

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:30.07.2018

CORAM:

THE HONOURABLE MR. JUSTICE SATRUGHANA PUJAHARI

W.P.No.11057/2016 and WMP No.9622 of 2016

A.Mohamed Suban

.. Petitioner

Vs

The District Manager
Tamil Nadu State Marketing Corporation
Ltd., [TASMAC], IMFS Depot, NO.1
Tamil Nadu Warehousing Corporation
Ltd., Katpadi Road, Vellore District.

...Respondent

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 order of the respondent bearing proceedings in Se.Mu.Na.Ka.No.A2/963/C.V/2013 dated 28.02.2015, and quash the same and consequently, direct the respondent herein to reinstate the petitioner into service, with continuity of service and all attended benefits.

For Petitioner : Mr.K.Sasindran

For Respondent : 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 termination dated 28.02.2015, in and by which, he was terminated from service by the respondent with a further prayer to reinstate the petitioner into service with all attendant benefits.

3 The petitioner would aver that he was appointed as a Salesman in the TASMAC Shop NO.11347 at Vellore District. It is further averred by the petitioner that to his shock and surprise, he received the suspension order on 13.09.2013, alleging certain irregularities including the allegation of low percentage of alcohol found in the seized liquor bottles, making the said bottles unfit for sale, found by the Senior Regional Manager, TASMAC, Salem, who inspected the shop on 12.09.2013. A

Charge Memo was issued to the petitioner on 23.10.2013, to which, the petitioner has submitted his reply on 11.11.2013. Not being satisfied with the said reply/explanation, an Enquiry Officer was appointed and a enquiry notice was served on the petitioner on 23.12.2013 asking him to appear before the Enquiry Officer and the petitioner submitted his detailed reply refuting the charges, before the Enquiry Officer on 24.12.2013 by appearing in person. Thereafter, second enquiry was conducted by a different Enquiry Officer, who without application of mind, has concluded the enquiry and submitted his Enquiry Report on 17.12.2014. On 28.01.2015, a notice was issued calling for the explanation of the petitioner and the petitioner submitted his explanation on 25.02.2015. The respondent, without considering the explanation offered by the petitioner, has terminated the services of the petitioner vide order dated 28.02.2015 and challenging the legality of the said order, the petitioner has filed the present writ 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 his family are dependant 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.

5. Mr.Arumugarajan, 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.

6. 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.

7. 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(CO)

//True Copy//

Sub Assistant Registrar

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To

The District Manager
Tamil Nadu State Marketing Corporation
Ltd., [TASMAC], IMFS Depot, NO.1
Tamil Nadu Warehousing Corporation
Ltd., Katpadi Road, Vellore District.

+1cc to Mr.Suresh Babu, Advocate, S.R.No.51501

W.P.No.11057/2016

rrs 19/09/2018

सत्यमेव जयते

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