IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2023

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.15831 of 2018
and
W.M.P.No.18828 of 2018
and
W.M.P.No.3780 of 2023

R.Murugan ... Petitioner

Vs.

1. The Managing Director,
   Tamil Nadu State Marketing Corporation Ltd.,(TASMAC)
   Thalamuthu Natarajan Maaligai,
   4th Floor, CMDA Building,
   Egmore,
   Chennai-600 008.

2. The Senior Regional Zonal Manager,
   Chennai Region,
   Tamil Nadu State Marketing Corporation Ltd., (TASMAC),
   735 LLA,Building,
   Anna Salai,
   Chennai-600 002.

3. The District Manager,
Tamil Nadu State Marketing Corporation Ltd., (TASMAC),
Ambattur Industrial Estate,
(Central) Chennai-600 056. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, call for the records relevant to the order in Na.Ka. No.A1/335/2017 dated 21.04.2018 passed by the 3rd respondent and quash the same as illegal improper unreasonable arbitrary and against the principles of natural justice.

For Petitioner : Mr.A. Rajesh Kanna

For Respondent : Mr.K.Sathish Kumar
Standing Counsel for TASMAC

ORDER

This Writ Petition has been filed to quash the order of the 3rd respondent dated 21.04.2018 as illegal and against the principles of natural justice.

2.It is the case of the petitioner that he was appointed as Supervisor in the Tamil Nadu State Marketing Corporation Limited through the proceedings of the 3rd respondent. On 29.07.2013, a surprise inspection was conducted by the flying squad of the Chennai region in the Shop No.335 and it was found that there was a shortfall of Rs.5,30,860/-. Further, it was found that the said amount was misappropriated by the shop employees. Based on the charges, the petitioner and other employees were suspended from service through the proceedings of the 3rd respondent. Thereafter, on 21.11.2013, show causes notice was issued to the petitioner and called for explanation for the charge framed by the respondents against the petitioner and other employees of the shop. Thereafter, the petitioner was terminated from the service on 18.12.2013. The shortfall amount was paid on 02.08.2013. Therefore, the petitioner filed a Writ petition in W.P.No.20511 of 2014 challenging the order of termination and this Court was pleased to allow the Writ Petition and directed the respondents to reinstate the petitioner into his service. The petitioner sent a representation to the respondent on 28.11.2017 to reinstate the petitioner into service. Accordingly, the petitioner was posted in the office of the 3rd respondent as an Office Assistant.

3.The learned counsel appearing for the petitioner would submit that the alleged misappropriated amount was also paid into the account of the respondent's Corporation on 02.08.2013 and subsequently, the petitioner was directed to pay the interest for the shortfall amount @24% and a sum of Rs.10,616/- was paid to the respondents on 30.12.2016 towards interest. He would submit that the respondents insisted the petitioner to pay 50% of the shortfall amount and GST @ 18% as a fine amount under the TASMAC Anti Fraud Policy, 2014.

4.The learned counsel appearing for the respondents would submit that the petitioner paid the shortage amount on 02.08.2013 and admitted his guilt vide letter dated 07.08.2013. After enquiry, the petitioner was dismissed from service. Thereafter, on the direction issued by this Court, he was reinstated into service and fresh enquiry was conducted. The Enquiry Officer submitted his report stating that the charges are proved and the petitioner paid the interest amount to the shortage amount only on 30.12.2016, i.e., after the Anti-Fraud Policy came into force on 01.01.2015. After receipt of enquiry report, second show cause notice was issued on 20.03.2015 and the petitioner submitted his explanation on 06.04.2015.

5.The learned counsel appearing for the respondents would further submit that as per TASMAC Anti Fraud Policy, 2014, the misappropriation amount should be paid along with 24% interest and 50% as fine amount. The petitioner paid the interest amount to the misappropriation amount on 30.12.2016 after the Code of Prevention and Deduction of Fraudulent 2013 and Anti Fraud Policy came into effect. As per the policy only, the present notice dated

21.04.2018 was issued to the petitioner directing him to pay 50% of misappropriate amount and 18% GST to the respondent/ Corporation.

6.On a perusal of the records, it is seen that the impugned order was passed on 21.04.2018 and the alleged misappropriated amount was paid into the account of the respondent's Corporation on 02.08.2013. Subsequently, the petitioner was directed to pay the interest for the shortfall amount @24% and a sum of Rs.10,616/- was paid to the respondents on 30.12.2016 towards interest. Thereafter, the respondents insisted the petitioner to pay 50% of the shortfall amount and GST @ 18% as a fine amount under the TASMAC Anti Fraud Policy, 2014. In a disciplinary action, no GST can be collected in respect of the penalty under Section 7(b)(xiv) of the Code. Therefore, the respondents are not entitled to impose GST on the penalty amount under the disciplinary proceedings in terms of Section 7(b)(xiv) of the Code in the absence of any provision in the said Section about the collection of the GST. Hence, this Court is not inclined to accept the submissions made by the learned counsel appearing for the respondents.

Accordingly, this Writ Petition is allowed. No costs. Consequently connected Miscellaneous Petitions are closed.

07.11.2023

Index : Yes/No
Speaking order:Yes/No
Neutral citation:Yes/No
mps

To

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V.BHAVANI SUBBAROYAN, J.

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