

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2018

CORAM

THE HONOURABLE Mr.JUSTICE D.KRISHNAKUMAR

W.P.No.28323 of 2011
and M.P.No.1 of 2011

P.Rajasekar

... Petitioner

Vs.

1. The District Manager I,
Tamilnadu State Marketing
Corporation Ltd. (TASMAC),
Coimbatore Division,
Coimbatore, Tamilnadu.

... Respondent

Prayer:

The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Mandamus, directing the respondent to reinstate the petitioner in his service as Salesman in the TASMAC, at Coimbatore Division, with continuity of service, backwages and all attendant benefits.

For Petitioner : Mr.P.R.Thiruneelakandan
For Respondent : Mr.K.Sathishkumar

O R D E R

According to the petitioner, the petitioner was appointed as a Salesman in TASMAC shop at Coimbatore Division through employment exchange. He was not reported to duty from 1.2.2008 to 13.6.2009 and he orally intimated to the Shop Supervisor. The petitioner reported to duty on 1.7.2009, but the respondent denied employment to the petitioner, stating that he was absented from duty for more than one year without permission and the petitioner was required to produce medical certificate for his long absent. On 10.8.2011, the petitioner produced medical certificate and requested the respondent to provide him duty, but, the petitioner was not permitted to join duty. Hence, the petitioner has filed the present writ petition before this Court for the aforesaid prayer.

2 According to the learned counsel for the petitioner, without holding any enquiry on the unauthorised absence of the petitioner and by violating the principles of natural justice, the petitioner was denied employment. If any misconduct on the part of the employee, the respondent has to follow the principles of natural justice by conducting enquiry and pass final orders. In the absence of any enquiry and without following the principles of natural justice, the respondent has no right to deny employment to the petitioner.

3 The learned counsel appearing for the respondent would submit that at the outset, the writ petition is not maintainable before this Court under Article 226 of the Constitution of India. The petitioner was appointed as Salesman on consolidated pay of Rs.1000/- per month and he was posted in shop No.1616 and later he was transferred to shop No.2236 for administrative reason. The petitioner without any intimation to the authority concerned, absent from duty from 1.2.2008 and thereafter, he did not turn up for duty for almost 16 months. Thereafter, the petitioner approached the authority concerned, but the petitioner was not permitted to join duty, by stating that without permission, he was unauthorised absent from duty from 1.2.2008 to 30.6.2009. The petitioner now produced medical certificate. The genuineness of the medical certificate is disputed by the respondent Corporation.

4 Admittedly, the petitioner being a workman under the Industrial Dispute Act, has to approach Labour Court for the relief as prayed for in the writ petition. Therefore, the writ petition is not maintainable before this Court. However, considering the pendency of the writ petition, i.e. for more than seven years, it is appropriate for this Court to pass the following order:

i) The petitioner is permitted to file an application before the Conciliation Officer, Labour Court concerned, within a period of two weeks from the date of receipt of a copy of this order.

ii) On receipt of such application, The Conciliation Officer shall pass appropriate orders under the provisions of the Act as expeditiously as possible, without insisting upon limitation aspect due to pendency of writ petition before this Court.

5. In fine, the writ petition stands dismissed with the above directions. No Costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

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Sub Assistant Registrar

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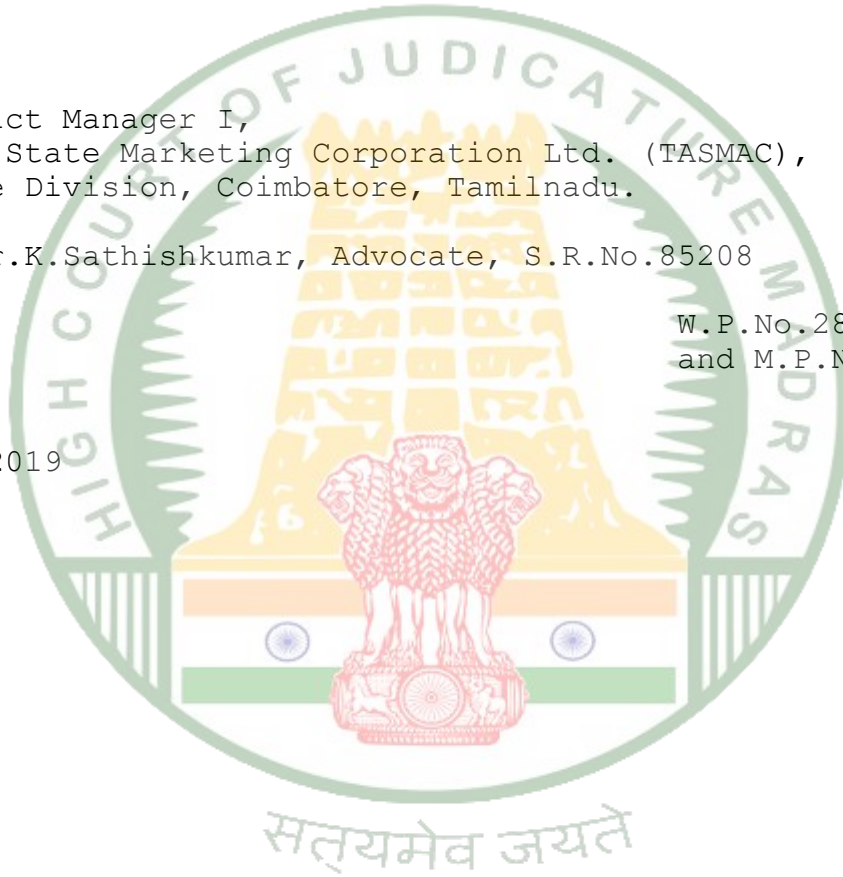
To

The District Manager I,
Tamilnadu State Marketing Corporation Ltd. (TASMAC),
Coimbatore Division, Coimbatore, Tamilnadu.

+1cc to Mr.K.Sathishkumar, Advocate, S.R.No.85208

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PP(CO)
CS/18/01/2019



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