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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2022

CORAM

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.NO.35693 OF 2015

AND

M.P.NO.1 OF 2015

R.Muthukumar

... Petitioner

.Vs.

1. The District Manager,
IMFS Depot, TASMAL Ltd.,
2/43B, Doctors Colony,
Jagirampalayam Village,
Salem - 5.

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

3. The Managing Director,
TASMAC Ltd., 4th Floor,
CMDA Tower-II, Egmore,
Chennai - 600 008.

... Respondents

PRAYER:-

Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, to call for the records relating to the impugned order in Na.Ka.No.772/A3/2012/CV passed by the first respondent dated 30.09.2013 as confirmed by the second respondent in SA/MU/No.3546/2015/A dated 01.09.2015 and quash the same, consequently, direct the respondents to reinstate the petitioner with back wages, continuity of service and all attendant benefits.

For Petitioner : Mr.B.Manoharan
For Mr.M.Selvam

For Respondents : Mr.K.Sathish Kumar
Standing Counsel



O R D E R

This writ petition has been filed to issue a writ of Certiorarified Mandamus, to call for the records relating to the impugned order in Na.Ka.No.772/A3/2012/CV passed by the first respondent dated 30.09.2013 as confirmed by the second respondent in SA/MU/No.3546/2015/A dated 01.09.2015 and quash the same, consequently, direct the respondents to reinstate the petitioner with back wages, continuity of service and all attendant benefits.

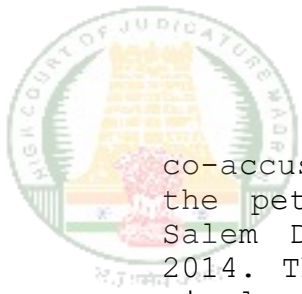
2. The case of the petitioner is as follows:

(i) The petitioner was employed in the second respondent Corporation. He was appointed originally on 29.12.2003 and was working as sales personnel. From his earlier posting in Pellur Karadipatti, he was shifted to Vazhapadi. He was working there for one and half years. Thereafter, the petitioner was transferred to Alagapuram and has worked there for six years.

(ii) On 30.05.2012, the first respondent conducted a surprise inspection in the shop where the petitioner was posted to work at that point of time and found there was adulteration and also some discrepancies were found in the stock. In pursuance of which, a disciplinary action was initiated against the Supervisor and other sales men, including the petitioner. The petitioner was placed under suspension with effect from 31.05.2012, followed by a charge memo containing three articles of charges.

(iii) On completion of the enquiry proceedings, a report was filed on 25.03.2013. On the basis of the finding holding the charge proved against the petitioner, the petitioner came to be removed from service by the orders of the disciplinary authority dated 30.09.2013. The substance of the charge against the petitioner was that he caused loss to the tune of Rs.1,775/- to the Corporation. Being aggrieved by the order of removal from service, the petitioner appeared to have filed an appeal on 11.05.2015, before the second respondent, the appellate authority. The second respondent rejected the appeal by confirming the order passed by the disciplinary authority. The petitioner is before this Court challenging the above orders.

3. In the writ petition, several grounds have been raised in assailing the order of punishment imposed on the petitioner. However, when the matter is taken up for hearing, the learned counsel would draw the attention of this Court that the other



co-accused who was also implicated in the same charge along with the petitioner in the same TASMAL Shop No.7128, Asthampatti, Salem District, had approached this Court in W.P.No.28574 of 2014. This Court vide order dated 02.04.2019, after hearing the rival submissions of the parties, has allowed the writ petition and ordered reinstatement of the petitioner therein.

4. The learned counsel would submit that the petitioner herein was also facing the same charge as the petitioner in W.P.No.28574 of 2014 and both of them were identically placed. Since the petitioner therein Mr.P.Murugan has obtained favourable orders from this Court and pursuant to that order, he was also reinstated in service, the learned counsel would implore this Court to follow the earlier order of this Court in the above said writ petition and allow this writ petition also.

5. Mr.K.Sathish Kumar, learned Standing Counsel appeared on behalf of the respondent Corporation has also acknowledged the fact that the common charge sheet was issued against the other person also. But, this Court has intervened in the matter vide its order dated 02.04.2019 and on the basis of the direction of the learned Judge, the said Mr.P.Murugan was also reinstated in service.

6. In view of the admitted position, this Court is inclined to allow the present writ petition as well. However, before allowing the writ petition, it is useful to refer the reasons set forth by the learned Judge in the order passed in the aforementioned writ petition. The relevant portions from paragraph Nos.5 to 8, are re-produced hereunder:

"5. A perusal of the records, it is not in dispute that at the time of inspection, the petitioner denied the said allegation and the same was not taken note off by the authority concerned. Further, the learned counsel for the petitioner would submit that the petitioner has now given an undertaking affidavit dated 21.03.2019 before this Court stating that he will not commit adulteration at any circumstances or any malpractice to the respondent-Corporation and it is further stated that if the petitioner is re-appointed by the Corporation, he undertook that he will not claim any backwages for the aforesaid non-working period.

6. At this juncture, the learned Standing Counsel appearing for the TASMAL would submit that



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by recording the undertaking affidavit of the petitioner dated 21.03.2019, necessary orders may be passed.

7. In view of the above submissions and also considering the fact that while passing impugned order, the Authority concerned did not take note off the denial made by the petitioner against the allegations, and that taking note of the affidavit of undertaking filed by the petitioner, dated 21.03.2019, this Court is inclined to pass the following order:-

(i) the impugned dismissal order passed by the third respondent, dated 30.09.2013 which was also confirmed by the second respondent, dated 31.07.2014 are liable to be set aside, accordingly, they are set aside;

(ii) The third respondent is directed to reinstate the petitioner within a period of two weeks from the date of receipt of a copy of this order.

(iii) It is made clear that the petitioner is not entitled for any backwages and any other monetary benefits during the period of break-in-service, as per his undertaking affidavit dated 21.03.2019, i.e., from the date of suspension till the date of the order to be passed by the third respondent.

8. With the above observations, the Writ Petition is allowed. There is no order as to costs. Consequently, connected miscellaneous petition is closed."

7. In view of the above, this Court has no hesitation in allowing the writ petition. Accordingly, the impugned orders in Na.Ka.No.772/A3/2012/CV passed by the first respondent dated 30.09.2013, as confirmed by the second respondent in SA/MU/No.3546/2015/A dated 01.09.2015, are hereby set aside.

8. The respondent Corporation is directed to reinstate the petitioner within a period of two weeks from the date of receipt of a copy of this order. While reinstating the petitioner, it is clarified that the petitioner is not entitled to backwages or any other monetary benefits during the period of break-in-



service. However, it is made clear that the petitioner is entitled to notional benefits and continuity in service etc.

9. The writ petition stands allowed on the above terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

gsk

To

1. The District Manager,
IMFS Depot, TASMAL Ltd.,
2/43B, Doctors Colony,
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56, Brindhavan Road,
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3. The Managing Director,
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+1cc to Mr.B.Manoharan, Advocate, S.R.No.10623

W.P.NO.35693 OF 2015 AND
M.P.NO.1 OF 2015

PL(CO)
PBS/28/02/2022