry, as pointed out above, coupled with the fact that the petitioner is out of service from 30.06.2015, this Court is of the view that the matter does not require remand and the impugned order is liable to be set aside.

11. Accordingly, the impugned order is set aside and the writ petition is allowed. The respondents are directed to reinstate the petitioner with continuity of service and other consequential benefits, except arrears of salary from the date of dismissal till the date of reinstatement. The respondents are directed to comply with this order within a period of three weeks from the date of receipt of a copy of this order. No costs. Connected W.M.P. is closed.

Sd/-

Asst.Registrar

/true copy/ जयते

Sub Asst. Registrar

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To

- 1.The Senior Regional Manager,
Tamil Nadu State Marketing Corporation
Ltd., (TASMAC),
Salem Region, No.56, Brindhavan Road,
Fairlands, Salem - 16.

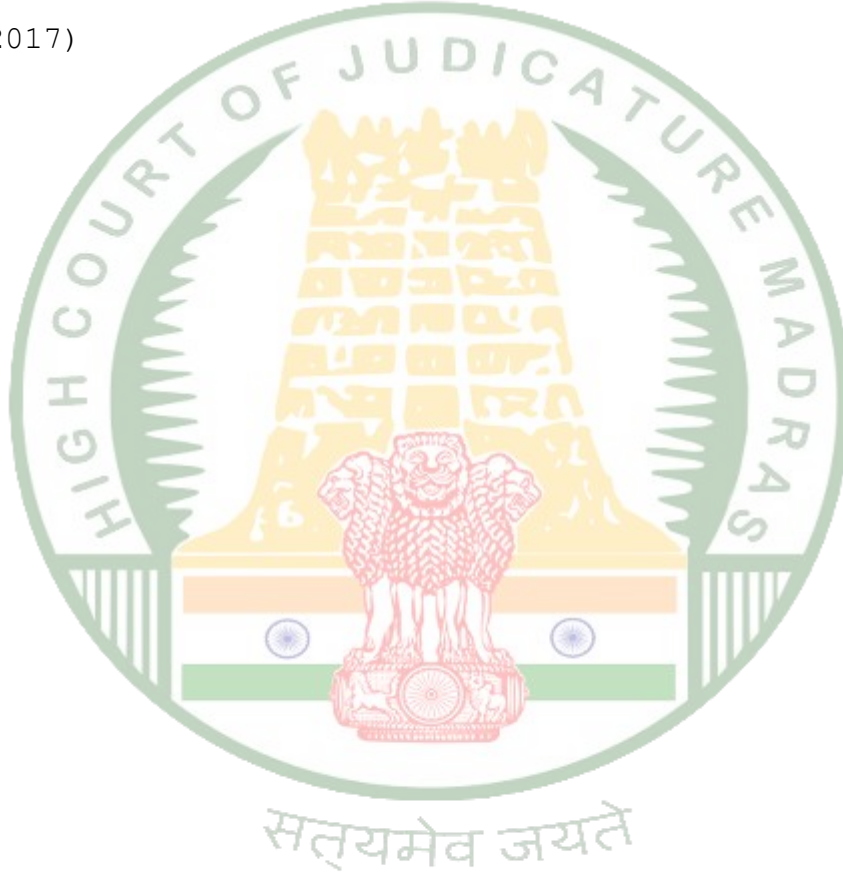
2.The District Manager, Arakkonam District,
Tamil Nadu State Marketing Corporation
Ltd., (TASMAC),
Sipcoot, Ranipeor, Vaalaja Taluk,
Vellore District.

+1cc to Mr.K. Sasindran, Advocate SR. 9078

+1cc to Mr.C. Kasi Rajan, Advocate SR. 8535

W.P. No. 1935 of 2016

AD(CO)
VR(20/02/2017)



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