

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:30.07.2018

CORAM:

THE HONOURABLE MR. JUSTICE SATRUGHANA PUJAHARI

W.P.No.27691/2017 & WMP.Nos.29645 & 29646/2017

T.Raja

...Petitioner

Vs

1 The Managing Director  
Tamil Nadu State Marketing  
Corporation Limited [TASMAC]  
4th Floor, CMDA Building Tower-II  
Chennai-600 008.

2 The Senior Regional Manager  
Tamil Nadu State Marketing  
Corporation Limited [TASMAC]  
56, Brindhavan Salai  
Azhagapuram, Salem - 16.

3 The District Manager  
Tamil Nadu State Marketing  
Corporation Limited [TASMAC]  
2/92, Santhiyur Village,  
S.Attaiyampatti Post  
Salem 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 of the 1st respondent bearing proceedings in Se.Mu.No.R1/6100/2016 dated 26.10.2016 confirming the orders of the 2nd respondent in Se.Mu.No.3013/2015/A dated 30.06.2015 and the order of the 3rd respondent in Na.Ka.No.2430/2014/A4/C.V dated 06.04.2015 and quash the same and consequently, direct the respondents herein to reinstate the petitioner into service.

For Petitioner : Mr.A.Siva Sankar

For Respondents : Mr.K.Sathish Kumar

## 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 1<sup>st</sup> 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 It appears that the petitioner was appointed as a Salesman in Tamil Nadu State Marketing Corporation Limited (TASMAC) under the 3<sup>rd</sup> respondent and he was posted as a Salesman in Retail Vending shop No.7107. The said shop was inspected by the Senior Regional Manager, TASMAC, Salem - 16 and during the course of such inspection as allegedly noticed certain defects i.e three liquor bottles were found open and percentage of alcohol is less than the prescribed minimum, a report was submitted. Hence, the petitioner was placed under suspension and a departmental enquiry was conducted against him for selling less alcohol content bottles. The petitioner was proceeded with Disciplinary proceeding 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 finding in the disciplinary proceeding to be illegal and as no proper procedure was followed also perverse being based on 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.

3 During the course of hearing on admission, it is being submitted by the learned counsel appearing for the petitioner that the petitioner does not dispute the finding of

misconduct said to have been proved against him and only prays that 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 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 petitioner is a poor salesman and his family are dependant 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 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.

5. Mr.K.Sathish Kumar, the learned counsel who accepts notice for respondents/TASMAL 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 no useful purpose is going to be served by asking a counter affidavit from the respondent and therefore this Court dispose of this writ petition 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 fact 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 remained 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

rka  
To

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2/92, Santhiyur Village,  
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Salem District.

+1cc to Mr.K.Sathishkumar, Advocate, S.R.No.51730  
+1cc to Mr.A.Siva Sankar, Advocate, S.R.No.51502

W.P.No.27691/2017

srg 4/9/2018