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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2022

CORAM

THE HONOURABLE MR. JUSTICE S. VAIDYANATHAN
AND
THE HONOURABLE MRS. JUSTICE N. MALA

W.A. Nos.1206 & 1207 of 2022
&
C.M.P. Nos. 7680, 7686, 7678 & 7679 of 2022

U. Mutharasan

..Petitioner/Appellant
in W.A.No.1206 of 2022

G. Devidayal Pillai

..Petitioner/Appellant
in W.A. No.1207 of 2022

Vs.

The District Manager,
Tamil Nadu State Marketing Corporation,
Thirubhuvanam,
Nagapattinam District,
Nagapattinam - 612 001.

..Respondent/Respondent in both Writ Appeals

Prayer: Writ Appeals under Clause 15 of Letters Patent as against the order dated 01.04.2022 passed in W.P. Nos. 7780 & 7786 of 2022 respectively.

Prayer in WP.Nos.7780 & 7786 of 2022:-

Petition filed under Article 226 of the Constitution of India, it is therefore prayed that this Hon'ble Court may be pleased to issue a writ of certiorarified mandamus calling for the records from the respondent relating to the order bearing Na.Ka.No.808/2021/A1, dated 24.02.2022 dismissing the petitioner from Service with effect from 04.10.2021 and quash the same and consequently direct the respondent to reinstate the petitioner in service with continuity of service and back wages and other attendant benefits and render justice.



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For Appellant in
both Writ Appeals : Mr.S. Ayyathurai

For Respondent in
both Writ Appeals : Mr.N. Damodaran,
Standing Counsel

J U D G M E N T

S. Vaidyanathan, J.
And
N. Mala, J.

The appellants are writ petitioners, who preferred these appeals as against the order dated 01.04.2022 in W.P. Nos. 7780 & 7786 of 2022 respectively.

2. The appellants/writ petitioners herein were working as Salesmen and for having committed a misconduct, they were suspended from service with effect from 04.10.2021. Challenging the suspension order, W.P. No.24441/2021 was filed and that is pending before this Court. Thereafter, show cause notice was issued to the writ petitioners and the allegations made therein had been denied and thereafter, enquiry officer was appointed, who proceeded with the enquiry and concluded the same and thereafter, dismissal orders dated 24.02.2022 were passed, which were challenged by the writ petitioners in the aforementioned writ petitions. The learned Single Judge, after the hearing the submissions on either side, dismissed the writ petitions with the following directions:

(i) The petitioners are directed to prefer an appeal before the Appellate Authority within two weeks from the date of receipt of a copy of this order.

(ii) If any such Appeal is received, the Appellate Authority is directed to consider the same and pass orders in accordance with law, as expeditiously as possible, taking into account the fact that, now the petitioners are being out of employment.

(iii) If any request is made by the petitioners for payment of subsistence allowance, the respondent is directed to pay subsistence allowance, in accordance with Rules, within a period of six weeks from the date of receipt of request made by the petitioners."

Challenging the said order, the writ petitioners are before this Court.



3. The contention of the writ appellants was that when Industrial Employment (Standing Orders) Act, 1946 and Tamil Nadu Payment of Subsistence Allowance Act, 1981 are made applicable to the respondent Corporation, the respondent cannot harp upon the so-called Rules, which are yet to be framed. Even assuming there are such Rules, there is no semblance of payment of subsistence allowance as per the Rules. The enquiry conducted was not fair and it was violative of principles of natural justice and that the same will have to be interfered with by this Court directing reinstatement of the appellants/petitioners and by paying backwages.

4. The learned counsel for the respondent Corporation, in reply, would submit that the dismissal orders were passed on 24.02.2022 for a grave misconduct committed by the appellants as they were selling liquor bottles of 750 ml @ Rs.880/- over and above the prescribed rate of Rs.840/- and committed a serious misconduct. The petitioners were issued with a show cause notice and after due opportunity, enquiry was conducted wherein the charges were held proved and dismissal orders were passed. According to the learned counsel for the respondent, when there is an appeal remedy available before the Senior Divisional Manager, without exhausting the same, the present appeals have been preferred. Hence, on the ground of availability of alternate remedy, the writ appeals will have to go. Apart from that, after the orders of the learned Single Judge, the writ petitioners have not approached the Appellate Authority and the contention of the petitioners that the entire enquiry proceedings are violative of principles of natural justice cannot be acceded to. It is for the Appellate Authority to decide whether the enquiry conducted was in accordance with the Rules or not and whether the matter has got to go before the Disciplinary Authority once again and prayed that this Court need not interfere with the order under challenge.

5. Heard both parties.

6. It is an admitted fact that the appellants/writ petitioners were employed as Salesmen and on account of misconduct committed, they were suspended and subsequently, dismissed from service on 24.02.2022. It is no doubt true that they have got a right of appeal as against the dismissal orders and without exhausting the same, they have approached this Court. Though normally this Court will not interfere when there is an alternate remedy available, prima facie, it is an admitted case that subsistence allowance had not been paid, which is mandatory to be paid once an employee is suspended and should be continued



to be paid at the rate prescribed as per the provisions of Tamil Nadu Payment of Subsistence Allowance Act, 1981, till the enquiry is completed and final orders are passed. After the dismissal orders passed in February, 2022, two months have gone by. If the matter is sent to the Appellate Authority, he will have to remit the matter to the Disciplinary Authority, in order to conduct an enquiry afresh after payment of subsistence allowance. This may take time and unnecessarily, allowance will have to be paid for future months also. Hence, this Court exercises its power and sets aside the orders of dismissal dated 24.02.2022 passed against the appellants, permitting the Disciplinary Authority to proceed with the enquiry afresh after affording reasonable opportunity to the appellants/writ petitioners and also after payment subsistence allowance as per the Tamil Nadu Payment of Subsistence Allowance Act, 1981. The learned Single Judge, while holding that the petitioners can approach the authorities seeking payment of subsistence allowance, has not only dismissed the writ petitions, but also held that payment has got to be made as per law and not as per 1981 Act, mentioned supra. Hence, in order to shorten the life of the litigation, instead of modifying the order and permitting the writ petitioners to approach the Appellate authority, we direct the Disciplinary Authority to appoint an Enquiry Officer, who shall conduct the enquiry on a day to-day basis, without adjourning the matter beyond three working days at any given point of time and complete the same. Until such time, from the date of suspension, the appellants/writ petitioners shall be entitled to payment of subsistence allowance. In case of protraction of enquiry by the employees, subsistence allowance may be restricted to 50% as contemplated under the 1981 Act. In case of any adverse decision taken against the employees/appellants, it is open to them to approach the Appellate Authority and thereafter, approach the appropriate forum for relief in case of confirmation of punishment or modification of punishment, if any.

7. The writ appeals are disposed of accordingly. No costs. Connected C.M.Ps are closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

nv



To

The District Manager,
Tamil Nadu State Marketing Corporation,
Thirubhuvanam,
Nagapattinam District,
Nagapattinam - 612 001.

+1cc to M/s.S.Ayyathurai, Advocate, S.R.No.28959

W.A. Nos. 1206 & 1207 of 2022

SJ(CO)
SU(26/05/2022)