

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2018

CORAM

THE HONOURABLE MR.JUSTICE SATRUGHANA PUJAHARI

W.P.No.11147 of 2013

Ayyasamy

... Petitioner

Vs.

1.The Senior Regional Manager,
Tamil Nadu State Marketing Corporation
Limited (TASMAC),
Tricity.

2.The District Manager,
Tamil Nadu State Marketing Corporation
Limited (TASMAC),
Perambalur.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records of the first respondent made in MU.MU.Number 3776/12 (U) dated 28.05.2012 by confirming the order passed by the second respondent made in proceedings in Na.Ka.No.C.V.3/03/2011/A1 dated 21.07.2011 and quash the same and consequently direct the second respondent to reinstate the petitioner in service with full back wages with continuity of service including all other attendant and monetary benefits to the petitioner.

For Petitioner : Mrs.P.Saganya Devi

For R1 : No appearance

For R2 : Mr.B.Nedunchezhiyan

O R D E R

This writ petition has been filed by the petitioner under Article 226 of the Constitution of India seeking to issue a writ of certiorarified mandamus, to quash the order passed by the first respondent made in MU.MU.Number 3776/12 (U) dated 28.05.2012 and the order passed by the second respondent in proceedings in Na.Ka.No.C.V.3/03/2011/A1 dated 21.07.2011, confirming the said order, by which the petitioner has been dismissed from the service and to direct the second respondent to reinstate the petitioner in service with full back wages with continuity of service including all other attendant and monetary benefits to the petitioner.

2.As it appears that the petitioner was appointed as a sales man by the respondents on 05.01.2004 in their retail vending shop at Serapattu. The aforesaid vending shop of the petitioner was inspected by the Assistant Manager (Accounts) on 18.03.2011 and some defects were found that is the petitioner was selling liquor in a loose condition and such liquor bottles were in unfit condition of selling. Thereafter, the petitioner was put under suspension and charge memo was issued on the basis of the said report of a inspection that the petitioner was selling liquor in loose condition and also alcoholic percentage of the same liquor bottles were not in accordance with the prescribed standards and the petitioner was failed to do his duty. Accordingly, the petitioner submitted his explanation and faced the disciplinary proceedings and ultimately, in the disciplinary proceedings, it was found by the Enquiry Officer that the petitioner / delinquent was found guilty. Thereafter, the Disciplinary Authority based on such enquiry report, dismissed the petitioner from service. The petitioner thereafter has challenged the same in an appeal before the first respondent/Appellate Authority. The Appellate Authority however, has dismissed the same and confirmed the order passed by the first respondent/Disciplinary Authority.

3. The petitioner therefore challenges such finding of the Enquiry Officer and punishment imposed, which has been confirmed by the second respondent, in this writ petition to be illegal and arbitrary. Inasmuch as no reasonable opportunity was given to him to defend his case. So also the enquiry was conducted in a hurried and hast manner and as such it cannot be sustained. Hence, the order of dismissal cannot be sustained. The order of the Appellate Authority was also challenged on the ground that the Appellate Authority in oblivious to the aforesaid having confirmed the order without giving him reasonable opportunity, the same cannot be sustained. Hence, made the prayer as stated earlier.

4. Counter affidavit has been filed by the second respondent disputing the averments made in the writ petition that the petitioner was not given reasonable opportunity to defend his case by the Enquiry Officer and such the order was made for non-compliance of the principles of audi alteram partem, as respondent nos.1 and 2 have given him the opportunity to defend him in the disciplinary proceedings as well as in the appeal filed. Further more, it has been specifically aver that since the petitioner has been found selling liquor in loose conditions and he has also admitted the same fact, the petitioner thereafter, could not have any grievance with regard to the finding recorded by the Enquiry Officer with regard to the charges, which have been proved against him. Hence, the writ petition is devoid of merits.

5. During the course of hearing, though the petitioner has challenged the finding of guilty recorded against him, submits that he does not dispute such finding of guilty. However, considering the nature of delinquency and the mitigating circumstances that the petitioner is a poor salesman, the punishment imposed that is dismissal from service appears to be shockingly disproportionate and as such the same be substituted by one of fine or any other lenient punishment and the respondent be directed to reinstate the petitioner into services and in that event, the petitioner also undertakes not to claim any back wages for the period when he was not working.

6. The learned counsel appearing for the respondents however, submits that the petitioner having brought disrepute to the institution and the charges framed being serious against him and removal of him from services by the respondent cannot be found faulted with, more so, when the Appellate Authorities taking into consideration the materials on record and the circumstances have not found it proper to interfere with the same.

7. After hearing the learned counsel for the parties and going through the materials on record, the nature of delinquency, and mitigating the circumstances, that is, he is a sales man, who has family burden to shoulder and also he admits delinquency and further undertakes that he shall not claim any back wages, if reinstated into services and the punishment imposed in this case is shockingly disproportionate, this Court is of the view that the same is required to be revisited. Accordingly, while not interfering with the recorded finding on delinquency of the petitioner holding him guilt, this Court remits back the matter to the Disciplinary Authority with a direction to substitute the punishment of removal from service by any other punishment by reinstating the petitioner into

service. Needless to say that the petitioner in that event shall also not be entitled to any back wages in view of the undertaking in this regard.

With the aforesaid order, this writ petition stands disposed of. No costs.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

abr/sk

To

- 1.The Senior Regional Manager,
Tamil Nadu State Marketing Corporation
Limited (TASMAC),
Tricity.
- 2.The District Manager,
Tamil Nadu State Marketing Corporation
Limited (TASMAC),
Perambalur.

+1cc to Mr.B.Nedunchezhiyan, Advocate, sr.no.14213
+1cc to M/s.P.Suganyadevi, Advocate, sr.no.13390

W.P.No.11147 of 2013

NA (CO)

RRK (24/05/18)

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