



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.11.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD) Nos.19721, 19764, 20061, 20063, 20066, 20073 and 20074 of 2019

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and

W.M.P. (MD) Nos.16202, 16203, 19119, 16254, 19156, 16589, 16591, 19147, 16593, 16594, 19145, 16596, 16598, 19163, 16600, 19122, 16604 to 16606 and 19124 of 2019

M.Senthilkumar	... Petitioner in W.P.(MD)No.19721 of 2019
Anbalagan	... Petitioner in WP(MD)No.19764 of 2019
J.Kannan	... Petitioner in WP(MD)No.20061 of 2019
S.A. Abdul Rahoop	... Petitioner in WP(MD)No.20063 of 2019
S.Saravana Kumar	... Petitioner in WP(MD)No.20066 of 2019
M. Ramakrishnan	... Petitioner in WP(MD)No.20073 of 2019
R. Ochathevan	... Petitioner in WP(MD)No.20074 of 2019

-Vs-

1.The Managing Director,
Tamil Nadu State Marketing Corporation
Limited (TASMAC),
4th Floor, CMDA Towers, Gandhi Irwin Bridge Road,
Egmore, Chennai.

2.The Senior Regional Manager,
Tamil Nadu State Marketing Corporation
Limited (TASMAC),
100, Anna Nagar, Madurai-625 020.

3.The District Manager,
Tamil Nadu State Marketing Corporation
Limited (TASMAC),
Madurai South, Kappalur, Madurai

... Respondents in all Writ Petitions

PRAYER in W.P. (MD) No.19721 of 2019: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the third respondent in Na.Ka.No.258/2018/A, dated 27.08.2019, which was served to the petitioner on 05.09.2019 and quash the same and consequently,



directing the respondents to reinstate the petitioner into service with all monetary benefits within the time stipulated by this Court.

Prayer in WP(MD). 19764/ 2019 :

Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records pertaining to the impugned proceedings passed by the third respondent in Na.Ka.No.258/2018/A, Dated 27.08.2019 and quash the same.

Prayer in WP(MD). 20061/ 2019 :

Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned proceedings passed by the third respondent in Na.Ka.No.258/2018/A, Dated 27.08.2019 and quash the same and consequently, directing the respondents to reinstate the petitioner into service with all monetary benefits.

Prayer in WP(MD). 20063/ 2019 :

Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned proceedings passed by the third respondent in Na.Ka.No.258/2018/A, Dated 27.08.2019 and quash the same and consequently, directing the respondents to reinstate the petitioner into service with all monetary benefits.
Prayer in WP(MD). 20066/ 2019 :

Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned proceedings passed by the third respondent in Na.Ka.No.258/2018/A, Dated 27.08.2019 and quash the same and consequently, directing the respondents to reinstate the petitioner into service with all monetary benefits.

Prayer in WP(MD). 20073/ 2019 :

Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records pertaining to the impugned proceedings passed by the third respondent in Na.Ka.No.258/2018/A, Dated 27.08.2019 and quash the same.

Prayer in WP(MD). 20074/ 2019 :

Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned proceedings passed by the third respondent in Na.Ka.No.258/2018/A, Dated 27.08.2019, which was served to the petitioner on 5.9.2019 and quash the same and consequently, directing the respondents to reinstate the petitioner into service with all monetary benefits within the time stipulated by this Court.



W.P. (MD) No.19721 of 2019
For Petitioner

: Mr.Veerakathiravan,
Senior Counsel,
For M/s.Veera Associates.

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WP(MD). 19764 of 2019 :
For Petitioner

: Mr. M.Gnanagurunathan

WP(MD) No.20061 of 2019
For Petitioner

: Mr.T. Lajapathi Roy

WP(MD) No.20063 of 2019
For Petitioner

: Mr.T. Lajapathi Roy

WP(MD) No.20066 of 2019
For Petitioner

: Mr.T. Lajapathi Roy

WP(MD) No.20073 of 2019
For Petitioner

: Mr. M.Gnanagurunathan

WP(MD) No.20074 of 2019
For Petitioner

: Mr. M.Ajmalkhan
Senior Counsel
For M/S. Ajmal Associates

For Respondents

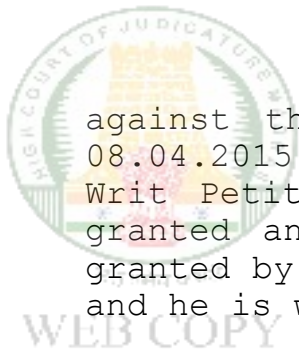
: Mr.H.Arumugam,
Standing Counsel.(in all Writ Petitions)

COMMON ORDER

The issues involved in these Writ Petitions are interlinked, therefore, they are heard together and disposed of by way of this common order.

2.The petitioners in all the Writ Petitions are the employees of the respondent TASMAL Corporation. They were dismissed from service by the third respondent, by separate order dated 27.08.2019, which is impugned in all these Writ Petitions.

3.While the petitioners were working as Salesman, Salesman, Salesman, Supervisor, Supervisor, Salesman and Salesman respectively, they were issued with charge memo, alleging that they were responsible for wrong stock statements being furnished to the third respondent in the name of one B.Selvam, Supervisor, in Shop No.5278. As per the charge memo, stock statements were sent on 10.08.2014, 23.08.2014 and 30.08.2014 respectively from Cell No.8148736766 by the said B.Selvam. Based on the said statements, which found to be wrong, disciplinary proceedings were initiated

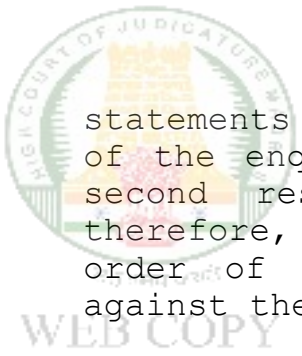


against the said B.Selvam and he was dismissed from service on 08.04.2015. He challenged the said order of dismissal by filing Writ Petition in W.P.(MD)No.5786 of 2015, wherein this Court has granted an order of interim stay. In view of the interim stay granted by this Court, the said B.Selvam was reinstated into service and he is working.

4.The second respondent has called for further report from the third respondent and instructed him to take stern action against the erring officials. Based on the said instructions, the third respondent has issued second show cause notice dated 16.10.2018. The petitioners gave their explanations. Not being satisfied with the explanations given by the petitioners, the third respondent has appointed enquiry officer to conduct domestic enquiry. After conclusion of the enquiry, the enquiry officer has submitted his report, holding that the charges levelled against the petitioners were proved. Based on the said report of the enquiry officer, another show cause notice was issued to the petitioners on 06.06.2019 and the petitioners have submitted their explanations to the third respondent. The third respondent, by impugned orders dated 27.08.2019, has dismissed the petitioners from service. The said orders are under challenge in the Writ Petitions.

5.The learned Senior Counsel appearing for the petitioners in W.P.(MD)Nos.19721 and 20074 of 2019 and the learned counsel appearing for the petitioners in other Writ Petitions separately contended that the third respondent did not furnish the enquiry report and therefore, the entire disciplinary proceedings are vitiated. The third respondent has not considered the explanations submitted by the petitioners and mechanically, accepted the report of the enquiry officer and passed the impugned orders. The impugned orders are liable to be set aside on the ground of delay in initiating disciplinary proceedings after 4 ½ years from the alleged occurrence ie., in the year 2014.

6.The learned counsel appearing for the petitioners further contended that according to the respondents, wrong stock statements were sent from the cell number ie., 8148736766 (hereinafter referred to as 'the suspected mobile number'), but the respondents did not examine the owner of the suspected cell number, namely, Jeya. One Selvakumar, Supervisor, who was the relative of the said Jeya, was exonerated from the charges. The petitioners were not given any opportunity to cross-examine the said Jeya. The enquiry officer has erroneously held that as the petitioners spoke to the suspected cell number, they are responsible for the wrong statements being sent from the suspected cell number. It is the duty of the Supervisor of a particular TASMACHOP to send SMS with regard to the stock statements to the third respondent and the petitioners are no way connected with furnishing the wrong stock statements to the third respondent. The petitioners are not working in Shop No.5278, where

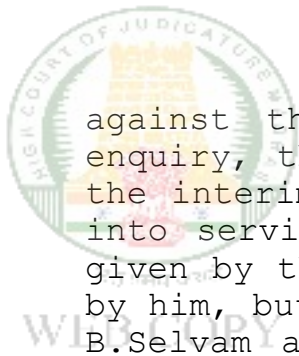


statements were sent in respect of the said shop alone. The report of the enquiry officer is without any evidence and appeal to the second respondent is not an effective statutory remedy and therefore, the Writ Petitions are maintainable. In any event, the order of dismissal is disproportionate to the charges levelled against the petitioners and prayed for allowing the Writ Petitions.

7.The respondents have filed counter affidavit. The learned Standing Counsel appearing for the respondents submitted that the stock statements of each shop must be sent to the official mobile number of the third respondent ie., 75981 87822 on the next day morning at 10.30 a.m., and all the stock statements would be consolidated and sent to the second respondent. The Supervisor must submit challan for the deposit of the sale amount with bank. In respect of Shop No.5278, there were some discrepancies and hence, disciplinary proceedings were initiated against the said B.Selvam, Supervisor of the said shop. He was dismissed from service and based on the interim stay granted by this Court on 23.04.2015, the said B.Selvam was reinstated into service. He submitted a representation dated 19.02.2018, making allegations against one Selvakumar, the petitioners herein and others. According to the said Selvam, he has sent correct statement from his mobile number, ie., 94870 85529 to the third respondent's official number ie., 75981 87822. The same was deleted and fake statements sent from the suspected mobile number was recorded. He has produced a list of calls, regarding the suspected mobile number from the BSNL. Based on the same, charge memos were issued to the petitioners. The said Selvakumar is the relative of the said Jeya, in whose name the suspected mobile number is registered and from which, stock statements were sent. The petitioners admitted that they talk to the suspected cell number. The enquiry officer, considering all the materials and explanations, has given a report that the charges levelled against the petitioners were proved. The enquiry report was sent along with second show cause notice and denied the allegations that enquiry report was not furnished. The contentions that there is no loss caused to the respondents Corporation and that the petitioners are working in different shops, are irrelevant, as the charges are with regard to the interference with administration of TASMAL. The impugned orders of dismissal are proportionate to the proven charges and prayed for dismissal of the Writ Petitions.

8.Heard the learned counsels appearing for the petitioners, the learned Standing Counsel appearing for the respondents and perused the materials available on record carefully.

9.From the materials on record, it is seen that certain SMS were alleged to be sent by one B.Selvam, Supervisor of Shop No.5278 from the suspected mobile number to official number of the third respondent and the details sent from the suspected mobile number with regard to the stock in Shop No.5278, were not correct. In view of the same, the respondents have initiated disciplinary proceedings



against the said B.Selvam and after conclusion of the domestic enquiry, the said B.Selvam was dismissed from service. In view of the interim order of this Court dated 23.04.2015, he was reinstated into service. After reinstatement, considering the representation given by the said B.Selvam, stating that the said SMS were not sent by him, but by other Shop members with intention to degrade the said B.Selvam and for the respondents to take action against him, the third respondent has initiated disciplinary proceedings against the petitioners and one Selvakumar and others. The basis for such disciplinary proceedings is that the petitioners spoke to the suspected mobile number. Therefore, incorrect stock statements were alleged to have been sent in the name of B.Selvam. The suspected mobile number is in the name of one Jeya. The said Jeya was not examined in the disciplinary proceedings. Further, the respondents have stated that one Selvakumar, who was working as Salesman in the Shop No.5324, was the relative of the said Jeya. The respondents have initiated disciplinary proceedings against the said Selvakumar along with petitioners. For the reasons best known to them, they have exonerated the said Selvakumar. Further, in the counter affidavit, the respondents have stated that the suspected mobile number (Sim) was obtained, by producing fake documents. In the charge memos issued to the petitioners, it has been stated that incorrect stock statements were sent on 23.08.2014 at 22.01.40 hours. In the said charge memos, it has been stated that the petitioner in W.P.(MD)No.19721 of 2019 spoke to the suspected mobile number one time ie., on 02.08.2014 for 46 seconds; the petitioner in W.P.(MD)No.19764 of 2019 spoke two times ie., on 13.08.2014 for 65 seconds and on 23.08.2014 for 43 seconds; the petitioner in W.P.(MD) No.20061 of 2019 spoke three times ie., on 23.08.2014 for 264, 43 and 213 seconds; the petitioner in W.P.(MD)No.20063 of 2019 spoke two times ie., on 06.08.2014 for 23 seconds and 13.08.2014 for 9 seconds; the petitioner in W.P.(MD)No.20066 of 2019 spoke seven times ie., on 04.08.2014 for 187 seconds and 92 seconds, on 05.08.2014 for 32 seconds, on 06.08.2014 for 75 seconds, on 13.08.2014 for 152 seconds and on 23.08.2014 for 117 seconds and 48 seconds; the petitioner in W.P.(MD)No.20073 of 2019 spoke one time ie., on 03.08.2014 for 11 seconds and the petitioner in W.P.(MD) No.20074 of 2019 spoke one time ie., on 04.08.2014 for 12 seconds.

10. There is nothing on record to show that based on the said conversation only, wrong stock statements were sent on 23.08.2014. The disciplinary proceedings were initiated after four years and during the enquiry, the petitioners have stated that they could have talked to the suspected mobile number and they did not remember to whom they talked, after lapse of 4 ½ years.

11. Further, the petitioner in W.P.(MD)No.20061 of 2019 has stated that the cell number mentioned in the charge memo is not his cell number and the same was not considered by the enquiry officer and by the third respondent. Further, from the charge memos and the



from the suspected mobile number, on such dates, the petitioners stated that they did not know, who used their numbers. The enquiry officer, considering the fact that there were phone calls from the suspected mobile number to the petitioners' phone numbers on such dates, before the alleged wrong statements were sent, presumed that the petitioners spoke to the suspected mobile number and held that the charges levelled against the petitioners are proved. The said finding is perverse and without any evidence to prove that the petitioners are responsible for the wrong stock statements sent. Therefore, the impugned orders of dismissal, which were passed based on the perverse finding, are invalid and illegal. In the charge memo issued to the petitioner in W.P.(MD)No.19721 of 2019, the respondents have mentioned only one date ie., on 23.08.2014, on which, they received SMS from the suspected mobile number with regard to the stock statements. In the counter affidavit, they have mentioned three days 10.08.2014, 23.08.2014 and 30.08.2014. It is the specific case of the said Selvam that he sent stock statements from his mobile number to the official number of the third respondent and the said statements were deleted and the statements sent from the suspected mobile number was recorded. The respondents have not denied the statements of the said Selvam in the counter affidavit. If the said statement is correct, somebody in the office of the third respondent was responsible for deleting the messages sent from the phone number belonging to the said Selvam and recording the false statements sent from the suspected mobile number. The third respondent ought to have verified this statement of the said Selvam and if the same was correct, ought to have taken action against the officials, who are presently working in the third respondent office.

12.The learned counsel appearing for the petitioners and the respondents submitted that the petitioners were reinstated into service, based on the interim order granted by this Court.

13.For the above reasons, the impugned orders of the third respondent dated 27.08.2019, are set aside. These Writ Petitions are allowed. The petitioners are entitled to monetary benefits for non-employment period from the date of dismissal to the date of reinstatement. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(AD-II)

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Sub Assistant Registrar(CS)

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+1CC TO MR.AJMAL ASSO., Advocate Sr. No. 99714
+2CC TO MR.M.GNANAGURUNATHAN, Advocate Sr. No. 99130, 99131
+3CC TO MR.T.LAJAPATHIROY, Advocate Sr. No. 99355, 99356, 99357

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**W.P. (MD) Nos.19721, 19764, 20061,
20063, 20066, 20073 and 20074 of 2019
18.11.2019**

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