

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2016

CORAM:

HON'BLE MR.JUSTICE NOOTY. RAMAMOHANA RAO
AND
THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

WRIT APPEAL No.1557 of 2016
and
C.M.P.No.19144 of 2016

T.Rajan

... Appellant

Versus

1. The Managing Director,
Tamil Nadu State Marketing Corporation
Limited, CMDA Tower II, IV Floor,
Gandhi Irwin Road,
Egmore, Chennai - 600 008.
 2. The Senior Regional Manager,
Tamil Nadu State Marketing Corporation
Limited, Coimbatore (Region),
Coimbatore.
 3. The District Manager,
Tamil Nadu State Marketing Corporation
Udhagamandalam, Nilgiris District.
- ... Respondents

Writ Appeal filed under Clause 15 of Letters Patent against the order dated 15.03.2016, made in W.P.No.9465 of 2016 passed by the learned single Judge.

W.P.No.9465 of 2016 : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, Calling for the entire records which culminated in issuing the proceedings in Na.Ka. 62/2015 A3 dated 14.12.2015 and Na.Ka. 62/2015 A4 dated 29.01.2016 on the file of the Third Respondent 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 Appellant : Mr.B.K.Girish Neelakantan

JUDGMENT
(DELIVERED BY NOOTY.RAMAMOHANA RAO, J)

This Appeal is preferred by the Writ Petitioner under Clause 15 of the Letters Patent, against the Order rendered by the learned single Judge dismissing the writ petition preferred by him.

2. In view of the order which we have proposed to pass now, perhaps it may not be relevant to go into the facts in detail, since it has come to our notice, the writ petitioner while working as a supervisor at one of the retail outlets attached to the Tamil Nadu State Marketing Corporation Limited at Udhagamandalam, is alleged to have misappropriated the sales money to the tune of Rs.5,41,159/-belonging to the Corporation, along with two other employees of the Corporation. All of them have been proceeded against, as a measure of discipline and the enquiry officer has found the writ petitioner/appellant guilty of the allegation of misappropriation.

3. A contention is canvassed by the learned counsel for the writ petitioner/appellant that the alleged amount of misappropriation has been remitted very promptly to the Corporation account by the writ petitioner/appellant and other delinquents and hence the crux of the allegation against them is completely neutralized.

4. We are not at all impressed by this submission. It is for the petitioner to establish as to the date on which money was realised and as to how, the same is remitted in time, to the account the Corporation. All factual controversies are required to be agitated before the Appellate/Revisional Authorities. Appellate/Revisional Authorities are empowered to examine the issue not only from the perspective of fact situation prevailing, but also with regard to the questions of law that arise for consideration in such an appeal/revision. It is thereafter, exercise of judicial review under Article 226 can be more effectively carried out. It is appropriate to notice that in exercise of judicial review, the court is not concerned, so much about the decision part of it, but it is concerned with the decision making process only. Therefore, against the order of punishment imposed by the District Manager, Tamil Nadu State Marketing Corporation, Udhagamandalam on 29.01.2016, an appeal ought to have been preferred raising all factual controversies and also legal issues if any available.

5. The only reason that is now assigned for not preferring any such appeal is, that the disciplinary proceedings have been initiated by the District Manager, Tamil Nadu State Marketing

Corporation, Udthagamandalam, pursuant to the inspection carried out by the Senior Regional Manager who is the Appellate Authority against the orders of punishment passed by the District Manager. In such an event, the appeal itself should have been preferred to the Managing Director of the Corporation, urging him to exercise the powers of the Appellate Authority, as in the peculiar facts of the case, the appellate powers cannot be exercised by the Senior Regional Manager. Then in such a case, the Managing Director of the Corporation, who is the Revisional Authority against the orders of the Senior Regional Manager, shall examine the entire record and decide the questions of fact and law that fall for consideration in such an appeal. The learned single Judge in fact also preserved the liberty of preferring such an appeal, to the writ petitioner.

6. Therefore, excepting to the extent of the above clarification, we see no reason to interfere with the order passed by the learned single Judge and accordingly, we dismiss the writ appeal.

7. However, the learned counsel for the appellant would urge that the appellant may be granted a reasonable period of time for preferring the appeal to the Managing Director of the Corporation. In case, the appellant prefers any such appeal on or before 26th December, 2016, to the Managing Director of the Corporation, the Managing Director may not reject the same only on a technical ground that such an appeal should have been preferred within the permissible time limit. Instead, examine the said appeal and pass appropriate orders on merits as expeditiously as possible, preferably within a period of six months from the date of receipt of the appeal from the writ petitioner/appellant.

8. The writ appeal stands dismissed. Consequently, C.M.P.No.19144 of 2016 is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

gr

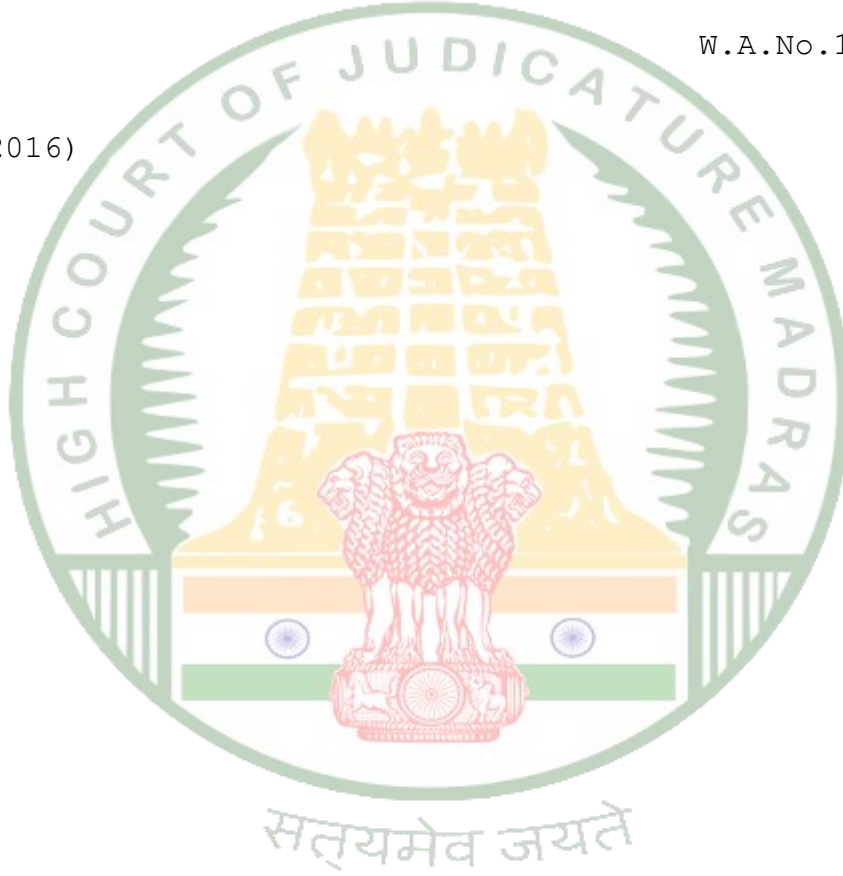
1. The Managing Director,
Tamil Nadu State Marketing Corporation
Limited, CMDA Tower II, IV Floor,
Gandhi Irwin Road,
Egmore, Chennai - 600 008.

2. The Senior Regional Manager,
Tamil Nadu State Marketing Corporation
Limited, Coimbatore (Region),
Coimbatore.
3. The District Manager,
Tamil Nadu State Marketing Corporation
Udhagamandalam, Nilgiris District.

+1cc to Mr.B.K.Girish Neelakantan, Advocate, S.R.No.71766

W.A.No.1557 of 2016

RSY(CO)
CA(20/12/2016)



WEB COPY