

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.04.2019

CORAM

THE HONOURABLE Mr.JUSTICE D.KRISHNAKUMAR

W.P.No.28574 of 2014 &

M.P.No.1 of 2014

P.Murugan

..Petitioner

Vs.

1.The Managing Director,
Tamil Nadu State Marketing Corporation Ltd.,
IVth Floor, CMDA Tower-2,
Egmore, Chennai - 600 008.

2.The Senior Regional Manager,
Tamil Nadu State Marketing Corporation Ltd.,
Salem.

3.The District Manager,
Tamil Nadu State Marketing Corporation Ltd.,
IMFL Depot, TASMAL Ltd.,
Salem District.

...Respondents

Prayer:- The Writ Petition is filed under Article 226 of the Constitution of India, seeking for issuance of Writ of Certiorarified Mandamus to call for the records of the second respondent in proceedings No.443/2013/E, dated 31.07.2014, confirming the orders passed by the third respondent in Na.Ka.No.772/A3/2012/CV, dated 30.09.2013 and quash the same and consequently direct the respondents herein to reinstate the petitioner in service.

For Petitioner : Mr.B.K.Girishneelakantan

For Respondents : Mr.K.Sathishkumar
Standing Counsel

O R D E R

In this Writ Petition, the petitioner challenges the order of the second respondent, dated 31.07.2014, confirming the order passed by the third respondent, dated 30.09.2013 and for a direction to the respondents to reinstate the petitioner in

service.

2. The case of the petitioner is that he was working as Salesman in the TASMAC Shop No.7128, Asthampatti Village, Salem District. While so, on 30.05.2012, the third respondent conducted a surprise inspection and by an order dated 31.05.2012, suspended the petitioner from service, based on the inspection for the allegation of shortage of Rs.1,775/- and adulteration of liquor. Thereafter, the third respondent served the charge memo and the petitioner appeared before the Enquiry Officer on 23.04.2013 and denied all the allegations. After enquiry, the Enquiry Officer submitted an enquiry report before the third respondent and the third respondent passed an order dismissal of service of the petitioner on 30.09.2013. Aggrieved over the order passed by the third respondent, the petitioner preferred Appeal before the second respondent and second respondent also dismissed the appeal preferred by the petitioner, by confirming the order passed by the third respondent, without giving opportunity to the petitioner. Hence, the present Writ Petition.

3. The learned counsel for the petitioner would submit that the charges framed against the petitioner was denied by the petitioner and there was no adulteration in the liquor during enquiry. It is further submitted that neither any material nor evidence is placed before the Authority to come to the conclusion that the petitioner adulterated water in the liquor bottle. It is further submitted that both the Authorities have failed to consider the explanation of the petitioner and without providing an opportunity to the petitioner, awarded exorbitant punishment of dismissal of service. Hence, the impugned orders have been passed against the principles of natural justice and the same is liable to be set aside.

4. The learned Standing Counsel appearing for the TASMAC would submit that the respondent has framed three charges against the petitioner. So far as the first charge is concerned, the Enquiry Officer submitted the report that the allegation against the petitioner is proved. Insofar as the second & third charges are concerned, the enquiry report reveals that it was not proved against the petitioner. Considering the gravity of charges, both the Authorities have passed the punishment of dismissal from service. It is further submitted that at the time of inspection, the petitioner admitted the said charges and based on his admission, the order of dismissal was passed by the third respondent, which was also confirmed by the second respondent.

5. A perusal of the records, it is not in dispute that at the time of inspection, the petitioner denied the said allegation and the same was not taken note off by the authority concerned. Further, the learned counsel for the petitioner would submit that the petitioner has now given an undertaking affidavit dated 21.03.2019 before this Court stating that he will not commit adulteration at any circumstances or any malpractice to the respondent-Corporation and it is further stated that if the

petitioner is re-appointed by the Corporation, he undertook that he will not claim any backwages for the aforesaid non-working period.

6. At this juncture, the learned Standing Counsel appearing for the TASMAL would submit that by recording the undertaking affidavit of the petitioner dated 21.03.2019, necessary orders may be passed.

7. In view of the above submissions and also considering the fact that while passing impugned order, the Authority concerned did not take note of the denial made by the petitioner against the allegations, and that taking note of the affidavit of undertaking filed by the petitioner, dated 21.03.2019, this Court is inclined to pass the following order:-

(i) the impugned dismissal order passed by the third respondent, dated 30.09.2013 which was also confirmed by the second respondent, dated 31.07.2014 are liable to be set aside, accordingly, they are set aside;

(ii) The third respondent is directed to reinstate the petitioner within a period of two weeks from the date of receipt of a copy of this order.

(iii) It is made clear that the petitioner is not entitled for any backwages and any other monetary benefits during the period of break-in-service, as per his undertaking affidavit dated 21.03.2019, i.e., from the date of suspension till the date of the order to be passed by the third respondent.

8. With the above observations, the Writ Appeal is allowed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

-sd/-

Assistant Registrar

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Sub-Assistant Registrar

r n s

To

1. The Managing Director,
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2. The Senior Regional Manager,
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Salem.

3.The District Manager,
Tamil Nadu State Marketing Corporation Ltd.,
IMFL Depot, TASMAL Ltd.,
Salem District.

+1 cc to MR.B.K.GIRISH NEELAMANDAN, Advocate SR.NO. 32104

+1 cc to MR.K.SATHISH KUMAR Advocate SR.NO. 31452

W.P.No.28574 of 2014 &
M.P.No.1 of 2014

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RD 10/06/2019



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