

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 26.10.2018
CORAM
THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.Nos.164, 165, 166 and 597 of 2017 and
W.M.P. Nos.156, 157, 158 and 159 of 2017

M.Dhanapal ... Petitioner in W.P.
No.164 of 2017
C. Visvalingam ... Petitioner in W.P.
No.165 of 2017
V. Ramesh ... Petitioner in W.P.
No.166 of 2017

M.Dhanapal
C. Visvalingam
V. Ramesh ... Petitioners in W.P.
No.597 of 2017

Vs

1.The Tamil Nadu State Marketing Corporation Ltd., (TASMAC),
rep by its Senior Regional Manager,
Thiruchirapalli & District. ... 1st respondent in
W.P. Nos.164,165,
and 166 of 2017

2.The District Manager,
Tamil Nadu State Marketing Corporation Ltd.,
Thiruvarur & District. ... 2nd Respondent in
W.P. Nos.164,165,
and 166 of 2017
and sole respondent
in W.P. No.597 of 2017

COMMON PRAYER IN W.P. Nos.164, 165 and 166 of 2017 : Writ
Petition filed under Article 226 of the Constitution of India,
to issue a Writ of Certiorarified Mandamus, to call for the
records pertaining to impugned dismissal order,
Na.Ka.No.198/2015/A1/dated 09.02.2016 issued by the 2nd
respondent and its consequential orders in appeal
Moo.Mu.No.967/2016 (U) dated 18.11.2016 issued by the 1st
respondent and quash the same and consequently to direct the 2nd
respondent to reinstate the petitioner with back wages,
continuity of service and all other attended benefits.

PRAYER IN W.P. No.597 of 2017 : Writ Petition filed under
Article 226 of the Constitution of India, to issue a Writ of

Certiorari to call for the records pertaining to impugned proceedings, Na.Ka. No.198/2015/A1, dated 10.12.2016 issued by the respondent and quash the same.

For Petitioner : Mr.P.Vijendran for all 4 WPs

For Respondents : Mr.B.Nedunchezian for TASMAL
RR 1 & 2 for W.P. Nos.164, 165
and 166 of 2017
Respondent in W.P. No.597 of 2017

COMMON ORDER

The Order of dismissal, dated 09.02.2016 issued by the second respondent and the consequential appellate order issued by the first respondent in proceedings on 18.11.2016 are under challenge in the present writ petition.

2. The writ petitioners were appointed as Supervisors in TASMAL on selection. On account of surprise inspection, the disciplinary proceedings were against the writ petitioner and by way of improper enquiry, the writ petitioner was dismissed from service. The learned counsel for the writ petitioner states that enquiry was not conducted in accordance with the procedures contemplated and therefore the order of dismissal is to be scrapped.

3. The similar grounds raised by the other TASMAL Supervisors against the order of dismissal was adjudicated in batch of writ petitions and this Court passed an order on 25.05.2017 in W.P. No. 30900 of 2015 etc. The relevant paragraphs are extracted hereunder :-

1. 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.

2. 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.

3. 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.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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 made a submission that the writ petitioners have not paid the penalty amount and the same is mandatory and therefore in the event of considering the case of the writ petitioners, this Court has to permit respondents to collect the penalty amount. In this view of the matter, the impugned orders of dismissal passed by the second respondent in proceedings in Na.Ka.No.198/2015/A1/dated 09.02.2016 and consequential appellate order by the first respondent in Proceedings No.Moo.Mu.No.967/2016 (U) dated 18.11.2016 are quashed. The respondents are directed to reinstate the writ petitioner into service with all consequential service benefits, subject to the condition that the writ petitioners deposits the penalty amount with the respondent within a period of eight weeks from the date of receipt of a copy of this order. On receipt of the said amount the respondents shall reinstate the writ petitioners.

5. With the above directions, Writ Petition Nos.164, 165, 166 of 2017 stands allowed.

6. W.P.No.597 of 2017 is filed to quash the penalty imposed on the petitioner in proceedings, dated 10.12.2016. In view of the fact that this Court has directed the writ petitioners to deposit the penalty amount with the respondent within a period of eight weeks, no further order is necessary in this writ

petition, in respect of the grounds raised in the writ petition. Accordingly W.P. No.597 of 2017 stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

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To

1.The Tamil Nadu State Marketing Corporation Ltd., (TASMAC),
rep by its Senior Regional Manager,
Thiruchirapalli & District.

2.The District Manager,
Tamil Nadu State Marketing Corporation Ltd.,
Thiruvarur & District.

+4cc to M/s.P.Vijendran, Advocate SR.NO.73628

+1cc to M/s.B.Nedunchezian, Advocate SR.NO.73768

VSNI(CO)

sm:23.11.2018

W.P.Nos.164, 165, 166 and 597 of 2017

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