

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:30.07.2018

CORAM:

THE HONOURABLE MR. JUSTICE SATRUGHANA PUJAHARI

W.P.No.6491/2018

B.Mohan

.. Petitioner

Vs

1 The Managing Director
Tamil Nadu State Marketing
Corporation Ltd., CMDA Tower-2
4th Floor, Gandhi Irwin Over
Bridge Road, Egmore, Chennai 600 008.

2 The General Manager [Pa.Na]
Tamil Nadu State Marketing
Corporation Ltd., CMDA Tower-2
4th Floor, Gandhi Irwin Over
Bridge Road, Egmore, Chennai 600 008.

3 The Senior Regional Manager
Tamil Nadu State Marketing
Corporation Ltd., 56, Brindavan
Raod, Fairlands, Salem-16.

4 The District Manager
Tamil Nadu State Marketing
Corporation Ltd., Vellore 632001.

... 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 relating to the orders of the 1st respondent in Se.Mu.Na.Ka.No.R1/13236/2017 dated 27.11.2017 read with O.Mu.No.R1/13236/2017 dated 05.02.2018 of the 2nd respondent confirming the 3rd respondent appeal order made in Se.Mu.No.82/2017/A dated 18.09.2017 which confirmed the 4th respondent final order made in Se.Mu.Na.Ka.No.A2/1046/C.V/2012 dated 21.02.2017 and to quash the same as illegal and to issue consequential direction to the 4th respondent to reinstate the petitioner into service with all service and consequential benefits.

For Petitioner : Mr.R.Baskaradoss
For Respondents : Mr.B.Nedunchezhiyan
Standing Counsel for TASMACH

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 1st respondent/Corporation 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 The petitioner would aver that he was appointed as a Supervisor in the TASMACH Shop NO.11014. On 12.12.2012, the 3rd respondent conducted a surprise inspection in the said shop and found that the liquor was sold in loose and submitted his report. On 17.12.2012, the petitioner was placed under suspension and a Charge Memo was issued on 12.01.2013, to which, the petitioner has submitted his reply, denying 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 the petitioner offered his explanation to the said Enquiry Report and without even affording an opportunity to put forth his case, he was removed from service vide order of the 4th respondent dated 22.07.2015 and the appeal preferred by him before the 3rd respondent, was also rejected on 27.11.2015 and challenging the legality of the said orders, the petitioner filed WP.No.3594/2016 challenging those orders of the respondents 4 and 3 dated 22.07.2015 and 27.11.2015 respectively and this Court, vide order dated 21.09.2016, had set aside the said impugned orders and once again, remanded back the matter to the 4th respondent for fresh consideration.

3 The petitioner would further aver that in pursuant to the directions of this Court, the enquiry was not conducted in the manner known to law and he was forced to sign the Enquiry Report and the objections raised by the petitioner was not at all considered by the Enquiry Officer and submitted his Enquiry Report on 23.01.2017, based on which the 4th respondent passed an order of removal from service on 21.02.2017, removing the petitioner from service and the appeal so also revision preferred by the petitioner before the respondents 3 and 1 came to be rejected on 18.09.2017 and 27.11.2017 respectively. Therefore, the petitioner came forward to file this writ petition, challenging the said finding in the disciplinary

proceeding to be illegal and as no proper procedure was followed also perverse being based no evidence. Hence, liable to be quashed. Alternatively, it is also pleaded that the punishment imposed is disproportionate to the nature of delinquency and as such, liable to be set aside and revisited with any other punishment.

4 During the course of hearing, 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 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 revisit the aforesaid punishment by any other punishment, the petitioner shall also not claim any back wages for the period he remained out of duty. 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.B.Nedunchezian, 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 of removal 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(CO)

//True copy//

Sub Assistant Registrar

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To

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- 4 The District Manager
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+1cc to Mr.G. Sankaran, Advocate SR.No.51453

+1cc to Mr.B. Nedunchezhiyan, Advocate SR.No.51946

W.P.No.6491/2018

GMV (10/09/2018)