

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2018

CORAM

THE HON'BLE Mr. JUSTICE V.PARTHIBAN

W.P.No.34760 of 2013

A.Sathiyakumar

... Petitioner

Vs.

- 1.The Managing Director,
Tamil Nadu State Marketing Corporation Ltd.,
(TASMAC)
Chennai - 600 008.
2. The Senior Regional Manager,
TASMAC Regional Office,
Salem - 636 016.
3. The District Manager,
Tamil Nadu State Marketing Corporation Ltd.,
(TASMAC)
Vellore - 632 001.

... Respondents

Prayer : Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the third respondent passed in his proceedings Se.Mu.Na.Ka.A2/274/CV/2011 dated 18.11.2013 and to quash the same and directing the respondents to reinstate the petitioner in service with continuity of service, back wages and other attendant benefits within a time limit.

For Petitioner : Ms.T.Ananthi

For Respondents: Mr.P.Arumugaraj
Senior Counsel (TASMAC)

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O R D E R

Heard Ms.T.Ananthi, the learned counsel appearing for the petitioner and Mr.P.Arumugaraj, learned Senior Counsel (TASMAC) appearing for the respondents.

2. The petitioner has approached this Court, seeking the following relief:-

"To issue a Writ of Certiorarified Mandamus, to

call for the records of the third respondent passed in his proceedings Se.Mu.Na.Ka.A2/274/CV/2011 dated 18.11.2013 and to quash the same and directing the respondents to reinstate the petitioner in service with continuity of service, back wages and other attendant benefits within a time limit."

3. The case of the petitioner is as follows:-

The petitioner was employed as salesman in the Tamil Nadu State Marketing Corporation Limited (hereinafter referred to as TASMAC). On 27.03.2011, an inspection was carried out by the District Manager of TASMAC and found certain irregularities during the inspection. Thereafter, the order of suspension was issued in respect of the petitioner as well as another salesman and supervisor vide proceedings dated 28.03.2011. Subsequently, the charge memo was issued on 06.04.2011 for all the three employees and the substance of the charge is that shortage of amount and loose sale of the various brand of liquor. An enquiry was conducted and on the basis of the enquiry finding, ultimately the petitioner was dismissed from service on 22.06.2011. An appeal was filed against the order of dismissal and the same was also not disposed of. Therefore, the petitioner approached this Court in W.P.No.22516 of 2011.

4. In the meantime, the petitioner's appeal was rejected by the second respondent vide his proceedings dated 28.09.2011. Thereafter, the petitioner filed a revision petition before the first respondent. Since the same was not disposed of, the petitioner once again filed a writ petition in W.P.No.10404 of 2012, before this Court and by order dated 18.04.2012, this Court directed the first respondent to dispose of the revision petition. In pursuance of the direction passed by this Court, the revision petition came to be rejected on 04.08.2012. Yet another writ petition was filed against the dismissal order in W.P.No.28600 of 2012. This Court, after considering the pleadings, passed an order dated 25.07.2013 by setting aside the order of dismissal holding that no enquiry was conducted by the respondents and the respondents were directed to conduct fresh enquiry by giving an opportunity to the petitioner and pass final orders within three months from the date of the receipt of a copy of that order.

5. Pursuant to the above orders passed by this Court, once again an enquiry was conducted and on the conclusion of the enquiry, the third respondent passed the order dated 18.11.2013, once again dismissing the petitioner from service. The said order is challenged in the present writ petition.

6. The learned counsel for the petitioner would submit that there was no proper opportunity given to the petitioner in the

conduct of enquiry and moreover, the enquiry was not conducted by following the principles of natural justice. She would further submit that as regards the other two employees whoever were charged along with the petitioner, were taken back to service after imposing a mere penalty of Rs.10,000/- & Rs.3,000/- respectively. In respect of the supervisor and the salesman concerned, on fine amount being recovered, they were reinstated in service in different TASMAL outlets.

7. Such being the case, the dismissal of the petitioner is per se discriminatory and violative of the Article 14 of the Constitution of India. She would draw the attention of this Court to the order of imposing penalty in respect of the two other persons who were charged along with the petitioner and subsequently, reinstated in service as evidenced by documents filed in the typed set of papers in support of the present writ petition on 31.10.2011.

8. Upon notice, learned Special Government Pleader appearing for the respondents, entered appearance and filed a counter affidavit. From the averments found in the counter affidavit that the submission made on behalf of the petitioner has not been specifically refuted or controverted and the fact of other two employees being reinstated in service, after levying penalty of Rs.10,000/- and Rs.3,000/- respectively, has also been not disputed on behalf of the respondents.

9. In view of the above discussion, this Court is in agreement with the contention raised on behalf of the petitioner that the order of dismissal passed against the petitioner is discriminatory, unreasonable, arbitrary and violative of Article 14 of the Constitution of India. The two other employees in the same duty have been charged along with the petitioner and subsequently, they have been taken back in service, after merely levying a penalty of Rs.10,000/- and Rs.3,000/- respectively, this Court does not see any justification for treating the petitioner differently in the matter of imposing penalty. More so, the penalty of dismissal from service appears to be too harsh and excessive, in the circumstances of the case. The fact of the matter is that the petitioner has suffered the order of dismissal and being forced to remain non-employed from 2013 till date, that by itself a grave penalty for the petitioner.

10. In the above circumstances, this Court has no hesitation in allowing the writ petition and the impugned order passed by the third respondent in his proceedings Se.Mu.Na.Ka.A2/274/CV/2011 dated 18.11.2013, is set aside. The respondents are directed to reinstate the petitioner in service within a period of four weeks from the date of receipt of a copy of this order. It is made clear that the petitioner is not

entitled to back wages during the period of non-employment.
However, entitled to all other benefits on being reinstated.

11. With the above terms, the writ petition stands allowed.
No costs.

Sd/-
Assistant Registrar(CS VIII)

//True copy//

dh Sub Assistant Registrar

To

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Vellore - 632 001.

+1cc to Mr.T.Ananthi, Advocate SR.No.40515
+1cc to Mr.P.Arumugarajan, Advocate SR.No.41294

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W.P.No.34760 of 2013

SJ(CO)
GN(07/08/2018)

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