

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD
W.A.Nos.2864 and 2866 of 2018
and C.M.P.Nos.23775 and 23778 of 2018

1. The District Manager,
Salem District,
Tamil Nadu State Marketing Corporation Ltd.,
Santhiyur, Salem District,
Salem - 636 203.
2. The Senior Regional Manager,
Tamil Nadu State Marketing Corporation Ltd.,
56, Brindavan Road, Fairlands, Salem - 16.
3. The Managing Director,
Tamil Nadu State Marketing Corporation Ltd.,
Thalamuthu Natarajan Maligai,
Chennai - 8. .. Appellants in both the WAs.

Vs.

V.Saravanan .. Respondent in
WA.No.2864/2018

M.Arul .. Respondent in
WA.No.2866/2018

Prayer: Writ Appeals filed under Clause 15 of Letters Patent against the common order of this Court, dated 27.02.2018, made in W.P.Nos.5421 and 5422 of 2017.

Prayer in in W.P.Nos.5421 of 2017:

Petition filed under Article 226 of the Constitution of India ,to issue a Writ of Mandamus calling for the records of impugned orders passed by the 3rd Respondent vide Se.Mu.Na.Ka.No.R1/11548/2016 dated 05.12.2016 in confirming the order of the 2nd respondent passed in Se.Mu.No.60/2013/Aa dated 28.04.2016 and in confirming the order of 1st respondent passed in Na.Ka.No.323/2011/A3/CV dated 24.02.2015 and quash the same consequently direct the respondents to reinstate the petitioner as Salesman with continuity of Service and all other attendant service benefits.

Prayer in in W.P.Nos.5422 of 2017:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus calling for the

records of impugned orders passed by the 3rd Respondent vide Se.Mu.Na.Ka.No.R1/11547/2016 dated 17.11.2016 in confirming the order of the 2nd respondent passed in Se.Mu.No.60/2013/Aa dated 28.04.2016 and in confirming the order of 1st respondent passed in Na.Ka.No.323/2011/A3/CV dated 24.02.2015 and quash the same consequently direct the respondents to reinstate the petitioner as Salesman with continuity of Service and all other attendant service benefits.

For Appellants : Mr.K.Sathishkumar
in both WAs.

C O M M O N J U D G E M E N T
(Judgement of the Court was made by S.MANIKUMAR, J.)

Instant writ appeals are directed against the common order made by the Writ Court in W.P.Nos.5421 and 5422 of 2017, dated 27.02.2018.

2. By observing that principles of natural justice have not been followed, Writ Court has set aside the orders of termination, passed against the writ petitioners / respondents herein, by the appellants herein and directed the appellants herein to reinstate the writ petitioners / respondents herein, in service without backwages but with continuity of service.

3. The District Manager, TASMAC, Salem has only considered the explanation and without conducting any enquiry into the serious allegation of misappropriation, terminated the service of the writ petitioners / respondents herein.

4. Heard Mr.K.Sathishkumar, learned standing counsel for TASMAC / appellants and perused the materials available on record.

5. On an earlier occasion, in a similar matter, where no enquiring was conducted, termination was set aside. Writ appeal preferred by TASMAC in W.A.(MD) No.27 of 2009 was rejected by a Hon'ble Division Bench of this Court on 27.01.2009. While confirming the order of the learned Single Judge, the Hon'ble Division Bench has noticed that based on the letters admitting the guilt, the workmen were terminated in TASMAC. In this regard, para 8 of the judgment in W.A. (MD) No.27 of 2009 is extracted hereunder:

"8. Be that as it may, we have come across a number of cases where allegations of adulteration and other serious misconduct levelled against the TASMAC Salesmen, whose services came to be terminated based on certain letters

said to have been given by the concerned TASMAC Salesmen admitting their guilt on the spot. Since numerous cases of this nature are being reported, it is high time that the appellant corporation instead of resorting to such shortcut method of terminating the services, even after noting such serious allegations of misconduct by such TASMAC employees, they can well be advised to take proper disciplinary action before resorting to termination of the services of such employees in order to have effective disciplinary control over those employees. Such a procedure can be followed in the matter of taking disciplinary action against these employees, especially, for imposing the extreme punishment of dismissal. It is high time that the appellant corporation who is stated to have employed several thousand salesmen to run the TASMAC shops set up a separate machinery for following the proper disciplinary procedure so that any action taken by TASMAC can be justified when the same is challenged before the Court of Law. It will also have an effective control over such employees in the matter of their day-to-day administrative control over their employees. Irrespective of serious allegations of adulteration, sale of empty bottles and such other misconduct, the salesmen got away with such punishment for not following the proper disciplinary procedure while imposing the punishment on them. We hope and trust that the appellant corporation will appreciate our observations in the proper perspective and take necessary measures to implement the proper procedure in taking disciplinary action against its employees in future."

6. Order of the Writ Court holding that principles of natural justice has not been followed cannot be interfered with for the reason that no department enquiry has been conducted.

7. We do not find any error in the impugned order of the Writ Court in ordering reinstatement. Therefore, while conducting enquiry into the charges already framed, it is always open to the appellants herein to place the writ

petitioners / respondents herein, under suspension, if they so desire.

8. TASMAC employees, whether entitled to protection under Article 311(2) of the Constitution of India. Article 311(2) of the Constitution of India, reads thus:-

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply,

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State, it is not expedient to hold such inquiry.

9. It refers to civil post in civil service. TASMAC employees are paid from the consolidated fund. Incorporate the reasons cited in this judgment. When an order of termination involves civil consequences, with a stigma on the conduct, certainly it requires an enquiry into the allegation and a finding. In this context, it is useful to refer to a decision of the Hon'ble Supreme Court in Dipti Prakash Banerjee vs. Satvendra Nath Bose National Centre for Basic Services, reported in (1993) 3 SCC 60, wherein it is held that if findings were arrived at in an enquiry as to

the misconduct behind the back of the officer or without a regular departmental enquiry, the order of termination has to be treated as founded on the allegations and it is bad.

10. With the above observation, writ appeals are disposed of. Consequently the connected miscellaneous petitions are closed. No costs.

Sd/--

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

dm

1. The District Manager,
Salem District,
Tamil Nadu State Marketing Corporation Ltd.,
Santhiyur, Salem District,
Salem - 636 203.
2. The Senior Regional Manager,
Tamil Nadu State Marketing Corporation Ltd.,
56, Brindavan Road, Fairlands, Salem - 16.
3. The Managing Director,
Tamil Nadu State Marketing Corporation Ltd.,
Thalamuthu Natarajan Maligai,
Chennai - 8.

W.A.Nos.2864 and 2866 of 2018
and

C.M.P.Nos.23775 and 23778 of 2018

A.SK(12/02/2019)

सत्यमेव जयते

WEB COPY