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IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 05.12.2019
CORAM
THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH
W.P No.33313 of 2019
W.M.P Nos.33768 & 33769 of 2019

V.Vijayakumar

Petitioner

vs.

The District Manager
Tamilnadu State Marketing Corporation Ltd.,
Nagapattinam District at
Industrial Estate, Thirubhuvanam,
Thiruvidaimaruthur Taluk,
Thanjavur District.

Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records from the respondent relating to the order bearing Na.Ka.No.286/2016/A, dated 06.05.2016 and quash the same and consequently direct the respondent to reinstate the petitioner in service with all the attendant benefits.

For Petitioner : Mr.S.Ayyathurai

For Respondent : Mr.N.Damodaran
Standing Counsel

ORDER

This writ petition has been filed challenging the order of suspension passed by the respondent dated 06.05.2016.

2.The petitioner was working as a Salesman in the Tamil Nadu State Marketing Corporation (TASMAC) shop at Vizhundhamavadi, Nagapattinam District. A fire accident took place on 06.05.2016 and an FIR came to be registered as an accidental fire on the same date. Subsequently, during the course of investigation, it was found that the shop has been set on fire by the petitioner, another Salesman V.Radhakrishnan and Supervisor Sivadas, in order to cover up a misappropriation that was committed in the shop. All the three were arrested and remanded to judicial custody. Hence on the same day an order of suspension came to be passed and all the three of them were suspended by virtue of the common suspension order.

3.Mr.S.Ayyathurai, the learned counsel for the petitioner submitted that suspension continues for the petitioner till



today and the criminal case is also pending. The learned counsel submitted that the order of suspension became a subject matter of challenge before this Court in W.P.No.32182 of 2016 filed by the Supervisor of the Shop and W.P.No.32413 of 2016 filed by the other Salesman and both these writ petitions were allowed by an order dated 06.10.2016 and 07.12.2018 respectively. The learned counsel submitted that the petitioner is also placed on the same footing and there is no reason to continue the suspension of the petitioner. The learned counsel further submitted that after the suspension order was quashed insofar as the other two persons are concerned, they have also been reinstated in service.

4.Per contra, Mr.N.Damodaran, the learned Standing Counsel appearing on behalf of the respondent submitted that the petitioner was suspended pending grave criminal charges. The learned counsel submitted that the petitioner and two others had set on fire the shop, only to cover up a misappropriation. Therefore, considering the seriousness of the offence and also the fact that the petitioner was remanded to judicial custody and was inside the jail for more than 48 hours, the petitioner was suspended from service along with two others. The learned counsel submitted that even if this Court is going to extend the same benefit by virtue of two earlier orders passed by this Court for the other two delinquent employees, the right of the Department to continue with the departmental proceedings awaiting the result of the criminal prosecution, should not be taken away. The learned counsel submitted that the interference in the suspension order should not be put against the Department to go ahead with the departmental proceedings.

5.This Court has carefully considered the submissions made on either side and also the materials available on record.

6.It will be relevant to extract the earlier order passed by this Court in W.P.No.32413 of 2016 wherein this Court had quashed the suspension order insofar as one of the Salesman, who was also involved in this case:

2. Assailing the correctness of the order dated 06.05.2016, the learned counsel appearing for the petitioner submitted that during the pendency of this Writ Petition, one Mr.Sivadass has filed a Writ Petition in W.P.No.32182 of 2016 before this Court challenging the common order of suspension dated 06.05.2016, which is impugned in this Writ petition, and this Court, by an order dated 06.10.2016, allowed the Writ Petition by setting aside the impugned order passed in respect of Mr.S.Sivadass with a further direction to the respondent to reinstate Mr.Sivadass in any non-sensitive post, where the department feels



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that the petitioner therein can be accommodated as per the Judgment of Hon'ble Supreme Court in Ajay Kumar Choudhary vs. Union of India reported in 2015 7 SCC 291 and therefore he submitted that the impugned order of suspension passed against the petitioner is also liable to be set aside. He further submitted that when Mr.Sivadass who was also one of the suspended employees under the very same common order, was reinstated and now he is working with the respondent, a direction may be issued to the respondent to reinstate the petitioner also by revoking the order of suspension.

3. The learned standing counsel appearing for the respondent submitted that all the three staff were working in the TASMACH shop at the relevant time and they were subsequently arrested and remanded to judicial custody and that the issue seized by the criminal court has not been come to an end and therefore, the respondent has not come forward to revoke the order of suspension any more long time.

4. This Court is unable to agree with the above said submission, for the reason that when the respondent has passed a common order of suspension dated 06.05.2016 placing Mr.Sivadass, Mr.Vijayakumar and the petitioner under suspension, in view of reinstatement of Mr.Sivadass, who is a supervisor, pursuant to the order passed by this Court in W.P.No.32182 of 2016 dated 06.10.2016, quashing the very same impugned order dated 06.05.2016, the petitioner, who is only a sales-man, can also be reinstated in service. Thus, in view of revocation of the very same suspension order, dated 06.05.2016, this Court is not able to find any merit in continuing the petitioner under suspension any more long time.

7.It is clear from the above order that the co-delinquent got the suspension order set aside and this Court had also directed the reinstatement of the petitioner therein in service. It is admittedly a common suspension order that was passed against all the three delinquent employees and out of which two of them have got it set aside in their favour. Therefore, the same will also enure to the benefit of the petitioner and the petitioner cannot be treated differently.

8.In view of the above discussion, this writ petition is allowed and the impugned order of suspension dated 06.05.2016 passed in respect of the petitioner is hereby set aside. The respondent is directed to reinstate the petitioner within a



period of two weeks from the date of receipt of copy of this order. If there is any arrears of subsistence allowance payable to the petitioner, the same shall also be paid immediately. Consequently, connected miscellaneous petitions are closed. No Costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssr

To

1. The District Manager
Tamilnadu State Marketing Corporation Ltd.,
Nagapattinam District at
Industrial Estate, Thirubhuvanam,
Thiruvidadaimaruthur Taluk,
Thanjavur District.

2. The Public Prosecutor,
High Court of Madras,
Madras.

+1cc to Mr.S.Ayyathurai, Advocate sr.10172

W.P No.33313 of 2019
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rr(co)
nr 23/01/2020