

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 23.01.2018

Coram

The Honourable Mr.Justice V.PARTHIBAN

W.P. No.2830 of 2012

D.Settu

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Petitioner

versus

1. The Managing Director,
Tamil Nadu State Marketing Corporation Ltd.,
(TASMAC),
Chennai-600 008.

2.The Senior Regional Manager,
TASMAC Regional Office,
Salem-636 016.

3.The District Manager,
Tamilnadu State Marketing Corporation Ltd.,
(TASMAC),
Vellore-632 001.

..

Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorarified Mandamus, calling for the records of the 3rd respondent passed in Se.Mu.Na.Ka.No.A2/642(1)/CV/2010 dated 17.12.2011 and to quash the same and directing the 3d respondent to reinstate the petitioner in service with effect from 02.04.2011 (on the date of earlier order of dismissal) with continuity of service and back wages till the petitioner is reinstated in service.

For Petitioner : Mr.P.Suresh Babu for
M/s.A.Dhevi

For Respondents : Mr.D.Arumugarajan

ORDER

The present writ petition has been filed, seeking for the following relief:

"To issue of Writ of Certiorarified Mandamus, calling for the records of the 3rd respondent passed in Se.Mu.Na.Ka.No.A2/642(1)/CV/2010 dated 17.12.2011 and to quash the same

and directing the 3d respondent to reinstate the petitioner in service with effect from 02.04.2011 (on the date of earlier order of dismissal) with continuity of service and back wages till the petitioner is reinstated in service..

2. The petitioner was employee in the third respondent/Corporation. He was placed under suspension on 30.06.2010 in contemplation of disciplinary action. Thereafter, a charge memo was issued and an enquiry was also ordered and on conclusion of the enquiry, the petitioner was dismissed from service on 02.04.2011. According to him, the order issued against the petitioner was totally illegal, arbitrary and unsustainable in view of the fact that there was no semblance of enquiry conducted into the charges. However, the petitioner preferred an appeal to the second respondent and the second respondent, after considering the appeal, set aside the order of dismissal passed by the third respondent dated 05.09.2011 and directed the third respondent to conduct proper enquiry and pass suitable orders.

3. Subsequently, a charge memo was issued on 04.11.2011 and an enquiry was also conducted. According to the petitioner, in the subsequent charge memo, few more allegations were added, which were not originally part of the charges framed earlier. Be that as it may, the petitioner is also aggrieved by the action of the respondent Corporation in not following proper procedure even after the same was set aside by the appellate authority. According to the petitioner, no witnesses were examined and no documents were marked and the enquiry was concluded holding that the charges proved, however, a copy of the report was not furnished. On the basis of flawed enquiry, the third respondent passed an order on 17.12.2011 once again dismissing the petitioner from service. However, without exhausting the appeal remedy available to the petitioner, the petitioner has approached this Court seeking to challenge the order of disciplinary authority dated 17.12.2011.

4. Upon notice, Mr.D.Arumugarajan, learned Standing Counsel entered appearance for the respondents and filed counter affidavit.

5. Although the petitioner has raised several grounds attacking the impugned order, stating that no procedure was followed before dismissing him from service, this Court cannot straight away deal with those issues unless the same were placed before the appellate authority for consideration. In this case, no valid reasons were disclosed as to why the appellate authority was not approached into the matter, except saying no useful purpose would be served. When an effective remedy of

appeal is provided under the statute, it is not open to the petitioner to approach this Court without exhausting such remedy. Needless to mention that the appellate authority is the person to appreciate any lacunae in conducting the enquiry and passing of the order by the disciplinary authority.

6.It is therefore, in fitness of things, the petitioner ought to have preferred an appeal before the appellate authority against the order of disciplinary authority, dated 17.02.2011, under the provisions of the statute and the appellate authority can apply his mind on the subject matter both on facts as well as legal position and come to a definite conclusion with regard to the conduct of the petitioner. Such being the case, the petitioner has invoked jurisdiction of this Court directly without exhausting the efficacious alternative remedy available to him. Therefore, this Court is of the considered view that the second respondent is to be directed to dispose of the appeal to be preferred by the petitioner in this regard. The writ petition is disposed of with the following direction:-

The petitioner is directed to file an appeal before the second respondent within a period of one week from the date of receipt of a copy of this order and there upon, the second respondent is directed to dispose of the appeal, within a period of four weeks from the date of receipt of such appeal, on merits and in accordance with law. Any decision taken by the appellate authority shall be communicated to the petitioner herein.

7.The writ petition is disposed of on the above terms. No costs.

Sd/-
Asst.Registrar (CCC)

/true copy/

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Sub Asst. Registrar

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To

1. The Managing Director,
Tamil Nadu State Marketing Corporation Ltd.,
(TASMAC),
Chennai-600 008.

2.The Senior Regional Manager,
TASMAC Regional Office,
Salem-636 016.

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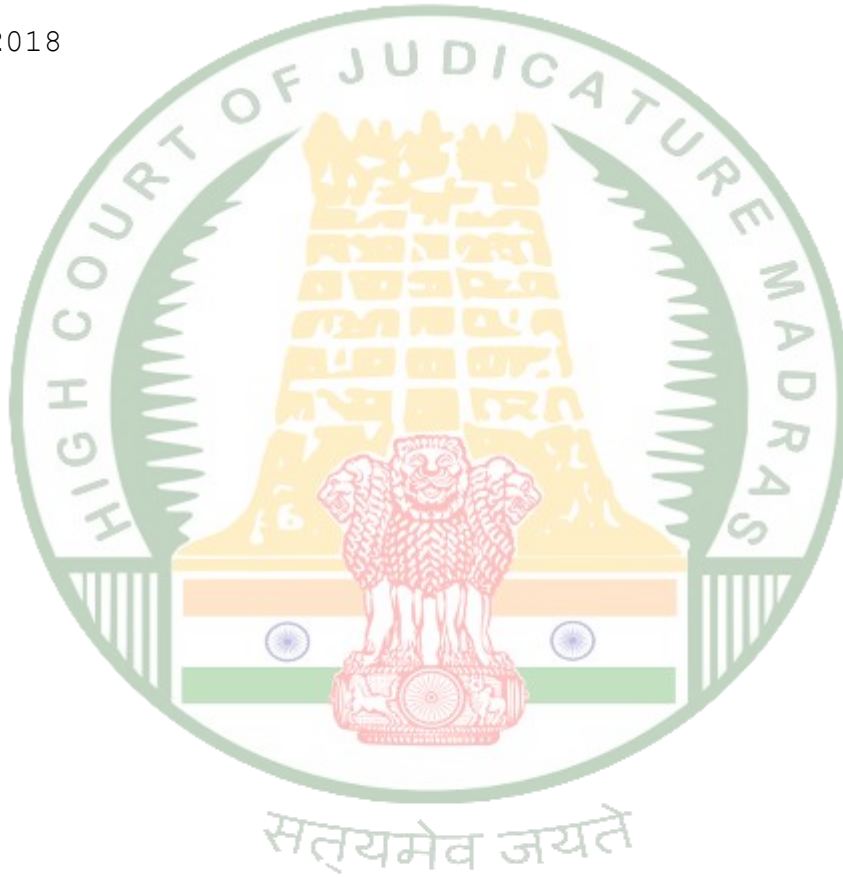
3.The District Manager,
Tamilnadu State Marketing Corporation Ltd.,
(TASMAC),
Vellore-632 001.

+ 1 cc to M/s.A.Dhevi Advocate,SR.5046

+ 1 cc to Mr.D.Arumugarajan Advocate,SR.5193

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