

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.07.2019

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

WP.No.19521 of 2019 and
W.M.P.Nos.19008 & 19013 of 2019

S.Karthikeyan

...Petitioner

Vs.

1. Tamil Nadu State Marketing
Corporation Ltd.,
rep. by its Managing Director,
CMDA Tower-II,
4th Floor, Gandhi Irwin Bridge Road,
Egmore, Chennai-08.

2. The Senior Regional Manager,
Tamil Nadu State Marketing
Corporation Ltd., Salem Region,
56, Brindavan Road,
Salem-636 016.

3. The District Manager,
Vellore District,
Tamil Nadu State Marketing
Corporation Ltd.,
Kaatpadi Road,
Vellore District.

4. S.Umapathi

...Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the orders in Na.Ka. No.R2/ 11057/ CV/ 2019 dated 12.02.2019, 23.04.2019 and 27.05.2019 passed by the 3rd respondent asking the petitioner to remit a sum of Rs.15,35,830/- towards shortage of cash and stock on joint and several basis and to submit a chellan to the office of the 3rd respondent, quash the same and for a direction to reinstate the petitioner with effect from 23.01.2019 with continuity of service back wages and all other attendant benefits and not to insist for payment of the above amount either separately or on a joint and several liability basis towards shortage of cash and stock without holding any

joint enquiry against the petitioner and the 4th respondent and another Salesman and also without proving the charge and his responsibility and liability for the shortage of cash and stock for payment of any amount, as per the Tamil Nadu Model Standing Orders.

For Petitioner : Mr.V.Ajoy Khose

For Respondents : Mr.Sathish Kumar for TASMACH

ORDER

This Writ Petition has been filed by the petitioner, challenging the impugned orders dated 23.04.2019 and 27.05.2019 passed by the 3rd respondent herein, directing the petitioner to remit a sum of Rs.15,35,830/- towards shortage of cash and stock, which according to the 3rd respondent, the petitioner has misappropriated.

2. The impugned orders passed against the petitioner are in relation to the disciplinary action initiated against the petitioner for certain lapses committed by him while he was working as employee of the respondent Corporation. According to the allegations contained in the impugned orders, the funds collected from the sales of the shop, was not properly remitted and the amount was misused for his personal gain by the petitioner. After quantifying the amount of loss by the Corporation, the petitioner was directed to remit a sum of Rs.15,35,830/- towards alleged misappropriation of funds with interest and also fine. The petitioner was also directed to submit his explanation to the allegations. The grievance of the petitioner is that without conducting an enquiry, such a huge amount is sought to be recovered from him. According to the petitioner, he is innocent and therefore, he is unable to make the loss good which according to the Corporation, has been misappropriated. If only a proper enquiry is conducted, the petitioner's innocence would be established. Therefore, the petitioner is challenging the impugned orders with a direction to reinstate him in service with effect from 23.01.2019 since he has been kept out of the employment in view of the serious allegations attributed against him.

3. This Court, at the time of admission, has pointed out to the learned counsel appearing for the petitioner that the allegations against the petitioner are quite serious in nature, relating to misappropriation of huge funds belonging to the respondent Corporation and therefore, no interference is called for. However, this Court at the same time, is in agreement with the learned counsel for the petitioner that the respondent Corporation cannot direct the petitioner to pay such a huge amount without conducting a proper enquiry and establishing the charge of misappropriation against the petitioner. It is not

open to the Corporation to direct the petitioner to pay the amount first and then seek for explanation. Such action on the part of the Corporation is like putting the cart before the horse.

4. In the above circumstances, in the fitness of things, this Court is of the view that the respondent Corporation may proceed against the petitioner and conduct a proper enquiry in terms of the established principles of natural justice and also in terms of any service regulations as applicable to the petitioner in regard to the allegations levelled against the petitioner. However, till the conclusion of the disciplinary proceedings, the respondent Corporation cannot be allowed to insist upon the payment of the alleged loss caused to the Corporation since that would squarely depend upon the outcome of the disciplinary proceedings initiated against the petitioner.

5. For the above said reasons, the respondent Corporation is restrained from directing the petitioner to pay any alleged loss towards misappropriation of Corporation funds which is the subject matter of adjudication pending finalization of the disciplinary proceedings in the matter. The respondent Corporation is otherwise free to proceed with the disciplinary action against the petitioner after affording reasonable opportunity to him and conclude the disciplinary action within a period of six months from the date of receipt of a copy of this order.

In view of the above, the impugned orders in in Na.Ka. No.R2/ 11057/ CV/ 2019 dated 12.02.2019, 23.04.2019 and 27.05.2019 passed by the 3rd respondent, are hereby set aside to the extent indicated above.

The Writ Petition is partly allowed. No costs. Consequently, connected WMPs are closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

Suk

To

1.The Managing Director,
Tamil Nadu State Marketing
Corporation Ltd.,
CMDA Tower-II,
4th Floor, Gandhi Irwin Bridge Road,
Egmore, Chennai-08.

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2. The Senior Regional Manager,
Tamil Nadu State Marketing
Corporation Ltd., Salem Region,
56, Brindavan Road,
Salem-636 016.

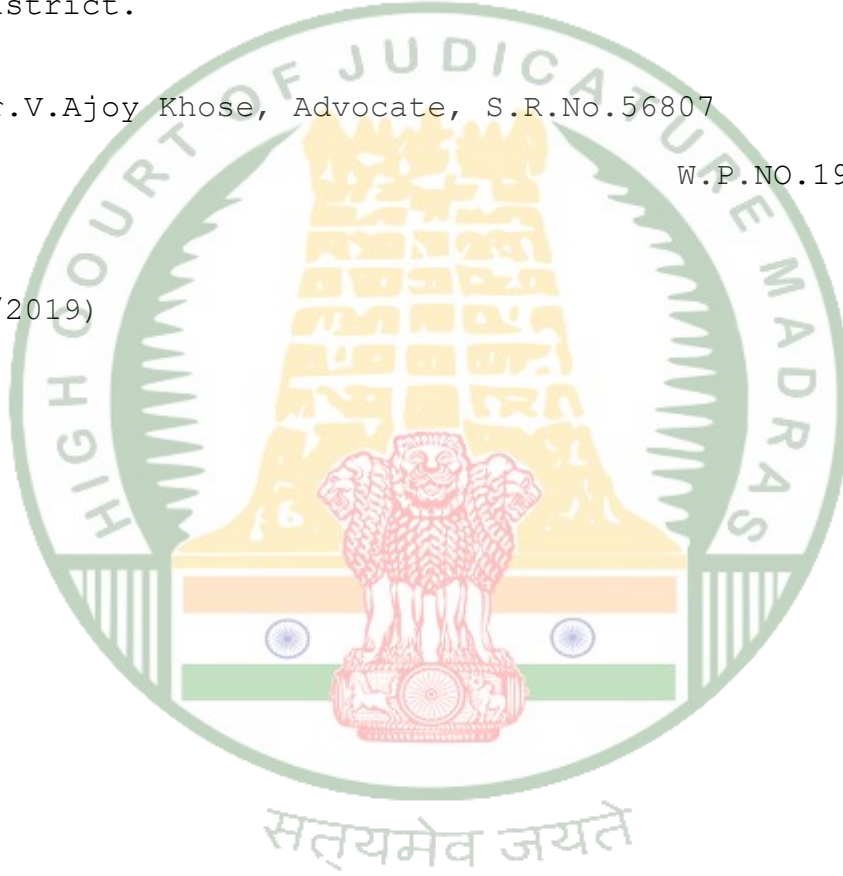
3. The District Manager,
Vellore District,
Tamil Nadu State Marketing
Corporation Ltd.,
Kaatpadi Road,
Vellore District.

+1cc to Mr.V.Ajoy Khose, Advocate, S.R.No.56807

W.P.NO.19521 OF 2019

MP (CO)

RRS (30/08/2019)



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