

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.03.2015

CORAM:

THE HONOURABLE MR. JUSTICE K.K.SASIDHARAN

Writ Petition Nos.17364,17365,19002,19003,
20888 of 2013 and Connected MPs

V.Ganapathi	...Petitioner in W.P.No.17364/2013
S.Mangeshkar	...Petitioner in W.P.No.17365/2013
D.Loganathan	...Petitioner in W.P.No.19002/2013
K.Ravi	...Petitioner in W.P.No.19003/2013
B.Dinakaran	...Petitioner in W.P.No.20888/2013

Vs

- 1.The Managing Director,
Tamilnadu State Marketing Corporation Ltd., (TASMAC),
Egmore, Chennai - 600 008.
- 2.The Senior Regional Manager,
TASMAC Regional Office,
Salem - 636 016.
- 3.The District Manager,
Tamilnadu State Marketing Corporation Ltd., (TASMAC)
Vellore - 632 001. ... Respondents in all the
Petitions

W.P.Nos.17364 and 17365 of 2013 filed under Article 226 of the Constitution of India for the issuance of writ of Certiorarified mandamus, calling for the records of the third respondent passed in his proceedings Se.Mu.Na.Ka.A2/945/CV/2010 dated 12.04.2011 as confirmed by the order of the 2nd respondent in Se.Mu.No.787/2011/E dated 03.10.2011 as confirmed by the order of the first respondent in his proceedings Na.Ka.No.10069, 9961/R1/2011 respectively, dated 03.06.2013 and to quash the same and directing the respondents to reinstate the petitioner in service with continuity of service, back wages and other attendant benefits.

W.P.Nos.19002 and 19003 of 2013 filed under Article 226 of the Constitution of India for the issuance of writ of Certiorarified

mandamus, calling for the records of the third respondent passed in his proceedings Se.Mu.Na.Ka.A2/900 and 876/CV/2010 dated 17.04.2011 and 14.04.2011 as confirmed by the order of the 2nd respondent in Se.Mu.No.788 and 790/2011/E dated 29.08.2011 and 18.08.2011 as confirmed by the order of the first respondent in his proceedings Na.Ka.No.9695 and 9708/R1/2011, dated 19.06.2013 respectively and to quash the same and directing the respondents to reinstate the petitioner in service with continuity of service, back wages and other attendant benefits.

W.P.No.20888 of 2013 filed under Article 226 of the Constitution of India for the issuance of writ of Certiorarified mandamus, calling for the records of the third respondent passed in his proceedings Se.Mu.Na.Ka.A2/577/CV/2011 dated 03.03.2012 as confirmed by the order of the 2nd respondent in Se.Mu.Na.Ka.No.223/2012/E dated 26.04.2012 as confirmed by the order of the first respondent in his proceedings Na.Ka.No.11449/R1/2013, dated 12.07.2013 respectively and to quash the same and directing the respondents to reinstate the petitioner in service with continuity of service, back wages and other attendant benefits.

For Petitioners : Mr.S.Sathiamurthi

For Respondents : Mr.S.Muthuraj

C O M M O N O R D E R

W.P.Nos.17364 and 17365 of 2013

The action taken by the Tamil Nadu State Marketing Corporation Limited (hereinafter referred to as TASMAC) terminating the petitioners from service without conducting proper enquiry made them to file these writ petitions.

2. The petitioners were appointed as Salesmen in TASMAC. They were placed at Shop No.11348. The Senior Regional Manager, TASMAC appears to have conducted inspection on 01.10.2010. The TASMAC initiated disciplinary proceedings against the petitioners by issuing charge memo dated 20.10.2010. The petitioners submitted explanation to the charge memo. The Disciplinary Authority, without examining the witnesses, including Analyst report passed orders terminating the petitioners from service. The petitioners filed appeal before the first respondent. The appeals were rejected without considering the materials on merits. The petitioners are therefore before this Court. W.P.Nos.19002 of 2013

3. The petitioner was appointed as Salesman in TASMAC with effect from 27.11.2003. He was attached to Shop No.11028. While so, the Senior Regional Manager, TASMAC, inspected the shop in question at Kalavai on 19.09.2010. The Senior Regional Manager, alleging misconduct on the part of the petitioner issued a Show Cause Notice. Thereafter, without conducting proper enquiry, dismissed the petitioner from service. The said order was challenged before the Appellate Authority. The order rejecting the appeal was taken up in revision before the first respondent. The revision was dismissed by order dated 19.06.2013. Feeling aggrieved, the petitioner is before this Court.

W.P.Nos.19003 of 2013

4. The petitioner was appointed as Salesman in TASMAC with effect from 29.12.2003. He was attached to Shop No.11347 at Melmonavur. The District Manager, TASMAC inspected the shop on 09.09.2010. Thereafter, the Disciplinary Authority initiated disciplinary proceedings against the petitioner by issuing charge memo alleging certain acts of misconduct. The petitioner was ultimately dismissed from service without conducting proper enquiry. The said order was challenged before the Appellate Authority. The Appellate Authority rejected the appeal. Thereafter, the petitioner filed revision before the first respondent. The revision was dismissed on 19.06.2013. Therefore, the petitioner is before this Court.

W.P.No.20888 of 2013

5. The petitioner was appointed as Salesman in TASMAC with effect from 31.12.2003. He was attached to Shop No.11129 at Valaja. While so, the District Manager inspected the premises on 13.08.2011. Thereafter, charge memo was issued to the petitioner on 02.09.2011. However, without conducting enquiry in the manner known to law, the Disciplinary Authority passed an order of termination. The said order was unsuccessfully challenged before the first respondent. The petitioner challenges the order passed by the Disciplinary Authority and the connected order passed by the Appellate Authority.

6. The District Manager, TASMAC, Vellore filed a common counter affidavit justifying the impugned orders. According to him, enquiry has been conducted after issuing charge memo to the petitioners. The Disciplinary Authority on the basis of the statement given by the petitioners and the reports submitted by the Forensic expert passed orders dismissing the petitioners from service. The District Manager admitted that witnesses were not examined. Similarly, documents were not marked to prove the misconduct.

7. Heard the learned counsel for the petitioners and the learned Standing Counsel for TASMAC.

8. The TASMAC initiated disciplinary proceedings against the petitioners alleging that they sold liquor in loose manner and adulterated the liquor. The adulterated liquor was sent to Forensic Expert. The report submitted by the Forensic Expert appears to have been accepted by the Disciplinary Authority and based on the report, the petitioners were dismissed from service.

9. The core question is whether the Disciplinary Authority was correct in dismissing the petitioners without conducting proper enquiry.

10. The common counter affidavit filed by the District Manager, TASMAC clearly shows that enquiry was not conducted and witnesses were not examined. Even the Forensic Report was not marked in the enquiry proceedings. The experts were not examined to prove the collection of sample and analysis report. The report submitted by the Forensic Expert was not marked with opportunity to the petitioners. The petitioners are therefore perfectly correct in their contention that fair enquiry was not conducted before dismissing them from service.

11. The orders dismissing the petitioners from service would involve serious civil consequences to them. Since TASMAC alleged commission of serious acts of misconduct against the petitioners, it is their bounden duty to prove those allegations. The Disciplinary Authority simply followed the procedure of examining the delinquents and passing final orders dismissing them from service. The counter affidavit filed by the District Manager, TASMAC and more particularly, Paragraph 9 supports the case pleaded by the petitioners. I am therefore of the view that proper enquiry was not conducted by TASMAC and as such, the petitioners must succeed.

12. In the result, the impugned orders are set aside and respondents are directed to reinstate the petitioners into service forthwith. The petitioners are not entitled for back wages. However, they should be given the benefits of earlier service for all other purpose. The petitioners should be permitted to join service as expeditiously as possible and in any case within a period of two weeks from the date of receipt of a copy of this order.

13. In the upshot, I allow the writ petitions. No costs.
Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

svki

To

- 1.The Managing Director,
Tamilnadu State Marketing Corporation Ltd., (TASMAC)
Chennai - 600 008.
- 2.The Senior Regional Manager,
TASMAC Regional Office, Salem - 636 016.
- 3.The District Manager,
Tamilnadu State Marketing Corporation Ltd., (TASMAC)
Vellore - 632 001.

+5cc's to Mr.S.Sathiamurthi, Advocate,
S.R.No.16751, 16754, 16755, 16752 & 16753
W.P.Nos.17364,17365,19002,
19003 and 20888 of 2013

DT(CO)
CA(15/04/2015)

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