



WEB COPY

W.P.(MD)No.4782 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P. (MD)No.4782 of 2021

and

W.M.P. (MD)Nos.3906 and 3909 of 2021

V.Subiarun

... Petitioner

versus

1. The Managing Director,
Tamil Nadu State Marketing
Corporation (TASMAC),
4th Floor, CMDA Tower - 2,
Egmore,
Chennai.

2. The Regional Manager,
Tamil Nadu State Marketing
Corporation (TASMAC),
Madurai - 20.

3. The District Manager/Deputy Collector,
Tamil Nadu State Marketing
Corporation (TASMAC),
Tuticorin,
Tuticorin District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Proc.No.M1/952/2019 dated 06.10.2020 passed by the 1st respondent and quash the same as illegal and consequently, direct the respondents to reinstate the petitioner into service with all other monetary benefits.

For Petitioner : Mr.M.Ajmalkhan
Senior Counsel
for M/s.Ajmal Associates

For Respondents : Mr.S.Jameel Arasu

ORDER

This writ petition has been filed as against the order of the first respondent dated 06.10.2020, in and by which, the first respondent relieved the petitioner from service and also for a consequential direction to the respondents to reinstate the petitioner into service with all other monetary benefits.



2. The case of the petitioner is that he was appointed as Assistant Manager (Accounts-II) on contract basis at consolidated pay vide proceedings of the first respondent dated 19.06.2013. Thereafter, he was posted at Tuticorin District. On 06.09.2020, while he was verifying the sales value and the stock balance, he found that there was a shortage of Rs.1,74,95,810/- in Shop No.9991 and he also reported the same to the second respondent. However, the first respondent, vide order dated 06.10.2020, relieved the petitioner from service, without issuing any charge memo or conducting any departmental proceedings. Challenging the same, the present writ petition has been filed.

3. The learned Senior Counsel appearing for the petitioner submits that the first respondent, without conducting any enquiry or issuing any show cause notice, relieved the petitioner from service and the impugned order was not served on the petitioner and it was served only to his E-mail. Further, the first respondent failed to follow the procedure mentioned in Circular dated 17.06.2020 in Na.Ka.No.R-2/14589/2018 dated 21.01.2019. Therefore, the order impugned in this writ petition is liable to be set aside. In support of the contentions, the learned Senior Counsel also relied upon the Judgment of this Court reported in **2006 (1) CTC 660 (V.L.Lakshmanakumar vs. The District Manager, TASMAL Limited, Madurai District)**.

4. The learned counsel appearing for the respondents submits that the petitioner, being the Assistant Manager (Accounts), was duty bound to supervise the stocks of various TASMAL shops situated in and around Tuticorin District every day. On surprise inspection conducted by the special squad in Shop No.9991 of Arumuganeri, Thoothukudi District, it was found that a huge misappropriation took place to the tune of Rs.1,57,95,810/-. Since the petitioner failed in his duty in verifying the stock of Shop No.9991, there was a loss to the tune of Rs.1,57,95,810/-. Hence, the petitioner was removed from service. He further submits that the petitioner was employed only on contract basis and he has no right to claim for reinstatement.

5. The learned Senior Counsel by referring the Code of Prevention and Detection of Fraudulent Acts in Tamil Nadu State Marketing Corporation Limited - 2014 submits that the word "Employee" is defined as full time employees, part time employees, persons engaged on ad-hoc, or temporary, or casual, or contract basis including employees from TEXCO, individuals on deputation from the Government (Centre/State) and other organisations, and individuals on probation or under-training, including ex-employees, therefore, the petitioner also comes under the category of an Employee and he is entitled for an opportunity of hearing before removal.



6. This Court considered the submission made on either side.

7. By the order impugned in this writ petition, the petitioner, who was working as an Assistant Manager (Accounts-II) on contract basis at consolidated pay, was relieved from service with effect from 06.10.2020. By the same order, another Assistant Manager was also placed in full additional charge in the place of the petitioner.

8. The grievance of the petitioner is that the impugned order has been passed without following the principles of natural justice and without conducting any enquiry. Though it is contended by the learned Senior Counsel that the procedure contemplated in Circular dated 17.06.2020 issued by the first respondent was not complied with, the same is not placed before this Court.

9. As per a Circular dated 10.01.2018, the Assistant Manager (Accounts) are engaged only for the accounts work and other related works. Admittedly, there was a shortage of stock to the tune of Rs.1,56,38,250/- in Shop No.9991 and the same was deducted by the Internal Audit Department on 25.09.2020. The case of the petitioner is that the Internal Auditors have to conduct physical verification in each and every shop on monthly basis and the Internal Audit Department had not found any shortage in the inspection conducted in the month of July 2020. While so, there cannot be a shortage of stock to the tune of Rs.1,56,38,250/- in September 2020.

10. The petitioner also claims that he was verifying the daily SMS Figure sent by the shop personnel regarding the sales value and cross checking the same with the closing balance. The petitioner had also deducted some difference of stock in Shop No.9991 as Rs.1,74,95,810/- on 06.09.2020 and also informed the same to the second respondent/the Regional Manager, Madurai, by way of a report. The said report is not placed before this Court and no reference to the date of the report.

11. Though the petitioner was appointed on contractual basis, he is held responsible for the shortage amount in a shop and relieved from service by the order impugned in this writ petition. When the Management is imposing a major punishment on the petitioner, in all fairness, the respondents ought to have conducted an enquiry and taken a decision after providing an opportunity of hearing to the petitioner.

12. The Allahabad High Court, ***in Munni Poonam vs. State of U.P. And three others (W.A.No.3061 of 2021)*** held that in the event respondents found that there was some adverse report with regard to petitioner's working in the institution, she ought to have been confronted with such material and only after an opportunity in that



regard, a decision could have been taken whether or not to continue petitioner's contractual engagement and as this course has not been adopted, then, the order impugned cannot be sustained.

13. In this case, the petitioner has been relieved from service without conducting any enquiry and without giving any opportunity of hearing. On this ground alone, this Court is inclined to allow the writ petition.

14. Accordingly, the writ petition is allowed and the order of the first respondent dated 06.10.2020 is hereby set aside. The respondents are directed to conduct an enquiry and take a decision afresh, after providing an opportunity of hearing to the petitioner. This exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

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/ /2022

Sub Assistant Registrar(CS)

Ogy

To

1. The Managing Director,
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Tuticorin, Tuticorin District.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-2562[F] dated
27/01/2022)

W.P. (MD)No.4782 of 2021

25.01.2022