

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10.03.2020

Pronounced on : 02.06.2020

CORAM

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.3880 of 2019

M.Suresh, .. Petitioner

Vs.

1.The Senior Regional Manager,
Tamil Nadu State Marketing Corporation Ltd.,
Coimbatore.

2.The District Manager/Sub-Collector,
Tamil Nadu State Marketing Corporation Ltd.,
Ooty, The Nilgiris District.
Presently at No.305/G, Vandicholai,
Kothagiri Road, Edapalli Village,
Coonoor,
Nilgiris District-643 104.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, calling for the records relating to the second respondent vide Na.Ka.C.No.61/2015 dated 23.11.18 and to quash the same, and consequently direct the respondents to reinstate the petitioner in service with all attendant benefits.

For Petitioner : Mr.S.Vijayakumar

For Respondents : Mr.K.Sathish Kumar

ORDER

The petitioner herein was an employee of the respondent Corporation. An audit inspection was held in Shop No.8253 on 14.05.2015 wherein the petitioner was employed and in the said inspection, it came to light that a sum of Rs.40,92,502/- was shown to be shortage with regard to the sales of stock in the said shop. On the basis of audit report, the petitioner and three others along with one K.Subramanian, were suspended from service on 15.05.2015. An F.I.R., was also registered against them. According to the petitioner herein, though charge sheet was filed, after completion of investigation before the Judicial Magistrate and as per the charge sheet, only the said K.Subramanian, was alone found responsible for committing the offence of causing financial loss to the Corporation and not others. Therefore, it appears that a request was made on behalf of the petitioner and three others for revocation of their suspension.

2. Simultaneously, the petitioner along with others filed writ petition before this Court in W.P.No.28060 of 2017 assailing the order of suspension. According to the petitioner, this Court has passed an interim order dated 02.11.2017, directing the respondents to reinstate the petitioner into services. However, he was not reinstated. Subsequently, this Court has disposed of the above said writ petition on 06.04.2018 directing the respondents to conclude the departmental enquiry proceedings initiated against the petitioner and others.

3. Pursuant to the direction issued by this Court on 06.04.2018, the respondents issued a second show cause notice to the petitioner and others, dated 11.05.2018 and in response to the second show cause notice, a reply was also sent by the petitioner on 19.05.2018. Not being satisfied with the identical replies submitted by the petitioner and others, the respondent authority passed an order of dismissal against the petitioner and others vide order dated 23.11.2018. Against the dismissal order, the petitioner and others are before this Court.

4. Mr.S.Vijaya Kumar, learned counsel appearing for the

petitioner would submit that the petitioner was wrongly alleged to have committed the act of misconduct, since in the charge sheet itself, it was found that only the said K.Subramanian, Supervisor of the shop was responsible for the shortage of the amount. According to the learned counsel, there is absolutely no evidence against the petitioner for any alleged irregularities. According to the learned counsel, number of grounds have been raised in the affidavit and on adjudication of those grounds, the petitioner herein is entitled to succeed in this writ petition.

5. On the other hand, Mr.K.Sathish Kumar, learned counsel appearing for the respondents-Corporation, would submit that the allegations against the petitioner and others are very serious in nature and therefore, the Disciplinary Authority has taken a right decision in dismissing the petitioner and others from service. The charge against them was proved and the punishment imposed was also commensurate with the gravity of the offence committed by the petitioner and others. However, the learned counsel as a matter of preliminary objection, would submit that without exhausting the appeal remedy as provided under the Corporation Rules and Regulations, the petitioner and others have

invoked the extraordinary jurisdiction of this Court directly. On this ground alone, the writ petition needs to be dismissed.

6. At this, the learned counsel for the petitioner would submit that filing the appeal before the Appellate Authority would only be an empty formality. According to him, since no evidence of the said misappropriation on the part of the petitioner and others is available on record, the punishment imposed on the petitioner and others is liable to be interfered by this Court.

7. This Court is unable to appreciate the arguments advanced by the learned counsel on behalf of the petitioner. It is an admitted fact that even in the impugned order, it is mentioned that the appeal would lie against the order of dismissal. The contention that resorting to appeal remedy would only be an empty formality is completely misconceived and legally unacceptable.

8. When an appeal remedy is provided under the Rules, no matter whatsoever apprehension the petitioner may perceive, a statutory

appeal remedy has to be exhausted before knocking the doors of this Court invoking its extraordinary jurisdiction under Article 226 of the Constitution of India.

9. It is more so, when an enquiry was conducted and the charges were held to be proved. Moreover, it is not explained as to how filing of an appeal before the appellate authority will be an empty formality. Merely because the petitioner perceives such appeal remedy would be of no use to him, the role of appellate authority as envisaged in the Rules cannot be belittled as mere a rubber stamp Authority. It is always possible for the appellate authority to appreciate the explanation given by the petitioner and others by way of appeal and also the appellate authority can appreciate the materials made available and come to an independent conclusion both in terms of the evidence against the petitioner in the enquiry proceedings, as well as proportionality of the penalty with reference to the extent of the involvement of the petitioners and others. But there cannot be any presumption that the appellate authority will surrender his independent power of consideration of appeal and endorse the view of the disciplinary authority, mechanically. In a

case like this, it is all the more imperative that the appellate remedy is invoked and a considered decision of the appellate authority, is a *sine qua non* for a proper and effective judicial review by this Court, in case the petitioner is still aggrieved after the appeal is disposed of.

10. In the above circumstances, agreeing with the preliminary objection as to the maintainability of the writ petition by the counsel for the Corporation, without expressing any views on the grounds and the facts raised in the writ petition, this writ petition is disposed of by directing the petitioner to prefer a statutory appeal before the appellate authority.

11. If the petitioner chooses to file any appeal, the same can be preferred within a period of two weeks from the date of receipt of copy of this order. On such appeal being preferred, the appellate authority, shall consider the same without insisting upon the limitation aspect and shall pass considered order on merits in accordance with law within a period of eight weeks thereafter. There shall be no order as to costs.

02.06.2020

Speaking/Non-speaking order

Index : Yes.

Internet: Yes.

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V.PARTHIBAN, J.,

rm/mrm

To

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