

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02-04-2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.34441 of 2018

And

W.M.P.Nos.40012 and 40013 of 2018

K.Hari

.. Petitioner

vs

The District Manager,
Tamil Nadu State Marketing Corporation Ltd (TASMAC),
Katpadi Road,
Vellore District-632 004.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the order passed by the respondent in Se.Mu.Na.Ka.No.A2/ 808/C.V./2018 dated 26.7.2018 and quash the same and consequently, direct the respondent herein to reinstate the petitioner into service with continuity of service and all attendant benefits.

For Petitioner : Mr.M.Manimaran

O R D E R

The order dated 26.7.2018, which is impugned in the present writ petition, states that the writ petitioner was arrested on account of the registration of a criminal case in respect of the allegation of manufacturing of spurious liquor and sold the same.

2. The criminal case registered against the writ petitioner was published in the newspapers and further, the writ petitioner remained unauthorisedly absent from attending the duties with effect from 26.7.2018. Thus, the writ petitioner was temporarily relieved from service by the respondent. The writ petitioner was temporarily relieved from service on account of the registration of a criminal case and the allegations against the writ petitioner are serious in nature.

3. The learned counsel for the writ petitioner states that no subsistence allowance has been paid to the writ petitioner and the order of suspension is continued beyond the period of three months and as per the judgment of the Hon'ble Supreme Court of India in the case of Ajay Kumar Choudhary vs. Union of India and Others [2015 (3) CTC 119], the same is to be quashed. No charge memo or a show cause notice was issued against the writ petitioner. Contrarily, he is relieved from service temporarily and no subsistence allowance has been paid to the writ petitioner. Thus, the order impugned is liable to be scrapped.

4. On contemplation of charges or during the pendency of the criminal case, an employee shall be placed under suspension. On initiation of departmental disciplinary proceedings, the authorities competent must continue the same by following the procedures contemplated under the Rules. The order impugned states that the writ petitioner is relieved from service temporarily. In such circumstances, it is to be clarified by the respondent that whether the departmental disciplinary proceedings are continuing or any charge memo has been issued.

5. In view of the fact that the order impugned is ambiguous in respect of the nature of the order, whether it is a suspension order or the writ petitioner is relieved temporarily from service. In the event of such temporary relieving of the writ petitioner, it is to be stated that under which provisions of the Rules, such an order is passed by the respondent.

6. In the event of stating that it is an order of suspension, the writ petitioner would be entitled to receive the subsistence allowance during the pendency of the departmental disciplinary proceedings. All these aspects are to be clarified with reference to the Rules.

7. Undoubtedly, the allegations against the writ petitioner are serious in nature. However, while passing the orders, the authorities competent must keep in mind that the order must be in consonance with the Rules as well as the same should clarify the nature of the order which is passed.

8. In the present case, the impugned order states that the writ petitioner is relieved from service temporarily. Except that it is not stated about the payment of subsistence allowance and other aspects. Under these circumstances, the respondent is directed to review the impugned order dated 26.7.2018 and pass a fresh order with reference to the Rules in force.

9. Accordingly, the writ petitioner is permitted to submit a detailed representation, setting out all the facts and circumstances, within a period of two weeks from the date of receipt of a copy of this order. On receipt of such representation, the respondent is bound to review the impugned order dated 26.7.2018 and pass a revised order on merits in accordance with law, within a period of four weeks thereafter.

10. With the above observations, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

s/d-

Assistant Registrar(J)

True Copy

Sub-Assistant Registrar

Svn
To

The District Manager,
Tamil Nadu State Marketing Corporation Ltd (TASMAC),
Katpadi Road,
Vellore District-632 004.

+1 CC to Mr.M.Manimaran, Advocate sr 31838.

+1 CC to Mr.P.Arumugarajan, Advocate sr 31554.

W.P.No.34441 of 2018

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SP(25/04/2019)

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