

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:30.07.2018

CORAM:

THE HONOURABLE MR. JUSTICE SATRUGHANA PUJAHARI
W.P.No.7193/2018 & WMP.Nos.8931 & 8932/2018

M.Prabakar

.. Petitioner

Vs

1 The Regional/District Manager
TASMAC, Tiruvannamalai
Tiruvannamalai District.

2 The Senior Regional Manager
TASMAC, Salem.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of writ of Certiorarified Mandamus calling for the records of the respondents in connection with the impugned orders issued by the respondents 1 and 2 in Na.Ka.No.R.V.2/1920/2014 dated 17.04.2015 and Se.Mu.No.4295/2015/A dated 23.12.2016 respectively and quash the same and further direct the respondents to reinstate the petitioner into service with all consequential and monetary benefits.

For Petitioner : Mr.R.Dineshkumar
For Respondents : Mr.P.Arumuga Rajan
Standing Counsel

ORDER

By consent of both sides, this Writ Petition is taken up for hearing and disposal.

2 The petitioner challenges the order of rejection of his appeal and the removal from service order passed by the respondents 1 and 2 respectively on 17.04.2015 and 23.12.2016 respectively with a further prayer to direct the respondents to reinstate the petitioner into service with all consequential and monetary benefits.

3 The petitioner would aver that he was appointed as a Salesman in the TASMAC Shop NO.9285 during the year 2003. On 04.10.2014, the 1st respondent conducted a surprise inspection in the said shop and found that the seals of certain liquor bottles were found

open and the petitioner was placed under suspension vide order dated 07.10.2014 by the 1st respondent and a Charge Memo was issued on the same day, to which, the petitioner has submitted his reply on 17.11.2014, denying all the charges. Not being satisfied with the said reply/explanation, an Enquiry Officer was appointed and on completion of the enquiry, the Enquiry Officer filed his Enquiry Report. Though the petitioner has submitted his explanation to the said Enquiry Report, the same was not considered and he was removed from service vide order of the 1st respondent dated 17.04.2015 and the appeal preferred by him before the 2nd respondent on 08.05.2015, was also rejected on 23.12.2016 in pursuant to the orders/directions of this Court passed in WP.No.25200/2015 to dispose of the said appeal within a period of six weeks from the date of receipt of a copy of the said order and challenging the legality of the said orders, the petitioner is before this Court with the present petition.

4 During the course of hearing on admission, it is being submitted by the learned counsel appearing for the petitioner the petitioner does not dispute the finding of misconduct to have been proved against him and only prays this Court should direct the respondent to revisit the punishment of removal by any other punishment, by giving appropriate direction to the respondent, inasmuch as the punishment of removal in the facts and situations and considering the nature of delinquency appears to be shockingly disproportionate, more so, when the same has been passed without taking into consideration the mitigating circumstances that the petitioner is a poor salesman, working under the supervisor and his family are dependants on him.

5. The learned counsel appearing for the petitioner also submits that in the event of disciplinary authority revisiting the aforesaid punishment by any other punishment, the petitioner shall also not claim any back wages for the aforesaid period. Furthermore, it is also submitted that this Court in similar circumstances in umpteen number of writ petitions have also directed reinstatement by revisiting the punishment / penalty by any other punishment.

6. Mr.P Arumuga Rajan, the learned counsel who accepts notice for respondents/TASMAC does not dispute the fact that in similar facts and situations, this Court in umpteen number of writ petitions have directed to the disciplinary authority to revisit the punishment and reinstate the delinquent salesman into service but without any back wages and hence necessary orders be passed as this Court may deem fit and proper.

7. After hearing the learned counsel appearing for the parties and going through the materials on record, especially the submissions made that in similar cases, this Court has directed the Disciplinary Authority to reconsider the punishment / penalty imposed, this writ petition stands disposed of at the stage of admission with a direction to the disciplinary authority to revisit / reconsider the punishment of removal imposed by any other suitable punishment as it may deem fit and proper in the facts and situations within a period of six weeks from the date of receipt of copy of this order. However, it is made clear that in the event of substitution of punishment by any other punishment, the petitioner shall not be entitled to any back wages for the period during which he remains out of duty.

8. With the aforesaid order, this writ petition stands disposed of. However there shall be no order as to costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1 The Regional/District Manager
TASMAC, Tiruvannamalai
Tiruvannamalai District.

2 The Senior Regional Manager
TASMAC, Salem.

+1cc to Mr.R.Dineshkumar , Advocate SR.No. 51751

W.P.No.7193 of 2018

ASK(19/09/2018)

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