

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2020

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.31886 of 2018

and

WMP No.37119 of 2018

A.Settu

... Petitioner

.Vs.

1. The District Manager,
"TASMAC" Ltd,
District Manager Office,
Thiruvannamalai District.

2. The Senior Regional Manager,
"TASMAC" Ltd,
Salem-16.

3. The Managing Director,
"TASMAC" Ltd,
Chennai-8.

... Respondents

Prayer:- Writ petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for records to the impugned order in Se.Mu.No.182/2018/A, dated 14.08.2018 from the file of the second respondent by confirming the order in Na.Ka.R.V.2/1753/2015, dated 28.05.2018 passed by the first respondent and quash the same consequently direct the respondents to restore the petitioner into service with all monitory and service benefits and grant such other relief as deems fit to this Court.

For Petitioner : Mr.P.Ganapathy

For Respondents : Mr.P.Arumuga Rajan
Standing Counsel

O R D E R

This Writ Petition has been filed challenging the order passed by the 2nd respondent dated 14.08.2018, confirming the order passed by the 1st respondent dated 28.05.2018, terminating the services of the petitioner.

2.The case of the petitioner is that he was working as a Salesmen in the TASMACH Shop and he absented himself from duty for the period from 06.02.2013 to 30.05.2015 for nearly two years and three months. This was treated to be an unauthorised absence and a Charge Memo came to be issued against the petitioner. Subsequently, the petitioner gave an explanation and he justified his absence on medical grounds. An Enquiry Officer was also appointed and an enquiry report was also submitted, wherein, it was found that the petitioner had unauthorisedly absented himself contrary to the service rules.

3.On receipt of the enquiry report and further explanation from the petitioner, the 1st respondent proceeded to pass an order terminating the services of the petitioner, on 28.05.2018. The petitioner filed an appeal before the 2nd respondent and the appeal was also dismissed by the 2nd respondent by an order dated 14.08.2018. Questioning the same, the present Writ Petition has been filed before this Court.

4.The learned counsel for the petitioner submitted that a similarly placed person had filed a review petition before the Managing Director, TASMACH and an order was passed to the effect that the period of absence can be considered as no work no pay period and the concerned delinquent employee can be taken into service by providing him a fresh employment. The learned counsel submitted that pursuant to the orders passed in the review petition, the District Manager of TASMACH has also granted appointment to the concerned person. The learned counsel further submitted that the petitioner can also be treated in the same manner.

5.Per contra, the learned Standing Counsel appearing on behalf of the respondents submitted that the petitioner has directly approached this Court without availing the alternative remedy to file a review petition before the Managing Director, TASMACH. The learned counsel submitted that there are absolutely no grounds to interfere with the orders passed by the respondents and if at all, the petitioner wants to work out his remedy by filing a review, it is always open to him to pursue his remedy in accordance with law. A counter affidavit has also been filed by the 2nd respondent justifying the termination of service of the petitioner.

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

7.The learned counsel for the petitioner has made it clear that the case of the petitioner can be considered on similar lines with that of the case of one Thirumurugan, who was also terminated from t service for unauthorised absence and

thereafter, he was provided a fresh appointment without any claim for back wages by treating the period of absence as no work no pay.

8.This Court is not inclined to interfere with the orders passed by the respondents. However, it is left open to the petitioner to file a review petition before the Managing Director, TASMAC, within a period of two weeks from the date of receipt of a copy of this order. The Managing Director, TASMAC, on receipt of the review petition, shall consider the case of the petitioner on par with the case of one Thirumurugan, who was directed to be given a fresh appointment without any back wages. The Managing Director, TASMAC, shall pass appropriate orders within a period of six weeks from the date of receipt of the review petition filed by the petitioner. Except giving this liberty, this Court is not inclined to pass any further orders in this present Writ Petition.

This Writ Petition is disposed of accordingly. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

KP
To

1. The District Manager,
"TASMAC" Ltd,
District Manager Office,
Thiruvannamalai District.

2. The Senior Regional Manager,
"TASMAC" Ltd,
Salem-16.

3. The Managing Director,
"TASMAC" Ltd,
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RSV (CO)
SP (24/02/2020)