



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.11.2016

CORAM:

THE HONOURABLE DR.JUSTICE **S.VIMALA**

W.P (MD) No.19417 of 2016

and

W.M.P (MD) No.13993 of 2016

M.Senthil Kumar

: Petitioner

Vs.

1.The Senior Regional Manager,
Tamil Nadu State Marketing Corporation (TASMAC),
Madurai Region,
Plot No.100, Anna Nagar,
Madurai - 20.

2.The District Manager,
Tamil Nadu State Marketing Corporation (TASMAC),
Vadamadurai Road, Mullippadi,
Dindigul District.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order passed by the 2nd respondent in his proceedings in Na.Ka.15/16/R.v-9 dated 27.04.2016 and quash the same and consequently direct the respondents to reinstate the petitioner into service with all monetary benefits with continuity of service.

For Petitioner : Mr.N.Sathish Babu

For Respondents : Mr.M.Muniyasamy,
Standing Counsel for TASMAC.

O R D E R

This writ petition has been filed for issuance of a Writ of Certiorarified Mandamus praying to quash the impugned order passed by the second respondent, dated 27.04.2016 and consequently direct the respondents to reinstate the petitioner into service with all monetary benefits with continuity of service.

2.Heard the learned counsel appearing for the petitioner and the learned standing counsel for TASMAC, who took notice for the respondents. By consent, the writ petition itself is taken up

for final disposal.

3.The case of the petitioner is that the petitioner has been appointed as TASMAL shop supervisor in Shop No.3219, Palayam Village, Vedachandur Taluk, Dindigul District, on a consolidated pay of Rs.2,000/- per month. The petitioner has paid a sum of Rs.50,000/- as caution deposit. During audit inspection, it was found that there was a shortage of Rs.1,58,240/-. The two salesmen, who were doing job along with the petitioner, were informed that they were dismissed from service. The petitioner was also not provided with any job by the respondents. The two salesmen approached this Court in W.P(MD)No.3143 and 3251 of 2015 and this Court, by the order dated 10.01.2008, allowed the writ petitions and quashed the proceedings of the respondent and they were reinstated in service. Thereafter, the petitioner by narrating the above said facts, sent representation on 28.03.2016 to the respondent, for which, the second respondent, by the proceedings dated 27.04.2016, informed that he was terminated from service on 08.12.2004. Aggrieved over the same, the petitioner has come up with the present writ petition.

4.The learned counsel for the petitioner would submit that the petitioner is also a person similarly placed along with the other two salesmen and also that the petitioner is facing the charge of joint liability along with two other salesmen and therefore the benefit conferred on those two salesmen must also be conferred to the petitioner and this writ petition has to be allowed.

5.The learned standing counsel for the respondents would submit that the petitioner is guilty of laches of delay and only on the main ground of delay, this writ petition is liable to be dismissed.

6.The learned counsel for the petitioner would submit that the copy of the order dated 08.12.2004 has not been served on the petitioner at all and as there was no written order terminating him from service, he was not in a position to challenge the same and only on account of the orders passed in respect of two other salesmen, the petitioner entertained the idea of challenging the order of termination (without even an order being passed in favour of him).

7.A perusal of the order dated 10.01.2008 passed in W.P(MD) Nos.3143 and 3251 of 2005 reveals that the writ petitions have been allowed on the ground that before passing the order of termination, no charge memo was issued and no enquiry was conducted and no opportunity of hearing was given to the petitioners therein.

<https://hcservices.ecourts.gov.in/hcservices/>

8.No doubt, the petitioner is guilty of delay and laches. But, in the case of the petitioner also, it is alleged that there



was no show cause notice, no charge memo and no enquiry has been conducted. The two salesmen, who are similarly placed, who were held jointly responsible for the misappropriation caused in the respondent shop, have been ordered to be reinstated. Under such circumstances, the petitioner alone cannot be singled out.

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9. In the order dated 21.04.2015 made in W.P(MD)No.13139 of 2014, this Court has also pointed out that the respondent has dismissed the service of a salesman without issuing charge memo and without affording opportunity and therefore number of cases are being filed before this Court, in which the order of dismissal has been set aside on the ground that principles of natural justice had not been followed. In that case also, the case of the petitioner namely Joseph Daniel has been considered and there was a direction to the respondent to allow him to join duty forthwith. Under such circumstances, this Court is not in a position to reject the claim of the petitioner, even though it is belatedly filed. Therefore, the writ petition is partly allowed and the order rejecting service to the petitioner is set aside but the respondents are directed to allow the petitioner to join duty forthwith and the same does not prevent the respondents from initiating fresh proceedings following the principles of natural justice. It is made clear that the petitioner is not entitled to backwages, if he is allowed to join in the duty as the petitioner is found guilty of laches. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CRL)

/True Copy/

Sub Assistant Registrar

smn

TO

1. The Senior Regional Manager,
Tamil Nadu State Marketing Corporation (TASMAC),
Madurai Region, Plot No.100, Anna Nagar, Madurai - 20.

2. The District Manager,
Tamil Nadu State Marketing Corporation (TASMAC),
Vadamadurai Road, Mullippadi, Dindigul District.

+1cc to Mr.N.Sathish Babu Advocate Sr.No. 64970
JAM/11.11.16/GSV-PM/3p-4c

ORDER MADE IN

W.P(MD)No.19417 of 2016

and

W.M.P(MD)No.13993 of 2016

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