

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.01.2020

Coram

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.3970 of 2017 and
W.M.P.No.4054 of 2017

P.Selvam

... Petitioner

Vs.

1. The Managing Director,
Tamilnadu State Marketing Corporation Limited,
(TASMAC), Head office, 4th floor,
CMDA Tower-2, Egmore,
Chennai 600 006.
2. The District manager, Chennai-North,
Tamilnadu State Marketing corporation Limited,
(TASMAC) Ambattur Estate, Chennai 600 058.

... Respondents

Prayer: The Writ petition has been filed under Article 226 of the Constitution of India to issue an order, direction, writ more particularly a writ in the nature of Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent in relating to the impugned order bearing No.Na.Ka.No.A7/1653/2016 dated 26.12.2016 and his consequential order Sae.Mu.AA.No.A1/248/2016 dated 18.01.2017 and quash the same as arbitrary, illegal, consequently direct the respondents to reinstate the petitioner in his service as a Salesman in the TASMAC shop at Chennai with continuity of service, back wages and all other attendant benefits.

For Petitioner : Mr.P.R.Thiruneelakandan

For Respondents : Mr.P.Arumugarajan

ORDER

This writ petition has been filed to quash the impugned order passed by the 2nd respondent in No.Na.Ka.No.A7/1653/2016 dated 26.12.2016 and consequential order Sae.Mu.AA.No.A1/248/2016 dated 18.01.2017 and quash the same as arbitrary, illegal and consequently direct the respondents to reinstate the petitioner into his service as a Salesman in the TASMAC shop at Chennai with continuity of

service, back wages and all other attendant benefits.

2. The case of the writ petitioner in nutshell is as follows.

The petitioner was working as a salesman in the Tasmac shop No.248, Otteri, Chennai. During surprise inspection made by the 2nd respondent on 08.10.2013, it was found that there was a shortage of sales collection of Rs.2,63,110/- and it was admitted by the Shop supervisor Ganesan and the Assistant Salesman Venkateshwaralu that they are responsible for the shortage amount. Thereafter, the Supervisor paid his part of the shortage amount of Rs.1,30,000/- and hence, his suspension was revoked and he was given appointment as shop supervisor and the Assistant Salesman namely Venkateshwaralu was required to pay the balance shortage amount of Rs.2,69,110/-.

2.1. In such circumstances, the above said Assistant Salesman obtained an order of direction from this court in W.P.No.30656 of 2014 dated 10.12.2013 to consider his representation dated 10.12.2013 by the respondents. Accordingly, on 17.11.2016, the first respondent held that the employees employed in the said shop are collectively responsible for the alleged shortage amount of Rs.2,63,110/- and ordered to recover the same 50% from the supervisor and 30% from the salesman and 20% from the Assistant Salesman. Pursuant to the above said order, the 2nd respondent directed the petitioner to pay 30% of shortage amount. Before passing the above said order, the 2nd respondent had not conducted any enquiry and the petitioner was not given any opportunity for hearing. Hence this writ petition.

3. The learned counsel appearing for the writ petitioner submitted that the impugned order passed by the respondents is a clear violation of principles of natural justice and that without hearing the petitioner and conducting enquiry, they passed the final order and hence the same is liable to be quashed.

4. On perusal of the materials on record and on perusal of the orders passed by the 2nd respondent reveals that there is no reference in the impugned order for permitting petitioner to give his explanation with regard to the shortage of sales collection. Further in the counter affidavit filed by the 2nd respondent, there is no specific denial of the allegation made by the petitioner that he was not given any opportunity before passing the final order and the impugned order passed by the respondent is in violation of principles of natural justice. More over, there is no materials available on record for giving opportunity to the writ petitioner and for following the procedure as contemplated under the rules, before passing the final order.

5. Upon hearing the submissions made by the counsel and upon perusing the impugned order as well as the counter affidavit, this court comes to a conclusion that the 2nd respondent has not afforded any opportunity for hearing the writ petitioner, before passing the final order. Therefore, the impugned order passed by the 2nd respondent is violation of principles of natural justice and the same is liable to be quashed.

6. Accordingly, by consent of both the parties to the writ petition, this court is inclined to pass the following order.

i) the impugned orders passed by the 2nd respondent dated 26.12.2016 and 18.01.2017 are quashed.

ii) The 2nd respondent is directed to proceed the matter in accordance with law by giving opportunity to the writ petitioner and to pass appropriate order, as far as possible, 12 weeks from the date of receipt of a copy of this order.

7. With the above direction, this writ petition is allowed. No costs. Consequently, connected writ miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Managing Director,
Tamilnadu State Marketing Corporation Limited,
(TASMAC), Head office, 4th floor,
CMDA Tower-2, Egmore,
Chennai 600 006.

2. The District manager, Chennai-North,
Tamilnadu State Marketing Corporation Limited,
(TASMAC) Ambattur Estate, Chennai 600 058.

+1cc to M/s.P.R.Thiruneelakandan, Advocate SR.6121

+1cc to M/s.P.Arumugaran, Advocate SR.5037

W.P.No.3970 of 2017 and
W.M.P.No.4054 of 2017

RP (CO)
CB (25/02/2020)