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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.27774 of 2018
and
W.M.P.No.32294 of 2018

(Through Video Conferencing)

Chinnasamy

... Petitioner

Vs

1.The Managing Director,
Tamil Nadu State Marketing Corporation Limited
(TASMAC),
Head Office, 4th Floor, CMDA Tower - 2,
Egmore, Chennai - 8.

2.The Senior Regional Manager,
TASMAC Limited,
56, Brindhavan Road,
Fairlands, Salem - 16.

3.The District Manager (Salem),
Tamil Nadu State Marketing Corporation Limited
(TASMAC),
IMFS Depot, TASMAC Ltd, 2/43B,
Doctors Colony, Jagirammappalayam Village,
Salem - 5.

4.The District Manager (Krishnagiri)
Tamil Nadu State Marketing Corporation Limited,
(TASMAC),
Godown No.1,2/23, Tamil Nadu Warehousing Corporation,
Bangalore Main Road, Byabapalli Village,
Krishnagiri.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records in Se.Mu.Na.Ka.No.R2/31832/2015, on the file of the 1st respondent, dated 21.09.2016 and further direct the respondents to reinstate the petitioner with effect from 10.12.2013 with all back wages.



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For Petitioner : Mr.Muruganantham for
Mr.T.Elumalai
For Respondents : Mr.N.Damodaran
Standing Counsel

ORDER

The petitioner has challenged the impugned order dated 21.09.2016 passed by the 1st respondent. The aforesaid order has been passed by the 1st respondent by dismissing the revision petition filed by the petitioner against the order dated 22.07.2015, passed by the 2nd respondent as an appellate authority. Earlier, the petitioner was removed from service by the 4th respondent by an order dated 16.04.2015 in a disciplinary proceeding initiated against the petitioner.

2.The disciplinary proceeding initiated against the petitioner by the 4th respondent precedes, suspension of the petitioner with effect from 10.12.2013. The petitioner was thereafter issued with a charge memo on the same date, followed by another Charge Memo dated 04.03.2014. In the disciplinary proceeding pursuant to the 2nd mentioned Charge Memo dated 04.03.2014, a retired senior government employee was appointed as an enquiry officer who found the petitioner guilty of all the charges.

3.The charges against the petitioner were that on 19.11.2013 when the 2nd respondent/Senior Regional Manager of TASMACH conducted a surprise visit to the TASMACH Shop of which the petitioner was in-charge, it was found that the petitioner was absent and that the petitioner had allowed a stranger to be in charge of the TASMACH Shop and that during the inspection, half empty open bottle of Men's Club Brandy was found in the shop, thereby lowering the confidence of the public in the TASMACH Shops of the respondents.

4.The petitioner has challenged the impugned proceedings, dismissing the petitioner from service and for not paying subsistence elements during the pendency of the disciplinary proceedings and that procedure was followed by the 4th respondent while passing the order removing the petitioner from service on 16.04.2015. It is further submitted that the appointment of a retired government employee as an enquiry officer to enquire into the charges framed against the petitioner were arbitrary. It is further submitted that the entire disciplinary proceeding was initiated by the 4th respondent in absence of any statutory guidelines.



5.It is further submitted that a Division Bench of this court, in its order dated 27.01.2009 in W.A.No.27 of 2009 had directed the respondents to streamline their disciplinary proceedings and procedure as arbitrary orders were being repeatedly passed in the guise of disciplinary proceedings by removing its employees. It is submitted that as a matter of fact, a Code for conducting disciplinary proceedings has been formulated by the respondents.

6.Appearing on behalf of the respondents, the learned counsel submits that the to petition is devoid of merits and is liable to be dismissed. It is submitted, though there was no codified procedure prescribed when the petitioner was subjected to disciplinary proceedings and was removed from service, nevertheless, the proceedings were conducted by giving adequate opportunity to the petitioner to defend himself in the disciplinary proceedings.

7.It is submitted that the petitioner was issued with two charge memos, a proper enquiry was conducted by independent enquiry officer and only thereafter, the petitioner was removed from service by the 4th respondent by an order dated 16.04.2015. It is therefore submitted that the present petition is liable to be dismissed.

8.Heard the learned counsel for the petitioner and the learned counsel for the respondents and perused the impugned order dated 21.09.2016 passed by the 1st respondent rejecting the revision petition filed by the petitioner against the appellate order dated 22.07.2015 of the 2nd respondent affirming the order dated 16.04.2015 passed by the 4th respondent dismissing the petitioner from service of the respondent TASMAL.

9.In W.A.No. 27 of 2009, a Division Bench of this Court by its order dated 27.01.2009 has noted the malaise in the manner in which disciplinary proceedings were being conducted by the respondents. The court observed that it is high time that the respondent should set up a separate machinery for a proper conduct of disciplinary proceedings against its employees. This view has been, followed by this court and has interfered with the orders passed in the disciplinary proceedings. It is to be further noted that the respondent TASMAL has also framed Code of Prevention and Detection of Fraudulent Acts in Tamil Nadu State Marketing Corporation Limited - 2014 in this regard.

10.Therefore, the impugned order dated 21.09.2016 passed by the 1st respondent affirming orders dated 16.04.2015 and 22.07.2015 passed by the 1st and the 2nd respondents are set aside and the case is remitted back to the 4th respondent to



complete the disciplinary proceedings in terms of the aforesaid Code within a period of 6 months from the date of receipt of a copy of this order. If the petitioner has not been paid subsistence elements from the date of suspension till the date of his removal from service on 16.04.2015, petitioner shall also be paid 50% of the basic pay that was being received by the petitioner at the time of suspension as subsistence allowance within a period of one month from date of receipt of this order.

11.This Writ Petition stands disposed with the above observations. No cost. Miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS II)

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Sub Assistant Registrar

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To

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Tamil Nadu State Marketing Corporation Limited, (TASMAC),
Godown No.1,2/23, Tamil Nadu Warehousing Corporation,
Bangalore Main Road, Byabapalli Village, Krishnagiri.

+1cc to Mr.T.Elumalai, Advocate Sr No.41300

W.P.No.27774 of 2018
and
W.M.P.No.32294 of 2018

GPL (CO)
PR (18/11/2021)