

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:30.07.2018

CORAM:

THE HONOURABLE MR. JUSTICE SATRUGHANA PUJAHARI

W.P.No.21702/2016 and WMP No.18567 of 2016

S.Subramani

.. Petitioner

Vs

- 1 The Senior Regional Manager,
The Tamil Nadu State Marketing Corporation Ltd.,
(Tasmac Ltd)
Salem District.
- 2 The District Manager,
The Tamil Nadu State Marketing Corporation Limited,
(TASMAC Ltd.,)
Krsihnagiri District. Respondents

Prayer:- Writ 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 impugned dismissal order passed in Na.Ka.No.101/2014/CV-1 dated 30.04.2015 by the 2nd respondent and the consequential confirmation order passed in Se.Mu.No.3550/2015/A dated 25.08.2015 on the file of the 1st respondent and quash the same is illegal and consequently direct the respondents to reinstate the petitioner into service with all other consequential monetary benefits.

For Petitioner : Mr.K.Gandhi Kumar
For Respondents : Mr.B.Nedunchezhiyan
Standing Counsel for TSMAC

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 2nd 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 2nd respondent and he was posted as a Salesman in Retail Vending shop No.2944. The said shop was inspected by the Senior Regional Manager, TASMAC, Salem - 16 and during the course of such inspection as allegedly noticed certain irregularities i.e the petitioner was found to be selling liquor in loose manner and dereliction of duty, a report was submitted. Hence, the petitioner was placed under suspension and a departmental enquiry was conducted against him for the aforesaid allegations. The petitioner was proceeded with Disciplinary proceedings on the allegation of selling brandy in a loose manner with the brandy bottle supplied by the 2nd 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 arbitrary and as no proper procedure was followed also perverse being based no 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.

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3 During the course of hearing, 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 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 dependants on him.

4. The learned counsel appearing for the petitioner also submits that in the event of disciplinary authority revisit 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.B.Nedunchezian, 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 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 of removal 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. Consequently, the connected miscellaneous petition is also closed.

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Sd/-
Assistant Registrar (CS II)

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Sub Assistant Registrar

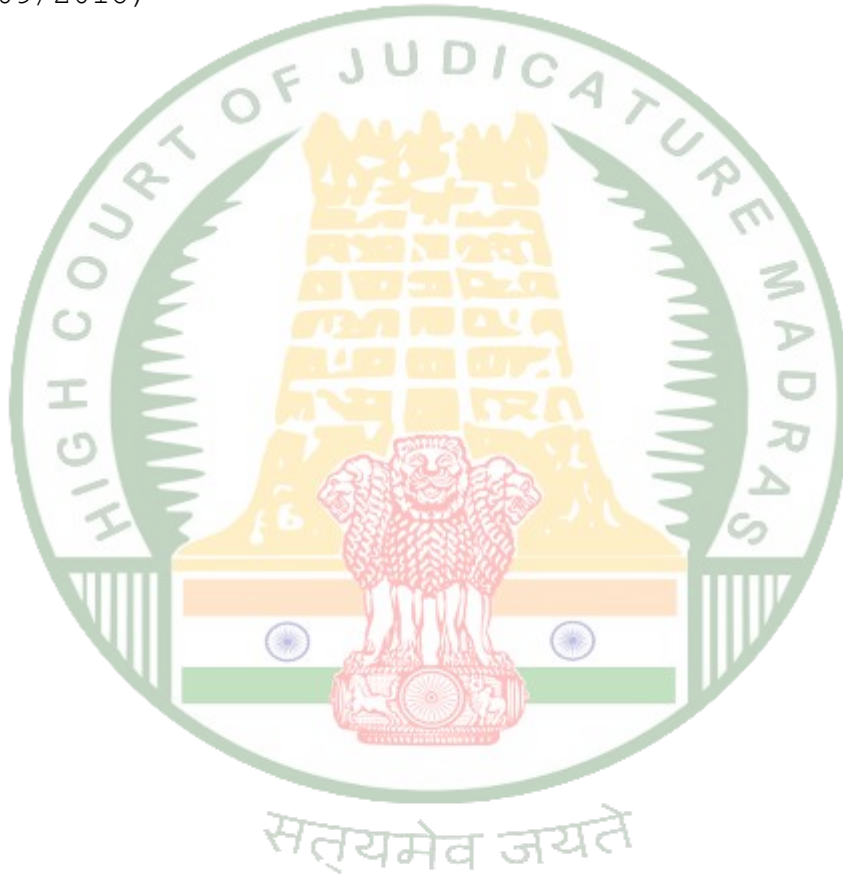
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To
1 The Senior Regional Manager,
The Tamil Nadu State Marketing Corporation Ltd.,
(Tasmac Ltd)
Salem District.

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

+1cc to Mr. K.Gandhi kumar, Advocate SR.No. 51498

W.P.No.21702 of 2016

SS(CO)
ASK(10/09/2018)



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