

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:30.07.2018

CORAM:

THE HONOURABLE MR. JUSTICE SATRUGHANA PUJAHARI
W.P.Nos.5133 to 5135/2015 & WMP.Nos.7512 to 7514/2015

N.Sivakumar ..Petitioner in WP.No.5133/2015
R.Sivan ..Petitioner in WP.No.5134/2015
R.Ganesh ..Petitioner in WP.No.5133/2015

Vs

- 1 The Managing Director
Tamil Nadu State Marketing
Corporation Limited, 4th Floor,
CMDA Tower - II,
Egmore, Madras 600 008
- 2 The Senior Regional Manager
Tamil Nadu State Marketing
Corporation Limited,
Coimbatore.
- 3 The District Manager
Tamil Nadu State Marketing
Corporation Limited,
IMFL Depot, TASMAL Ltd.,
Ootacamund,
The Nilgiris District .. Respondents
in all the writ petitions

Prayer in WP.No.5133/2015:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of writ of certiorarified mandamus calling for the entire records pertaining to the proceedings in Na.Ka.C.No.000161/2013 dated 21.01.2014 on the file of the 3rd respondent and consequential order in Na.Ka.No.481/2014/A1 dated 31.12.2014 on the file of the 2nd respondent. And quash the same as illegal incompetent and ultravires and consequently directing the respondents to rein state the petitioner in the post of Supervisor.

Prayer in WP.No.5134/2015:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of writ of certiorarified mandamus calling for the entire records pertaining to the proceedings in Na.Ka.C.No.000161/2013 dated 21.01.2014 on the file of the 3rd respondent and consequential order in Na.Ka.No.481/2014/A1 dated 31.12.2014 on the file of the

2nd respondent. And quash the same as illegal incompetent and ultravires and consequently directing the respondents to reinstate the petitioner in the post of Supervisor.

Prayer in WP.No.5135/2015:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of writ of certiorarified mandamus calling for the entire records pertaining to the proceedings in Na.Ka.C.No.000161/2013 dated 21.01.2014 on the file of the 3rd respondent and consequential order in Na.Ka.No.481/2014/A1 dated 31.12.2014 on the file of the 2nd 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 Petitioners in
all the petitions : Mr.M.Guruprasad
For Respondents in
all the petitions : Mr.K.Sathish Kumar
Standing

COMMON ORDER

The writ petition has been filed by the petitioners under Article 226 of constitution of India challenging the order of their termination from service in a disciplinary proceedings by the 3rd and 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 petitioners were appointed as a Salesman in Tamil Nadu State Marketing Corporation Limited (TASMAC), Nilgiris and they were posted as a Salesman in Retail Vending shop. The said shop was inspected by the 3rd respondent and during the course of such inspection as allegedly noticed certain irregularities i.e the petitioners were found to be selling less alcohol content bottle, a report was submitted. Hence, the petitioner was placed under suspension and a departmental enquiry was conducted against him for the aforesaid allegations. The petitioners were proceeded with Disciplinary proceedings on the allegation of selling brandy with less alcohol content by meddling with the brandy bottle supplied by the 2nd respondent and as such brought dis-reputation to the respondents. The petitioners 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 petitioners, 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 petitioners came forward to file these writ petitions, challenging the said finding in the disciplinary proceeding to be illegal and arbitrary and as no proper procedure was followed also perverse being based on 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.

5 During the course of hearing, it is being submitted by the learned counsel appearing for the petitioners the petitioners does not dispute the finding of misconduct to have been proved against them but only pray this Court should direct the respondents to revisit the punishment of removal by any other punishment, by giving appropriate direction to the respondents, 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 petitioners are poor salesman and their families are dependant on them.

5. The learned counsel appearing for the petitioners also submits that in the event of disciplinary authority revisit the aforesaid punishment by any other punishment, the petitioners shall also not claim any back wages for the period they remained out of duty. Futhermore, 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.

6. Mr.K.Sathish Kumar, 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 salesman into service but without any back wages and hence necessary orders be passed as this Court may deem fit and proper.

7. 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 petitioners shall not be entitled to any back wages for the period during which he remains out of duty.

8. With the aforesaid order, these writ petitions stand disposed of. However there shall be no order as to costs. Consequently, the connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar(CS vi)

//True Copy//

Sub Assistant Registrar

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To

- 1 The Managing Director
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Tamil Nadu State Marketing
Corporation Limited,
IMFL Depot, TASMAL Ltd.,
Ootacamund, The Nilgiris District

+3cc to Mr.M.GuruPrasad, Advocate SR.No.52511 to 52513
+1cc to Mr.K.Sathish Kumar , Advocate SR.No. 51726

W.P.No.5133 to 5135 of 2015

ASK(18/09/2018)