

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:30.07.2018

CORAM:

THE HONOURABLE MR. JUSTICE SATRUGHANA PUJAHARI

W.P.No.19394/2018 & WMP.Nos.22807 & 22808/2018

E.Kulasekar

.. Petitioner

Vs

1 The Managing Director
TASMAC, Head Office,
4th Floor, CMDA Tower
Egmore, Chennai 600 008.

2 The Senior Regional Manager
TASMAC, Salem-16.

3 The District Manager
TASMAC, Arakonnam.

... 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 proceedings viz., [1]Se.Mu.Na.Ka.No.R1/12835/2017 dated 15.11.2017 passed by the 1st respondent [ii]Se.Mu.No.1177/2016/A dated 07.08.2017 by the 2nd respondent and [iii] Se.Mu.Na.Ka.No.A2/230/C.V/2015 dated 22.07.2015 passed by the 3rd respondent and quash the same and consequently to direct the respondents to reinstate the petitioner in service with all service and monetary benefits.

For Petitioner : Ms.Lesi Saravanan

For Respondents : Mr.B.Nedunchezhiyan

सत्यमेव जयते
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 1st 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 3rd respondent and he was posted as a Salesman in Retail Vending shop No.11003. The said shop was

inspected by the Senior Regional Manager, TASMAL, Salem - 16 and during the course of such inspection as allegedly noticed certain defect 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 selling less alcohol content bottles. The petitioner along with his supervisor in the said shop were proceeded with Disciplinary proceedings 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 order of removal inter alia on the ground that the same being perverse and as such, liable to be quashed.

3 During the course of hearing on admission, 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 and 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, working under the supervisor when the aforesaid misconduct said to have been committed by him along with the supervisor and his family are dependants 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 aforesaid period. 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/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, 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 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.

-s/d-

Assistant Registrar (CS-IX)

True Copy

Sub-Assistant Registrar

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To

- 1 The Managing Director
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Egmore, Chennai 600 008.
- 2 The Senior Regional Manager
TASMAC, Salem-16.
- 3 The District Manager
TASMAC, Arakonnam.

W.P.No.19394 of 2018

KK (CO)
SP (04/09/2018)