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W.P.No. 3079 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No. 3079 of 2018
and WMP.No.3767 of 2018

S.Palani,
S/o. Subramani

..Petitioner

Vs.

1. The Senior Regional Manager,
Tamil Nadu State Marketing Corporation Ltd.,
(TASMAC) Salem Region,
No.56, Brindavan Road,
Fairlands, Salem – 16.

2. The District Manager,
Tamil Nadu State Marketing Corporation Ltd.,
(TASMAC), TANCOF Complex,
No.52, Anna salai,
Thiruvannamalai District.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for Writs of Certiorarified Mandamus, calling for the proceedings of the records of the 2nd respondent pertaining to Letter Na.Ka.r.v.2/338/2015 dated 22.04.2015 which confirmed by the 1st respondent in Se.Mu.No.3709/2015/A dated 16.11.2015 quash the same and consequently direct the respondents herein to reinstate the petitioner in service with all service, monetary and attendant benefits.



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For Petitioner : Mr.S.Makesh

For the Respondents : Mr.P.Arumugaraja
Standing Counsel

ORDER

The prayer sought for herein is for issuance of a writ of certiorarified mandamus, to quash the order passed by the second respondent in Letter Na.Ka.r.v.2/338/2015 dated 22.04.2015 which is confirmed by the 1st respondent in Se.Mu.No.3709/2015/A dated 16.11.2015 and consequently direct the respondents herein to reinstate the petitioner in service with all service, monetary and attendant benefits.

2. The petitioner was working as a Supervisor in TASMACH Shop No.9321 located at Vadugasathu Village, Arani Taluk. While so, he was directed to discharge duty as Supervisor in Shop No.9301 as additional charge with effect from 28.11.2014 located at Araiyaalam Village, Arani Taluk.



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3. Since the two shops work were given to the petitioner i.e., Shop Nos. 9321 as well as 9301, there were lots of work to be undertaken by the petitioner like statistics, deposit of money in bank, indend and monthly stock report for both shops. As far as the Shop No.9301 is concerned, the post of salesman is vacant, hence the petitioner had to take care of the salesman duty also.

4. While so, on 02.02.2015, the District Manager/second respondent had to make a surprise visit in Shop No.9321. On that day, the petitioner since was in-charge of Shop No.9301, he was working in that shop not at Shop No.9321, one S.Sankarganesh, Salesman was there in the shop during the inspection and the petitioner had no knowledge about the inspection at Shop No.9321. It is also well aware of the District Manager, who made Inspection.

5. Subsequent to the said inspection certain discrepancies allegedly have been found against the salesman, for which, fixing the responsibility on the petitioner also being the Supervisor, disciplinary proceedings were initiated, which ultimately ended in an order of the



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second respondent dated 22.04.2015, by which, the petitioner was removed from service. As against which, when the petitioner preferred an appeal, that was also rejected, confirming the order passed by the Original Authority, the Appellate Authority passed an order dated 16.11.2015. Challenging all these orders, the present writ petition has been filed.

6. Heard Mr.S.Makesh, learned counsel appearing for the petitioner, who would contend that the petitioner though was originally the Supervisor for Shop No.9321, since he was given in-charge of Shop No.9301 and on the date of inspection, the petitioner had not been therein in Shop No.9321 and he was only available in Shop No.9301, therefore, if at all any discrepancies found, for which, only the salesman, who was in-charge of shop No.9321 alone was responsible, for which, the petitioner cannot be made responsible.

7. He would also submit that as against the salesman concern, actions seems to have been taken by the respondents, where also the order of removal of service was passed against them i.e., one R.Elumalai



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and one S.Sankar Ganesh, who were the salesmen and against the orders passed by the TASMACH removing them from service, they filed writ petitions in W.P.No.39108 of 2015 and W.P.No.825 of 2016 and both the writ petitions along with the similar writ petitions were heard together and were allowed by a learned Judge of this Court by order dated 25.07.2017.

8. Pursuant to the said orders passed by the Writ Court, no further appeal has been filed by the TASMACH and it seems that the order passed by the Writ Court in respect of the salesmen have been implemented and they have been reinstated. When that being so, singling out the petitioner is not fair. Moreover for the alleged irregularities, if any, found during the inspection on the particular date in Shop No.9321, the petitioner is not at all responsible as the petitioner was in the in-charge of Shop No.9301. Therefore, the learned counsel seeks indulgence of this Court against the impugned orders.

9. Heard Mr.P.Arumugaraja, learned Standing Counsel appearing for the respondents TASMACH, who would submit that even though the



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petitioner was in-charge of another shop i.e., Shop No. 9301, his original Supervisor post is for Shop No.9321. Therefore, he must have taken diligence and care in both the shops and if any discrepancies found, Supervisor concern would also be liable to be prosecuted and therefore it is not only against the salesmen of the shop concerned but also the Supervisor that is the petitioner against whom, disciplinary proceedings were initiated and ultimately since the charges have been proved as per the Enquiry Officer's report, based on which, the removal of service was inflicted against the petitioner, which was confirmed by the Appellate Authority. Hence, the learned Standing Counsel appearing for the TASMACH would submit that the orders impugned does not require any interference from this Court.

10. I have considered the said submissions made by the learned counsel appearing for both sides and have perused the materials placed before this Court.

11. It is to be noted that, the petitioner though was in-charge as Supervisor for the Shop No.9321, as an additional duty Shop No.9301



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was also entrusted to him and therefore naturally the Supervisor has to look after both the shops in supervising capacity.

12. On the particular date, when the alleged inspection had taken place, the petitioner was in Shop No.9301 i.e, in-charge shop not in Shop No.9321, therefore there is some substance in the contentions made by the petitioner's counsel that, on the date of inspection since the petitioner was not in the Shop No.9321, he cannot be blamed for any discrepancies found in the Shop No.9321 on the date of inspection, as such discrepancies could have been attributable only against the salesmen.

13. Though action has been taken against the salesmen also, when they approached this Court by filing writ petitions, those writ petitions were allowed by this Court by order dated 25.07.2017, as against which, no appeal has been filed.

14. The learned Standing Counsel appearing for the respondents TASMACH had brought to the notice of this Court that the said order having been accepted by the TASMACH, which was implemented and both the salesman viz., R.Elumalai and S.Sankar Ganesh, who were the



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Salesman for the shop No.9321 have been reinstated by the order of the TASMACH dated 10.10.2017 and the copy of the same has been produced by the learned Standing Counsel appearing for the TASMACH before this Court for perusal. Those orders passed by the TASMACH accepting the orders passed by this Court referred to above would make it clear that even in respect of the Salesmen, who were readily available in Shop No.9321 on the date of inspection, against whom the discrepancies were found out, had been reinstated. Therefore, keeping the Supervisor that is the petitioner aloof from that purview and singling out by making these disciplinary proceedings against the petitioner, in the considered opinion of this Court, is untenable and it is violative under Article 14 of the Constitution also.

14. Moreover on merits also since the petitioner was in-charge of Shop No.9301 and on the date of inspection, he was working in Shop No.9301, no blame can be put against the petitioner as a Supervisor for having not supervised the same properly in Shop No.9321 and therefore, on merits also the charge framed against the petitioner, in the considered opinion of this Court, may not be justifiable and therefore, for all these



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reasons, the impugned orders would not stand in the legal scrutiny. In the result, the following orders are passed in this writ petition:

- ◆ That the impugned orders are set aside and as a sequel, there shall be a direction to the respondents to reinstate the petitioner. On reinstatement, except the backwages, all other service benefits including the continuity of service shall be extended to the petitioner.
- ◆ The needful as indicated above shall be undertaken by the respondents TASMACH within a period of four(4) weeks from the date of receipt of a copy of this order.

With these directions, this writ petition is disposed of accordingly.

No costs. Connected miscellaneous petition is closed.

06.07.2022

Index : Yes/No
Internet: Yes/No
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R.SURESH KUMAR.J,

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To

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