



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.07.2020
CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

WEB COPY

W.P.(MD)No.8073 of 2020
and
W.M.P.(MD) No.7491 of 2020
(Through Video conferencing)

Balaji

... Petitioner

-Vs-

1.The Managing Director,
M.M.23, Alangudi Agricultural Producers
Co-operative Marketing Society Ltd.,
No.7, Gandhi Road, Alangudi-622 301,
Pudukkottai District.

2.The President,
M.M.23, Alangudi Agricultural Producers
Co-operative Marketing Society Ltd.,
No.7, Gandhi Road, Alangudi-622 301,
Pudukkottai District.

... Respondents

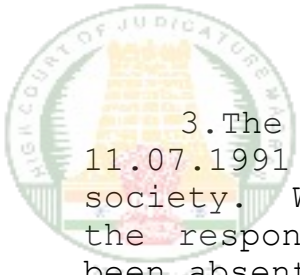
Prayer: Writ Petition - filed under Article 226 of Constitution of India, to issue a writ of Certiorarified Mandamus, calling for the records relating to the impugned suspension order dated 15.07.2020 issued by the 1st respondent and quash the same and consequently direct the respondents to allow the petitioner to join duty with all attendant benefits.

For Petitioner : Mr.Gowri Shankar
For Respondents : Mrs.J.Padmavathi Devi,
Special Government Pleader

ORDER

The prayer sought for herein is for a writ of Certiorarified Mandamus, calling for the records relating to the impugned suspension order dated 15.07.2020 issued by the 1st respondent and quash the same and consequently direct the respondents to allow the petitioner to join duty with all attendant benefits.

2.Heard Mr.Gowri Shankar learned counsel appearing for the petitioner and Mrs.J.Padmavathi Devi, learned Special Government Pleader appearing for the respondents.



3.The petitioner joined in the respondents Society on 11.07.1991 as Salesman and he has been continuously working in that society. While so, on 08.05.2020, a show cause notice was issued by the respondents against the petitioner, since the petitioner had been absent for duty on 08.05.2020 and was continue to be absent for several days. In this regard, it is the case of the petitioner that he has been suffered with Vertigo and also according to the Doctor's certificate, he had developed chest pain also. Therefore, since he has been advised for bed rest, he could not attend duty for 53 days continuously and even thereafter. According to the petitioner, the petitioner has been absent for duty from 08.05.2020 to 15.07.2020.

4.In this context, now the impugned order dated 15.07.2020 has been issued by the respondents Society placing the petitioner under suspension on two grounds, one is that, the petitioner from 08.05.2020 has been continuously absent without any proper application to get leave and also when a similar disciplinary proceedings was initiated in the year 2011, where also, explanation was sought for, the petitioner has not responded. Therefore, for these two reasons, now the petitioner has been placed under suspension by the impugned order dated 15.07.2020, which is under challenge in this writ petition.

5.The learned counsel appearing for the petitioner would submit that, only due to medical reason, he could not attend duty for more than two months i.e., from 08.05.2020 to 15.07.2020 and in this regard, he has filed a medical certificate dated 30.06.2020, according to which, the petitioner was suffering from Vertigo and the clinical condition of the petitioner shows that chest pain on and off and therefore, for these reasons only purely on medical grounds, he could not attend duty for more than 2 months and instead of the procedure to be adopted, since the respondents placed the petitioner under suspension, the impugned order has to be interfered with.

6.However, the learned Special Government Pleader appearing for the respondents, on instructions, would submit that, the petitioner even in the year 2011, when similar show cause notice was issued, has not responded and so far has not responded. In the present case, from 08.05.2020, without any valid reason, the petitioner has been continuously absent. Immediately, on 08.05.2020 itself, since he has been in unauthorized absent, show cause notice was issued and the said show cause notice when was taken to the resident of the petitioner to be served by an employee of the respondent Society, the petitioner, on reading the contents of the show cause notice refused to receive it and this is evident from the letter given by the said employee viz., one V.Veeriah on 08.05.2020, who states as follows:

“நான் 8.5.2020 அன்று தங்களால் சங்க பணியாளர் T.பாலாஜி அவர்களுக்கு வழங்கிய குறிப்பாணையை கொண்டு சென்று அவர் வீட்டில்



அவரிடம் கொடுத்தேன். அவர் அதை வாங்கி படித்து பார்த்து விட்டு பெற்றுக்கொள்ள மாட்டேன் எனக்கூறி திருப்பி என்னிடம் கொடுத்து அனுப்பி விட்டார் என்பதை பணிவுடன் தெரிவித்துக் கொள்கிறேன்.”

When the petitioner was not even ready to receive the show cause notice issued to the petitioner and he has been continuously absent for more than two months, having waited all along, the respondents have no option except to place the petitioner under suspension in contemplation of the disciplinary proceedings and therefore, the present impugned order placing the petitioner under suspension dated 15.07.2020 is not required to be interfered with.

7.The learned Special Government Pleader would also submit that, within a reasonable period, enquiry would be initiated against the petitioner and disciplinary proceedings would be concluded by passing final order. Therefore, enabling the respondents to complete the disciplinary proceedings within a reasonable time, let the petitioner be kept under suspension. Therefore, on that ground also, the petitioner's suspension need not be interfered with.

8.I have heard the submissions made by both sides and have perused the materials placed before this Court.

9.Even though it was the claim of the petitioner that, on a medical reason or medical ground, he has been absent for duty from 08.05.2020 to 15.07.2020, the petitioner seems to have not chosen to give any letter seeking medical leave to that effect. Moreover, it has been prima facie established by the respondents that on 08.05.2020, they issued a show cause notice, for which the petitioner refused to receive it. Even though the said submission has been now made and the learned counsel appearing for the petitioner by citing averments made in the affidavit filed in support of the writ petition, denied the same, that issue cannot be gone into at this stage. At any rate, now, the petitioner has been placed under suspension for absence of duty for more than two months and whether such absence is condonable one on medical ground or not is only to be decided after conducting the disciplinary proceedings, which has already been initiated by the respondents. However, in the name of contemplation of disciplinary enquiry, the petitioner cannot be kept in prolonged suspension. Therefore, in order to balance both, this Court is inclined to dispose of this writ petition with the following order:

“the respondents are hereby directed to issue charge memo against the petitioner, pursuant to the initiation of the disciplinary proceedings and conduct enquiry, after completing the enquiry within a period of three months from the date of receipt of a copy of this order, final order shall be passed. It is needless to mention that, during the disciplinary proceedings and enquiry, the petitioner shall co-operate with the respondents, especially with the Enquiry Officer, enabling the Enquiry



Officer to complete the Enquiry and file a report to that effect in time. After giving reasonable opportunity of being heard to the petitioner, final order can be passed by the respondents at the end of the disciplinary proceedings. Once the disciplinary proceedings is completed within the time stipulated above, depending upon the outcome of the disciplinary proceedings, the parties can act upon. It is made clear that, if the disciplinary proceedings is not completed or concluded within the time stipulated above, i.e. within three months period, on the expiry of such three months period, the impugned order shall be rescinded. Accordingly, the petitioner shall be reinstated into service."

10. With the above observation and direction, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

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2. The President,
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Co-operative Marketing Society Ltd.,
No.7, Gandhi Road, Alangudi-622 301,
Pudukkottai District.

Order made in
W.P. (MD) No. 8073 of 2020
27.07.2020

Arul

SDS (13.08.2020) 4P-3C

<https://hcservices.ecourts.gov.in/hcservices/>