

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2017

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

Writ Petition Nos.149 and 150 of 2017
and WMP.Nos.141 and 142 of 2017

M.Dhanasekaran ...Petitioner in W.P.No.149/2017

N.Udhayakumar ...Petitioner in W.P.No.150/2017
Vs.

- 1.The Managing Director
Tamil Nadu State Marketing
Corporation Ltd., (TASMAC)
4th floor, CMDS Tower-II, Gandhi Irwin
Bridge Road, Egmore, Chennai-600 008
- 2.The Senior Regional Manager
Tamil Nadu State Marketing Corporation
Ltd., (TASMAC)
Salem Region, No.56, Brindhavan Road
Fairlands, Salem-16 ...Respondents 1 and 2
in W.P.149/2017
- 3.The District Manager
Tamil Nadu State Marketing Corporation Ltd., (TASMAC)
IMFS Depot, No.1, Tamil Nadu Warehousing
Corporation Ltd., Katpadi Road,
Vellore District ...3rd Respondent
in W.P.149 and sole
respondent in WP.150/17

Prayer in W.P.No.149/2017:-

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of order of the 1st respondent bearing proceedings in Respondent bearing proceedings in Na.Ka.No.R1/8400/2016 dated 19.09.2016 which confirm the order passed by the 2nd respondent in Se.Mu.No.5743/2015/A dated 30.11.2015 which confirm the order passed by the 3rd respondent in Se.Mu.Na.Ka.A2/711/C.V/2015 dated 25.08.2015 and quash the same and consequently direct the respondents herein to reinstate the petitioner into service, with continuity of service and all attendant benefits.

Prayer in W.P.No.150/2017:-

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of order of the 1st respondent bearing proceedings in Respondent bearing proceedings in Na.Ka.No.A2/711/C.V./2015 dated 25.08.2015 and quash the same and consequently direct the respondent herein to reinstate the petitioner into service, with continuity of service and all attendant benefits.

In both WPs.

For Petitioner : Mr.P.Suresh Babu

For Respondents : Mr.M.John Kennedy

O R D E R

The petitioners were appointed as Salesman in the service of Tamil Nadu State Marketing Corporation (TASMAC) and was put incharge of shop No.11086 at Ambur, Vellore District. It is further stated that the respondent has conducted a surprise inspection on 29.04.2015 and found certain irregularities such as shortage of sales amount and mixing water in the liquor. The petitioners were placed under suspension by the District Manager, TASMAC, vide order dated 30.04.2015 and they were issued with charge memo on 07.05.2015 for which the petitioners had offered their response. The respondent has also appointed an Enquiry Officer, who after conducting enquiry held the charges framed against the petitioners have been proved. The petitioners were issued with a second show cause notice dated 04.08.2015 for which they submitted their explanation on 21.08.2015 and vide impugned order dated 25.08.2015, the respondent-District Manager, TASMAC, has passed the order of removal from service and challenging the legality of the same, the petitioners came forward to file this writ petition.

2. The learned counsel appearing for the petitioners would submit that admittedly the respondent has participated in the surprise raid/inspection and on the basis of the alleged delinquency, placed the petitioners under suspension and also issued charge memo and based on the Enquiry Officer's report has passed the impugned order of removal from service and since on account of the active participation, he has become biased and in this regard, invited the attention of this court to the order dated 05.03.2015 made in W.P.No.28066 of 2015 (A.Sreenivasan and three others Vs. The District Manager, Tamil Nadu State Marketing Corporation (TASMAC), Tiruvallur), wherein, the learned Single Judge set aside the impugned order of removal from service and remanded the matter to the respondent with appropriate directions and prays for similar orders.

3. It is not in dispute that the respondent has formed part of the team which conducted the surprise inspection and having noted certain delinquency on the part of the petitioners, the respondent has placed the petitioners under suspension and also framed charge memo and appointed an Enquiry Officer, who after enquiry submitted report holding that all the charges framed against the petitioners have been proved. The petitioners have been issued with second show cause notice and after their explanation, has passed the impugned order of removal from service.

4. This court in the order dated 05.03.2015 made in W.P.No.28066 of 2015 has considered similar issue and set aside the impugned order of dismissal passed therein and remanded the matter for fresh adjudication for the reason that the respondent, who had detected the irregularities on inspection has passed the ultimate order of dismissal. In the present case, third respondent, having conducted the surprise inspection on 29.04.2015 has himself passed the order of removal from service. As against that, when the petitioner filed an appeal before the second respondent, the same was dismissed on 30.11.2015. Thereafter, when he had preferred the revision petition before the first respondent, the same was also dismissed on 19.09.2016 on the ground of delay. In any event, since the order of the third respondent is without application of mind, which has been wrongly overlooked by both the appellate authority and the revisional authority, the same is liable to be set aside.

5. In the result, the Writ Petitions are partly allowed and the impugned order dated 25.08.2015 is set aside. This Court directs the District Manager, Tamil Nadu State Marketing Corporation Limited, Vellore District, to take into consideration the observations made in the above writ petitions and proceed further strictly in accordance with law/relevant rules/regulations, if he is so advised and in the light of the impugned order being set aside, the respondent-District Manager, TASMAR, is directed to reinstate the petitioners forthwith and confer them with all consequential benefits, if they are otherwise eligible. No costs. Consequently, the connected miscellaneous petitions are also closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

nvsri.

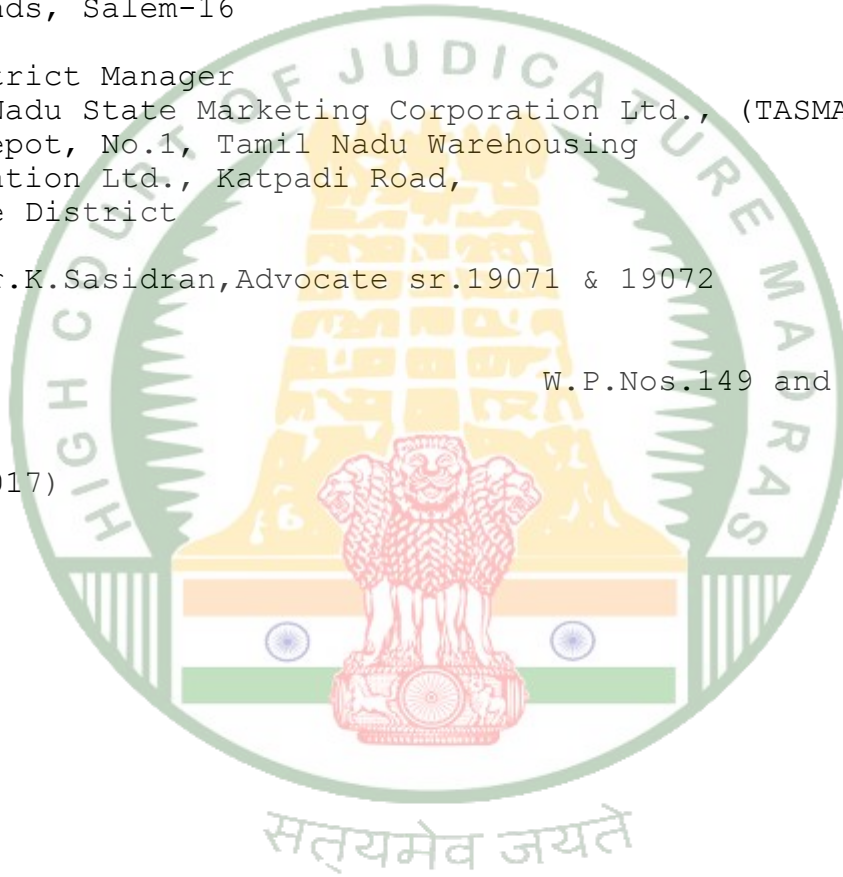
To

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Corporation Ltd., Katpadi Road,
Vellore District

+2cc to Mr.K.Sasidran,Advocate sr.19071 & 19072

W.P.Nos.149 and 150 of 2017

kgk(co)
ss(17/4/2017)



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