

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 29.10.2018

Coram
The Hon'ble Mr.Justice Satrughana Pujahari

Writ Petition No. 31902 of 2014
and
W.M.P.Nos. 6135 of 2016 & MP.No.1 of 2014

K.Shankar Ganesh

...Petitioner

Vs.

- 1.The Managing Director,
The Tamilnadu State Marketing Corporation Ltd.,
4th Floor, CMDA Tower-II,
Gandhi Irwin Road,
Egmore, Madras-600 008.
- 2.The Senior Regional Manager,
The Tamil Nadu State Marketing Corporation Ltd.,
Coimbatore.
- 3.The District Manager,
The Tamilnadu State Marketing Corporation Ltd.,
IMFL Depot, TASMAL Ltd.,
Ootacamund,
The Nilgiris District.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for records pertaining to the proceedings in Na.Ka. C.No.000134/2013 dated 21.01.2014 on the file of the third respondent and consequential order in Na.Ka.No.474/2014/A1 dated 22.08.2014 on the file of the second respondent and quash the same as illegal, incompetent and ultravires and consequently, reinstate the petitioner in the post of Salesman.

For Petitioner : Mr.M.Guruprasad

For Respondent : Mr.K.Sathishkumar, SC

ORDER

The writ petition has been filed by the petitioner under Article 226 of constitution of India challenging the order of his termination from service passed in a disciplinary proceedings by the third respondent which has been confirmed by

the 2nd respondent in an appeal, 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), Nilgiris and he was 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 he noticed certain irregularities i.e the petitioner was 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 petitioner was 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 petitioner in the aforesaid disciplinary proceedings participated to repel the charge against him to be of any substance. However, the conclusion of the disciplinary proceedings taking note of the materials on record, the third respondent held that the petitioner was guilty of the delinquency and also imposed the punishment of removal from service. The petitioner unsuccessfully challenged the same before the second respondent in an appeal. Then, the petitioner has come to challenge such order of removal in the disciplinary proceeding passed by the second respondent to this writ petition inter alia on the grounds that the disciplinary proceedings having not been conducted properly inasmuch as he was not given an appropriate opportunity of hearing was also no proper due procedure was followed and also the findings that the delinquency to have been proved being perverse, the same cannot be sustained. Consequently, the punishment imposed on the petitioner is liable to be set aside.

3. In spite of opportunity given, no counter affidavit has been filed by the respondents.

4. However, on consent of the parties, this writ petition is taken up for disposal in the absence of reply affidavit.

5. During the course of hearing, it is being submitted by the learned counsel appearing for the petitioner that the petitioner did not dispute the finding of misconduct to have been proved against him 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 petitioner is a poor Supervisor and his family is dependant on him.

6. 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 they 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 of removal by any other punishment.

7. 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.

8. 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 have directed the Disciplinary Authority to reconsider the punishment 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 remained out of duty.

9. With the aforesaid order, this writ petition stands disposed of. However there shall be no order as to costs. Consequently, the connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

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The Tamilnadu State Marketing Corporation Ltd.,
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Ootacamund,
The Nilgiris District.

+1cc to Mr.M.Guruprasad, Advocate, S.R.No.73822

Writ Petition No.31902 of 2014

SV(CO)

rrs 23/11/2018



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