

In the High Court of Judicature at Madras

Dated : 12.4.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.27366, 27978 to 27982, 28040 to 28044, 28271 to 28275, 28278 to 28282, 28625 to 28628, 28949 to 28952 of 2012 and 41257 to 41259 of 2016 and all connected pending MPs and WMPs

S.Sivakumar	...Petitioner in WP.27366/12
K.Ravikumar	...Petitioner in WP.27978/12
K.P.Senthil kumar	...Petitioner in WP.27979/12
M.N.Kuppusamy	...Petitioner in WP.27980/12
N.Barathan	...Petitioner in WP.27981/12
P.Manickam	...Petitioner in WP.27982/12
A.Sadasivam	...Petitioner in WP.28040/12
M.Arumugam	...Petitioner in WP.28041/12
D.Selvam	...Petitioner in WP.28042/12
P.Krishnasamy	...Petitioner in WP.28043/12
M.Selvaraj	...Petitioner in WP.28044/12
C.Udhayakumar	...Petitioner in WP.28271/12
A.Kumar	...Petitioner in WP.28272/12
V.K.Arumugam	...Petitioner in WP.27273/12
S.Palanivel	...Petitioner in WP.27274/12
M.Gunasekar	...Petitioner in WP.27275/12
K.Lakshmipathi	...Petitioner in WP.28278/12
N.S.Sundarmoorthy	...Petitioner in WP.28279/12
N.Saravanan	...Petitioner in WP.28280/12
C.Palanisamy	...Petitioner in WP.28281/12
R.Nallasivam	...Petitioner in WP.28282/12
P.Thiyagarajan	...Petitioner in WP.28625/12
D.Muthusamy	...Petitioner in WP.28626/12
C.Yogamurthy	...Petitioner in WP.28627/12
R.D.Raghu	...Petitioner in WP.28628/12
P.Karuppaswamy	...Petitioner in WP.28949/12
D.Karthik Prabu	...Petitioner in WP.28950/12
R.Arumugam	...Petitioner in WP.28951/12
K.Boopathi	...Petitioner in WP.28952/12
N.Arunagiri	...Petitioner in WP.41257/16
N.Rajan	...Petitioner in WP.41258/16
T.Balamurugan	...Petitioner in WP.41259/16

Vs

1.The Managing Director, TASMAG,
Egmore, Chennai-8.

2.The Senior Regional Manager,
TASMAC, Coimbatore.

3.The District Manager and Deputy
Collector, TASMAC, Erode District. ...Respondents in all
the petitions

PETITION under Article 226 of The Constitution of India
praying for the issuance of Writs of (i) Certiorari to call for
the records relating to the order passed by the 3rd respondent
dated 27.8.2012 made in Na.Ka.No.0923/ 2012/R2 and quash the
same (WP.No.27366 of 2012, 27978 to 27982, 28040 to 28044, 28271
to 28275, 28278 to 28282, 28625 to 28628 & 28949 to 28952/12)
and

ii) Mandamus, for bearing the respondents from recovering
any amounts in the Petitioner's salary, incentives, bonus and
etc; for the dues in respect of bar running in the year 2005-
2007, and consequently direct the respondents to close the
recovery proceedings by accepting the reply of the petitioners
dated 24/07/2015 (in WP.Nos.41257 to 41259/2016)

For Petitioners in WP.Nos.27366,
27978 to 27982, 28040 to 28044,
28271 to 28275, 28278 to 28282,
28625 to 28628 & 28949 to 28952
of 2012 : Mr.N.Chinnaraj

For Petitioners in WP.Nos.41257 to
41259 of 2016 : Mr.M.R.Jyothimanian

For Respondents in all the WPs : Mr.K.Sathishkumar

COMMON ORDER

In WP.Nos.27366, 27978 to 27982, 28040 to 28044, 28271 to
28275, 28278 to 28282, 28625 to 28628 and 28949 to 28952 of
2012, the petitioners, who are working as supervisors in the
TASMAC shops, have been issued the orders of recovery from their
respective salaries on the ground that the bars managed by them
have not generated required revenue for the State and that they
should match the revenue payable in cases where the bars are
managed by private licensees.

2. The correctness of identical orders has been tested
before this Court in W.P.Nos.27785 to 27789 of 2012 and this
Court, by a common order dated 05.5.2017, allowed the said writ
petitions. The operative portions of the said common order read
as follows :

"4. The learned counsel appearing for
the writ petitioner submitted that the same
issue was considered by this Court earlier

in the batch of writ petitions on 03.1.2008 in W.P.No.19231 of 2007 etc., batch and the order is extracted here under :

'It is also made clear that as far as the petitioners are concerned, if any salary or other benefit to which they are entitled to from the time of their being appointed to run the shops, is due, the respondent is directed to make payment of the same to those employees. In a given case if any amount has been paid by the petitioners. In a given case if any amount has been paid by the petitioners in respect of fixation of 2.5% or 1.5% in the past, it becomes necessary to permit the respondent to conduct an enquiry over the same and find out the situation. Accordingly, permission is granted. In a given case if the amount is paid and no collection is made, the respondent is directed to repay the same. If it is found that the petitioners have got any profit out of it, they should be directed to make payment to the respondent.'

5. Accordingly, the discretion was provided to the competent authorities either to fix 2.5% or 1.5% of the total sales amount, then such a discretion is provided to the authorities, the respondents had imposed 2.5% without considering the fact that the Supervisors / Writ Petitioners themselves were conducting the bars attached with the TASMACH Shop and sustaining heavy loss.

6. The learned counsel for the writ petitioner submitted that some of the writ petitioners are now working and some left the job. Under these circumstances, this Court is of the view that the respondents shall reconsider and pass appropriate orders in respect of fixation of 2.5% or 1.5% of the total sales amount, in accord with the factual circumstances of each cases.

7. With these, the orders of recovery issued by the respondents are quashed and liberty is granted to the respondent to reconsider the entire factual circumstances relating to the conducting of bars attached with TASMACH Shop and the profit and loss situation by providing opportunity to the writ petitioners and pass appropriate orders either by fixing 2.5% or 1.5% and thereafter

decide the issue as early as possible by passing appropriate orders.

8. With this observation, the writ petitions are allowed."

3. The learned Standing Counsel for the respondents does not dispute the above legal position and would submit that the present writ petitions may also be disposed of on similar lines.

4. In so far as W.P.Nos.41257 to 41259 of 2016 are concerned, the petitioners seek for the issuance of a Writ of Mandamus to forbear the respondents from recovering any amounts from their respective salaries. At the time when these writ petitions were filed, no notice was issued to those writ petitioners and therefore, they filed W.P.Nos.41257 to 41259 of 2016 seeking to forbear the respondents from recovering any amounts from their respective salaries.

5. The learned Standing Counsel for the respondents submits that as of now, the show cause notices have been issued to the petitioners in W.P. Nos.41257 to 41259 of 2016.

6. Therefore, the direction issued in the common order dated 05.5.2017 in W.P.Nos.27785 to 27789 of 2012 would equally apply to the cases of the petitioners in W.P.Nos.41257 to 41259 of 2016.

7. In the result, all the writ petitions are allowed and the orders of recovery are quashed. Liberty is granted to the respondent Corporation to reconsider the entire factual circumstances in relation to conducting of bars attached to the TASMAC shops and the profit and loss situation by providing an opportunity to the writ petitioners and pass appropriate orders either by fixing either 2.5% or 1.5% and thereafter decide the issue as expeditiously as possible. No costs. Consequently, all connected pending MPs and WMPs are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

RS

To

1.The Managing Director, TASMAC,
Egmore, Chennai-8.

2.The Senior Regional Manager,
TASMAC, Coimbatore.

3.The District Manager and Deputy
Collector, TASMAC, Erode District.

+3 ccs to Mr.M.R.Jothimanian Advocate sr 27144 to 27146

+1 cc to Mr.N.Chinnaraj Advocate sr 27950

+3 ccs to Mr.K.Sathish kumar Advocate sr 27867

WP.No.27366 of 2012 etc.cases

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