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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2021

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.22516 of 2018

and

W.M.P.No.26374 of 2018

(Through Video Conferencing)

P.Sivakumar

... Petitioner

Vs

1. The Managing Director,
Tamil Nadu State Marketing Corporation Ltd
TASMAC,
4th Floor, CMDA Tower-2,
Thalamuthu Natrajan Maligai,
Egmore, Chennai - 600 008.

2. The Senior Regional Manager,
Tamil Nadu State Marketing Corporation Ltd
TASMAC
4th Floor, CMDA Tower-2,
Thalamuthu Natarajan Maligai,
Egmore, Chennai - 600 008.

3. The District Manager,
Tamil Nadu State Marketing Corporation Ltd
TASMAC
Kanchipuram (South) District,
Kanchipuram.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records on the file of the respondents in connection with the proceedings of the 1st respondent in Se.Mu.Na.Ka.R1/11409/2017 dated 11.07.2018 by confirming the order of 2nd respondent in Se.Mu.Na.Ka.A1/008/2018, dated 11.05.2018 confirming the order of 3rd respondent through his vide proceedings in Na.Ka.No.13/R.1/2012 dated 05.01.2018 quash the same, consequently direct the respondents to reinstate the petitioners in service with effect from the date of dismissal viz., with continuity of service, back wages and other attendant benefits.



For Petitioner : Mr.A.Ashvadhan
For Respondents : Mr.Arumugarajan
Standing Counsel

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ORDER

The petitioner has challenged the impugned order dated 11.07.2018 suspending the petitioner from the service of the 1st respondent/TASMAC.

2.The case of the petitioner in this writ petition is though the petitioner had taken leave and had joined TASMAC on 03.03.2012. On 03.03.2012, a surprise inspection was carried out by the 3rd respondent/District Manger along with the Inspector. It was found that on inspection water had been added to the alcoholic drinks in two litre water bottle had been kept ready for sale.

3.The case of the petitioner is that the petitioner was not indulged in adulteration of the alcoholic beverage sold to the consumers. It is the further case of the petitioner, the petitioner was alone in the shop and two other co-employees namely S.Murugan and M.Raghu who were suspended also and were reinstated into the service, whereas, the petitioner alone has been singled out. He further submits there are no direct evidence to substantiate that the petitioner was involved in the adulteration of the two litre bottle using needle.

4.It is further submitted that the petitioner cannot be guilty in as much as he has joined duty only on 03.03.2012. He further submits that there is no direct evidence and therefore the suspension order dated 03.03.2012 and termination orders are liable to be set aside. He further submits that even though he was suspended from service on 03.03.2012, no order suspending the petitioner from the service was issued to him. He was however not allowed to work. He therefore submits that straight away charge memo dated 05.06.2012 was issued to the petitioner and during the pendency of the disciplinary proceedings, the petitioner was also not paid subsistence allowance. He therefore prays for allowing this writ petition.

5.Defending the stand of the respondent, the learned counsel for the respondent submits that the petitioner admitted before the Enquiry Officer of having indulged in adulterating alcoholic beverage using needle and therefore submits that the writ petition is devoid on merits. He therefore prays for dismissal of the present writ petition.



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6. Heard the learned counsel for the petitioner and the respondent and perused the Enquiry Officer's report and the impugned order dated 05.01.2018 suspending the petitioner from service and the order of dismissing the petitioner from service on 11.07.2018.

7. The petitioner has admitted presence of adulterated liquor at the time of Inspection. He has however not categorically attempted and he adulterated the two litre bottle. The disciplinary proceedings has a long period. During the aforesaid period, the respondent ought to have paid subsistence allowance to the petitioner.

8. Two other employees namely S. Murugan and M. Raghu who were also accused of same delinquency have been reinstated into the service on 31.10.2012 and on 06.02.2014. The petitioner is also entitled to be treated on par with his colleagues who were also suspended along with him but were later reinstated into the service of the respondent/TASMAC in absence of direct evidence of the petitioner having indulged in adulteration of liquor.

9. Under these circumstances, this writ petition is partly allowed by directing the respondent to pay the subsistence allowance to the petitioner between the date of suspension and passing of the impugned order. Since the petitioner's colleague who were also found guilty but have been subsequently reinstated into the service on the date mentioned above, the respondents are directed to reinstate the petitioner into service of the petitioner in the TASMAC within a period of four weeks from the date of receipt of a copy of this order. It is however, made clear barring subsistence allowance, there shall be no other payment to the petitioner.

10. Writ petition stands disposed of with the above observations. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

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To

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Tamil Nadu State Marketing Corporation Ltd
TASMAC, Kanchipuram (South) District,
Kanchipuram.

+1cc to M/s.A.Ashvathamam, Advocate, S.R.No.41326

W.P.No.22516 of 2018
and
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SSV(CO)
SU(06/10/2021)