

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29.01.2021

Coram:

THE HON'BLE MR.JUSTICE R.SUBBIAH
and
THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Writ Appeal No.3585 of 2019
and
C.M.P.No.23011 of 2019

The District Manager,
The Tamil Nadu State Marketing
Corporation Limited,
(TASMAC Ltd),
Krishnagiri District. .. Appellant

Vs.

1. S.Subramani, S/o Sellan
2. The Senior Regional Manager,
Tamil Nadu State Marketing Corporation Ltd.,
(TASMAC) Ltd.,
Salem Region, Salem. .. Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 30.07.2018 passed by the learned Single Judge in W.P.No.21702 of 2016 on the file of this Court.

W.P.No.21702 of 2016: Prayer:-

Writ petition filed under article 226 of the constitution of India praying for issuance of writ of certiorarified mandamus to call for the records of the impugned dismissal order passed in Na. Ka. No. 101/2014/CV-1 dt 30.4.2015 by the 2nd respondent and the consequential confirmation order passed in Se. Mu. No. 3550/2015/A dt 25.8.2015 on the file of the 1st respondent and quash the same is illegal and consequently direct the respondents to reinstate the petitioner into service with all other consequential monetary benefits

For appellant : Mr.N.Damodaran

For respondents: Mr.K.Gandhikumar for R-1

JUDGMENT

(The Judgment of the Court was delivered by R.Subbiah, J)

This Writ Appeal is filed as against the order dated 30.07.2018 passed by the learned Single Judge in Writ Petition in W.P.No.21702 of 2016. The said Writ Petition was filed praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the impugned dismissal order passed in Na.Ka.No.101/2014/CV-1, dated 30.04.2015 by the appellant and the consequential confirmation order passed in Se.Mu.No.3550/2015/A, dated 25.08.2015 on the file of the second respondent herein, quash the same as illegal and consequently direct the respondents before the Writ Court to reinstate the first respondent/writ petitioner in service with all other consequential monetary benefits. Upon hearing both sides, the learned Single Judge disposed of the said Writ Petition and held as follows:

"6. 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 a copy of this order. However, it is made clear that in the event of substitution of punishment of removal by any other punishment, the petitioner shall not be entitled to any back wages for the period during which he remains out of duty.

7. With the aforesaid order, this writ petition stands disposed of. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is also closed."

2. The first respondent herein (writ petitioner) was appointed as TASMAL Salesman in Achamangalam 'X' Road, Krishnagiri in Shop No.2944, Krishnagiri District on consolidated wages of Rs.5,000/-. On 24.01.2014, the Senior Regional Manager, Salem (second respondent herein) had inspected the said shop along with the appellant and found certain irregularities in selling the liquor in loose. Hence, on 06.02.2014, the first respondent/writ petitioner was suspended from service. Thereafter, Enquiry Officer was appointed to conduct an enquiry. Ultimately, the Enquiry Officer found that the first respondent/writ petitioner is guilty of the charge(s)

levelled against him, the same having been proved. The disciplinary authority accepted the report of the Enquiry Officer and imposed a penalty of dismissal from service against the first respondent/writ petitioner. Thereafter, the first respondent/writ petitioner preferred an appeal to the appellate authority, who confirmed the order of dismissal from service, against which, the first respondent herein preferred the Writ Petition, which was disposed of with the aforesaid directions.

3. Before the learned Single Judge, it was contended by the first respondent/writ petitioner that the punishment of dismissal from service is shockingly disproportionate, more so, when the same had been passed without taking into consideration the mitigating circumstances that the writ petitioner is a poor salesman and his family is depending on him. It was also contended that, in the event of the disciplinary/appellate authority re-visiting the punishment by any other punishment, the writ petitioner may not claim any back wages for the period he remained out of duty.

4. The learned Single Judge made it clear that in the event of substitution of punishment of dismissal by any other punishment, the first respondent/writ petitioner shall not be entitled to any back wages for the period during which he remained out of duty.

5. The learned counsel for the appellant/TASMAC submitted that the punishment of dismissal from service is proportionate to the charge(s) levelled against the first respondent/writ petitioner. The first respondent/writ petitioner had committed the offence of shortage of money and also sold spurious liquor and therefore, leniency need not be shown to him. In such event, more than 20,000 employees working in the TASMAC (respondents in the Writ Petition), will take advantage and will indulge in this kind of irregularity.

6. Heard both sides and perused the materials available on record.

7. Taking into account the facts and circumstances of the case, this Court is not accepting the submission made on behalf of the appellant/TASMAC to the effect that the other employees will indulge in such kind of activities. The learned Single Judge, by carefully considering the facts, had assigned the reason that the punishment is shockingly disproportionate to the charges levelled against him and directed reinstatement by considering the family background of the first respondent/writ petitioner.

8. Moreover, we find that it was the contention of the first respondent/writ petitioner before the learned Single Judge that in several other similar cases, the same order as that of the present one, had been passed by this Court and thus, he left the matter to the Court for passing appropriate orders.

9. Accordingly, while considering the family background of the first respondent/writ petitioner, the learned Single Judge

had exercised his discretion and passed the order as extracted above.

10. Absolutely, we do not find any compelling circumstances warranting interference by this Court. Accordingly, the Writ Appeal is dismissed. No costs. Consequently, C.M.P. is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

CS

To

1. The District Manager,
The Tamil Nadu State Marketing
Corporation Limited,
(TASMAC Ltd), Krishnagiri District.
2. The Senior Regional Manager,
Tamil Nadu State Marketing Corporation Ltd.,
(TASMAC) Ltd., Salem Region, Salem-16.
Salem District.

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GMI (CO)
RMP (24/03/2021)