

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 04.10.2016
CORAM
THE HONOURABLE MR. JUSTICE R.SUBBIAH
W.P.Nos.33930 of 2015 and 13279 of 2016
and M.P.No.1 of 2015 in W.P.No.33930 of 2015

A.Karunakaran

.. Petitioner in
both the writ petitions

Vs.

- 1 The Managing Director
Tamil Nadu State Marketing-Corporation Ltd
(TASMAC) Thalamuthu Natarajan Maaligam 4th
Floor C.M.D.A Building Egmore Chennai-08.
 - 2 The Senior Regional Zonal
Manager Chennai Region Tamil Nadu State
Marketing-Corporation Ltd (TASMAC) 735 L.L.
A Building Anna Salai Chennai-02.
 - 3 The District Manager
Tamil Nadu State Marketing-Corporation Ltd
(TASMAC) Thirumazhisai Tiruvallur District
(East).
- .. Respondents
in both the WPs.

Writ petition No.33930 of 2015 has been filed under Article 226 of the Constitution of India, praying for a Writ of certiorarified mandamus to call for the records relevant to the order in Se.Mu.Ka.No.A6/0195/2015 dated 15.9.2015 passed by the third respondent and quash the same as illegal, improper, against the natural justice and thereby direct the respondents to reinstate the petitioner into service with effect from 20.1.2015 and pay back all service benefits to him immediately.

Writ petition No.13279 of 2016 has been filed under Article 226 of the Constitution of India, praying for a Writ of mandamus directing the respondents to consider the petitioner's representation dated 15.3.2016 and thereby direct the respondents to reinstate the petitioner as Salesman in the TASMAC Shop No.9086 at Thiruvallur East pursuant to the order of this Honourable Court made in MP.No.1/2015 in W.P. No.33930/2015 dated 20.10.2015.

For Petitioner : Mr.A.Rajesh Kanna,
in both the writ petitions.

For Respondents : Mr.C.Kasirajan,
in both the writ petitions.

COMMON ORDER

W.P.No.33930 of 2015 has been filed challenging the order dated 15.9.2015 passed by the third respondent and consequently to direct the respondents to reinstate the petitioner into service with effect from 20.1.2015 and pay back all service benefits to him immediately.

2. Writ petition No.13279 of 2016 has been filed for a mandamus, directing the respondents to consider the petitioner's representation dated 15.3.2016 and thereby direct the respondents to reinstate the petitioner as Salesman in the TASMAC Shop No.9086 at Thiruvallur East pursuant to the order of this Court made in MP.No.1/2015 in W.P. No.33930/2015 dated 20.10.2015.

3. Since the issue involved in both the writ petitions as well as the parties are one and the same, both the writ petitions are disposed of by way of a common order.

4. The case of the petitioner as could be seen in the affidavits filed in support of the both writ petitions, in brief, is as follows:-

(a) The respondents called for applications for appointment to the post of Supervisors and Salesmen in TASMAC retail shops and the petitioner has also applied for the same. As per the orders of the third respondent, the petitioner was appointed as a Salesman in TASMAC Shop No.99 situated at Tiruvallur District. Thereafter, he was transferred to many number of shops situated at Tiruvallur District. Finally, he was transferred to shop No.9086 situated at CTS Salai, Pattabiram. From the date of joining, he has alone taken charge of sales and supervise the shop since no supervisor was appointed for the said shop. Thereafter, one Srinivasan was appointed as Supervisor and one T.Ramu was appointed as Assistant Salesman for the said shop.

(b) While so, the petitioner went on leave on 17.12.2014 to 20.12.2014 since he was suffering from viral fever. After recovering from the illness, on 22.12.2014, he approached the third respondent to join duty in the shop, by producing the Doctor Certificate. However, on 23.12.2014, he received a show cause notice from the third respondent calling for explanation

as to why shop No.9086 was not opened for a period of three days. On a reading of the said show cause notice, he came to understand that the third respondent along with his crew, visited the shop on 20.12.2014 for inspection and due to the closure of the shop, the third respondent instructed to break open the lock by using gas cutting machine. Thereafter, one Ganesh, the supervisor of shop No.8774 was instructed to take additional charge of shop No.9086.

(c) On receipt of the said show cause notice, the petitioner submitted his explanation on 3.1.2015. However, without considering his explanation, the third respondent placed him under suspension for the reason that when the internal audit inspection was carried out by Macharla and Associates on 19.1.2015, they found that there was a short fall of Rs.1,45,644/- in the said shop. Thereafter, a charge memo was issued on 16.2.2015 as against the petitioner and other employees of the said shop. During the course of enquiry, the third respondent passed an order dated 5.5.2015 directing the petitioner and other employees of the said shop to pay a sum of Rs.72,822/- as a fine, which is the 50% of the short fall amount of Rs.1,45,644/- and interest at the rate of 24% for the said amount from 10.1.2015 to 21.1.2015.

(d) Challenging the order of the third respondent, the petitioner filed a writ petition before this Court in W.P.No.16350 of 2015 and this Court, by order dated 10.6.2015, directed the third respondent to complete the disciplinary proceedings within a period of three months. Since the third respondent has not complied with the order of this Court, the petitioner sent a contempt notice on 11.9.2015. Immediately after receipt of the contempt notice, the third respondent passed the impugned order dated 15.9.2015 fixing the entire liability on the petitioner and imposed a fine of Rs.72,822/- and 24% interest for the short fall amount. Hence, challenging the same, the petitioner filed the writ petition in W.P.No.33930 of 2015 along with M.P.No.1 of 2015 seeking interim stay of the said order. This Court, by an order dated 20.10.2015 in M.P.No.1 of 2015, granted an order of interim stay of the proceedings of the third respondent till the disposal of the writ petition.

(e) During the pendency of the said writ petition, the petitioner filed another writ petition in W.P.No.13279 of 2016 to consider his representation dated 15.3.2016 seeking to reinstate him as Salesman in the TASMACH Shop No.9086 at Thiruvallur East pursuant to the order of this Court made in MP.No.1/2015 in W.P. No.33930/2015 dated 20.10.2015.

5. Learned counsel appearing for the petitioner submitted that enquiry was conducted as against the petitioner and two other employees and under such circumstances, the third respondent cannot compel the petitioner to pay the entire amount of Rs.72,822/-. However, learned counsel further submitted that the petitioner is prepared to pay his share of penalty amount.

6. I have also heard the learned counsel appearing for the respondents.

7. Considering the facts and circumstances of the case and in view of the said submission made by the learned counsel appearing for the petitioner, this Court directs the petitioner to pay his share of penalty amount with appropriate interest, within a period of six weeks from the date of receipt of a copy of this order and on receipt of the same, the third respondent is directed to re-instate the petitioner into service and further, directed to pass appropriate orders, by reviewing the order dated 15.9.2015 in Se.Mu.Ka.No.A6/ 0195/2015. The writ petition in W.P.No.33930 of 2015 is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

8. In view of the order passed in W.P.No.33930 of 2015, nothing survives in the writ petition in W.P.No.13279 of 2016 and hence, the same is dismissed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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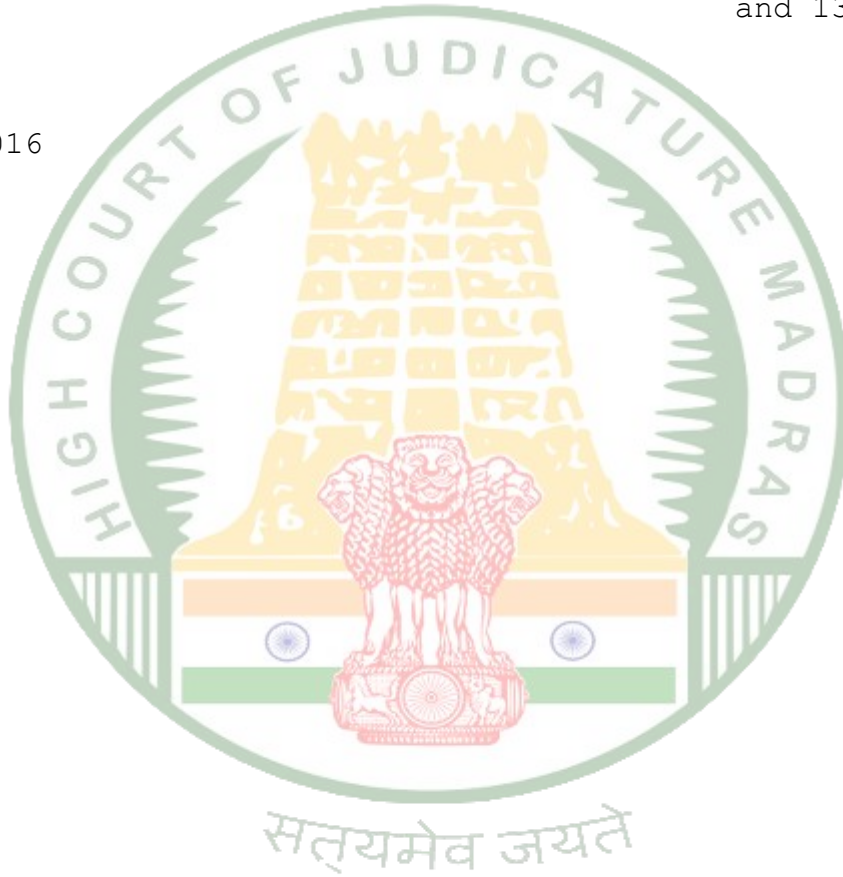
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+2 ccs to Mr.A.Rajesh Kanna Advocate sr 57031 & 57032

W.P.Nos.33930 of 2015
and 13279 of 2016

rj (co)
aa26/10/2016



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