

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2017

CORAM

THE HONOURABLE MR.JUSTICE M. SATHYANARAYANAN

W.P. No. 1936 of 2016

&

W.M.P. No. 1693 of 2016

V. Poovarasan

..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.A2/298/C.V/2015 dated 30.06.2015, which was confirmed by the 1st respondent in Se.Mu.No. 4979/2015/A dated 17.10.2015 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 recruited as a Salesman on a contractual basis and he was working in Shop No. 11130 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 10.03.2015, when he was in the shop, Salem Regional Inspection Team came to the shop and asked for some liquor bottles for inspection and thereafter, he was asked to meet the 1st respondent and on meeting the first respondent, he was taken to the Police Station and handed over and a case was also registered in Crime No. 95/2015 by the Prohibition and Enforcement Wing Police, Ranipet and later on, he came out on bail. It is further stated that a suspension order was issued to the petitioner and thereafter, a charge memo dated 30.03.2015 was issued 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 06.04.2015 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 and it is the specific case of the petitioner that enquiry, in accordance with law, was not conducted and the Enquiry Officer, on 13.05.2015, submitted his report that the charges have been proved, based on which the petitioner 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 challenging the legality of the said order filed an appeal before the 1st respondent, who, vide impugned order dated 17.10.2015, has dismissed the said appeal. Therefore, challenging the legality of the said order, the petitioner came forward to file the present writ petition.

4. Learned counsel for the petitioner has drawn the attention of this Court to the typed set of documents and would further submit that though the 2nd respondent had lodged a complaint on 10.03.2015 to the Inspector of Police, Prohibition and Enforcement Wing, Ranipet and even as per the complaint, the seized bottles and incriminating articles have been handed over to the Police and the jurisdictional Police, after investigation, has filed a positive final report, which was taken on file in C.C. No. 39 of 2015 by the Court of Judicial Magistrate No.II, Walajapet (in-charge) and the Chemical Analyst's Report has also been marked as Ex-P5 and the seized bottles as well as other incriminating articles have been marked as M.O.s 1 and 2 and the said case has also ended in acquittal vide judgment dated 31.08.2015. No further challenge has been

made. Despite that, the Appellate Authority has placed reliance upon forensic lab report dated 10.03.2015, the copy of which has not been furnished to the petitioner. Further, he would submit that since the enquiry has not been held in accordance with law and documents, which do not form part of records have also been relied upon, behind the back of the petitioner, prays to set aside the impugned order and grant reinstatement.

5. 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.

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

7. A perusal of the typed set of documents would disclose that the 2nd respondent had lodged a complaint to the Inspector of Police, Prohibition and Enforcement Wing, Ranipet, on 10.03.2015 and at the time of lodging of the complaint, he had handed over (i) 180 ml liquor bottles (46 nos.), (ii) 180 ml liquor (Jet Brandy) bottles (42 nos.) (iii) 375 ml liquor bottles (3 nos.) bottles, (iv) 1 litre plastic bottles (5 nos.) (v) bottle caps (45 nos.), (vi) small nail (1 no.) and (vii) piercing needles (2 nos.), to the Police as well as the persons involved in the commission of the offence. After investigation, the said authority had filed a positive final report, which was taken on file in C.C. No.39 of 2015 by the Court of Judicial Magistrate No.II, Walajapet (in-charge) and during the course of trial, the forensic lab report was marked as Ex-P5 and the material objects were also marked as M.O.1 series and M.O.2 and the said Court has concluded that the offence for which the petitioner was charged has not been proved and therefore, acquitted him vide judgment dated 31.08.2015. Admittedly, no further challenge has been made and therefore, it has become final.

8. A perusal of the orders passed by the Disciplinary Authority as well as the Appellate Authority would disclose that for reaching the conclusion of delinquency on the part of the petitioner, the request made by the 2nd respondent for

ascertaining the content of alcohol and the lab report dated 10.03.2015 holding that the percentage of alcohol found in the sample sent was only 29.10.% and as such, it is not fit for consumption, have been relied upon. In the considered opinion of this Court, the findings reached by the Disciplinary Authority as well as the Appellate Authority, on the basis of the said document, are unsustainable for the reason that incriminating articles along with personnel were handed over to the PEW, Ranipet, by the 2nd respondent, even at the time of lodging the complaint on 10.03.2015 and they have also come out on bail and the case, after a full-fledged trial has also ended in acquittal. A perusal of the judgment in C.C. No. 39/2015 dated 31.08.2015 would disclose that the report of the Forensic Lab was marked as Ex-P5 and the bottles and other incriminating materials were marked as M.O.1 series and M.O.2 and it is not clear from the records as to how the District Manager was able to send the liquor bottles and get a report holding that the percentage of alcohol in the sample sent was only 29.10% despite the fact that the bottles seized were in the custody of PEW Police. That apart, a copy of the enquiry report has not been furnished to the petitioner and a careful scrutiny of the materials placed, would disclose that a fair and reasonable procedure has not been adopted while conducting the domestic enquiry and therefore, the impugned order 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/

Sub Asst. Registrar

To

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

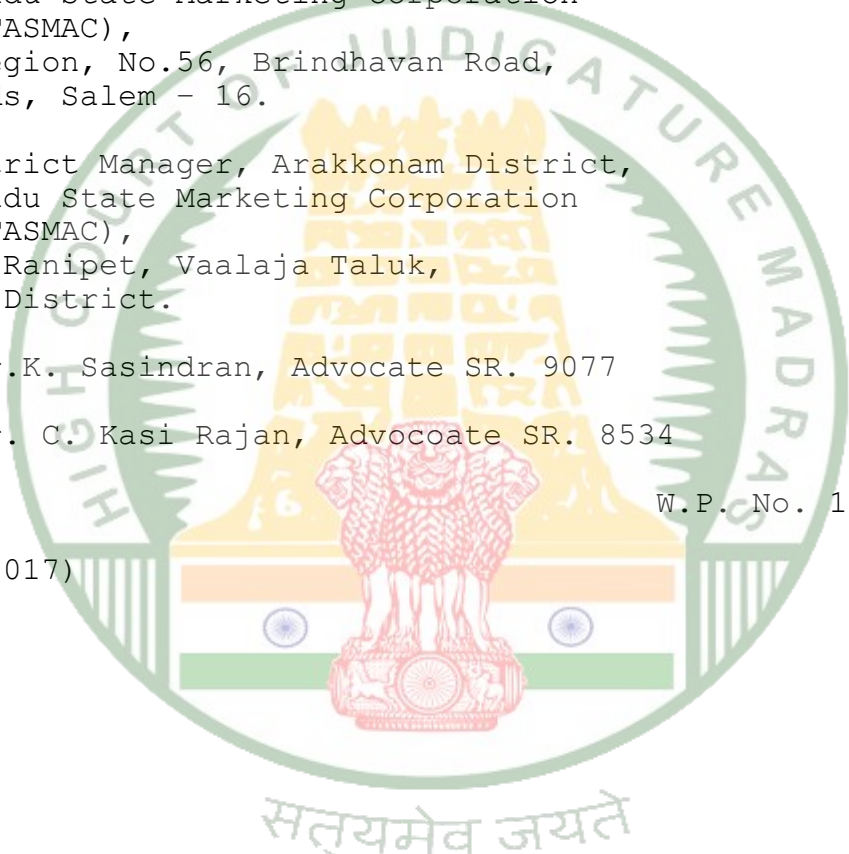
2.The District Manager, Arakkonam District,
Tamil Nadu State Marketing Corporation
Ltd., (TASMAC),
SIPCOT, Ranipet, Vaalaja Taluk,
Vellore District.

+1cc to Mr.K. Sasindran, Advocate SR. 9077

+1cc to Mr. C. Kasi Rajan, Advocoate SR. 8534

W.P. No. 1936 of 2016

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



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