

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE D. KRISHNAKUMAR

W.P.Nos.13155 and 12667 of 2017

V. Premanand ... Petitioner (in both Wps)

versus

The District Manager,
Tamil Nadu State Marketing Corporation Limited (TASMAC)
Kancheepuram District (South)
Kancheepuram. ... Respondent (in both Wps)

Prayer in W.P.12667 of 2017: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari and Mandamus calling for records pertaining to the order passed by the respondent in proceedings No: Na.Ka.En:1597/R2/2014, dated 15.04.2017 and to quash the same and consequently direct the respondent to reinstate the petitioner in service by reviewing his suspension order dated 27.07.2009 with all consequential and monetary benefits.

Prayer in W.P.13155 of 2017: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondent to provide suspension allowance and other benefits to the petitioner during the suspension period from 27.07.2009, pursuant to his representation dated 15.05.2017.

For Petitioner : Mr.R. Thirumoorthy

For Respondent : Mr.P. Arumuga Rajan
For (TASMAC)

COMMON ORDER

(i) The writ petition in W.P.No.12667 of 2017 has been filed by the writ petitioner seeking calling for records pertaining to the order passed by the respondent in proceedings No: Na.Ka.En:1597/R2/2014, dated 15.04.2017 and to quash the same and consequently direct the respondent to reinstate the petitioner in service by reviewing his suspension order dated 27.07.2009 with all consequential and monetary benefits.

(ii) The writ petition in W.P.No.13155 of 2017 has been filed by the writ petitioner seeking for a direction to the respondent to provide suspension allowance and other benefits to the petitioner during the suspension period from 27.07.2009, pursuant to his representation dated 15.05.2017.

2. According to the writ petitioner, he was appointed as Supervisor in the Tamil Nadu State Marketing Corporation Limited (TASMAC) in Chennai, on 21.01.2004 and was transferred to the TASMAC Shop No.4344, at Cuddalore Village, Kancheepuram District under the same Department as Supervisor. On 25.07.2009, there was a surprise inspection conducted by the authority and it was found that there was misappropriation of funds to the tune of Rs.5,14,392/-. The learned counsel for the petitioner further submitted that prior to the inspection, the petitioner was on leave for three months due to family problem. Thereafter, one Mr.Sankar, who was working as a Salesman, was alone responsible and he only discharged duty when the petitioner was on leave. After the said inspection, the petitioner was placed under suspension on 27.07.2009. Thereafter, he approached the authorities and gave his explanation. Though he explained the fact that during the alleged misappropriation period, he was on leave, but the same was not considered by the respondent. Till date, the respondent has not taken any action to resolve his grievance. Hence, the writ petitioner has made several representations dated 29.12.2014, 22.06.2015 and 02.07.2016 requesting the authorities to review his order of suspension and to reinstate the petitioner into service. In addition to, he had approached the respondent and made several representations requesting to provide him subsistence allowance. But there was no response from the authorities. Hence, the writ petitioner has come forward with these present writ petitions before this Court.

3. The learned counsel for the petitioner further submitted that based on the representations given by the petitioner, the respondent/Corporation passed an impugned order directing the writ petitioner to pay 50% of the alleged misappropriation amount as penalty along with interest at the rate of 24% p.a. from the date of the order of suspension till such payment made by the petitioner to the respondent/Corporation as per Rules for considering him to re-instate the service of the petitioner. The alleged irregularities were committed in the year 2009, but the relevant Rules were came into force only in the year 2014, therefore, the same will not be applicable to the writ petitioner herein, as the irregularities have been committed in the year 2009.

4. On the other hand, Mr.P.Arumuga Rajan, learned counsel appearing for the respondent/TASMAC submitted that the

respondent has passed the impugned order in the light of the relevant Rules and directed him to pay the penalty amount as well as interest to the respondent/Corporation. Further, a criminal case has been registered against the writ petitioner in Crime No.208 of 2009 for the offence under Section 409 of IPC by the Inspector of Police, Koovathoor Police Station, Kancheepuram District and the same is pending. But, no disciplinary action has been taken by the competent authority and no final report has been filed. However, the writ petitioner has paid the entire misappropriation amount of Rs.5,14,392/- by way of Demand Draft dated 29.12.2014. Therefore, the learned counsel for the petitioner prays for appropriate orders for revocation/reviewing the order of suspension.

5. Heard Mr.R.Thirumoorthy, learned counsel appearing for the petitioner and Mr.P.Arumuga Rajan, learned counsel appearing for the respondent/TASMAC and perused the materials available on record.

6. On perusal of the records, it is not in dispute that the writ petitioner was suspended from service on 27.07.2009 by the respondent, while he was working as Supervisor in the Tamil Nadu State Marketing Corporation Limited (TASMAC) and thereafter, he paid the entire misappropriation amount of Rs.5,14,392/- by way of Demand Draft, dated 29.12.2014. Thereafter, he made several representations dated 29.12.2014, 22.06.2015 and 02.07.2016 to the respondent/TASMAC to reinstate him into the service. Since there was no action the petitioner filed writ petition before this Court in W.P.No.3735 of 2017 and the same was taken up for consideration on 15.02.2017 wherein this Court was pleased to direct the respondent to pass an order on his representations dated 29.12.2014, 22.06.2015 and 02.07.2016 in the light of the judgment rendered by the Hon'ble Supreme Court in Ajaykumar Choudhry Vs. Union of India reported in 2015 7 (SCC) 591.

7. According to the writ petitioner, the relevant Rules i.e., Code of Prevention and Detection of Fraudulent Act in Tamil Nadu State Marketing Corporation Limited, 2014, were amended and came into force only in the year 2014. Therefore, the said Rules will not apply to the alleged misappropriation of the petitioner prior to the aforesaid Rules. The relevant portion of the Rules is extracted hereunder.

8. By accepting the contention of the learned counsel for the petitioner, it is seen that the aforesaid Rules will apply only with retrospective effect, passing the impugned order as well as the interest questioned, has to be decided by the petitioner in respect of the aforesaid alleged offence committed by the petitioner in the year 2009. Insofar as the charges as against the writ petitioner, the Government had not passed

orders on the petitioner's representations dated 29.12.2014, 22.06.2015 and 02.07.2016 to reinstate the petitioner into service, in the light of the order passed by the respondent/Corporation by directing to pay the amount as well as interest based on the said Rules. But, however, the learned counsel appearing for the petitioner has fairly submitted before this Court that the writ petitioner has agreed to pay interest at the rate of 9% from the date of the writ petition i.e., 27.07.2009 to 29.12.2014 within the time frame that may be fixed by this Court.

9. Based on the aforesaid facts and circumstances of the case, this Court has considered the said submissions of the learned counsel appearing for the petitioner as well as the respondent/Corporation. It is seen that no charge sheet or final report is filed in Crime No.208 of 2009 from the year 2009. Consequently, the respondent has relied upon the amended Rules by imposing the said penalty amount as well as interest against the petitioner for reinstating the service of the petitioner. Therefore, the said amended Act came into force with retrospective effect.

10. Earlier, the petitioner filed a Writ Petition in W.P.No.3735 of 2017, to direct the respondents to review the petitioner's suspension and reinstate him in service with all consequential and monetary benefits pursuant to the petitioner's representation dated 02.07.2016 and this Court by order dated 15.02.2017 directed the respondent to consider the petitioner's representation dated 02.07.2016 on merits and in accordance with law, after taking note of the Judgment of the Hon'ble Supreme Court and based on the order passed in the said Writ Petition, the respondent has passed the impugned order dated 15.04.2017.

11. During the course of arguments, the learned counsel appearing for the respondent has placed the representation made by the petitioner on 08.01.2020, in which it has been stated that the writ petitioner has agreed to pay the amount as stated in the impugned order by deducting the amount settled towards the subsistence allowance by the respondent for the aforesaid suspension period and if any balance amount, the same shall be also paid on monthly basis to the respondent corporation.

12. Considering the facts and circumstances of the case and the submission made by both counsels, the impugned order in Na.Ka.No.13/R1/2009, dated 27.07.2009 passed by the District Manager, Tamil Nadu State Marketing Corporation Limited (TASMAC), Kancheepuram District (South), is quashed with the following conditions:-

(i) The writ petitioner is directed to pay interest at the rate of 9% p.a. for the aforesaid amount of Rs.5,14,392/- (Rupees Five Lakh Forteen Thousand Three Hundred Ninety Two Only) for the period from 27.07.2009 to 29.12.2014 within a period of four weeks (4) from the date of receipt of a copy of this order, after adjusting the amount if any already paid.

(ii) In the light of the representation of the petitioner dated 08.01.2020 and the submission made by the learned counsel for the respondent, the petitioner shall make appropriate application seeking reinstatement into service within a period of one week.

(iii) It is made clear that only after complying the direction issued by this Court in W.P.No.3735 of 2017, the respondent/Corporation shall consider to reinstate the petitioner and pass order within a period of two weeks thereafter.

13. Both the writ petitions are disposed of with the above directions. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

msm/ak
To

The District Manager,
Tamil Nadu State Marketing Corporation Limited (TASMAC)
Kancheepuram District (South)
Kancheepuram.

+2cc to Mr.R.Thirumoorthy, Advocate Sr.4693, 4694
+1cc to Mr.P.Arumugarajan, Advocate Sr.5038

W.P.Nos.13155 and 12667 of 2017

br[co]
srg 25/09/2020