

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:30.07.2018

CORAM:

THE HONOURABLE MR. JUSTICE SATRUGHANA PUJAHARI

W.P.Nos.10856 to 10858/2017 & WMP.Nos.11790 to 11795/2017

P.Murugasamy ... Petitioner in WP.No.10856/2017
E.Shankar ... Petitioner in WP.No.10857/2017
R.Rajendiran ... Petitioner in WP.No.10858/2017

Vs

- 1 The Managing Director
Tamil Nadu State Marketing
Corporation Limited, TASMAC
Chennai-600 008.
- 2 The Senior Regional Manager
Tamil Nadu State Marketing
Corporation Limited, TASMAC
Salem - 16.
- 3 The District Manager
Tamil Nadu State Marketing
Corporation Limited, TASMAC
Thiruvannamalai.

... Respondents in all the writ petitions

Prayer in WP.No.10856/2017:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of writ of certiorarified mandamus calling for the entire records connected with the impugned order passed by the 2nd respondent vide Se.Mu.No.2526/2015/A dated 30.05.2015 by confirming the order of the 3rd respondent passed vide Na.Ka.R.V.2/5954/2012 dated 12.03.2015 and quash the same and direct the respondents to reinstate the petitioner in service as Salesman with continuity of service with backwages and all other attendant benefits.

Prayer in WP.No.10857/2017:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of writ of certiorarified mandamus calling for the entire records connected with the impugned order passed by the 2nd respondent vide Se.Mu.No.5851/2015/A dated 27.11.2015 by confirming the order of the 3rd respondent passed vide Na.Ka.R.V.2/2751/2013 dated

22.04.2015 and quash the same and direct the respondents to reinstate the petitioner in service as Salesman with continuity of service with backwages and all other attendant benefits.

Prayer in WP.No.10858/2017:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of writ of certiorarified mandamus calling for the entire records connected with the impugned order passed by the 2nd respondent vide Se.Mu.No.2471/2015/A dated 19.06.2015 by confirming the order of the 3rd respondent passed vide Na.Ka.R.V.2/1920/2014 dated 16.03.2015 and quash the same and direct the respondents to reinstate the petitioner in service as Salesman with continuity of service with backwages and all other attendant benefits.

For Petitioners in
all the petitions : Mr.S.N.Ravichandran

For Respondents in
all the petitions : Mr.P.Arumuga Rajan

COMMON ORDER

By consent of both sides, the Writ Petitions are taken up for hearing and final disposal as the issue to be adjudicated in these writ petitions is one and the same.

2. The petitioners have filed these present writ petition challenging the orders passed by the 2nd respondent on 30.05.2015; 27.11.2015 and 19.06.2015 respectively, in and by which, the appeals preferred by the petitioners against the order of dismissal from service passed by the 3rd respondent on 12.03.2015 ; 22.04.2015 and 16.03.2015, were dismissed, confirming the dismissal orders.

WP.No.10856/2017:

3. The petitioner would aver that he was sponsored through the Employment Exchange and was appointed as the Salesman in the TASMACH Shop NO.9507, Konaiyur Village, on a consolidated salary. The petitioner was transferred to Shop No.9309 during the year 2011. On 19.10.2012, a surprise inspection was conducted by the 3rd respondent in the said shop and found that the petitioner had sold liquor in loose sale. A charge memo was issued on 22.10.2012, to which, the petitioner has submitted his explanation, refuting the charges, on 25.10.2012. On the same day, he was suspended from service. An Enquiry Officer was appointed on 30.08.2014 and on completion of the enquiry, the Enquiry Officer filed his Enquiry Report,

wherein it has been held that the charges were proved. Since the enquiry commenced two years after the petitioner was placed under suspension during the year 2012, he filed WP.No.10391/2015 and MP.No.1/2015 seeking for an interim direction to the respondent to pay the subsistence allowance from 16.03.2013 to 16.03.2015 pending the writ petition and this Court, vide interim order dated 09.04.2015, directed the 3rd respondent herein, to pay the subsistence allowance to the petitioner from the date of suspension till the date of dismissal. On 20.11.2014, a 2nd show cause notice was issued to the petitioner and the petitioner submitted his explanation on the same day. The 3rd respondent, without taking into consideration the explanation offered by the petitioner, had mechanically passed an order of termination dated 12.03.2015, removing the petitioner from service. The appeal preferred by the petitioner before the Appellate Authority, namely, the 2nd respondent, was rejected on 30.05.2015. Hence, challenging the legality of the said orders of the respondents 2 and 3 dated 30.05.2015 and 12.03.2015, the petitioner has come up with the present writ petition.

WP.No.10857/2017:

3. The petitioner would aver that he was sponsored through the Employment Exchange and was appointed as the Salesman in the TASMACH Shop NO.9228, Cheyyar Town Sales Shop, on a consolidated salary. The petitioner was transferred to Shop No.9290. On 05.08.2013, a surprise inspection was conducted by the 3rd respondent in the said shop and found that the petitioner had sold liquor in loose sale and that he had sold K/F Select Beer 650ml for Rs.110/- in stead of Rs.100/- and certain other irregularities, thereby causing loss to the Government. The petitioner was placed under suspension on the same day, i.e., 05.08.2013. An Enquiry Officer was appointed on 25.10.2014 and on completion of the enquiry, the Enquiry Officer filed his Enquiry Report, wherein it has been held that the charges were proved. On 20.04.2015, a 2nd show cause notice was issued to the petitioner and the petitioner submitted his explanation on the same day. The 3rd respondent, without taking into consideration the explanation offered by the petitioner, had mechanically passed an order of termination dated 22.04.2015, removing the petitioner from service. The appeal preferred by the petitioner before the Appellate Authority, namely, the 2nd respondent, was rejected on 27.11.2015. Hence, challenging the legality of the said orders of the respondents 2 and 3 dated 22.04.2015 and 27.11.2015, the petitioner has come up with the present writ petition.

4. The petitioner would aver that he was sponsored through the Employment Exchange and was appointed as the Salesman in the TASMACH Shop NO.9281, Katharjenda Street Sales Shop, on a consolidated salary. The petitioner was subsequently transferred and posted to Shop No.9505, Periyakozhappalur Village sales shop. On 20.09.2013, a surprise inspection was conducted by the 3rd respondent in the said shop and found that the petitioner had sold the liquor in loose sale and caused revenue loss to the Corporation and that there was a deficit of Rs.710/- during inspection. The petitioner was placed under suspension on 21.09.2013. He submitted his explanation on 27.09.2013 denying the allegations. An Enquiry Officer was appointed and on completion of the enquiry, the Enquiry Officer filed his Enquiry Report, wherein it has been held that the charges were proved. On 13.11.2014, a 2nd show cause notice was issued to the petitioner and the petitioner submitted his explanation. The 3rd respondent, without taking into consideration the explanation offered by the petitioner, had mechanically passed an order of termination dated 16.03.2015, dismissing/removing the petitioner from service. The appeal preferred by the petitioner before the Appellate Authority, namely, the 2nd respondent, was rejected on 19.06.2015. Hence, challenging the legality of the said orders of the respondents 2 and 3 dated 16.03.2015 and 19.06.2015, the petitioner has come up with the present writ petition.

5. During the course of hearing, it is being submitted by the learned counsel appearing for the petitioners the petitioners does not dispute the finding of misconduct to have been proved against them but only pray this Court should direct the respondents to revisit the punishment of removal by any other punishment, by giving appropriate direction to the 2nd and 3rd respondents, inasmuch as the punishment of removal in the facts and situations especially 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 petitioners are poor ***salesman and Supervisor** their families are dependant on them.

6. The learned counsel appearing for the petitioners also submits that in the event of disciplinary authority revisit the aforesaid punishment by any other punishment, the petitioners shall also not claim any back wages for the period they 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.

7. Mr.P.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 and Supervisor** into service but without any back wages and hence necessary orders be passed as this Court may deem fit and proper.

8. 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 petitioners shall not be entitled to any back wages for the period during which he remains out of duty.

9. With the aforesaid order, these writ petitions stand disposed of. However there shall be no order as to costs. Consequently, the connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar(CS IX)

Date:24/09/2018

***Para 5&7 Amernded as per order of this Court.14/11/2018**

sd/ Assistant Registrar(CCC)

Dated:15/11/2018

//True Copy//

Sub Assistant Registrar

Date:24/09/2018

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To

1 The Managing Director
Tamil Nadu State Marketing
Corporation Limited, TASMAC

To be substituted to
the order already
Despatched on
12/11/2018

Chennai-600 008.

- 2 The Senior Regional Manager
Tamil Nadu State Marketing
Corporation Limited, TASMAC
Salem - 16.
- 3 The District Manager
Tamil Nadu State Marketing
Corporation Limited, TASMAC
Thiruvannamalai.

+3cc to Mr.S.N.Ravichandran, Advocate Sr.51561

W.P.No.10856 to 10858 of 2017

ev[col]
srg 26/09/2018
GSP(15/11/2018)



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