



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.10.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.10245 of 2018 and
W.M.P.(MD)Nos.9286 to 9289 of 2018

B.Vijayan

... Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by its Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.
2. The Commissioner,
Prohibition and Excise Department,
Ezhilagam, Chepauk,
Chennai – 600 005.
3. The Managing Director,
TASMAC,
4th Floor, CMDA Tower,
No.2, Gandhi Irwin Road,
Egmore, Chennai – 600 008.
4. The General Manager
(Wholesale & Administration),
4th Floor, CMDA Tower,
No.2, Gandhi Irwin Road,
Egmore, Chennai – 600 008.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records in connection with the impugned order of rejection passed by the 4th respondent in



his Proceedings O.Mu.No. (M1)/32979/2014 dated 26.02.2015 and the consequential impugned order of rejection passed by the 2nd and 1st respondents in their Proceedings No.P & E 9 (1) /1998/2016 dated 14.06.2016 and Letter No.13054/H, P & E (VI) / 2016-5 dated 27.06.2017 and quash all as illegal and arbitrary and consequently direct the respondents to appoint the petitioner in the post of District Manager of TASMAC on par with his batch mates with all service and monetary benefits within the time limit that may be stipulated by this Court.

For Petitioner : Mr.G.Thalaimutharasu

For R-3 & R-4 : Mr.Veera Kathiravan,
Additional Advocate General,
assisted by,
Mr.S.Sivanesan,
Standing Counsel.

For R-1 & R-2 : Mr.R.Sureshkumar,
Additional Government Pleader.

* * *

ORDER

Heard the learned counsel appearing for the writ petitioner and the learned Additional Advocate General appearing for respondents 3 and 4 and the learned Additional Government Pleader appearing for respondents 1 and 2.



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2. The writ petitioner is an M.B.A. degree holder. He was selected as shop supervisor for the retail vending shops in TASMACH on 19.11.2003. During the year 2004, the then Managing Director of TASMACH issued recruitment notification for filling up the vacancies in the posts of District Manager from among the TASMACH employees holding M.B.A degree. The petitioner applied in response to the said recruitment notification. He was one of 17 persons selected for such appointment. He was also sent for training. Before he could be issued with formal order posting as District Manager, he came to be dismissed from service. The petitioner filed W.P.No. 37146 of 2006 and got the dismissal order set aside. The petitioner subsequently got reinstated as shop supervisor.

3. In the meanwhile, there was a change in the Government. The TASMACH employees holding M.B.A degree who were appointed as District Managers were sacked en masse. Most of those individuals were however reinstated in the year 2011. The petitioner's grievance is that he should be posted as District Manager and given the very same post



on par with those whom selected along with him in the year 2004. The petitioner filed representation in this regard and since it was not considered, he filed W.P.No.4455 of 2017 and W.P.No.39196 of 2015. This Court directed the Commissioner of Prohibition and Excise Department, Chepauk, Chennai, to give a disposal to the petitioner's request. Vide order dated 14.06.2016, the Commissioner of Prohibition and Excise Department, Chepauk, Chennai, rejected the petitioner's request. Aggrieved by the same, the petitioner filed an appeal before the Government. Since it was not disposed of, the petitioner filed W.P.No.4455 of 2017. Vide order dated 23.02.2017, this Court directed the Government to pass order on the petitioner's appeal dated 28.09.2016. Pursuant to the said direction, the Government issued the impugned letter dated 27.06.2017, rejecting the petitioner's appeal. Challenging both the orders, the present writ petition came to be filed.

4. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition. He pointed out that the petitioner



is only asking for treatment of parity and nothing else. He would also draw my attention to the proceedings dated 18.10.2004 issued by the Managing Director, TASMAC, Chennai, which states that the petitioner has been provisionally selected for the post of District Manager on contract basis. It is not in dispute that he was sent for training in two spells. The petitioner belongs to Scheduled Caste; the petitioner even alleges that he is a victim of caste discrimination. The petitioner was falsely accused with acts of misconduct leading to dismissal from service. The dismissal order was set aside by this Court vide order dated 08.12.2008 in W.P.No.37146 of 2006 in which it has been held that enquiry was conducted after removing the petitioner from service. But for the said unfortunate development, the petitioner would have been posted as District Manager. Like others he would have been reinstated in the year 2011. The petitioner wants to be posted as District Manager.

5. Per contra, the learned Additional Advocate General submitted that merely because the petitioner was sent for training in two spells, the petitioner cannot claim any legal



right that he should be posted as District Manager. It is true that the post of District Manager can be filled up on contract basis or on regular basis. It is only the Managing Director of TASMAC who is the authority competent to fill up the vacancies on contract basis. In this case, the petitioner has not moved the TASMAC authority. Instead he moved the Commissioner of Prohibition and Excise Department, Chepauk, Chennai and thereafter the Government. They are not competent to appoint the petitioner on contract basis. In any event, the petitioner cannot take advantage of the posting given to a group of TASMAC employees holding M.B.A. Degree. He pressed for dismissal of the writ petition.

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

7. No doubt, but for the dismissal from service imposed on the petitioner, the petitioner would have been appointed as District Manager. The proceedings dated 18.10.2004 reads that the petitioner was provisionally selected for appointment as District Manager and that



necessary orders will be issued separately as and when vacancy arises. It is true that the petitioner was sent for training on two spells. The petitioner was never appointed as District Manager even on contract basis. Provisional selection for appointment is one thing and formal appointment is another. It is true that a group of TASMACH employees who possess M.B.A. degree were conferred with the post of District Manager in the year 2004. But such a manner of selection can hardly said to be legal. Illegality cannot form the basis for claiming right by other persons similarly placed. The post of District Manager could not have been filled up only from among the TASMACH employees who possessed M.B.A. degree. TASMACH is a State Government run Corporation. It is a State instrumentality falling within Article 12 of the Constitution. Vacancies in the post of District Manager ought to have been kept open to all eligible candidates. The manner of selection for filling up the post of District Manager on contract basis in the year 2004 can hardly be said to be legal or correct. On the strength of such proceedings, the petitioner cannot claim any parity.



8. As rightly pointed out by the learned Additional Advocate General, the Commissioner of Prohibition and Excise Department, Chepauk, Chennai, cannot be called as the competent authority. It is only the Managing Director of TASMAC who is competent to fill up the post of District Manager on contract basis. For the reasons mentioned above, I am not inclined to interfere. This writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

12.10.2022

Index : Yes / No
Internet : Yes/ No

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G.R.SWAMINATHAN,J.

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