

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 02.04.2019

Coram

The Honourable DR.JUSTICE ANITA SUMANTH

W.P. Nos.1161 of 2017
& W.M.P.No.1118 of 2017

C.Sanjeevan

....Petitioner

/Vs/

- 1.The Managing Director,
Tamil Nadu State Marketing
Corporation Ltd, (TASMAC)
Egmore, Chennai.
- 2.The Senior Regional Manager,
The Tamil Nadu State Marketing
Corporation Ltd, (TASMAC)
Salem.
- 3.The District Manager,
The Tamil Nadu State Marketing
Corporation Ltd, (TASMAC)
Krishnagiri.

....Respondents

P R A Y E R: WRIT PETITION under Article 226 of the Constitution in the nature of Certiorarified Mandamus calling for the records relating to the orders of the 3rd respondent namely The District Manager, The Tamil Nadu State Marketing Corporation Ltd, (TASMAC) Krishnagiri in Na.Ka.No.101/2014/CV-1 dated 30.04.2015 and confirmed by the 2nd respondent namely, The Senior Regional Manager, The Tamil Nadu State Marketing Corporation Ltd, (TASMAC) Salem in Se.Mu.No.3551/2015/Aa. Dated 25.08.2015 and further confirmed by the 1st respondent namely The Managing Director, The Tamil Nadu State Marketing Corporation Limited, (TASMAC) Egmore, Chennai in E.Mu.Na.No.R.2/31830/2015 dated 28.09.2016 and quash the said orders and consequently direct the respondents to reinsstate the petitioner in service with all service, monetary and attendant benefits.

For Petitioner : Mr.N.E.A.Dinesh

For Respondents : Mr.N.Damodharan

O R D E R

Heard Mr.N.E.A.Dinesh, learned counsel for the petitioner and Mr.N.Damodaran, learned counsel for the respondents.

2. The petitioner is aggrieved by an order of the Managing Director(TASMAC) dated 28.09.2016 dismissing the petitioner from service.

3. The petitioner was employed as a supervisor in a TASMAC shop with additional charge of another TASMAC unit as well. In the course of surprise inspection of one of the shops on 24.01.2014, the Inspecting Officer found certain discrepancies/irregularities in the nature of sale of liquor whereby 180 ml. Express Brandy and 180 ml. of Old Monk Rum had been transferred from the original broken bottle to other bottles and sold.

4. The petitioner states that he was not in the shop at the time when the inspection commenced but had gone to deposit the collection from sales in a nearby bank. Upon his return, he was confronted with the inspection report put to him by the Senior Regional Manager/2nd respondent, which he signed.

5. On the basis of the inspection, the petitioner was suspended vide proceeding dated 06.02.2014. The District Manager, Krishnagiri was appointed as Enquiry Officer. A report dated 16.04.2014 has been filed by the Officer stating that the charges framed against the petitioner have not been proved, while confirming the charges raised against the sales person. Even, while the aforesaid report was available, the District Manager has appointed another Enquiry Officer who vide his report dated 20.03.2015 held the petitioner guilty of the charges.

6. Thereafter, an appeal as against the same was filed before the Senior Regional Manager(TASMAC) who, vide his order dated 25.08.2015, dismissed the same, confirming the charges and the order of dismissal. Aggrieved by the same, a revision petition was filed before the Managing Director of TASMAC/1st respondent, which was also rejected on 28.09.2016. Hence the present writ petition.

7. It is clear that the procedure adopted by the respondents is neither acceptable or proper. The enquiry report dated 16.04.2014 issued by the District Manager, TASMAC is clear to the effect that the charges as laid against the petitioner have not been proved. The notes of inspection referred to in the enquiry report state that the loose liquor was sold by the salesman in retail and the petitioner was not even present in the shop at the time when the incident in question occurred. It is thus clear and admitted that the petitioner had not been in the shop and had gone to the bank to deposit the sales collection.

8. The first report dated 16.04.2015 was well available with the District Manager at the time when the order dated 30.04.2015 was passed. Though, the District Manager did have the liberty to arrive at an independent conclusion, even adverse and contrary to the report, he ought not to have sought another report without mentioning any reason as to why the earlier one was not acceptable.

9. The impugned order dated 28.09.2016 is passed substantially based on the findings of the first authority, and as such stands vitiated for the same reasons as stated in the previous paragraph. Learned counsel for the petitioner states that he does not wish to press the question of back wages.

10. In the light of the above discussion, the writ petition is allowed and the petitioner is directed to be reinstated in service with all attendant benefits but without back wages. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Managing Director,
Tamil Nadu State Marketing
Corporation Ltd, (TASMAC)
Egmore, Chennai.
2. The Senior Regional Manager,
The Tamil Nadu State Marketing
Corporation Ltd, (TASMAC)
Salem.
3. The District Manager,
The Tamil Nadu State Marketing
Corporation Ltd, (TASMAC) Krishnagiri.

+1 cc to M/s.V.Nicholas, Advocate, S.R.No.31863

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(CO)
SSM(20/05/2019) .