

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 10.08.2018

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THE HONOURABLE MR.JUSTICE SATRUGHANA PUJAHARI

W.P.No.11983 of 2016
and W.M.P.No.10352 of 2016

A.B.Dharuman

..Petitioner

Vs

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Department of Excise and Prohibition,
Fort St.George,
Chennai
 2. Tamil Nadu State Marketing Corporation Ltd., (TASMAC)
Rep. by its Senior Regional Manager,
MSR Complex, Dayalan Street,
Goundampalayam,
Coimbatore - 641 030
 3. The District Manager,
Tamil Nadu State Marketing
Corporation Ltd. (TASMAC),
Udhagamandalam 643 200,
Nilgiris District
 4. The Assistant Manager,
Accountant Section,
Tamil Nadu State Marketing Corporation Ltd., (TASMAC),
Udhagamandalam 643 200,
Nilgiris District
- ..Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus, calling for the records of the third respondent in proceedings in Na.Ka.Si.En.000160/2013 dated 21.01.2014 and the consequent proceedings of the respondent number 2 herein in proceedings in Na.Ka.En.337/2014/Aa1 dated 24.07.2014 and quash the same and consequently direct the respondents to reinstate the petitioner as Asst. Salesman with retrospective effect and Seniority and full back wages.

For Petitioner : Mr.P.V.Ravi Chandran

For Respondents : Mr.K.Sathish Kumar,
Standing Counsel

ORDER

The writ petition has been filed by the petitioner under Article 226 of constitution of India to challenge the order of his termination in a disciplinary proceedings by the 3rd respondent to be illegal, arbitrary and contrary to law. The petitioner prays for quashment of the same and direct reinstatement of him into service with back wages and other attendant benefits.

2 It appears that the petitioner was appointed as a Salesman in Tamil Nadu State Marketing Corporation Limited (TASMAC) under the 3rd respondent and he was posted as a Salesman in Retail Vending shop No.8271. The said shop was inspected by Coimbatore Division flying squad and during the course of such inspection as allegedly noticed certain defects, viz petitioner and two others i.e. Thiru.Yuvaraj, Salesman and Thiru.F.Johnson, Supervisor were found to be selling less alcohol content bottle and an opened Brandy bottle was kept for selling loose and for diluting with water. A report was submitted and the petitioner was placed under suspension and a departmental enquiry was conducted against him for above said charges. The petitioner along with two others in the said shop were proceeded with departmentally on the allegation of selling brandy with less alcohol content by meddling with the brandy bottle supplied by the respondent and as such brought dis-reputation to the respondents. The petitioner in the aforesaid disciplinary proceedings participated to repel the charge against him to be of any substance. But admittedly on conclusion of the disciplinary proceeding, taking into consideration the report of the enquiry officer as well as the explanation of the petitioner, the Disciplinary authority accepted the report of the enquiry officer recording the charges to have been proved, imposed a penalty of removal. Assailing the same, the petitioner preferred an appeal as well as the Revision but unsuccessful. Therefore, the petitioner came forward to file this writ petition, challenging the said order of removal inter alia on the ground that the same being perverse and as such, liable to be quashed.

3 During the course of hearing on admission, it is being submitted by the learned counsel appearing for that the petitioner the petitioner does not dispute the finding of misconduct said 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 when the aforesaid misconduct said to have been committed by him along with the supervisor and his family are dependants on him.

4. 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.K.Sathishkumar, the learned Standing Counsel for the 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(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
The State of Tamil Nadu,
Department of Excise and Prohibition,
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2. Senior Regional Manager,
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Nilgiris District

+lcc to Mr.P.V.Ravi Chandran, Advocate, S.R.No.55757

+lcc to Mr.K.Sathish Kumar, Advocate, S.R.No. 55124.

W.P.No.11983 of 2016

rrs 17/09/2018.