

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.08.2020

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.10295 of 2020

R.Muthuraj

.. Petitioner

Vs.

The District Manager,
Tamilnadu State Marketing Corporation Limited,
TASMAC, 84 Ambattur Industrial Estate,
Chennai(South) District, Chennai-58

.. Respondents

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 its Na.Ka.No.893/A4/2016 dated 03.10.2017 and quash the same and consequently direct the respondent to reinstate the petitioner back into service.

For Petitioner ... Mr.V.Vijay Shankar
For Respondent ... Mr.John Kennedy

ORDER

This matter is taken up through web hearing.

2. This writ petition has been filed seeking for issuance of a Writ of Certiorarified Mandamus to call for the records of the respondents in its Na.Ka.No.893/A4/2016 dated 03.10.2017 and quash the same and consequently direct the respondent to reinstate the petitioner back into service.

3. The case of the petitioner is that he was working as Assistant Shop Salesman in the respondent Corporation. According to him, in March 2014, while he was working, he sought permission from his Supervisor to leave the work spot and go home as he was feeling pain and uneasiness. According to him, he was taking medical treatment due to uneasiness and he was advised complete rest for some time. According to the petitioner, that after the recovery from illness, he reported to duty on 16.05.2016, but he claims that he was not allowed to

join duty and according to him, he attempted to join duty on several times thereafter, but he was not allowed to join duty.

4. While matter stood thus, according to the petitioner, he was issued with a charge memo on 10.05.2016, containing three articles of charges, charging him for un-authorised absence. An enquiry officer was appointed to enquire into the charges and the petitioner also participated in the enquiry. According to the petitioner, there was no witness examined in the course of the enquiry and despite that, the enquiry officer submitted his report on 03.07.2016 holding that the charges were proved against the petitioner.

5. In response to the enquiry report against him, the petitioner stated to have submitted a detailed reply on 26.09.2017, denying all the allegations and also pointing out the flaws in the procedure adopted by the enquiry officer and the flaws in the enquiry findings. According to the petitioner, without considering the objections raised in his representation dated 26.09.2017, the respondent issued the proceedings on 03.10.2017, dismissing him from service. Hence, the petitioner is before this Court, seeking to quash the order of dismissal, raising several grounds in support of the challenge.

6. When the matter is taken up for hearing, Mr. John Kennedy appeared on behalf of the respondent Corporation. Mr. Balamuralikrishnan, learned counsel appearing for the petitioner would submit that he would be satisfied if the petitioner is directed to prefer an appeal against the order of dismissal from service and such appeal being filed, the respondent may be directed to dispose of the appeal on merits within the time to be stipulated by this Court.

7. Mr. John. Kennedy, learned counsel appearing for the respondent Corporation has reported no objection for such direction being issued by this Court.

8. In view of the limited prayer now sought for by the petitioner during the course of the verbal submissions, this Writ Petition is disposed of at the admission stage itself, in view of the fact that as against the order of dismissal from service, the petitioner has not preferred any appeal at all. In disciplinary matters, the appellate authority is the competent person to appreciate the explanation to be offered by the petitioner, as the petitioner claims to have absented duty for bona fide reasons. Moreover, the appellate authority is the competent person to appreciate as to whether the procedure adopted by the enquiry officer was in consonance with the established principles of natural justice and further whether the disciplinary authority, who passed the order of dismissal, has followed the due process of law.

9. In the above circumstances, the petitioner is hereby directed to prefer an appeal raising all the grounds including the one raised in the present Writ petition, to the appellate authority within a period of two weeks from the date of receipt of a copy of this order. On such appeal being preferred, the appellate authority is directed to pass appropriate orders on merits and in accordance with law within a period of four weeks thereafter. While passing orders in the appeal, the appellate authority is also directed to take into consideration the explanation submitted by the petitioner for his absence for the period which was the subject matter of challenge in the writ petition.

10. The Writ petition is disposed of with the above direction. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The District Manager,
Tamilnadu State Marketing Corporation Limited,
TASMAC, 84 Ambattur Industrial Estate,
Chennai (South) District, Chennai-58

+1CC to Mr.V.Vijay Shankar, Advocate in Sr no.26226

सत्यमेव जयते

W.P.No.10295 of 2020

SKS (CO)
RV (02/09/2020)

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