

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25-07-2017

CORAM:

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.Nos.30900, 40502, 38792, 38793, 39107, 39108, 40381,
40382, 40383, 40384 of 2015 and 825 to 828 of 2016

and

MP Nos.1, 2, 1, 1, 1, 1, 1, 1, 1 and 1 of 2015

and WMP Nos.635 to 638 of 2016

N.MURUGESAN ... PETITIONER in WP.30900 of 2015
S.SURESH ... PETITIONER in WP.40502 of 2015
R.SENDHIL KUMAR ... PETITIONER in WP.38792 of 2015
M.CHAKKARAPANI ... PETITIONER in WP.38793 of 2015
E.MUTHUKUMAR ... PETITIONER in WP.39107 of 2015
R.ELUMALAI ... PETITIONER in WP.39108 of 2015
K.NARAYANASAMY ... PETITIONER in WP.40381 of 2015
P.SIVALINGAM ... PETITIONER in WP.40382 of 2015
S.CHIDAMBARAM ... PETITIONER in WP.40383 of 2015
B.SARAVANAN ... PETITIONER in WP.40384 of 2015
S.SANKAR GANESH ... PETITIONER in WP.825 of 2016
K.KUMAR ... PETITIONER in WP.826 of 2016
G.DURAI ... PETITIONER in WP.827 of 2016
V.BALAJI ... PETITIONER in WP.828 of 2016

vs.

1.THE SENIOR REGIONAL MANAGER
TAMIL NADU STATE MARKETING CORPORATION LTD.
(TASMAC) SALEM REGION
NO.16 BRINDAVAN ROAD FAIRLANDS SALEM-16.

2.THE DISTRICT MANAGER/DEPUTY COLLECTOR
TAMIL NADU STATE MARKETING CORPORATION LTD.
(TASMAC) KRISHNAPURAM ROAD
THUMMANKURCHI & POST NAMAKKAL DISTRICT.

... RESPONDENTS in WPS.30900 & 38792 of 2015

1.THE SENIOR REGIONAL MANAGER
TAMIL NADU STATE MERKETING CORPORATION LTD.
(TASMAC) SALEM REGION 56 BRINDHAVAN ROAD
FAIRLANDS SALEM-16.

2.THE DISTRICT MANAGER
TAMIL NADU STATE MERKETING CORPORATION LTD.
(TASMAC) TANCOF COMPLEX
NO.52 ANNA SALAI THIRUVANNAMALAI.

... RESPONDENTS in WP.40502 of 2015

1.THE SENIOR REGIONAL MANAGER
TAMIL NADU STATE MARKETING CORPORATION LTD.
(TASMAC) SALEM REGION 56 BRINDHAVAN ROAD
FAIRLANDS SALEM-16.

2.THE DISTRICT MANAGER
TAMIL NADU STATE MARKETING CORPORATION LTD.
(TASMAC) TANCOF COMPLEX
NO.52 ANNA SALAI
THIRUVANNAMALAI.

... RESPONDENTS in WP.38793 of 2015

1.THE SENIOR REGIONAL MANAGER
TAMIL NADU STATE MARKETING CORPORATION LTD.
(TASMAC) SALEM REGION 56 BRINDHAVAN ROAD
FAIRLANDS SALEM 16

2.THE DISTRICT MANAGER
TAMIL NADU STATE MARKETING CORPORATION LTD.
(TASMAC) TANCOF COMPLEX
NO.52 ANNA SALAI
THIRUVANNAMALAI

... RESPONDENTS in WPS.39107, 39108, 40381,
40382, 40383, 40384, 825 to 828 of 2016

Writ Petitions filed under Article 226 of the
Constitution of India, praying for the issue of a Writ of
Certiorarified Mandamus,

W.P.No.30900 of 2015 : Calling for the records of order of the
2nd Respondent bearing proceedings in Se.Mu.Na.Ka.No.2227/B1/
2014/C.V/2014, dated 01.04.2015, Which is confirmed by 1st
Respondent in Se.Mu.No. 3705 /2015/A dated 04.09.2015 and
quash the same and consequently direct the respondents herein
to reinstate the petitioner into service.

W.P.No.40502 of 2015 : Calling for the records of order of the
2nd Respondent bearing Proceedings in Na.Ka.R.V.2/1920/2014,
dated 04.04.2015, which is confirmed by 1st Respondent in
Se.Mu.No.3757/2015/A dated 19.11.2015 and quash the same and
consequently direct the Respondents herein to reinstate the
Petitioner into service.

W.P.No.39792 of 2015 : Calling for the records of order of the 2nd Respondent bearing proceedings in Se.Mu.Na.Ka.No.2415/B1/CV/2014 dated 01.04.2015 which is confirmed by 1st respondent in Se.Mu.No.3706/2015/A dated 06.11.2015 and quash the same and consequently direct the respondents herein to reinstate the petitioner into service with continuity of service and all attended benefits.

W.P.No.38793 of 2015 : Calling for the records of order of the Respondent bearing proceedings in Na.Ka.R.V.2/1920/2014, dated 01.04.2015 Passed by 2nd Respondent and order dated 31.10.2015 in Se.Mu.No.3538/2015/A passed by 1st respondent and quash the same and consequently direct the respondent herein to reinstate the petitioner into service with continuity of service and all attended benefits.

W.P.No.39107 of 2015 : Calling for the records of order of the 2nd respondent bearing proceedings in Na. Ka. R.V.2/1920/2014, dated 22.4.2015, which is confirmed by 1st respondent in Se. Mu. No.3759/2015/A dt 31.10.2015 and quash the same and consequently direct the respondents herein to reinstate the petitioner into service with continuity of service and all attended benefits.

W.P.No.39108 of 2015 : Calling for the records of order of the 2nd respondent bearing proceedings in Na. Ka. R.V.2/338/2015, dt 22.4.2015, which is confirmed by 1st respondent in Se. Mu. No. 3709/2015/A dated 16.11.2015 and quash the same and consequently direct the respondents herein to reinstate the petitioner into service with continuity of service and all attended benefits.

W.P.No.40381 of 2015 : calling for the records of order of the 2nd respondent bearing proceedings in Na.Ka.R.V.2/1920/2014 dated 8.4.2015 which is confirmed by 1st respondent in Se.Mu.No.3539/2015/A dated 19.9.2015 and quash the same and consequently direct the respondents herein to reinstate the petitioner into service.

W.P.No.40382 of 2015 : calling for the records of order of the 2nd respondent bearing proceedings in Na.Ka.R.V.2/1920/2014 dated 8.4.2015 which is confirmed by 1st respondent in Se.Mu.No.3539/2015/A dated 19.9.2015 and quash the same and consequently direct the respondents herein to reinstate the petitioner into service.

W.P.No.40383 of 2015 : calling for the records of order of the 2nd respondent bearing proceedings in Na.Ka.R.V.2/795/2013 dated 13.3.2015 which is confirmed by 1st respondent in Se.Mu.No.5426/2015/A dated 17.10.2015 and quash the same and consequently direct the respondents herein to reinstate the petitioner into service with continuity of service and all attendant benefits.

W.P.No.40384 of 2015 : calling for the records of order of the 2nd respondent bearing proceedings in Na.Ka.R.V.2/795/2013 dated 13.3.2015 which is confirmed by 1st respondent in Se.Mu.No.5426/2015/A dated 17.10.2015 and quash the same and consequently direct the respondents herein to reinstate the petitioner into service with continuity of service and all attendant benefits.

W.P.No.825 of 2016 : Calling for the records of order of the 2nd respondent bearing proceedings in Na.Ka. R.V.2/338/2015, dated 22.4.2015, which is confirmed by 1st respondent in Se.Mu. No.3709/ 2015/A dated 16.11.2015 and quash the same and consequently direct the respondents herein to reinstate the petitioner into service with continuity of service and all attended benefits

W.P.No.826 of 2016 : Calling for the records of order of the 2nd respondent bearing proceedings in Na.Ka. R.V.2/1920/2014, dated 1.4.2015, which is confirmed by 1st respondent in Se.Mu. No.3992/ 2015/A dated 23.10.2015 and quash the same and consequently direct the respondents herein to reinstate the petitioner into service with continuity of service and all attended benefits.

W.P.No.827 of 2016 : Calling for the records of order of the 2nd respondent bearing proceedings in Na.Ka. R.V.2/1920/2014, dated 17.3.2015, which is confirmed by 1st respondent in Se.Mu. No.2473/ 2015/A dated 30.5.2015 and quash the same and consequently direct the respondents herein to reinstate the petitioner into service with continuity of service and all attended benefits.

W.P.No.828 of 2016 : Calling for the records of order of the 2nd respondent bearing proceedings in Na.Ka. R.V.2/1920/2014, dated 4.4.2015, which is confirmed by 1st respondent in Se.Mu. No.3757/ 2015/A dated 19.11.2015 and quash the same and consequently direct the respondents herein to reinstate the petitioner into service with continuity of service and all attended benefits.

For Petitioner : Mr.K.Sasindran

For Respondents : Mr.V.Ayyadurai,
Additional Advocate General
assisted by Mr.B.Nedunchezian

C O M M O N O R D E R

All these batch of writ petitions are filed challenging the orders of termination issued in respect of the writ petitioners by the respondents.

²
<https://hcservices.ecourts.gov.in/hcservices/> The learned counsel for the writ petitioners contended that the termination orders are void on account of

the violation of the principles of natural justice. In this regard, it is substantiated that disciplinary proceedings were initiated against all the writ petitioners on the alleged irregularities committed by them found during the surprise inspection.

3. The writ petitioners are initially placed under suspension and after issuing a charge memo, a domestic enquiry was conducted. In some of the cases, the Enquiry Officers held that the charges are not proved and in some other cases, it was held that the charges are proved.

4. May that it be, wherever the charges are proved, the ground of not providing the opportunity will not arise because it is for the Disciplinary Authorities to accept the enquiry report and pass final orders in the disciplinary proceedings. In other cases, where the charges are held not proved and the Disciplinary Authorities have decided to deviate, they have to issue a notice assigning the reasons and to provide opportunity to the delinquents to submit their explanations on that. Admittedly, no such opportunity was provided to the delinquents in that regard.

5. The second ground raised by the writ petitioners is that the Appellate Authority himself passed the final orders of termination and the right of appeal to the writ petitioners are denied and thus the orders of termination are to be scrapped.

6. Thirdly, it is contended that in view of the non-adherence to the principles of natural justice, the application of mind on the part of the Disciplinary Authority is lacking and accordingly, the impugned orders are to be set aside.

7. The learned Additional Advocate General Mr.V.Ayyadurai, appearing on behalf of the respondents, contended that the point regarding the passing of final orders by the Appellate Authority, cannot be questioned in view of the fact that large number of proceedings are initiated in this regard and it is always advisable that the Higher Authorities take a decision which will be less disputed and the inconsistencies can be avoided.

8. The learned Additional Advocate General further contended that there is no non-application of mind in this regard in view of the fact that in each and every case of charge memo, domestic enquiry was conducted and the writ petitioners had participated and in that domestic enquiry submitted their defence statements. Since they have participated in the disciplinary proceedings and allowed the disciplinary proceedings to conclude, now they cannot come up with the contention that there is non-application of mind on the part of the respondents.

9. The Disciplinary Authority, considering the seriousness of the allegations raised against the writ petitioners and in order to maintain the administration, had taken a decision and terminated these petitioners. Thus, there is no irregularity or infirmity in passing the orders of termination by the respondents.

10. With regard to the violation of the principles of natural justice, the learned Additional Advocate General contended that no such notice is required in view of the factor that the second show cause notice was issued by relying upon the very statements furnished by the respective delinquents during the course of enquiry. Further, the second show cause notice is an opportunity provided to the delinquents and if any explanations/objections can be provided by the delinquents. Thus, this action of the Disciplinary Authority, cannot be construed as violation of the principles of natural justice.

11. This Court, on hearing the parties, has to consider whether the arguments advanced by the learned counsel appearing for the writ petitioners as well as the learned Additional Advocate General, that the requirement of the principles of natural justice is adhered to or not.

12. This Court is of the firm opinion that in a domestic enquiry, all reasonable opportunities under the Rules should be provided to the delinquents concerned. On receipt of the enquiry report, the Disciplinary Authority has to independently consider the findings of the enquiry report and take a decision in this regard.

13. No doubt, in all these cases before this Court, such a decision is taken, but while taking such a decision if the Disciplinary Authority wishes to deviate the findings of the enquiry report, then the reasons are to be assigned for undertaking such a deviation.

14. The materials relying on for deviation are to be clearly mentioned and a notice is to be given to the delinquents. Such a valuable opportunity is provided under the concept of principles of natural justice because each employee/delinquent should understand on what grounds the findings of the enquiry report is deviated.

15. This apart, the law requires the application of mind by the Disciplinary Authority is not only undertaken but seems to be undertaken. The deviation, if seems to be undertaken, then the recording of the reasoning for that effect is a required principle. The Disciplinary Authority, while deviating the findings of the enquiry report, certainly has to record the reasons and only then he will be permitted to proceed further in the disciplinary proceedings.

16. Thus this Court is of the firm view that recording of the reasoning for deviation and issue of show cause to the delinquents concerned and on receipt of explanations/objections on the deviations, final decision can be taken in the disciplinary proceedings. But, admittedly, no such procedure had been followed in these cases. Accordingly, the point in this aspect is required to be considered in all these writ petitions.

17. In respect of the right of appeal also, there are different views taken in different cases. But in all these writ petitions, the writ petitioners are working in the cadre of Supervisor, Salesman etc. They are all almost Group III or Group IV employees and right of appeal to them is a valuable one. In case of Group I and Group II Officers, such may not be the plea. But in respect of Group III and Group IV employees, the right of appeal is a valuable one. And in such a mass orders of termination, it is required that each case to be independently considered by the Appellate Authority also to some extent. The Court is unable to consider that taking away the right of appeal will affect the right of the writ petitioners since after the termination order, they had approached this Court directly in respect of merits and demerits of the case.

18. With regard to the third ground of non-application of mind, this Court need not consider, at this point of time, in view of the fact that the orders are already infirm in respect of the non-adherence to the principles of natural justice.

19. Thus the point of non-application of mind is not required to be considered at this point of time in these writ petitions. Accordingly, all the impugned orders of termination passed in these respective writ petitions are quashed. However, liberty is granted to the respondents to reopen the disciplinary proceedings from the appropriate place and proceed in accordance with the rules by following the rules as well as the principles of natural justice by providing all reasonable opportunities to the delinquents and take a decision, thereafter by passing suitable orders.

20. With this liberty, the writ petitions stand allowed, however there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Svn

To

1. The Senior Regional Manager,
Tamil Nadu State Marketing Corporation
Ltd., (TASMAC),
Salem Region,
No.16, Brindavan Road,
Fairlands,
Salem-16.
2. The District Manager/Deputy Collector,
Tamil Nadu State Marketing Corporation
Ltd., (TASMAC),
Krishnapuram Road,
Thummankurchi & Post,
Namakkal District.
3. The District Manager,
Tamil Nadu State Marketing Corporation
Ltd., (TASMAC),
TANCOF Complex,
No.52, Anna Salai,
Thiruvannamalai.

+14cc's to Mr.K.Sasindran, Advocate, S.R.Nos.53539 to 53552
+1cc to Mr.B.Nedunchezhiyan, Advocate, S.R.No.52618

W.P.Nos.30900, 40502,
38792, 38793, 39107,
39108, 40381, 40382,
40383, 40384 of 2015
and 825 to 828 of 2016

SK(CO)
CA(04/08/2017)

WEB COPY