



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.03.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD) .No.24300 of 2018

S.Karthigairajan

... Petitioner

Vs.

1.The District Manager,
Tamil Nadu State Marketing
Corporation Limited (TASMAC),
Madurai North,
Rameshwaram National Highways,
Kalukar Kadai Villakku,
Manalur,
Sivagangai District.

2.The Assistant Manager (Accounts),
Tamil Nadu State Marketing
Corporation Limited (TASMAC),
Madurai North,
Rameshwaram National Highways,
Kalukar Kadai Villakku,
Manalur,
Sivagangai District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the first respondent to pay the Salary to the petitioner from the month of September, 2018 onwards on the basis of petitioner's representation to the first respondent dated 12.11.2018.

For Petitioner : Mr.L.Prabhu

For Respondents : Mr.H. Arumugam,
Standing Counsel.

ORDER

This Writ Petition has been filed for Mandamus directing the first respondent to pay the salary from the month of September 2018 onwards on the basis of petitioner's representation dated 12.11.2018.



2. The petitioner is graduate and was appointed as Salesman through Employment Exchange on 25.12.2003. On 19.04.2005, an inspection was carried out at night hours and certain irregularities were noticed and on the strength of the report, the Supervisor, Salesman and the petitioner were held responsible for the alleged water adulterated liquor sale in the said shop. After due investigation, a case was registered in Crime No.311/2005 on the file of Karuppayoorani Police Station and the same is pending before the Judicial Magistrate VI Madurai in C.C.No.22 of 2016. The case is pending for trial for the want of appearance of witnesses from the respondents side. In the meanwhile, the petitioner was dismissed from service on 20.04.2005. The petitioner challenged the same in W.P.(MD).No.8624 of 2008 and the same was disposed with a liberty to the respondent to initiate disciplinary proceedings. The respondents preferred Writ Appeal in W.A.(MD). No.91 of 2014 and the same was dismissed. Thereafter, the petitioner was reinstated in service in Shop No.5554 vide order dated 22.10.2013. According to the petitioner, the disciplinary proceedings was not initiated against the petitioner and no action of any kind was initiated against the petitioner, even though the criminal case was registered against the petitioner. The petitioner was issued Show Cause Notice on 17.03.2018 directing the petitioner to appear on 02.04.2018 before the first respondent and the notice states that the petitioner was directed to appear in order to enquire regarding the payment of alleged misappropriation to the tune of Rs.2,55,350/- for the loss caused to the TASMAL because of the petitioner and three others who have sold the water adulterated liquor in Shop No.5413, otherwise, penal action would be initiated against the petitioner under Revenue Recovery Act. The contention of the petitioner is that the Show Cause Notice was served on the petitioner after the lapse of 33 months. The petitioner appeared before the first respondent on 02.04.2018 and submitted his explanation. The respondents have not satisfied with his explanation, has served the impugned transfer notice dated 04.05.2018. The petitioner joined the next day. The petitioner was working in the godown in the transferred place till July 2018 and had received salary until July 2018. Since the petitioner was not well, the petitioner was on medical leave during the month of August. The petitioner requested the respondents to accept the joining report along with medical certificate, but he was not allowed to join the duty. On 01.09.2018, the petitioner was granted to join duty and he has signed Attendance Register up to 03.09.2018 along with few others working in the Office. On 04.09.2018, the petitioner was not allowed to sign the Attendance Register maintained by one Ravi, an Office Assistant who had directed the petitioner to appear before the first respondent to get permission to sign the Attendance Register. The petitioner appeared in person in the Office of the 1st respondent on 04.09.2018 at about 12.00 noon and the first



respondent firmly replied that he cannot be assigned any job nor allowed to sign the Attendance Register unless the petitioner agree to pay the loss incurred by the TASMAL in Shop No.5413. The petitioner approached this Court challenging the transfer order in W.P.(MD).No.11227 of 2018 and the same was closed on 25.01.2021. Since the petitioner was not granted permission to join duty, finally, the petitioner agreed with the first respondent that he is prepared to pay the alleged amount however, the same would be paid after the conclusion of the criminal case pending in C.C.No.22 of 2016. The contention of the petitioner is that the case is pending for trial without any progress, because none of the witnesses from the prosecution side appeared before the concerned Court. According to the affidavit, the next date of hearing is 03.01.2019. The contention of the petitioner is that he was not sanctioned with the salary from the month of September, October and November 2018 inspite of the fact that he was marking his presence in godown regularly. The petitioner was neither allowed to sign in the Attendance Registrar nor sanctioned with the monthly salary. The petitioner submitted his representation dated 10.10.2018 and yet another representation dated 12.11.2018. None of his representation was considered. Hence, the petitioner has filed this Writ Petition. The petitioner was directed to file an additional affidavit to substantiate his case. The petitioner has stated that he has not changed his address and the address stated in the affidavit is the original address.

3. The respondents have filed a counter stating that the petitioner was directed to pay Rs.2,55,350/- for the loss incurred. The other contention of the petitioner is not correct, the petitioner was not attending the duty and has absented himself which amounts to unauthorized absence. Thereafter, the petitioner was terminated from service and based on the Court order, he was reinstated into service. The petitioner is having a habit of unauthorizedly absenting himself in duty and this is the second time. According to the circular applicable to the TASMAL, any person is absented for more than ten days, then the employee would be considered as unauthorizedly absent and he is liable for punishment of termination from service. The petitioner was issued with two notices to the same address but it was returned with the postal endorsement "no proper address, door number is not there". Hence, the notices were returned to the sender. The other contention of the respondent is that the Writ Petition prayer is only to grant salary but the writ petitioner had not worked. Therefore, the salary was not paid. Hence the respondents prayed to dismiss the Writ Petition.

4. Heard Mr.L.Prabhu, learned counsel for the petitioner and Mr.H. Arumugam, learned Standing Counsel for the respondents and peruse the records.



5. The contention of the petitioner is that the respondents had imposed a punishment of recovery of Rs.2,55,350/- without any notice or enquiry. Even in the counter, it has been stated that the petitioner was directed to pay the amount, otherwise, disciplinary proceedings will be initiated and the relevant portion is extracted hereunder:

"6. I submit that thereafter a notice dated 15.06.2015 was issued to the petitioner to pay a sum of Rs.2,55,350/- for the loss caused to the TASMAR by the petitioner, but he did not reply to the notice. Hence another notice was issued to the petitioner in April 2018 as per the decision made on review meeting held at Head office to collect the said amount immediately through two installments and the petitioner was given an opportunity to appear on 02.04.2018 before the District Manager regarding the issuance of notice **otherwise disciplinary action would be initiated** against the petitioner under the regulations of Revenue Recovery Act. Thereafter the petitioner appeared on 02.04.2018 and submitted his written explanation stating that he can't repay the said amount because of the proceedings in C.C.No.311/2005 was pending at criminal court. Therefore, the process of disciplinary proceedings against the petitioner was temporarily aborted. Thereafter, the petitioner was transferred to Godown and he challenged the transfer order dated 04.05.2018 in W.P.No.11227/2018 and the came up for hearing on 25.05.2018 but this Hon'ble Court did not incline to grant interim order and directed to file counter and thus the writ petition is pending and we have also filed counter on 14.08.2018."

The contention of the petitioner is that this recovery was imposed on the petitioner without any proceedings and the petitioner is not liable to pay the same. Even though it alleges that three persons are involved, the respondents have imposed the punishment to recover the entire amount only from the petitioner alone.

6. This Court is not able to understand the stand of the respondents for two reasons because the recovery is ordered without any proceedings and the respondents counter also states that if the petitioner is not paying the amount, disciplinary proceedings will be initiated. The stand of the respondents is that, the recovery order can be passed without any enquiry and the disciplinary proceedings can be initiated if the amount is not paid, which is absolutely unknown in the service jurisprudence. It is totally arbitrary attitude of the respondents.

7. It is seen from the records that the petitioner was issued with the transfer order to work in the godown and the petitioner has joined the transferred place the next day and was



working until July. The transfer order was passed in the month of May. The petitioner was on medical leave from the month of August and thereafter again he was not permitted to join in the transferred place in the month of September. But the contention of the respondent is that the petitioner did not come for duty and he has unauthorizedly absented himself. The statement of the respondents is not believable because according to the respondents statement, the petitioner is not obeying the transfer order and therefore he is unauthorizedly absented himself. But the record shows that the petitioner was issued transfer order in the month of May and he had been working in the month of May, June, July in the transferred place and he was on medical leave in the month of August and in September, the tussle has started between the petitioner and the respondents. In order to put all the issues between the petitioner and the respondents to rest, this Court is passing the following order:

(i) *The petitioner is directed to join duty with immediate effect from the date of receipt of a copy of this order and the respondents shall not restrain the petitioner from joining the duty.*

(ii) *The petitioner is directed to pay Rs.85,116 (Rupees Eighty Five Thousand One Hundred and Sixteen only) in prorata basis.*

(iii) *The respondents shall retain the amount until the completion of the criminal proceedings. If the criminal proceeding ended up in acquittal, then the respondents are directed to re-pay the said amount to the petitioner. If the petitioner is convicted, the amount shall be retained by the respondents.*

(iv) *Since according to the respondents, the disciplinary proceedings will be initiated if the amount is not paid. Therefore, the respondents are restrained from initiating any disciplinary proceedings for the loss incurred.*

(v) *The criminal Court is directed to complete the criminal trial within a period of six (6) months from the date of receipt of a copy of this order. If need be the Court may consider for splitting of trial*

8. With the above direction, this Writ Petition is disposed of. There shall be no order as to costs.

Sd/-

Assistant Registrar (Crl Side)

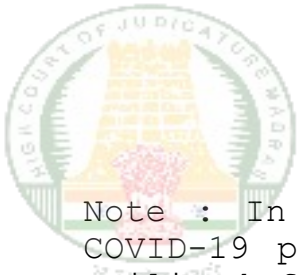
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/ /2022

Sub Assistant Registrar(CS)

Nsr

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



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

- 1.The District Manager,
Tamil Nadu State Marketing
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Rameshwaram National Highways,
Kalukar Kadai Villakku,
Manalur,
Sivagangai District.
- 3.The Judicial Magistrate,
Judicial Magistrate Court No.VI,
Madurai.

+1 CC to M/s.H.ARUMUGAM, Advocate (SR-14716[F] dated 25/03/2022)

+1 CC to M/s.L.PRABHU, Advocate (SR-14142[F] dated 24/03/2022)

W.P. (MD) .No.24300 of 2018
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MGJ(20.04.2022) 6P 6C