

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2021

CORAM

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.15522 & 15524 of 2020

in

WMP.Nos.19378 & 19380 of 2020

(Heard through VC)

Ravi
Sentil Kumar

... Petitioner in WP.No.15522/2020
... Petitioner in WP.No.15524/2020

-vs-

1.The District Manager,
"TASMAC" Ltd,
Thiruvannamalai.

2.The Senior Regional Manager,
"TASMAC" Ltd., Salem. ...Respondents in both WPs.

Common Prayer: Petitions filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for records pertaining to Impugned order in Se.Mu.Order.No.R.V.2/1211/2020, dated 31.08.2020 passed by 1st respondent and quash the same, and direct the respondents to reinstate the petitioners into service with all backwages and grant such other relief

In both WPs.

For Petitioner : Mr.P.Ganapathy

For Respondents: M/S.P.Arumugarajan, SC for RR1 & 2

COMMON ORDER

As the relief sought for in both the writ petitions are similar in nature, they are disposed of by a common order.

2.These petitions have been filed, to call for records pertaining to Impugned order in Se.Mu.Order.No.R.V.2/1211/2020, dated 31.08.2020 passed by 1st respondent and quash the same, and direct the respondents to reinstate the petitioners into service with all back-wages and grant such other relief .

3. Mr.P.Arumugarajan , learned counsel takes notice on behalf of the respondents. By consent of both parties, these writ petitions are taken up for final disposal at the admission stage itself.

4. According to the petitioners, they were appointed as Salesman in the respondents TASMAL Ltd in the year 2004 and they have put in 15 years of service without any remarks. While in service, both were terminated from service by the impugned order dated 31.08.2020 on the administrative ground without conducting any enquiry, on account of receiving low inventory tightness of Rs.26.94.450/-. Aggrieved against the same, both filed an appeal to the 2nd respondent on 28.09.2002. Though it was acknowledged by him, no order is forthcoming till filing this writ petitions.

5.The relief sought for by the petitioners that the termination order need to be interfered with, cannot be gone into in these writ petitions. Taking note of the judgment of the Honourable Supreme Court in the recent decision in Ajay Kumar Choudhary vs. Union of India through its Secretary and another, reported in 2015 (7) SCC 291, the case of the petitioners to reinstate him in a non sensitive post may be considered, provided there are no legal impediments. Disposal of the writ petition will not preclude the respondents from issuing charge memo after obtaining explanation and to conduct domestic enquiry and impose any punishment, if the charges are established.

6.This Court has elaborately dealt with the issue of suspension in W.P.No.13 of 2021 (V.Mohanraj vs. The Secretary and two others), and passed a detailed order on 06.01.2021, holding as under:

"6. Considering the facts and circumstances of this case, this Court is not going to direct the respondents to promote the petitioner to the post of Inspector by including him in the panel and it is for the respondents to consider the same. It is needless to mention that if any departmental proceedings have been commenced or initiated, it is open to the respondents to proceed with the same so as to bring the proceedings to a logical end, de hors pendency of the criminal case, as both criminal proceedings as well as departmental proceedings can go on simultaneously and the criminal case should be proved beyond reasonable doubt by adducing oral and documentary evidence, whereas charges in the departmental proceedings should be established on the basis of preponderance of probabilities. If

Criminal Proceedings are not initiated or concluded within one year from the date of FIR, there is no hindrance on the part of the employer to proceed with the departmental proceedings on day to-day basis and bring the issue to a logical end at the earliest point of time and the employee will have to participate in the departmental proceedings and shall not attempt to adopt dilatory tactics.

7. In this regard, the Hon'ble Supreme Court in the case of Stanzen Toyotetsu India Private Limited vs. Girish v. and others, reported in (2014) 3 SCC 636, has clearly laid down a dictum as under:

"19. In the circumstances and taking into consideration all aspects mentioned above as also keeping in view the fact that all the three Courts below have exercised their discretion in favour of staying the on-going disciplinary proceedings, we do not consider it fit to vacate the said order straightaway. Interests of justice would, in our opinion, be sufficiently served if we direct the Court dealing with the criminal charges against the respondents to conclude the proceedings as expeditiously as possible but in any case within a period of one year from the date of this order. We hope and trust that the Trial Court will take effective steps to ensure that the witnesses are served, appear and are examined. The Court may for that purpose adjourn the case for no more than a fortnight every time an adjournment is necessary. We also expect the accused in the criminal case to co-operate with the trial Court for an early completion of the proceedings. We say so because experience has shown that trials often linger on for a long time on account of non-availability of the defense lawyers to cross-examine the witnesses or on account of adjournments sought by them on the flimsiest of the grounds. All that needs to be avoided. In case, however, the trial is not completed within the period of one year from the date of this order, despite the steps which the Trial Court has been directed to take the disciplinary proceedings initiated against the respondents shall be resumed and concluded by the Inquiry Officer concerned. The impugned orders shall in that case stand

vacated upon expiry of the period of one year from the date of the order.

20. In the result, we allow these appeals but only in part and to the extent indicated above. The parties are left to bear their own costs."

8. For the purpose of brevity, this Court makes it very clear that if any criminal proceedings have been initiated after commencement of the departmental proceedings, the one year time limit mentioned supra will not apply to those cases and the departmental proceedings shall go on uninterruptedly. Invariably, the offenders, who have committed grave offences, are being acquitted on the ground of benefit of doubt, owing to missing link in the chain of events and are trying to get back the entire backwages and for those persons, employment itself is a lottery.

9. In the present case on hand, even according to the petitioner, a charge memo has been issued as early as on 18.12.2015 and in case any departmental proceedings had already commenced, the same shall be proceeded on a day to-day basis without adjourning the matter beyond seven working days at any point of time and brought to a logical conclusion at the earliest. The petitioner shall co-operate for early attainment of the proceedings.

10. With the above observation, this writ petition is disposed of. No costs."

7. These writ petitions are disposed of a direction to the respondents to bare in mind the aforesaid judgments dated 06.01.2021 made in WP.No. 13/2021 in V.Mohanraj case, (cited supra) especially in paragraph No.6 and take a suitable decision thereon. No costs. Consequently, the connected miscellaneous petitions are closed.

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Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

jrs

To:

1.The District Manager,
"TASMAC" Ltd,
Thiruvannamalai.

2.The Senior Regional Manager,
"TASMAC" Ltd., Salem.

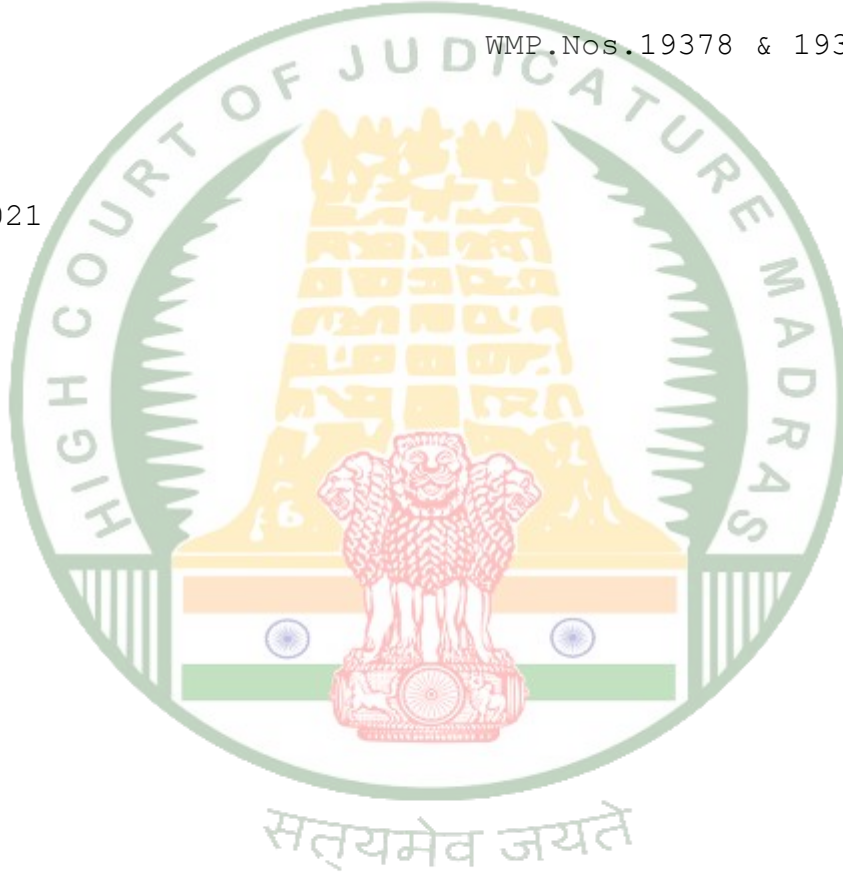
+2 ccs to Mr.P.Ganapathy Advocate sr5491

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