

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29.09.2015

Coram:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

W.P.No.30643 of 2015

S.Sankar Ganesh

... Petitioner

vs.

1. The Managing Director,
Tamil Nadu State Marketing
Corporation Ltd.,
CMDA Tower II, IV Floor,
Gandhi Irwin Road,
Egmore, Chennai - 8.
2. The Senior Regional Manager,
Tamil Nadu State Marketing
Corporation Ltd., (Salem Region),
Salem.
3. The District Manager,
Tamil Nadu State Marketing
Corporation Ltd.,
Namakkal District.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the proceedings of the third respondent in Na.Ka.No.3154/P1/CV/2014 dated 22.04.2015 and quash the same in respect of the petitioner herein and consequently direct the respondents herein to reinstate the petitioner with all consequential and attendant benefits.

For Petitioner : Mr.B.K.Girish Neelkantan

For Respondents : Mr.S.Muthuraj

ORDER

By consent, the writ petition itself is taken up for final disposal.

2. On 25.12.2014, the retail shop No.6226, in which the petitioner was working as a Supervisor, was subjected to surprise inspection by the flying squad and it was alleged that loose sale was effected by adding water in Indian Made Foreign Liquor. It is the specific case of the petitioner that on that day he was unwell and even prior to that, he was taking treatment and he has availed leave for two days on 25.12.2014 and 26.12.2014 and as such, there is no chance that he has committed the above act of delinquency on that particular day. The petitioner was initially placed under suspension and he was issued with a charge memo on 12.01.2015 and ultimately, the disciplinary proceedings has culminated in the order of dismissal from service, vide order dated 22.4.2015, passed by the third respondent and challenging the legality of the same, the present writ petition came to be filed.

3. The learned counsel for the petitioner would submit that the explanation/written statement/defence submitted by the petitioner have not at all been taken into consideration by the respondents and admittedly, on the date of surprise inspection/raid on 25.12.2014, the petitioner did not attend duty, as he availed leave and hence, prays for quashing of the impugned order of dismissal from service and for a consequential order of re-instatement with all attendant benefits.

4. Per contra, Mr.S.Muthuraj, learned counsel, who accepts notice on behalf of respondents 1 to 3 has submitted that even in the impugned order of dismissal, it has been indicated that the petitioner has preferred departmental appeal before the Senior Regional Manager, Salem and in the light of the effective alternative remedy, the writ petition is not maintainable and prays dismissal of the writ petition.

5. This Court considered the rival submissions and also perused the materials.

6. In the impugned order it has been indicated that the petitioner is having a remedy of departmental appeal to the Senior Regional Manager. The points urged by the learned counsel for the petitioner would revolve on adjudication of factual disputes and therefore, this Court, in exercise of jurisdiction under Article 226 of the Constitution of India, is not in a position to venture into the same.

7. Though the petitioner prayed for a larger relief, this Court, in the light of the above facts and circumstances, permits the petitioner to file departmental appeal to the Senior Regional Manager, Salem, within a period of two weeks from the date of receipt

of a copy of this order and the said official, on receipt of the appeal, shall entertain the same, if it is otherwise in order, without raising the issue of limitation and pass orders on merits and in accordance with law within a period of eight weeks thereafter and communicate the decision taken to the petitioner.

8. The writ petition is disposed of accordingly. No costs.

-Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

msk

To

1. The Managing Director,
Tamil Nadu State Marketing
Corporation Ltd.,
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2. The Senior Regional Manager,
Tamil Nadu State Marketing
Corporation Ltd., (Salem Region),
Salem.
3. The District Manager,
Tamil Nadu State Marketing
Corporation Ltd.,
Namakkal District.

+1 cc to Mr.B.K.Girish Neelakantan, Advocate (sr.53158)

pa(co)
cp 01/10/2015

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