

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2018

CORAM:

THE HONOURABLE MR. JUSTICE SATRUGHANA PUJAHARI

W.P.No.9894 of 2016

K.Shanmugasundaram

.. Petitioner

Vs

1. The Senior Regional Manager,
Tamilnadu State Marketing
Corporation Ltd, (TASMAC),
Coimbatore.
2. The District Manager,
Tamilnadu State Marketing
Corporation Ltd, (TASMAC),
Tiruppur, Tiruppur District,
Tamil Nadu.

.. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the respondents in relating to the impugned order of the first respondent bearing reference Na.Ka.876/2015/A1 dated 28.12.2015 confirming the order passed by the second respondent bearing reference in Na.Ka.No.933/2015/A dated 08.07.2015 and quash the same as arbitrary, illegal, consequently direct the respondents to reinstate the petitioner in his service as a 'Salesman' in the TASMAC shop with continuity of service, back wages and all other attendant benefits.

For Petitioner : Mr.P.R.Thiruneelakandan
For Respondents : Mr.K.Sathishkumar, SC

ORDER

The grievance of the petitioner in this writ petition is that while working as Salesman under the respondent he remained absent from duty from 31.08.2009 to 22.07.2009 for health reasons. i.e. he met with an accident and suffered from serious injuries. He however, had not intimated the same to the authority. After recovery from the injuries he approached the authority /respondent to allow him to work but denied with the same in spite of repeated representations made at different

point of time i.e. starting from 28.02.2009 till 05.07.2012. Hence, he approached this Court by filing a petition in W.P.No.24265 of 2013 challenging such apathetical attitude of the respondent/ employer. This Court has disposed of the same vide order dated 08.08.2004 to approach the appropriate Industrial Forum for non-employment, giving liberty to the respondent reinstating the petitioner and initiate disciplinary proceeding for such unauthorised absence. Thereafter, the petitioner was allowed to work in TASMACH Shop.No.2309, Tiruppur District but a charge memo was issued to him on 27.04.2015 for his unauthorised absence, the petitioner accordingly issued an explanation to the charge memo and an enquiry officer was appointed but without making further enquiry in accordance with the law though the petitioner has denied the charge and no material was placed before the enquiry officer to substantiate the charge, he was terminated from service on 08.07.2015 by the respondent against which, the petitioner had made an appeal before the first respondent. The first respondent without appreciating the fact that no proper enquiry was conducted, confirmed such order of termination, hence this writ petition challenging the finding on the misconduct as well as the punishment imposed. According to the petitioner the same being contrary to law inasmuch as without any material on the misconduct alleged and without conducting the enquiry giving the appropriate opportunity of hearing, he was terminated from service and also the punishment being shockingly disproportionate, the same cannot be sustained.

2. No counter affidavit has been filed in this writ petition in spite of opportunity given.

3. However, during the course of hearing, the learned counsel for the petitioner submits that the petitioner does not challenge the finding on the delinquency that is the misconduct alleged which stated to have been proved, but submits that the respondents be directed to revisit the punishment by punishment other than removal inasmuch as the punishment imposed is shockingly disproportionate.

4. The learned counsel appearing for the respondents submits that the petitioner having remained unauthorisedly absent appears to be not an willing worker and as such the punishment of removal imposed on him cannot be said to be disproportionate lest shockingly disproportionate. Since the penalty imposed is not shockingly disproportionate, this Court should be loath in interfering with the same in exercise of the writ jurisdiction.

5. After hearing the counsel for the parties and going through the materials on record, especially the punishment of removal, which has been imposed on the petitioner for remaining

unauthorisedly absent, this Court is of the view that the same is shockingly disproportionate to the mis-conduct proved. There being no proportionality of the punishment imposed and also during the course of hearing, the counsel for the petitioner submits that the petitioner shall abandon his right of backwages for the period he remained out of work in the event of his reinstatement by substituting of the same by any other suitable punishment, this Court disposes of this writ petition with the direction to the respondents to revisit the punishment of removal by any other punishment reinstating the petitioner into service, within four weeks of receipt of a copy of this Order. However, the petitioner is not entitled to any backwages on such reinstatement.

6. With the aforesaid order this writ petition stands disposed of. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

dn/lok

To

1. The Senior Regional Manager,
Tamilnadu State Marketing
Corporation Ltd, (TASMAC),
Coimbatore.

2.The District Manager,
Tamilnadu State Marketing
Corporation Ltd, (TASMAC),
Tiruppur, Tiruppur District,
Tamil Nadu.

+1cc to Mr.P.R.Thiruneelakandan, Advocate, S.R.No.51981

+1cc to Mr.K.Sathish Kumar, Advocate, S.R.No.52053

W.P.No.9894 of 2016

SJ(CO)
GSP(04/09/2018)