

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 02-11-2018

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.13515 of 2017

And

W.M.P.No.14596 of 2017

K.Thiagarajan

.. Petitioner

..Vs..

1.The Managing Director,
The Tamil Nadu State Marketing Corporation
Ltd., (TASMAC),
Head Office, 4th Floor,
CMDA, Tower-2,
Egmore,
Chennai-8.

2.The Senior Regional Manager,
The Tamil Nadu State Marketing Corporation
Ltd., (TASMAC),
Thiruchirapalli⁹ and District.

3.The District Manager,
Tamil Nadu State Marketing Corporation Ltd.,
Thiruvarur and District. .. Respondents

PRAYER : Writ Petition Under Article 226 of the Constitution of India for the issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to impugned dismissal order Na.Ka.No.04/2016/A1 dated 20.6.2016 issued by the third respondent and its consequential orders in appeal Moo.Mu. No.1945/ 2016((U) dated 4.10.2016 issued by the second respondent and its consequential order in revision in Se/Mu/Na/Ka/No.R1/21453/2016 dated 26.4.2017 passed by the first respondent and quash the same and consequently direct the third respondent to reinstate the petitioner with back wages, continuity of service and all other attended benefits.

For Petitioner : Mr.P.Vijendran

For Respondents : Mr.B.Nedunchezhiyan

O R D E R

The order of dismissal issued by the third respondent in proceedings dated 20.6.2016 and the consequential Appellate Order issued by the second respondent in proceedings dated 4.10.2016 and the Revisional Order of the first respondent dated 26.4.2017, are under challenge in this writ petition.

2. The writ petitioner joined as a Supervisor with the respondent-Corporation on 8.1.2004, after depositing the security deposit of Rs.50,000/-. On account of a surprise inspection, certain irregularities were noticed and an action was taken against the writ petitioner and without conducting a proper enquiry, he was dismissed from service. The learned counsel for the writ petitioner states that the procedure adopted for conducting an enquiry is not in accordance with law and therefore, the impugned order of dismissal is liable to be scrapped.

3. The reasonable opportunity contemplated has not been provided and the entire process conducted by the respondents were in violation of the principles of natural justice. This apart, the Competent Disciplinary Authorities have not allowed the writ petitioner to examine and cross-examine the witnesses and the decision in the disciplinary proceedings were taken unilaterally. In all cases wherein the dismissal orders were passed on account of surprise inspection, the very same irregular procedures were followed and this Court considered a batch of cases in WP Nos.30900 of 2015 etc., batch and an order was passed on 25.7.2017. The relevant paragraphs 12, 13, 14, 15, 16, 17, 18, 19 and 20 of the said judgment, are extracted as under:-

"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."

4. The learned counsel for the respondents brought to the notice of this Court that the writ petitioner has not deposited the penalty amount and in the event of not recovering the same, the respondent-Corporation would suffer a monetary loss i.e., the penalty amount to be paid by the writ petitioner is Rs.2,37,185/- and the interest amount of Rs.9,417/- also is to be paid. Thus, the writ petition stands allowed on condition that the writ petitioner deposits the penalty amount of Rs.2,37,185/- along with the interest, within the period of eight weeks from the date of receipt of a copy of this order.

5. Accordingly, the impugned orders passed by the third respondent in proceedings Na.Ka.No.04/2016/A1 dated 20.6.2016, by the second respondent in appeal Moo.Mu. No.1945/ 2016((U) dated 4.10.2016 and by the first respondent in revision in Se/Mu/ Na/Ka/ No.R1/21453/2016 dated 26.4.2017 are quashed and the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

Svn

To

- 1.The Managing Director,
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Head Office, 4th Floor,
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+ 1 cc to Mr.P. Vijendran, Advocate Sr.76038

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WP No.13515 of 2017

RSK(CO)
EU(03/12/2018)