

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12.08.2015

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WP.No.367/2015 & MP.No.1/2015

M.Jaishankar

..Petitioner

Versus

1.The District Manager [Central]
Tamil Nadu State Marketing Corporation
Ltd., [TASMAC], No.B4, Ambattur
Industrial Estate, Ambattur, Chennai-58
Tamil Nadu.

2.The General Manager
Tamil Nadu State Marketing Corporation
Ltd., [TASMAC], Chennai Division
Anna Salai, Chennai-2, Tamil Nadu.

..Respondents

Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus calling for the records of the 1st respondent relating to the impugned order Sae.Mu.Ka.No.A2/603/2013 dated 23.01.2014 and quash the same and consequently direct the respondents to reinstate the petitioner in his service as as Supervisor in the TASMAC shop with continuity of service, Back wages, and all other attendant benefits.

For Petitioner : Mr.P.R.Thiruneelakandan

For RR1&2 : Mr.S.Muthuraj

ORDER

Heard Mr.P.R.Thiruneelakandan, learned counsel for the petitioner and Mr.S.Muthuraj, learned counsel for the respondents and though the miscellaneous petition is listed in the cause list, with the consent of the learned counsel on either side, the writ petition itself is disposed of.

2.This petition has been filed by the petitioner / Supervisor of the Tasmac shop bearing Shop No.290, at Nelson Manickam Road, Choolaimedu, Chennai. By the impugned order, the petitioner has been terminated from service. The allegation against the petitioner is that there was a shortage of cash and initially a show cause notice was issued to the petitioner on 06.09.2013. The petitioner would state that the officials of the department advised the petitioner to remit the amount. Heeding to the advise of the superior officers and without admitting the guilt, the amount was remitted by the petitioner and thereafter, he has been terminated from service. It is submitted by the learned counsel for the petitioner that though a charge memo was issued and an enquiry officer was appointed, no enquiry worthwhile was conducted and the order of termination was passed without proper application of mind and the said punishment is also disproportionate to the alleged delinquency. Learned counsel for the petitioner submitted that mere remittance of the amount by itself would not, tantamount, to accepting the charge and in this regard, the learned counsel placed reliance on the decision of this Court reported in [2004] 4 M.L.J. 320 [R.Venkataraman Vs. The New India Assurance Co. Ltd., represented by its Regional Manager, Coimbatore and others] and also on the Judgment of the Division Bench of this Court reported in [2009] 7 M.L.J. 17 [Chairman and Managing Director, Tamil Nadu Small Industries Development Corporation Ltd., Madras and others Vs. M.Jagadeesan and others].

3.Per contra, the learned counsel for the respondents would submit that after conducting an enquiry, the order of termination was passed and proper procedure was followed. It is further submitted that the petitioner has filed an appeal before the 2nd respondent and even before the appeal petition is considered by the 2nd respondent, the petitioner has rushed to this Court.

4.After hearing the learned counsels for the parties and perusing the materials placed on record, this Court is of the view that when an appeal is pending before the General Manager, viz., the 2nd respondent herein, it would be proper for the petitioner to exhaust the appellate remedy.

5.Learned counsel for the respondents, on instructions, would submit that the 2nd respondent would consider the appeal petition. While doing so, the 2nd respondent should take note of the decisions rendered by this Court in K.VENKATARAMAN's case and M.JAGADEESAN's case [cited supra], wherein the legal position which has been stated is that the letter of admission should unequivocal and unambiguous and merely because the petitioner has remitted the amount, that by itself would not lead to an inference that he has admitted the charge. The specific case of the petitioner is that he was advised

by his superior officers to remit the amount and without prejudice to his rights he has remitted the amount. The submission made by the learned counsel for the petitioner is tenor.

6.In the light of the above, the writ petition is disposed of directing the 2nd respondent to consider the petitioner's appeal petition on merits and in accordance with law, after affording an opportunity of personal hearing to the petitioner and pass orders within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

AP

To

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Tamil Nadu.

2.The General Manager
Tamil Nadu State Marketing Corporation
Ltd., [TASMAC], Chennai Division
Anna Salai, Chennai-2, Tamil Nadu.

+1cc to Mr.S. Muthuraj, Advocate, S.R.No.42622

+1cc to Mr.P.R. Thiruneelakandan, Advocate, S.R.No.42250

GP(CO)

EU(25/08/2015)

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