

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2016

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

W.P. Nos. 34444 & 34560 of 2015

&

M.P. Nos. 1 & 2 of 2015

Mr.S. Sekar

..Petitioner in W.P. No.
34444 of 2015

Mr.S. Palani

..Petitioner in W.P. No.
34560 of 2015

Vs.

1. The Senior Regional Manager,
Tamil Nadu State Marketing
Corporation (TASMAC) Ltd.,
Salem.

2. The District Manager,
Tamil Nadu State Marketing
Corporation (TASMAC) Ltd.,
Vellore - 632 004.

..Respondents in both the
writ petitions.

Prayer: Petitions under Article 226 of the Constitution of India praying for issue of a Writ of Certiorarified Mandamus to call for the records on the file of the respondents, in connection with the proceedings in (i) Se.Mu.Na.Ka.A2/967/C.V/2013 dated 06.04.2015 passed by the 2nd respondent and (ii) Se.Mu.No.3269/2015/A dated 09.09.2015 passed by the 1st respondent and quash the same and consequently direct the respondents to reinstate the petitioners in service with all service, monetary and attendant benefits.

For Petitioners :: Ms.Lesi Saravanan

For Respondents :: Mr.C. Kasirajan

COMMON ORDER

By consent, the main writ petitions themselves are taken up for final disposal.

2. As far the petitioner in W.P. No. 34444 of 2015 is concerned, he was selected and appointed as Salesman in the service of Tamil Nadu State Marketing Corporation Limited (TASMAC), on a consolidated pay of Rs.3000/- and he had also paid the necessary security deposit for joining the said post. The petitioner was posted to Shop No. 11345 at Vellore District. While so, the 1st respondent came for a surprise inspection on 12.09.2013 and found certain irregularities like loose sales and non-display of TASMAC name board before the shop, etc. Thereafter, the 2nd respondent, vide order dated 13.09.2013, placed the petitioner under suspension as well as the Supervisor for the said irregularities. Subsequently, a charge memo dated 23.10.2013 was issued pointing out certain irregularities for which the petitioner had also submitted his explanation. The 2nd respondent, not satisfied with the same, appointed an Enquiry Officer, who, after complying with the formalities, found that the charges framed against the petitioner have not been proved and submitted the same before the Disciplinary Authority, namely, the 2nd respondent. Thereafter, the 2nd respondent had issued a second show cause notice dated 17.10.2014 calling upon the petitioner to submit his explanation as to why he should not be dismissed from service. The petitioner had submitted his response on the very same day. The 2nd respondent, being the Disciplinary Authority, not satisfied with the explanation offered by the petitioner, passed an order of dismissal from service, vide impugned order dated 06.04.2015 and challenging the illegality of the same, W.P. No. 34444 of 2015 has been filed by the petitioner therein.

3. As far the petitioner in W.P. No. 34560 of 2015 is concerned, he was selected and appointed as Salesman in the service of Tamil Nadu State Marketing Corporation Limited (TASMAC), on a consolidated pay of Rs.3000/- and he had also paid the necessary security deposit for joining the said post. The petitioner was posted to Shop No. 11345 at Vellore District. While so, the 1st respondent came for a surprise inspection on 12.09.2013 and found certain irregularities like loose sales and non-display of TASMAC name board before the shop, etc. Thereafter, the 2nd respondent, vide order dated 13.09.2013, placed the petitioner under suspension as well as the Supervisor for the said irregularities. Subsequently, a charge memo dated 23.10.2013 was issued pointing out certain irregularities for which the petitioner had also submitted his explanation. The 2nd respondent, not satisfied with the same, appointed an Enquiry Officer, who, after complying with the formalities, found that the charges framed against the petitioner have not been proved and submitted the same before the Disciplinary Authority, namely, the 2nd respondent. Thereafter, the 2nd respondent had issued a second show cause notice dated 17.10.2014 calling upon the petitioner to submit his explanation as to why he should not

be dismissed from service. The petitioner had submitted his response on the very same day. The 2nd respondent, being the Disciplinary Authority, not satisfied with the explanation offered by the petitioner, passed an order of dismissal from service, vide impugned order dated 06.04.2015 and challenging the illegality of the same, W.P. No. 34560 of 2015 has been filed by the petitioner therein.

4. Learned counsel for the petitioners had drawn the attention of this Court to the typed set of documents and would submit that admittedly, the Enquiry Officer had found that the charges framed against the respective petitioners had not been proved and therefore, the question of issuing a second show cause notice does not arise at all. Since the petitioners being subordinates of the 2nd respondent, had submitted their explanation on 17.10.2014 itself and the 2nd respondent/Disciplinary Authority, without adhering to the settled principles of Service Jurisprudence, has passed the orders of dismissal from service. The said orders are, per se, unsustainable in law and therefore, prays for interference.

5. Per contra, learned Standing Counsel appearing for the respondents has drawn the attention of this Court to the counter affidavit filed by the 2nd respondent and would submit that considering the nature of allegations and the seriousness of charges, a fair decision has been taken to dismiss the petitioners from service and prior to doing so, a reasonable opportunity of offering an explanation was also provided to the petitioners and not satisfied with the explanation offered by the respective petitioners, the dismissal orders came to be rightly passed and prays for dismissal of the writ petitions.

6. This Court paid its anxious consideration to the rival submissions and also perused the materials placed before it.

7. Admittedly, the Enquiry Officer had found that the charges framed against the petitioners had not been proved. In the considered opinion of this Court, once the Enquiry Officer found that the charges framed against the petitioners had not been proved and if the 2nd respondent, who is the Disciplinary Authority, is not inclined to accept the said finding, he is called upon to issue a second show cause notice, specifically indicating the reasons as to why he is differing from the finding recorded by the Enquiry Officer and thereafter, depending upon the explanation offered by the delinquent, should proceed further. Admittedly, the 2nd respondent did not follow the said procedure and merely forwarding the report of the Enquiry Officer, has called upon the respective petitioners to submit their explanation as to why they should not be dismissed from service. The petitioners, who are at his mercy, being his

subordinates, left with no other option, except to offer their explanation, accordingly, submitted their explanation on 17.10.2014 itself. The 2nd respondent rejected the explanation offered by the respective petitioners and passed the orders of dismissal from service. Even in the impugned orders, he has not given the reasons as to why the petitioners have been dismissed from service. In the considered opinion of this Court, the settled principles of Service Jurisprudence have been given a complete go-by by the 2nd respondent while passing the impugned orders. Hence, the impugned orders warrant interference.

8. At this juncture, learned Standing Counsel for the respondents would submit that the respondents may be permitted to proceed from the stage in which the Enquiry Report was submitted to the 2nd respondent and undertakes that the principles relating to Service Jurisprudence would be strictly complied with.

9. This Court heard the submissions of the learned counsel for the petitioners on the above point.

10. In the result, the impugned orders dated 06.04.2015 passed by the 2nd respondent are set aside and the writ petitions are partly allowed. The matters are once again remanded back to the 2nd respondent, who shall take into consideration, the Enquiry Report submitted by the Enquiry Officer and thereafter, shall proceed further strictly in accordance with law and pass appropriate orders.

11. Since this Court has set aside the orders of dismissal passed against the writ petitioners, the 2nd respondent is directed to reinstate the respective petitioners, within a period of two weeks from the date of receipt of a copy of this order and confer all consequential benefits thereon. No costs. Connected M.Ps are closed.

Sd/-

Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

nv

To

1. The Senior Regional Manager,
Tamil Nadu State Marketing
Corporation (TASMAC) Ltd.,
Salem.
2. The District Manager,
Tamil Nadu State Marketing
Corporation (TASMAC) Ltd.,
Vellore - 632 004.

2 ccs to Mr.Lesi saravanan, Advocate, Sr. 74211, 74212
1 cc to Mr.C. Kasirajan, Advocate, Sr. 74362

W.P. Nos. 34444 & 34560 of 2015

SK (CO)
kk 19/1



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