

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 10.08.2018

CORAM

THE HONOURABLE MR.JUSTICE SATRUGHANA PUJAHARI

W.P.No.34019 of 2017
and W.M.P.No.37734 of 2017

G.Suresh

..Petitioner

Vs

1. The Senior Regional Manager,
Tamil Nadu State Marketing
Corporation Limited (TASMAC),
4th Floor, LLA Building,
Anna Salai,
Chennai 600 002
2. The District Manager,
Tamil Nadu State Marketing
Corporation Limited (TASMAC),
Kakallur,
Thiruvallur - 602 001

... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for entire records relating to proceedings in Su.Mu.N.No.A4/2061/2015 dated 30.11.2015 dismissal order passed by the second respondent and consequently conformed the order of second respondent by the first respondent in his proceedings Su.Mu.No.3936/A9/2015, dated 10.07.2017 insofar as Petitioner is concerned and quash the same and consequently direct the respondents to reinstate the petitioner with all back wages.

For Petitioner : Mr.J.Ramkumar
For Respondents : Mr.P.Arumugarajan,
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 respondents 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.

It appears that the petitioner was appointed as a Salesman in Tamil Nadu State Marketing Corporation Limited (TASMAC) under the 2nd respondent and he was posted as a Salesman in Retail Vending shop No.117 located at No.755, T.H.Road, Thiruvottiyur at Thiruvallur District on 15.11.2003. The said shop was inspected by a flying squad arranged by the first respondent and during the course of such inspection as allegedly noticed certain defects i.e water mixed liquor bottles were sold and shortage of Rs.17,000/-, a report was submitted. Hence, the petitioner was placed under suspension and a departmental enquiry was conducted against him for the said charges. The petitioner was proceeded with Disciplinary proceedings on the allegation of selling water mixed alcohol supplied by the respondents and as such brought dis-reputation to the respondents so also shortage of Rs.17,000/-. 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 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 the petitioner that the petitioner was removed from service on the ground of shortage of money and selling water mixed alcohol but in the meanwhile the above money has also been recovered. The learned counsel for the petitioner also undertakes that if any due is pending he will pay the same. However, he 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 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.B.Nedunchezian, the learned Standing 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 Supervisor 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.

Sd/-

Assistant Registrar(CO)

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Sub Assistant Registrar

To

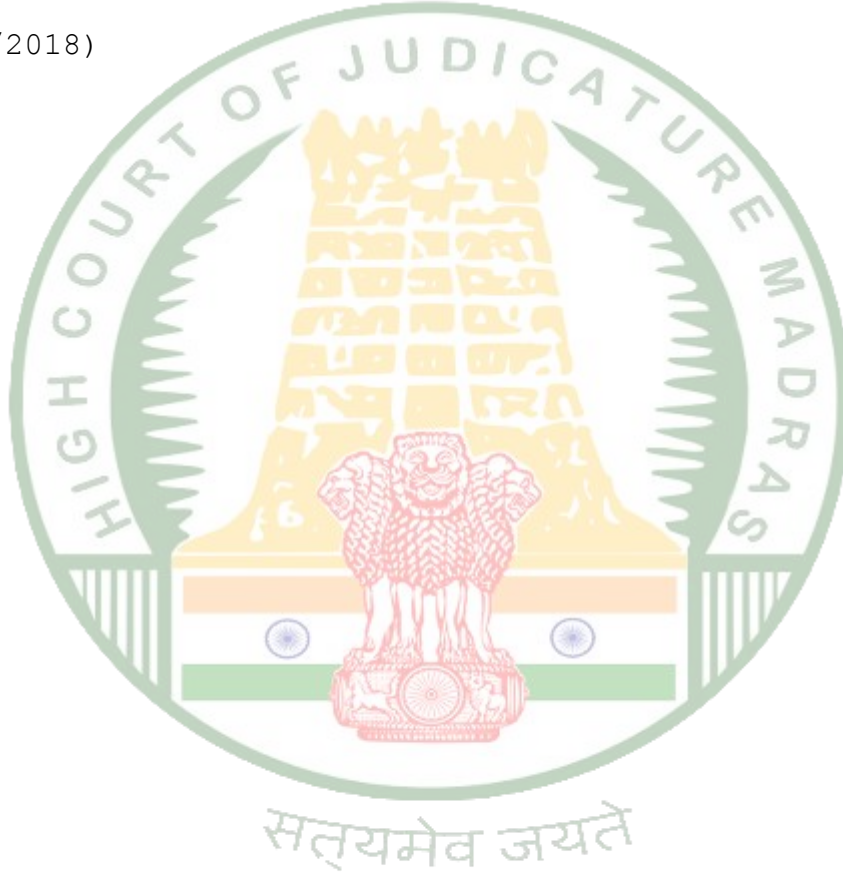
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+1cc to Mr.J.Ramkumar, Advocate, S.R.No.34019

W.P.No.34019 of 2017

RR(CO)
GSP(24/09/2018)



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