

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Judgment 09.02.2018	Date of Pronouncing Judgment 22.03.2018
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CORAM

THE HONOURABLE MR. JUSTICE SATRUGHANA PUJAHARI

WP No.18388 of 2013

and

WMP No.4704 of 2017

P.Srinivasan

..Petitioner

Vs

1. The Managing Director,
Tamil Nadu State Marketing Corporation Ltd.,
(TASMAC),
Egmore, 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:- Writ 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 3rd respondent passed in his proceedings Se.Mu.Na.Ka.A2/945/CV/2010 dated 12.04.2011 as confirmed by the order of the 2nd respondent in Se.Mu.No.787/2011/E dated 03.10.2011 as confirmed by the order of the 1st respondent in his proceedings Na.Ka.No.9959/R1/2011 dated 03.06.2013 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 as fixed by this Court.

For petitioner : M/s.Lesi Saravanan
For Respondents : Mr.P.Arumuga Rajan

O R D E R

This writ petition has been filed by the petitioner under Article 226 of the Constitution of India seeks to challenge the order of his termination in a

disciplinary proceedings by the respondent/Corporation to be illegal, arbitrary and contrary to the law. The petitioner also prays to quash the same and direct reinstatement of him into service with backwages and other attendant benefits.

2. It appears that the petitioner was appointed as Salesman in the Tamil Nadu State Marketing Corporation Limited (TASMAC) under the 3rd respondent, on 29.12.2003 and he was posted as a Salesman in Retail Vending shop No.11348 in Kaniyambadi Retail Vending shop No.11348. The said shop was inspected by the Senior Regional Manager, TASMAC, Salem-16, and he allegedly noticed certain defects, namely, (i) that the petitioner was found to be selling liquor loosely; and (ii) that he had allowed an unauthorized person to assist him in the shop. Hence, he was put under suspension and a departmental enquiry was conducted against him. The Enquiry Officer, in the enquiry, held the charge to have been proved against the petitioner and pursuing such enquiry report, the 3rd respondent passed an order of dismissal, on 12.04.2011. The petitioner challenged the same, in an appeal, before the 2nd respondent, which came to be dismissed on 03.10.2011. Thereafter, a revision was preferred before the 1st respondent by the petitioner, which also came to be dismissed. It is the case of the petitioner that since the impugned order is perverse, so also he was not provided with the order of the Enquiry Officer, the impugned order of dismissal is liable to be quashed and that the petitioner is entitled to be reinstated into the service.

3. A Counter affidavit has been filed by the respondents indicating that the petitioner, being involved in the irregularities inasmuch as he was selling liquor in a loose manner and also adulterant liquor and also having allowed unauthorised person to handle the articles in the shop, which was not fit for human consumption, which appears to have been admitted in his response to the inspection report, the charge against the petitioner having been proved and as such, the disciplinary authority has terminated his services. The petitioner who was indulged in serious misconduct when only plead for mercy the order of dismissal cannot be said to be disproportionate. Therefore this writ petition, which has been filed, challenging the order of dismissal which has been confirmed by the appellate as well as the revisional authority, as such warrants no interference of this Court.

4. The learned counsel appearing for the petitioner drawing the notice of this Court to the record indicating the fact that no charge was there against the petitioner for adulteration of the liquor, but only a charge was that he was selling liquor loosely, so also allowed unauthorized person to assist him, which appears to have been admitted, with the promise not to repeat the same in future, submitted that for such misconduct the disciplinary authority could not have imposed the punishment of dismissal/ termination from service, which is shockingly disproportionate. Therefore, it has been submitted that this Court should quash the punishment and substitute the same by any other mild punishment with direction to reinstate the petitioner into service, the petitioner also undertakes not to claim any backwages, on such eventuality.

5. Per contra, the learned standing counsel appearing for the respondents has submitted that since the petitioner was guilty of adulteration and selling liquor in loose and he allowed the unauthorised person to enter into the shop to assist him, which was against the rule of the Corporation inasmuch as the same may be risky to the stock of the Corporation, which are gross misconduct and as such the punishment imposed cannot be said to be disproportionate. Hence the learned standing counsel appearing for the respondents has submitted that this writ petition is devoid of merit and is liable to be dismissed.

6. Before addressing the contention of the parties, it would be appropriate to have a look on the charges against the petitioner in the disciplinary proceedings. The same indicate that the petitioner was engaged in selling the liquor in loose, so also he had allowed the entry of unauthorized persons, as Salesmen, to the Vending shop, and at the time of inspection. Nothing was mentioned with regard to the fact that the petitioner was selling adulterated liquor, by mixing water with the liquor loosely to the customers and the same was not fit for human consumption.

7. Hence, there has been no charge of adulteration against the petitioner in the disciplinary proceedings and the same could not have been made a misconduct against the petitioner. However, the report of the Enquiry Officer when furnished to the petitioner, the petitioner responded to the same admitting the charge of loose sale of liquor. The petitioner, therefore, having admitted the charge after getting the report of the Enquiry Officer, recording his guilt and therefore the

acceptance of the enquiry report regarding guilt against the petitioner by the disciplinary authority cannot be said to be illegal and arbitrary or violative of the principle of natural justice or on any statutory provisions with regard to the disciplinary proceedings prescribed in this regard. Looking into the facts and situation of the case, therefore, the finding of guilt against the petitioner recorded by the disciplinary authority cannot be said to be suffering from any illegality, infirmity or perversity.

8. Now coming to the question of punishment, no doubt, the Court do not interfere in a punishment imposed in a disciplinary proceedings, in exercise of the writ jurisdiction. But when the punishment appears to be shockingly disproportionate to the charge, the Court can verywell interfere with the same.

9. Considering the fact that the petitioner / Salesman in the case was selling liquor loosely, so also unauthorised allowed two of the salesman of the Corporation of other shops to assist him and the petitioner has admitted his guilt and no charge was framed against him with regard to adulteration, hence, this Court is of the view that the punishment removal imposed on the petitioner for the nature of delinquency appears to be shockingly disproportionate.

10. In view of the above reasonings, this writ petition is allowed, the punishment imposed is set aside and the third respondent is directed to revisit with the punishment imposed against the petitioner, by any other punishment. The petitioner as submitted should not be allowed any back wages on such reinstatement with any other punishment. However, in this circumstances, there shall be no order as to costs. Consequently, the Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

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Sub Assistant Registrar

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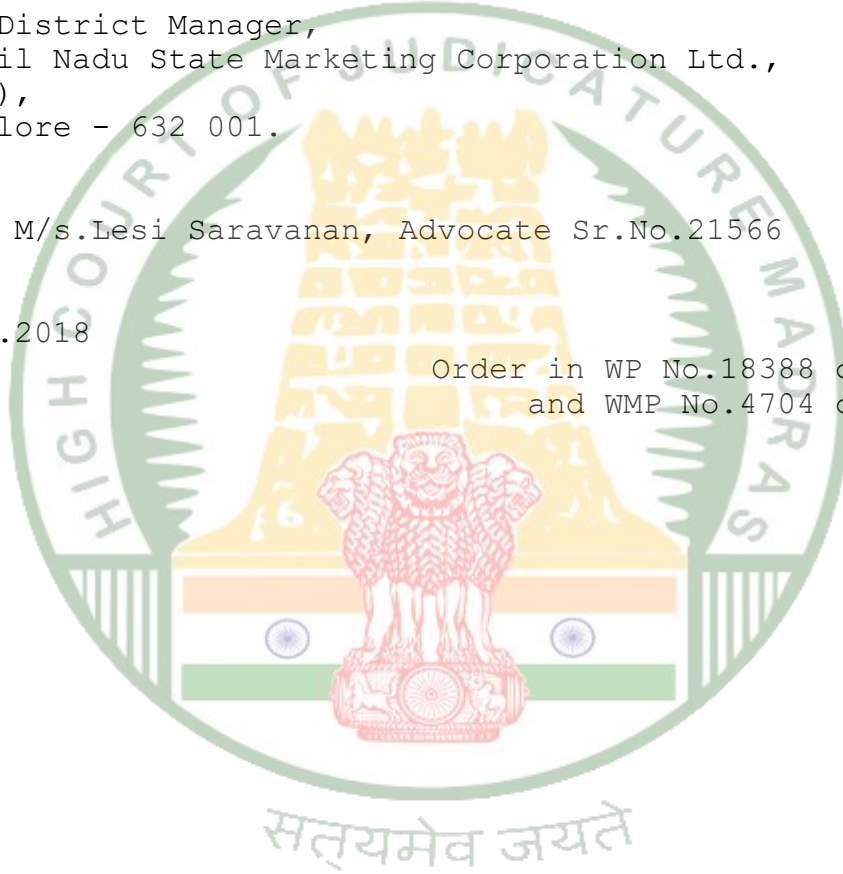
To

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+1cc to M/s.Lesi Saravanan, Advocate Sr.No.21566

MR(CO)
sm:10.4.2018

Order in WP No.18388 of 2013
and WMP No.4704 of 2017



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