

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.36072 of 2015
and M.P.No.1 of 2015

S.Kumar

...Petitioner

vs.

The District Manager,
Tamil Nadu State Marketing
Corporation Limited, (TASMAC),
Vellore District.

...Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the proceedings of the respondent in its Che.Mu.Na.Ka.No.A2/577/C.V/2014 dated 18.06.2014 and quash the same and consequently direct the respondent to reinstate the petitioner back into service.

For Petitioner : Mr.V.Rajinikanth

For Respondent : Mr.C.Kasirajan
Standing Counsel for TASMAC

O R D E R

By consent, this Writ Petition is taken up for final disposal.

2. The petitioner, in the affidavit filed in support of this writ petition would aver among other things that he was appointed as Shop Salesman of TASMAC retail shop No.11306 at Vellakal Mutham by order dated 13.01.2004 and he was paid a consolidated salary of Rs.2,000/- per month. It is further averred by the petitioner that on 25.06.2013, a flying squad headed by Senior Regional Manager had conducted surprise inspection and after noting certain irregularities, the petitioner was placed under suspension by the respondent vide order dated 01.06.2013 and the Superintendent of the shop, namely Ram Kumar was also placed under suspension and both of them were proceeded with departmentally alleging that loose sales of liquor were effected. The petitioner submitted his explanation stating that

inadvertently the box containing liquor bottles got broken and in order to save the same, the contents of the bottles were collected for the purpose of selling it and I was misconstrued as loose sales and therefore, prayed for exoneration of the charges. The Manager (Go-down In-charge) of TASMACH, Vellore District was appointed as the Enquiry Officer, who has given a finding against the petitioner based on the Forensic Report. The Disciplinary Authority, namely the respondent, by accepting the Enquiry Officer's Report, imposed the order of punishment of removal from service against the petitioner as well as against Ram Kumar. Challenging the legality of the same, the petitioner has come forward with this writ petition.

3. The learned counsel appearing for the petitioner would submit that Ram Kumar has filed W.P.No.26977 of 2014 and this Court, having found that no worthwhile enquiry conducted by the employer, has expressed its opinion that the impugner order of removal from service is to be set aside and accordingly set aside the impugned order, vide order dated 29.09.2016 and further directed the respondent to reinstate the petitioner therein/Ram Kumar into service. The learned counsel appearing for the petitioner would further contend that in the Enquiry Officer's report, reliance was placed upon Forensic Report and admittedly, copy of the same was not furnished to the petitioner and the Disciplinary Authority has also placed reliance upon the said report to reach the conclusion and hence, the principles of natural justice have been violated and prays for interference.

4. Mr.C.Kasirajan, learned Standing Counsel appearing for the respondent/TASMACH has produced the original records and would submit that the petitioner, in his statement, has admitted about the collection of liquor from broken bottles and therefore, a fair conclusion has been reached that it was for loose sales and the order of removal from service has been rightly passed against him and prays for dismissal of this writ petition.

5. This Court has considered the rival submissions and also perused the entire materials available on record.

6. A perusal of the Enquiry Officer Report dated 04.10.2013 would disclose that reliance has been placed upon the Forensic Report which disclose about lesser percentage of alcohol and it was accepted by the Disciplinary Authority, namely the respondent and passed the impugned order of removal from service. The Disciplinary Authority did not place reliance upon the admission on the part of the petitioner in his written statement of defence, but proceeded solely on the basis of the Forensic Report and admittedly, copy of the same has not been

furnished to the petitioner and therefore, this Court is of the view that the Disciplinary Proceedings initiated against the petitioner have been vitiated and the impugned order of removal from service warrants interference and the matter is to be remanded to the respondent once again for conducting fresh enquiry in accordance with law and also in strict compliance of the principles of natural justice.

7. In the result, this Writ Petition is partly allowed and the impugned order of the respondent in proceedings in Che.Mu.Na.Ka. No.A2/577/C.V/2014 dated 18.06.2014 is set aside and the matter is remanded to the respondent, who shall furnish a copy of the Forensic Report to the petitioner within a period of two weeks from the date of receipt of a copy of this order and on receipt of the same, it is open to the petitioner to submit his additional statement of defence to the respondent and upon receipt of the same, the domestic enquiry shall be conducted strictly in accordance with law and in strict adherence to the principles of natural justice and orders shall be passed as expeditiously as possible and not later than six weeks from the date of receipt of the additional statement of defence and the decision taken, shall be communicated to the petitioner. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

jvm

To

The District Manager,
Tamil Nadu State Marketing Corporation Limited, (TASMAC),
Vellore District.

+1cc to Mr.Rajinikanth, Advocate, S.R.No.6572
+1cc to Mr.Kasi Rajan, Advocate, S.R.No.6378

RSY (CO)
RS (07/02/2017)

W.P.No.36072 of 2015