



W.A(MD)No.1228 of 2015

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.03.2023

CORAM:

**THE HON'BLE MR JUSTICE R. SURESH KUMAR
AND
THE HON'BLE MR JUSTICE K.K. RAMAKRISHNAN**

W.A(MD)No.1228 of 2015

S.Sivakumar

... Appellant/Petitioner

.Vs.

1.The Senior Regional Manager,
Tamil Nadu State Marketing Corporation,
Thiruchirapalli.

2.The Deputy Collector/District Manager,
Tamil Nadu State Marketing Corporation,
Thanjavur District,
Thanjavur.

...Respondents/Respondents

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent Act, to allow this writ appeal and set aside the order made in W.P(MD)No.7829 of 2015, dated 08.06.2015.



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For appellant : Mr.C.M.Arumugam

For Respondents : Mr.H.Arumugam
Standing Counsel

JUDGMENT

(Order of the Court was made by R. SURESH KUMAR,J.)

This writ appeal has been directed against the order passed by the writ Court, dated 08.06.2015 made in W.P(MD)No.7829 of 2015.

2. The appellant was working as a salesman in a retail vending shop of TASMAC i.e., the respondents and he was dismissed from service pursuant to the disciplinary proceedings initiated against him on the alleged 5 charges framed against him. Challenging the said removal order, dated 24.12.2009 and 12.04.2010, when the petitioner moved the writ Court, it was considered and rejected by the learned Judge through the impugned order. Assailing the same, the present writ appeal has been filed.



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3. Mr.C.M.Arumugam, learned counsel appearing for the appellant would submit that, insofar as the charge framed against the appellant are concerned, on the date of inspection, the appellant was not present in the shop, therefore, even though 5 charges have been framed as against the appellant, the Enquiry Officer found that, 2 out of 5 charges have not been proved and even in respect of other two charges also, there has been no clear-cut finding given by the Enquiry Officer against the appellant, therefore, there was only one charge i.e., charge No.5 that, there is an alleged shortage of Rs.67,880/- was found and that was the only charge according to the Enquiry Officer that has been proved against the appellant, for which, such a huge punishment of dismissal of service have been inflicted against the appellant.

4. He would also submit that insofar as the said amount of Rs.67,880/- is concerned, the appellant alone is not responsible for the said shortage and there is another salesman and supervisor, who are also working in the same shop and insofar as those two people are concerned, the respondents TASMACH taken a different stand and they have been taken back to the fold of TASMACH and only the service of the appellant has been dismissed and by virtue of that for the past 7



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to 8 years, the appellant is out of service.

5. However, all these aspects have not been considered in a proper perspective by the learned Judge, therefore, according to the learned counsel for the appellant, the judgment impugned is liable to be interfered with by this Court.

6. We have heard Mr.H.Arumugan, learned Standing Counsel appearing for the respondents TASMACH, who would submit that, insofar as the 5th charge is concerned, it was a shortage of Rs.67,880/- and it was an admitted fact on the part of the appellant that, he had taken the money for various reasons that he had given in writing on 05.04.2010 before the Enquiry Officer by way of a statement and the copy of this also has been produced by the learned Standing Counsel appearing for the TASMACH.

7. Therefore, he by relying upon the said document, has contended that it is a statement given by the appellant, who admitted that he was responsible for the said shortage, of course, along with other two persons, namely, other co-employees, the guilt on the part of the appellant in misappropriating the said



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amount even for the shorter period, even though the amount subsequently has been paid back to the TASMACH and that would not make him entitled to seek for any benefit of reinstatement therefore, the punishment given against the appellant by the respondent TASMACH is in commensurate with the proven charge against him. Therefore, having considered the same, the learned Judge dismissed the writ petition through the impugned order, which does not warrant any interference from this Court, he contended.

8. We have considered the said submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

9. Even though 5 charges have been framed as against the appellant, insofar as the 5th charge is concerned, it is the finding of the Enquiry Officer that, it has been proved, where, there was a shortage of money to an extent of Rs.67,880/- and this has been admitted by the appellant through his statement, dated 05.04.2010 and this has also been produced before this Court for our perusal.

10. However, the learned counsel for the appellant would submit that



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insofar as the other two delinquents, who are the co-employees of the appellant are concerned, they have met with a different treatment at the hands of the respondent, whereas, the appellant alone has been dismissed from service and he has been out of service hence, he seeks to invoke the theory of proportionality insofar as the imposition of major penalty against the appellant is concerned, for which, he has cited some judgments also.

11. We have given our anxious consideration to the said plea made by the learned counsel for the appellant and having regard to the afore stated facts and circumstances, where, out of 5 charges, 5th charge was the only major charge, which has been, according to the Enquiry Officer, proved because of the own statement given by the appellant, dated 05.04.2010 whereby, certainly there was a shortage of Rs.67,880/-. Hence, such shortage can very well be construed as a misappropriation and therefore, for such violation on the part of the appellant, certainly he is liable to be inflicted with the punishment.

12. However, insofar as the proportionality of the punishment is concerned, since the other two co-employees in the similar episode have been treated



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(i) that the respondents TASMACH shall reinstate the appellant as a new entrant as salesman in any of the shops under their fold. Such an order shall be passed by them within a period of four weeks from the date of receipt of a copy of this order.

(ii) Such a reinstatement shall not confer any benefit of back-wages, continuity of service on the appellant. For all purposes, he shall be treated as a new entrant only from the date of reappointment or reinstatement as indicated above.

(iii) Once he is reinstated or reappointed as a salesman, he shall be treated as a fresh entrant from the said date and accordingly, his salary and other benefits shall be calculated and be paid only prospectively from the date of appointment. To that extent, the order impugned passed by the Writ Court is hereby modified and accordingly this Writ Appeal is allowed partly to the extent as indicated above. No costs.

[R.S.K.,J.] [K.K.R.K.,J.]
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R. SURESH KUMAR, J.
and
K.K.RAMAKRISHNAN, J.

am

JUDGMENT MADE IN
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