

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10-08-2022

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP No.3359 of 2015

And

MP No.1 of 2015

P.Mihiran

..

Petitioner

vs.

1.The Managing Director,
Tamil Nadu State Marketing Corporation Ltd.,
Chennai-8.

2.The Senior Regional Manager,
Tamil Nadu State Marketing Corporation Ltd.,
Old District Collector Office,
Trichy.

3.The District Manager,
Tamil Nadu State Marketing Corporation Ltd.,
Cuddalore District,
Cuddalore-5.

..

Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the third respondent in

Se.Mu.No.R.V.1/2143/2014 dated 27.01.2015, quash the same and consequently direct the respondents to continue the petitioner as Supervisor and extend all benefits with back wages etc.

For Petitioner : Mr.V.Neethidurai

For Respondents : Mr.K.Sathish Kumar,
Standing Counsel for TASMAC.

O R D E R

The order of reversion reverting the writ petitioner from the post of Supervisor to the post of Salesman in proceedings dated 27.01.2015 is sought to be quashed in the present writ petition.

2. The writ petitioner states that he was appointed as temporary Salesman on contract basis in proceedings dated 29.11.2003. He was continuing as a temporary Salesman till 28.02.2006. He made an application to absorb him as Supervisor in the Tamil Nadu State Marketing Corporation Ltd (TASMAC) in the existing vacancy. The petitioner further states that he is fully qualified for appointment to the post of Supervisor. His initial appointment was made as Salesman, since he was not in a position to

mobilise the sum of Rs.50,000/- towards security deposit. Subsequently, the petitioner deposited a sum of Rs.50,000/- and his case was recommended for appointment to the post of Supervisor. Accordingly, the petitioner was appointed as Supervisor in proceedings dated 20.02.2006. While-so, the respondent-TASMAC issued an order of reversion reverting the writ petitioner from the post of Supervisor to the post of Salesman in proceedings dated 19.07.2013. The said reversion order was challenged by the writ petitioner in WP No.20146 of 2013. This Court allowed the said writ petition on 23.07.2013 and remanded the matter back to the third respondent therein, to provide an opportunity to the writ petitioner and take a decision on merits.

3. Pursuant to the orders passed by this Court, the respondent-TASMAC issued notice to the petitioner providing an opportunity to submit his objections/explanations with reference to the reasons stated for reversion. The petitioner had not responded to the said notice. Thus, the respondent-TASMAC issued the impugned order in proceedings dated

27.01.2015, reverting the writ petitioner again from the post of Supervisor to the post of Salesman.

4. The learned counsel for the petitioner mainly contended that the petitioner is fully qualified to hold the post of Supervisor and he was appointed to the said post based on the deposit made by him and for one vacancy in the post of Supervisor, which was vacant in the Cuddalore District and, out of 50 Salesmen, the petitioner was selected and appointed. Thus he continued in the post of Supervisor. The order of reversion was issued without considering the eligibility of the writ petitioner and thus it is to be set aside.

5. The learned Standing Counsel appearing on behalf of the respondent-TASMAC objected the contentions raised on behalf of the petitioner by stating that there is no rule to promote the Salesman to the post of Supervisor. The writ petitioner was appointed as a Part Time Salesman on consolidated pay and his services were not even regularised and the petitioner was not a regular employee of the respondent-TASMAC. Thus,

he cannot be promoted and the District Manager of the respondent-TASMAC during the relevant point of time erroneously appointed the writ petitioner to the post of Supervisor. In respect of such irregular appointments to the post of Supervisors, the Head of the Department, namely, the Managing Director of Tamil Nadu State Marketing Corporation Ltd., issued directions to revert all those employees who were irregularly appointed to the post of Supervisors.

6. Pursuant to the directions issued by the Managing Director of the respondent-TASMAC, the writ petitioner was reverted to the post of Salesman. The petitioner, no doubt, challenged the said order of reversion issued in the year 2013 by this Court in WP No.20146 of 2013 and the order was set aside and the matter was remanded back to the respondent-TASMAC. Accordingly, the respondent-TASMAC issued notice to the writ petitioner on several occasions.

7. The petitioner at the first occasion requested time of 15 days for submitting his explanations. Even after the expiry of the 15 days time,

the petitioner had not submitted any explanations. Again the respondent issued notice on two occasions affording further opportunities to the writ petitioner to submit his explanations/objections. In spite of several notices issued to the writ petitioner, the petitioner has not even submitted his explanations/objections on the notices. Thus, the respondent-TASMAC issued the impugned order of reversion in proceedings dated 27.01.2015.

8. Considering the facts and circumstances, it is not in dispute that the petitioner was initially appointed as Part Time Salesman on consolidated pay. It is further admitted that the services of the writ petitioner were not regularised and he was not the permanent employee of the Tamil Nadu State Marketing Corporation Limited (TASMAC). The writ petitioner is unable to produce the Rule for promotion to the post of Supervisor.

9. Contrarily, the learned counsel for the petitioner reiterated that it is not a promotion, but an absorption to the post of Supervisor. Even for such an absorption from the post of Salesman, the procedures are to be

followed in accordance with the Rules.

10. The learned Standing Counsel for the respondent-TASMAC made a submission that there is no Rule for such promotions and appointments to the post of Supervisor, are made strictly by following the procedures and by way of direct Recruitment. In the absence of any Rules, the petitioner cannot be absorbed to the post of Supervisor and therefore, the Authorities Competent issued an order of reversion.

11. Curiously even after 19 years from the constitution of the Tamil Nadu State Marketing Corporation Limited (TASMAC), no Rules are framed for appointments and promotions. The appointments are made not under the Constitutional Schemes. The manner in which the learned Standing Counsel for the respondent-TASMAC made submissions regarding the process of appointment, this Court is of an opinion that appointments to the post of Salesman and Supervisors are made by not following the established principles under the Constitutional Scheme.

12. Tamil Nadu State Marketing Corporation Ltd (TASMAC) is a 'State', within the meaning of Article 12 of the Constitution of India. Thus all appointments are to be made under the Constitutional Scheme and by following the Rule of Reservation. Equal opportunity in public employment is the constitutional mandate. In the event of appointing persons without adhering to the Constitutional Schemes, the fundamental rights of lakh and lakh of eligible youth of this Great Nation are infringed and thus the manner in which the appointments are made in the Tamil Nadu State Marketing Corporation Limited (TASMAC) is to be contemned and even after a lapse of 19 years from the date of constitution of the respondent-TASMAC, curiously, the Rules are not framed for the purpose of appointments and to regulate the services of the employees working in the respondent-TASMAC, including the temporary employees. This exactly is the reason for the large scale irregularities, illegalities and corrupt activities in TASMAC.

13. No doubt the respondent-TASMAC is empowered to appoint employees on temporary basis. Even for such appointments, the

procedures are to be followed by providing equal opportunity to all the eligible persons, who all are aspiring to secure public employments. The appointments in the respondent-TASMAC, being a public appointment, equal opportunity is the constitutional mandate and any violations are to be seriously looked into. The Government of Tamil Nadu has to look into these issues seriously for the purpose of regulating the appointments to various posts in the respondent-TASMAC. Contrarily, the appointments are now made at the whims and fancies of the Authorities or at the instance of the political persons. Such appointments, at no circumstances, be approved by the Constitutional Courts. Every such appointments are to be made by conducting the selection process.

14. In the present case, the writ petitioner was appointed as Part Time Temporary Salesman on consolidated pay. He was continuing in the said post as such. He was suddenly absorbed as a Supervisor on depositing a sum of Rs.50,000/-. The petitioner is unable to establish that he was selected by a Competent Committee or he was appointed by following the established procedures contemplated for selection. Contrarily, he was

absorbed as Supervisor only by depositing a sum of Rs.50,000/- and such a procedure cannot be considered as a valid procedure for the purpose of appointment to the post of Supervisor.

15. Even in the absence of Service Rules for appointments, the respondent-TASMAC is bound to follow the established principles, as laid down by the Courts, for selections and appointments through Open Competitive Process. The respondent-TASMAC being a State, is bound to provide equal opportunity to all the eligible candidates either for appointment or for absorption or for promotion. Violation in this regard would result in unconstitutionality and thus this Court is of an opinion that any appointment to the post, whether it is temporary or permanent, the established procedures for selection are to be followed. No doubt, the Rules may not be in force as of now. Even in such circumstances, the procedures to be adopted must be transparent and the principle of equal opportunity enunciated under the Constitution is to be scrupulously followed.

16. In the present case, the petitioner was appointed as Part

Time Temporary Consolidated Pay Salesman and his services were not regularised. While-so, he was directly absorbed as Supervisor, the process of selection conducted by the respondent-TASMAC is not established before this Court.

17. The learned Standing Counsel for the respondent-TASMAC made a submission that no such procedure was followed nor a selection was conducted and the petitioner was directly absorbed as Supervisor in violation of the established procedures and therefore, the Managing Director-first respondent-TASMAC issued appropriate instructions to the District Manager of the respondent-TASMAC to revert the employees, who were appointed without following the procedures.

18. Let us now consider and look into the conduct of the writ petitioner. The writ petitioner who filed an earlier writ petition in WP No.20146 of 2013. this Court allowed the said writ petition and remanded the matter back to the respondent-TASMAC for fresh consideration. The respondent-Corporation issued notice on 03.06.2014, granting 15 days time

to the petitioner to submit his explanations/objections on the show cause notice. The writ petitioner made a request to grant another 15 days time. Thus, the respondent-TASMAC have granted another 15 days time for submitting his explanations. But the writ petitioner has failed to submit any explanations. Thereafter, the respondent-TASMAC had sent another notice in proceedings dated 05.06.2014. The said notice was also not responded, despite the fact that the notice was directly served on the writ petitioner. Thereafter, two show cause notices were issued to the writ petitioner on 03.06.2014 and 26.01.2015. Since the petitioner had not responded to the show cause notices for more than three occasions, the respondent-TASMAC issued the impugned order in proceedings dated 27.01.2015 and reverting the writ petitioner from the post of Supervisor to the post of Salesman.

19. The Part Time Temporary Salesman is not entitled for promotion to the post of Supervisor. Though the petitioner states that he was absorbed directly as Supervisor, he could not establish any Rule for such absorption of temporary part time employees from the post of Salesman to the post of Supervisor.

20. The learned Standing Counsel for the respondent-TASMAC has stated that there is no procedure to absorb the Salesman as Supervisor and the post of Supervisor is filled up by way of direct recruitment by inviting applications from the eligible candidates by issuing Recruitment Notifications. Thus the procedures followed for appointment to the post of Supervisor are that the respondent-TASMAC is publishing the Recruitment Notifications and after inviting applications from the eligible candidates, the selection is made.

21. However, in the present case, the petitioner was directly absorbed as Supervisor without following any established procedures contemplated and further more, the petitioner has failed to submit his explanations, despite the fact that show cause notices were issued on four occasions.

22. This being the factum, the absorption/promotion of the writ petitioner to the post of Supervisor is perverse and not in consonance with

the Rules or the established principles. Thus the decision taken by the Head of the Department, namely, the Managing Director of Tamil Nadu State Marketing Corporation Limited (TASMAC), to revert the writ petitioner from the post of Supervisor to the post of Salesman, is in accordance with law and there is no infirmity.

23. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

10-08-2022

Index : Yes/No.
Internet : Yes/No.
Speaking Order/Non-Speaking Order.
Svn

To

- 1.The Managing Director,
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WP No.3359 of 2015

S.M.SUBRAMANIAM, J.

Svn

WP 3359 of 2015

10-08-2022