

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:10.08.2018

CORAM:

THE HONOURABLE MR. JUSTICE SATRUGHANA PUJAHARI

W.P.No.2176 of 2015

A.Sivakumar

.. Petitioner

Vs

1 The Managing Director
The Tamil Nadu State Marketing Corp. Ltd.,
4th Floor, CMDA Tower - II,
Gandhi Irwin Road,
Egmore, Madras - 600 008

2 The Senior Regional Manager,
TASMAC, Coimbatore

3 The District Manager
TASMAC,
IMFL Depot, TASMAC Ltd.,
Ootacamund,
The Nilgiris District

... 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 pertaining to the proceedings in Na.Ka.C.No.000135/2013 dated 21.01.2014 on the file of the third respondent and consequential order in Na.Ka.No.479/2014/A1 dated 30.12.2014 on the file of the second respondent and quash the same as illegal, incompetent and ultravires and consequently directing the respondents to reinstate the petitioner in the post of Supervisor.

For Petitioner : Mr.M.Guruprasad
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 Supervisor in Tamil Nadu State Marketing Corporation Limited (TASMAC) under the 3rd respondent and he was posted as a Supervisor in Retail Vending shop No.8403. The said shop was inspected by the third respondent and during the course of such inspection as allegedly noticed a defect i.e thirteen bottles were found open for selling loose, a report was submitted. Hence, the petitioner was placed under suspension and a departmental enquiry was conducted against him for selling loose alcohol. The petitioner was proceeded with Disciplinary proceedings on the allegation of selling loose alcohol supplied by the respondents 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 but unsuccessful. Therefore, the petitioner came forward to file this writ petition, challenging the said order of removal interalia 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 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 only 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 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(CS IX)

//True Copy//

Sub Assistant Registrar

To

1 The Managing Director
The Tamil Nadu State Marketing Corp. Ltd.,
4th Floor, CMDA Tower - II,
Gandhi Irwin Road,
Egmore, Madras - 600 008

2 The Senior Regional Manager,
TASMAC, Coimbatore

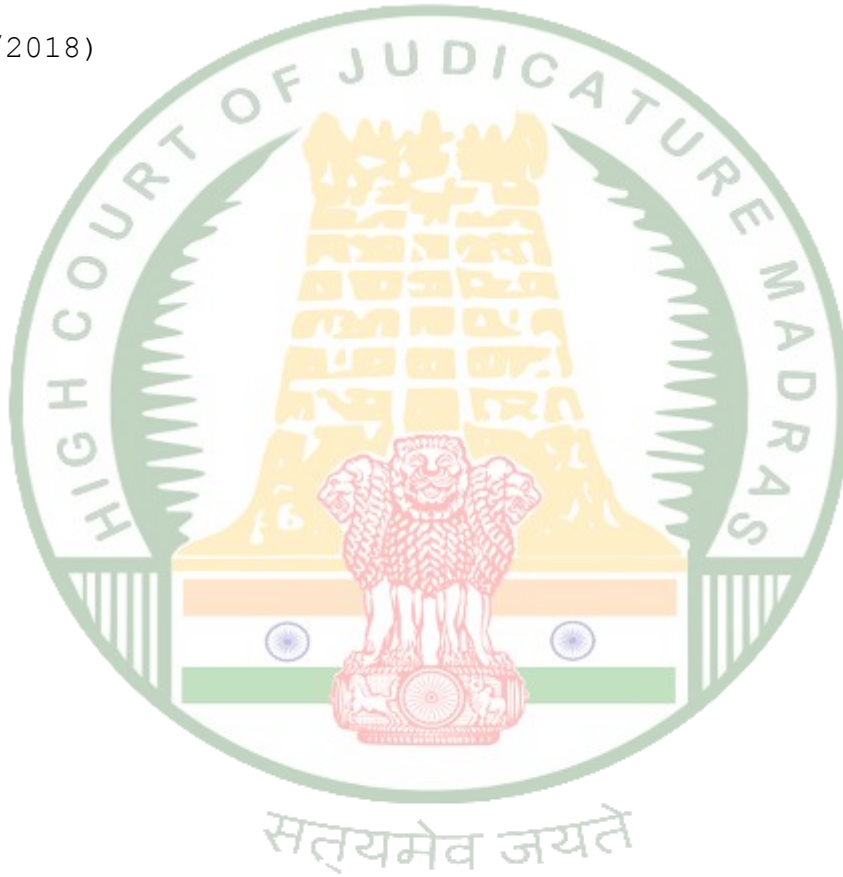
3 The District Manager
TASMAC, IMFL Depot, TASMAC Ltd.,
Ootacamund, The Nilgiris District

+1cc to Mr.K.Sathish Kumar, Advocate, S.R.No.55121

+1cc to Mr.M.Guruprasad, Advocate, S.R.No.55494

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GSP(18/09/2018)



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