

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Reserved on : 02.04.2019

Delivered on : 09.04.2019

CORAM
THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.24036 of 2017

P.G.Mayakesavan

... Petitioner

Vs

1.The Managing Director,
Tamil Nadu State Marketing Corporation Ltd.,
CMDA Towers-II,
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.,
Vellore.

... 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 relating to the third respondent's proceedings made in Se.Mu.Na.Ka.No.A2/06/C.V/2015 dated 25.08.2015, as confirmed by the second respondent in Se.Mu.No.6455/2015/A dated 12.01.2016 and that of the first respondent's order made in Se.Mu.Na.Ka.No.R2/21380/2016 dated 19.04.2017 to quash the same and to consequently direct the respondents to forthwith reinstate the petitioner with all benefits both service and monetary.

For Petitioner : Mr.L.Chandrakumar

For Respondents : Mr.P.Arumugarajan, SC

O R D E R

Heard Mr.L.Chandrakumar, learned counsel for the petitioner and Mr.P.Arumugarajan, learned standing counsel 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 relating to the third respondent's proceedings made in Se.Mu.Na.Ka.No.A2/06/C.V/2015 dated 25.08.2015, as confirmed by the second respondent in Se.Mu.No.6455/2015/A dated 12.01.2016 and that of the first respondent's order made in Se.Mu.Na.Ka.No. R2/21380/2016 dated 19.04.2017 and quash the same and to consequently direct the respondents to forthwith reinstate the petitioner with all service and monetary benefits."

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

(i) The petitioner was appointed as Salesman in the Tamil Nadu State Marketing Corporation on 27.11.2003. While he was working as Salesman pertaining to the Shop No.11279, he was placed under suspension on 02.01.2015, pending disciplinary action against him. Thereafter, on 07.02.2015, he was issued with a charge memo charging him for committing an act of misconduct by causing adulteration of liquor bottles and also causing loss in quantity of the bottles. Although the charge was strongly denied by the petitioner, an enquiry was initiated and the same was conducted into the charges. In the meanwhile, the petitioner was also proceeded against criminally by filing criminal case in C.C.No.12 of 2015. The criminal case was taken up for trial by the Judicial Magistrate and ultimately by judgment dated 18.05.2015, the petitioner was acquitted from the criminal charges.

(ii) In the mean time, the departmental enquiry was concluded hurriedly without examining any witnesses or marking any documents. The statement of the petitioner was alone recorded in the enquiry and the enquiry report was filed holding the charges proved against the petitioner. On the basis of the enquiry report, the disciplinary authority passed an order on 25.08.2015, removing the petitioner from service. Against the order passed by the disciplinary authority, the third respondent herein, an appeal has been filed on 23.11.2015 and the same came to be rejected by the second respondent appellate authority on 12.01.2016. A further revision was filed on 12.01.2016 and the same was rejected by the first respondent on 19.04.2017. The order of removing him from service which was confirmed in the revision dated 19.04.2017 is the subject matter of challenge in the present writ petition.

4. The learned counsel for the petitioner would submit that proper procedure has not been followed while conducting the departmental proceedings against the petitioner and no reasonable opportunity has been afforded to the petitioner to cross examine the witnesses and no documents were marked or no witnesses were examined in order to establish the charges. The Enquiry Officer perfunctorily carried his job with predetermined mind to hold the charges proved. The report ultimately submitted

by the Enquiry Officer was unsupported by any evidence at all.

5. The learned counsel would further submit that unfortunately the disciplinary authority, the third respondent herein, on the basis of the flawed enquiry report, removed the petitioner from service on 25.08.2015. According to the learned counsel, the order passed by the disciplinary authority suffers from two grave infirmities as follows:-

1. On the day when the order of removal from service was passed, the petitioner stood acquitted by the criminal court vide its judgment dated 18.05.2015.

2. The departmental enquiry was not conducted as per the procedure contemplated in the rules and the same was conducted in complete violation of the principles of natural justice.

6. However, the disciplinary authority overlooked the two fatal legal infirmities and imposed the punishment of removal from service on the petitioner. Both the second and the first respondents being appellate and revisional authorities, have confirmed the order of punishment imposed on the petitioner mechanically without due application of mind as to the legal objections raised on behalf of the petitioner and also the grave lacunae which rendered the findings of the Enquiry Officer as invalid and the order of the disciplinary authority on the basis of the flawed findings as unsustainable.

7. In any event, the learned counsel would submit that in identical circumstances, the learned Judge of this Court has allowed two writ petitions, one in W.P.No.7193 of 2018 dated 30.07.2018 and other in W.P.No.34019 of 2017 dated 10.08.2018. In both the writ petitions, the learned Judge of this Court has held as under in paragraph Nos.6 and 7, which are extracted hereunder:-

"6. Mr.P.Arumuga Rajan, the learned counsel who accepts notice for respondents/TASMAC 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.

7. 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."

Therefore, the learned counsel would urge this Court to pass similar orders as in the case of the above two writ petitions.

8. Per contra, the learned counsel appearing for the respondents would submit that the petitioner was extended all reasonable opportunities before the departmental enquiry and the charges came to be established on conclusion of the enquiry. Infact, the charges framed against the petitioner were too serious in nature, calling for the penalty of removal from service. Once the charges were found established, the disciplinary authority has rightly imposed the penalty of removal from service which was proportionate to the gravity of misconduct committed by the petitioner and the other authorities viz., appellate and revisional authorities, have confirmed the same rightly as no materials were produced by the petitioner calling for interference at their hands. As regards the decisions relied on by the learned counsel for the petitioner, the learned counsel appearing for the respondents would submit that the decisions have been passed by the learned Judge in similar circumstances and in effect that the submission made by the learned counsel for the petitioner has not been disputed.

9. Considering the materials, pleadings and other circumstances of the case, this Court is in agreement with the submission made on behalf of the petitioner that the enquiry has not been conducted in terms of the service regulations or in terms of the established principles of natural justice. It appears that the enquiry has been concluded only with the statement made by the petitioner and held guilty of the charges as no witnesses were examined and no documents were marked. Unfortunately, the disciplinary authority without appreciating that the findings of the Enquiry Officer was not duly supported by evidence, has gone about imposing severe penalty of removal from service. The imposition of penalty on the basis of the flawed findings of the Enquiry Officer, cannot be countenanced either in law or on facts.

10. Moreover, both the appellate and revisional authorities did not exhibit due application of mind in regard to the conduct of the departmental enquiry against the petitioner and also in regard to the proportionality of punishment imposed on the petitioner by the disciplinary authority. In any case, when

there was a fatal infraction of procedure followed by the Enquiry Officer, the respondents ought to have interfered in such matter on the ground of upholding the principles of natural justice. But, unfortunately all the authorities have uniformly overlooked the crucial fact that the petitioner has not been provided with the adequate opportunity in defending his position in the departmental enquiry.

11. Even otherwise, under similar circumstances, the learned Judge of this Court in two writ petitions, has interfered with the punishment imposed on the petitioners therein and in which event, this petitioner cannot be treated differently. In fact, the learned Judge of this Court in the aforementioned two writ petitions has thought fit to interfere with such punishment imposed on the petitioners therein in the admission stage itself, holding such punishments were unsustainable in law. Therefore, this Court is of the view that such a course needs to be adopted in this case also. Therefore, the impugned orders are liable to be interfered with.

12. For the above said reasons, the impugned orders in Se.Mu.Na.Ka.No.A2/06/C.V/2015 dated 25.08.2015, Se.Mu.No.6455/2015/A dated 12.01.2016 and Se.Mu.Na.Ka.No.R2/21380/2016 dated 19.04.2017, are hereby set aside. The third respondent is directed to substitute any other suitable punishment as he deems fit other than removal from service and shall pass appropriate orders to that effect, within a period of four weeks from the date of receipt of a copy of this order. The petitioner is also entitled to be reinstated in the meanwhile in service and its also made clear that the petitioner is not entitled to payment of any backwages during the period of his non-employment.

13. The writ petition stands allowed on the above terms. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

gsk

To

1.The Managing Director,
Tamil Nadu State Marketing Corporation Ltd.,
CMDA Towers-II,
Egmore, Chennai 600 008.

WEB COPY

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

3.The District Manager,
Tamil Nadu State Marketing Corporation Ltd.,
Vellore.

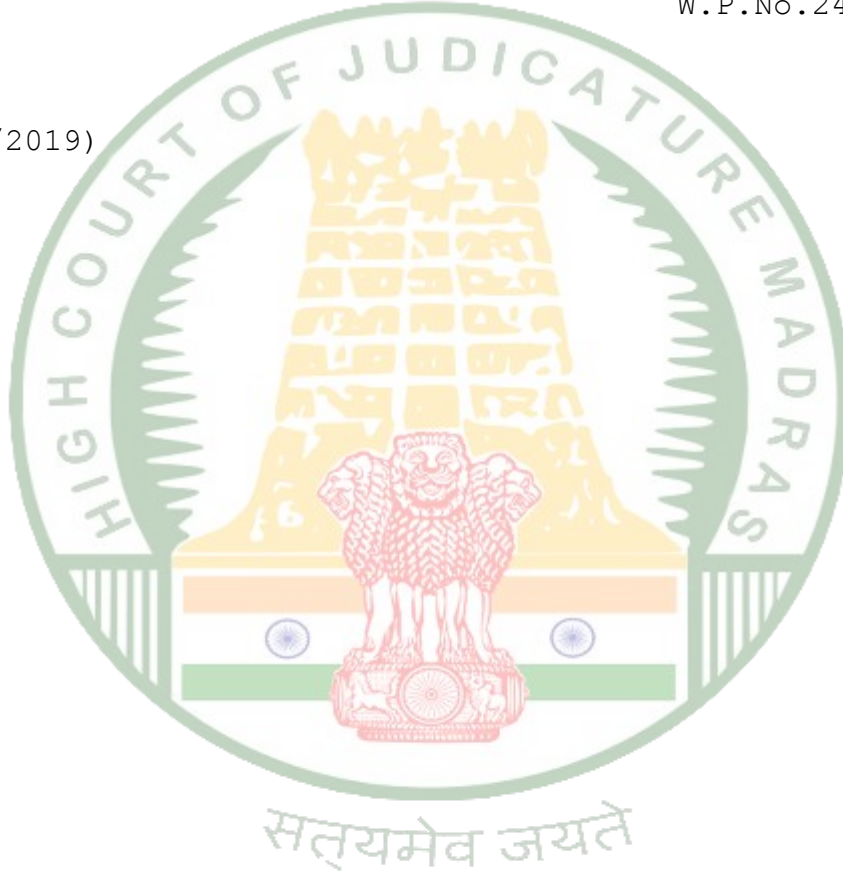
+1cc to Mr.P.Arumugarajan, Advocate, S.R.No.36001

+1cc to Mr.L.Chandrakumar, Advocate, S.R.No.34855

W.P.No.24036 of 2017

KAN (CO)

RRS (12/04/2019)



WEB COPY