



W.P.No.32702 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2023

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No. 32702 of 2018

and

WM.P.Nos.37897 and 37901 of 2018

S.Ganesan

... Petitioner

Vs.

1. The Govt of Tamil Nadu
rep by its Secretary,
Prohibition and Excise Department,
Secretariat,
Chennai-9.
2. The Chairman and Managing Director,
Tamil Nadu State Marketing Corporation Ltd.,
No.8, Gandhi Irwin Road,
Egmore,
Chennai -8.
3. The District Manager,
Tamil Nadu State Marketing Corporation Ltd.,



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TASMAC Office, Tirunelveli.

4. The Senior Regional Manager,
Tamil Nadu State Marketing Corporation Ltd.,
Madurai Region at Madurai,
Madurai District.

5. The District Manager (Retail Vending),
Tamil Nadu State Marketing Corporation Ltd.,
TASMAC Office,
Virudhunagar,
Virudhunagar District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent in proceedings Na.Ka.No.939/R1/2015, dated 13.2.2015 issued to the 3rd respondent making him the disciplinary authority and consequent order dated 23.09.2016 of the 3rd respondent in Na. Ka. No.A1/322/2015 and subsequent proceedings Na.Ka.No.R1/24058/2017 dated 02.03.2017 from the 2nd respondent to the petitioner and to quash the same and to further direct the 2nd respondent to properly consider the representation of the petitioner dated 04.09.2017 and 09.10.2017 and 23.11.2017



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addressed to the 2nd respondent.

For Petitioner : Mr.C.Sivakumar

For Respondents : Mr.M.Muthusamy,
Governemnt Advocate for R1

Mr.K.Sathish Kumar
Standing Counsel
for R2 to R5

ORDER

This Writ Petition has been filed to quash the order of the 2nd respondent dated 13.2.2015 issued to the 3rd respondent making him the disciplinary authority and consequent order dated 23.09.2016 of the 3rd respondent and subsequent proceedings dated 02.03.2017 from the 2nd respondent to the petitioner and to further direct the 2nd respondent to consider the representation of the petitioner dated 04.09.2017 and 09.10.2017 and 23.11.2017 addressed to the 2nd



2.The petitioner was appointed in the respondent Department as Salesman in the TASMACH Shop at Thayilpatti, Virudhunagar District. The petitioner claims that while he working as Salesman in Shop No.12016 on 26.12.2009 has faced a disciplinary proceeding, as the surprise inspection done by the jurisdictional District Manager, revealed certain irregularities, like 26 bottles of MC Dowel Brandy of 375 ml was mixed with water by opening the cap of the liquor bottles and therefore, he was placed under suspension on 26.12.2009 by the 5th respondent. The petitioner would state that he was issued with a charge memo on 18.01.2010, granting 15 days time to submit his explanation and it was also submitted, and not satisfied with the same, Enquiry Officer was appointed, who held that the charges



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framed against the petitioner as proved. The 3rd respondent on consideration of the materials placed before him has imposed the punishment of removal from service vide order dated 23.09.2016. Being aggrieved by the same, the petitioner preferred an appeal to the 2nd respondent who vide order dated 29.11.2016 has dismissed and confirmed the order of the 3rd respondent.

3.The petitioner would further state that after enquiry, it was held that the charges were proved and the petitioner was not issued with any show cause notice and after serving the report of the Enquiry Officer, he was removed from service vide order dated 03.06.2015, and challenging the legality of the same, the present Writ Petition is filed.

4.The learned Counsel appearing for the petitioner would



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submit that the charge memo was issued by the District Manager and the order of suspension was also passed by 26.12.2009, and after receipt of the enquiry report, the impugned order of removal was passed on 23.09.2016. He would further submit that in similar facts and circumstances, this Court vide order dated 5.3.2015, made in W.P.No.28066 of 2014, has set aside the matter with a direction to the Authority to reinstate the concerned petitioner and to conduct a fresh enquiry in accordance with the Regulations, and since the petitioner is similarly placed, same kind of order may be passed.

5.Per contra, Mr.M. Muthusamy, learned Government Advocate, who accepted notice on behalf of the respondents, would submit that the petitioner is having an effective alternate remedy in the form of revision to the 1st respondent and hence, a direction may be issued to avail the said remedy.



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6.This Court has carefully considered the rival submissions and also perused the materials placed before it.

7.As rightly contended by the learned Counsel appearing for the petitioner, the respondent/District Manager has assumed the role of all Authorities and she started with the issuance of charge memo and actively participated in the Disciplinary Proceedings, which culminated in the impugned order of removal from service.

8.This Court in similar facts and circumstances, has passed an order dated 5.3.2015, in W.P.No.28066 of 2014, and set aside the order of removal passed against the petitioner therein, by granting liberty to the respondent viz. the District Manager, TASMAL, Tiruvallur District, to proceed afresh. In the considered opinion of the



Court, the said order squarely applies to the facts of this case.

In the result, the Writ Petition is partly allowed and the impugned order dated 13.02.2015 passed by the 2nd respondent issued to the 3rd respondent and consequent order dated 23.09.2016 of the 3rd respondent and subsequent proceedings dated 02.03.2017 from the 2nd respondent to the petitioner, is set aside and the matter is once again, remanded back to the respondents for fresh adjudication strictly in accordance with law/Rules/Regulations and pending culmination of the disciplinary proceedings, the 2nd respondent is directed to reinstate the petitioner forthwith. The question of payment of back-wages and conferment of attendant benefits shall be decided subject to the result of the enquiry proceedings. No costs. Consequently, connected Miscellaneous Petitions are closed.



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Index : Yes/No
Speaking order: Yes/No
Neutral citation: Yes/No
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V.BHAVANI SUBBAROYAN, J,



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