



WEB COPY

W.A.(MD)No.1256 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.01.2021

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

AND

THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.A. (MD)No.1256 of 2020

and

C.M.P. (MD)No.7162 of 2020

- 1.The Managing Director,
TASMAC,
Tamil Nadu State Marketing Corporation Ltd.,
CMDA Tower - 2,
4th Floor, Egmore,
Chennai - 8.
 - 2.Senior Regional Manager,
TASMAC,
Tamil Nadu State Marketing Corporation Ltd.,
Tiruchirappalli.
 - 3.Divisional Manager,
TASMAC,
Tamil Nadu State Marketing Corporation Ltd.,
Thanjavur. ... Appellants/Respondents
- Vs.
- S.Sathishkumar ... Respondent/Petitioner

Prayer : Appeal filed under Clause 15 of the Letters Patent Act against the order passed by this Court in W.P.(MD)No.5551 of 2019, dated 19.11.2019.

Prayer in WP(MD). 5551/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the respondents in proceeding on the file of the 1st respondent Se.Mu. Na.Ka.No. R1/15642/2018 dated 08.03.2018 and quash the same and consequently direct the 1st respondent to reinstate the writ petitioner to his destined/ designated job.

For Appellants : Mr.H.Arumugam

For Respondent : Mr.R.Murali

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J U D G M E N T

(Judgment of the Court was delivered by M.M.SUNDRESH, J)

This appeal is preferred by the appellants, aggrieved over the order of the learned Single Judge, who upon hearing the arguments of the learned counsel appearing for the parties, was pleased to set aside the order of punishment imposed and consequently, allowed the writ petition as prayed for.

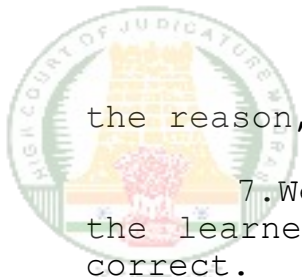
2.The respondent herein was working as a Salesman with the appellants. Four charges have been framed against him. Of the four charges, according to the Enquiry Officer, two charges were not proved and accordingly, the respondent was exonerated from the said charges and the remaining two charges are pertaining to mixing water with the liquor bottles by reducing the concentration of the liquor content and thereby, reducing the quality.

3.The order of the third appellant/disciplinary authority was challenged by the respondent before the second appellant/appellate authority. The second appellant/appellate authority dismissed the appeal filed by the respondent. Aggrieved over the said order, the respondent herein filed revision before the first appellant/revisional authority. The first appellant/revisional authority has also confirmed the orders passed by the appellants 2 and 3, holding that charges 3 and 4 are accordingly proved.

4.The learned Single Judge allowed the Writ Petition *inter alia* holding that charges 3 and 4 are connected to charges 1 and 2 and there is non-application of mind, as the appellants proceeded against the respondent on the premise that all the charges were proved, though the Enquiry Officer himself found that charges 1 and 2 are not proved.

5.Mr.H.Arumugam, learned Standing Counsel appearing for the appellants submitted that it is not correct to state that the appellants did not take into consideration the fact that charges 1 and 2 are not proved. In fact, they dealt with charges 3 and 4 alone. On these charges, it was found through the examination at the Lab that the concentration of the Liquor is lesser, as the percentage of Alcohol was not to the required one. It was the responsibility of the respondent to maintain the liquor bottles at the time of sale.

6.Mr.R.Murali, learned counsel appearing for the respondent submitted that the respondent has given his explanation and the same has not been considered properly. In this case, imposition of punishment of dismissal is onerous. Though the respondent was exonerated from charges 1 and 2, what weighed in the minds of the appellants was that the said charges were also proved and that was



the reason, the order of dismissal was passed.

7. We are not inclined to interfere with the order passed by the learned Single Judge, though the reasons assigned may not be correct. Charges 3 and 4 are to the effect that the respondent mixed water with the liquor bottles. There is no charge of misappropriation. It may be a case of dereliction of duty, as an explanation has been given by the respondent that when the bottles were taken, they were not sealed and the respondent suspected whether the same bottles were supplied for test and requested them to furnish the Lab Report and that he was not responsible for the same. The explanation given by the respondent was not considered in the right perspective. In any case, the proved charges would not warrant punishment of dismissal. Therefore, the learned counsel for the respondent is correct in stating that though the appellants passed order to the effect that charges 3 and 4 are proved, the other charges were also weighed in the minds of the appellants while imposing punishment. It is not stated that the respondent has mixed anything else with the liquor bottles and enrich himself.

8. Thus, considering the above, we are of the view that while the respondent is entitled for reinstatement, is not entitled for any back wages from the date of suspension till the date of reinstatement. Accordingly, the order of the learned Single Judge stands modified to the effect that the respondent is entitled for reinstatement without back wages. The appellants are directed to reinstate the respondent within a period of eight weeks from the date of receipt of a copy of this judgment. However, it is made clear that we have passed this order by taking into consideration the doctrine of proportionality.

9. This Writ Appeal is disposed of with the above direction. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Tamil Nadu State Marketing Corporation Ltd.,
Thanjavur.

+1 CC to M/s.H.ARUMUGAM, Advocate (SR-419[F] dated
07/01/2021)

+1 CC to M/s.M.SURESH KUMAR, Advocate (SR-404[F]
dated 07/01/2021)

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NR (19/01/2020) 4P : 6C