



W.P(MD)No.17204 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.11.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)Nos.17204 & 17515 of 2019

and

W.M.P(MD)Nos.13710 & 13999 of 2019

W.P(MD)No.17204 of 2019:

K.Balasubramanian

... Petitioner

Vs

The District Manager,
Tamil Nadu State Marketing Corporation Limited,
Compartment No:1,
Warehousing Corporation,
S.Vellalapatti Post,
Karur District – 639 004.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records culminating into the order dated 17.07.2019 in Na.Ka.C.V.2/5014/2018 passed by the respondent, quashing the same and directing the respondent to reinstate the petitioner into his service along with all attendant benefits including backwages.



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For Petitioner : Mr.S.K.Mani
For Respondent : Mr.H.Arumugam
Standing Counsel

W.P(MD)No.17515 of 2019:

L.Manikandan

... Petitioner

Vs

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Tamil Nadu State Marketing Corporation Limited,
Compartment No:1,
Warehousing Corporation,
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For Petitioner : Mr.S.K.Mani
For Respondent : Mr.H.Arumugam
Standing Counsel



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COMMON ORDER

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Heard the learned counsel for the writ petitioners and the learned Standing Counsel appearing for the respondent.

2. By the impugned order, the petitioners herein had been terminated from service. The case of the employer is that the petitioners were working in Shop No.5014, Aravakurichi Taluk, Karur District. The flying squad inspected the shop on 10.04.2018. Stock shortfall valued at Rs.19,32,760/- was found out. That led to the issuance of charge memo. Explanation was obtained from the petitioners. Enquiry was held. Thereafter, the impugned order came to be passed.

3. The learned counsel appearing for the writ petitioners reiterated all the contentions set out in the affidavits filed in support of the writ petitions. He called upon this Court to set aside the impugned orders and reinstate the petitioners into service.

4. The respondent has filed detailed counter affidavits and the learned Standing Counsel took me through their contents. The primary contention of the learned Standing Counsel is that shortfall was admitted and the petitioners also admitted their guilt even in their explanation. But for the surprise



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inspection conducted by the flying squad, misappropriation could not have been found out at all. He submitted that punishment imposed on the petitioners is commensurate with the gravity of misconduct and therefore, it does not call for interference. He also pointed out that before passing the impugned order, the employer had issued order directing recovery and the said order was unsuccessfully questioned by the writ petitioners in the writ proceedings. He pressed for dismissal of the writ petitions.

5. I carefully considered the rival contentions and went through the materials on record.

6. As rightly pointed out by the learned Standing Counsel, there is no dispute that misappropriation had been committed. The learned counsel for the petitioner primarily focused on two aspects:

- a) Who committed the act of misappropriation; and
- b) The purpose for which it was committed.

7. It is not in dispute that the shop in question was originally located near the Highway. Following the order passed by the Hon'ble Apex Court, it had to be closed and shifted. It is not in dispute that the shop was subsequently



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functioning in the land belonged to one M.Ramasamy of Punnam Village in Survey No.514/1. The specific case is that Ramasamy during the relevant time had come forward only to make available his vacant land. The shop Supervisor took the initiative to construct a building in the land belonging to Ramasamy. There was no approach road. Hence, with the consent of Ramasamy, he laid the road and also put up construction and got it electrified. Only thereafter, the District Collector, Karur issued proceedings on 08.04.2017 approving the location. The rental agreement was entered into between the building owner and the District Manager on 10.04.2017. Since these activities required substantial funding, acting in a *bona fide* manner, they had diverted the shop funds.

8. This is not a hypothesis that is projected entirely in the air. The enquiry report itself shows that there is foundation for this. The specific case of the petitioner is that the shop Supervisor Prakash and salesman Ravi owned up the entire guilt during enquiry proceedings.

9. In my view, these are mitigating circumstances. Totally five persons worked in the shop in question. The learned Standing Counsel is entirely right in its contention that all the five were jointly responsible. But the fact remains that two of them admitted during enquiry that they alone are responsible for the



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misappropriation which according to them was done keeping larger interest in mind. The Enquiry Officer had rightly given a finding that such siphoning and diversion of TASMACH funds was clearly an act of misappropriation. I am not in a position to straightaway interfere with the order in these writ proceedings. Instead, I direct the appellate authority namely the Senior Regional Manager, Trichy to dispose of the petitioners' appeals within a period of eight weeks from the date of receipt of a copy of this order. The appellate authority will examine Ramasamy and find out if the funds for construction of building as well as laying the approach road were made available only by Prakash and Ravi. If Ramasamy supports the hypothesis advanced by the petitioners, the same will be taken note of by the appellate authority as a mitigating circumstance. The petitioners also inform the Court that they have no claim for backwages and they will be more than satisfied if they are reinstated into service. The appellate authority shall go into all these aspects and pass final order within a period of eight weeks. These writ petitions are disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

23.11.2022

Index : Yes / No
Internet : Yes/ No
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To

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G.R.SWAMINATHAN, J.

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