



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.04.2022

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD) .No.11277 of 2017

and

W.M.P (MD) No.8658 of 2017

E.Moorthy

... Petitioner

**Vs.**

1.The Managing Director,  
Tamil Nadu State Marketing Corporation,  
Egmore, Chennai-8.

2.The Senior Regional Manager,  
Tamil Nadu State Marketing Corporation,  
Tiruchirappalli Zone,  
(TASMAC),  
Trichy.

3.The District Manager,  
Tamil Nadu State Marketing Corporation,  
Tiruchirappalli Zone,  
(TASMAC),  
Karur District.

... Respondents

**Prayer** : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records of the first respondent in his proceedings in Na.Ka.No.R1/13177/2016, dated, 09.09.2016 and quash the same and direct the first respondent to entertain the revision filed by the petitioner, dated, 28.09.2015, consequently direct the first respondent to hear the petitioner to dispose of the revision, dated, 28.09.2015 on merits and in accordance with law.

For Petitioner : Mr.S.Gokulraj

For Respondents : Mr.M.Subbaiah  
for H.Arumugam

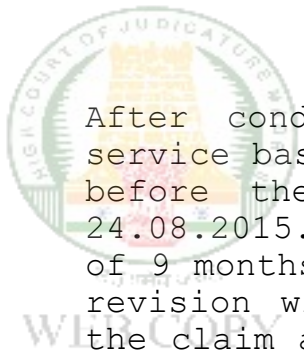


**ORDER**

This writ petition has been filed, challenging the impugned order, dated, 09.09.2016 with the consequential direction to entertain the revision petition filed by the petitioner, dated, 28.09.2015 and dispose the same on merits.

2. The brief facts of the case are that the petitioner was working as salesman in TASMACH in Shop No.5016 at Pallapatti, Karur District. A Charge Memo was issued on 21.12.2013, alleging that the petitioner has taken long leave without prior intimation. The third respondent had appointed an enquiry officer and conducted an enquiry on 27.12.2014 without giving sufficient opportunity to the petitioner. On 12.01.2015, the third respondent issued a second Charge Memo, based on the report submitted by the enquiry officer. The petitioner submitted his explanation on 23.01.2015. Without considering the explanation, the third respondent has passed a termination order, dated, 03.04.2015. Aggrieved over the same, the petitioner preferred an appeal on 21.04.2015. The notice was issued on 11.05.2015 and the petitioner appeared before the second respondent and submitted his explanation and also further submitted that the third respondent had not permitted the petitioner to join duty on 02.11.2012 to 14.11.2012 and after 14.11.2012 when the petitioner attempted to join duty. Meanwhile, the petitioner filed W.P(MD)No.16082 of 2015 seeking direction, directing the second respondent to dispose of the appeal and this Court, vide order, dated, 04.09.2015, passed an order, directing the second respondent to dispose of the appeal dated 21.01.2015 within a period of six weeks. The second respondent has rejected the appeal by quoting anti-date as 24.08.2015. Thereafter the petitioner preferred revision petition through register post on 28.09.2015 and the first respondent rejected the revision petition on 09.09.2016 stating that the petitioner has not filed revision within a period of 30 days. The contention of the petitioner is that the appeal order is dated 24.08.2015 but the same was anti dated. He received the same on after 24.08.2015 and then the petitioner has sent a revision petition on 28.09.2015 and the same was received on 30.09.2015. Hence, the revision petition is in time and the same was not considered by the first respondent.

3. The learned counsel for the third respondent denied the contention of the petitioner and had submitted that the respondent corporation is running retail vending business of IMFS and Beer products with effect from 29.11.2003 and the petitioner was employed as Salesman and his appointment is on purely part time / temporary and on a contract basis with the pay of consolidated salary. The salary is paid on the basis of "No Work No Pay". The petitioner had absented from duty from 02.11.2012 without informing to superior and no leave letter was submitted till 21.12.2013. Since the petitioner was unauthorized absent, the Charge Memo was issued and the proceedings were initiated against the petitioner.



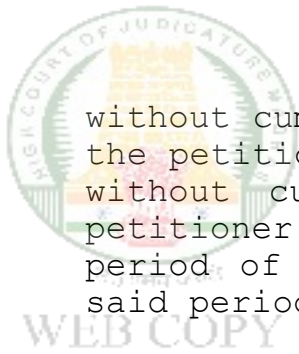
After conducting an enquiry, the petitioner was dismissed from service based on the records. The petitioner has preferred an appeal before the second respondent and the appeal was dismissed on 24.08.2015. Thereafter, the petitioner preferred revision with delay of 9 months. The petitioner has not given any reason for preferring revision with delay. Therefore, the petitioner is not entitled to the claim as prayed for and the learned counsel for the respondents submitted that the writ petition ought to be dismissed.

4. Heard Mr.S.Gokulraj, learned counsel appearing for the petitioner and Mr.M.Subbaiah, learned counsel appearing for the respondents.

5. The learned counsel for the petitioner relied on the letter sent by the post, where it has been stated that the revision petition article was delivered on 03.09.2015. The petitioner has taken the date as mistakenly as 30.09.2015. Therefore, the delay of 9 months is calculated and the same is incorrect. Even then if there is any delay, the respondents ought to consider the delay. This Court is of the considered opinion that the delay is not huge and hence the delay is condoned.

6. The learned counsel for the petitioner submitted that the petitioner was on leave due to severe back ache from 02.11.2012 to 24.11.2013 and thereafter the third respondent did not allow the petitioner to join the duty. The petitioner has submitted that he was on medical leave because he was not well due to severe back ache. The enquiry officer has held that the petitioner was on leave from 02.11.2012 to 24.11.2013 and has submitted leave application on 25.11.2013 along with the medical certificate, from the same doctor the petitioner has obtained medical certificate for every two months, but submitted the bunch of all the certificates with the leave application and has also held that from this it would be evident that the petitioner has absented without any leave application and hence the charges are proved. It is seen that the petitioner has absented from duty for more than one year, but subsequently submitted leave application along with the medical certificate.

7. This Court is of the considered opinion the petitioner was on leave for more than one year, but the petitioner claims that the petitioner was on leave for 12 days. The contention of the petitioner is that for rest of the days, the third respondent did not allow rather declined the petitioner to join duty. The said fact was not denied by the respondent. Even if the respondent deny the fact, the petitioner would be entitled to consider the period as loss of pay as per Fundamental Rules, wherein the period of absence shall be considered as loss of pay and hence the punishment of dismissal from service is absolutely disproportionate. Therefore, the impugned order of dismissal from service is set aside and the petitioner is entitled to the punishment as stoppage of increment for one year



without cumulative effect. The respondents are directed to reinstate the petitioner and implement the punishment of stoppage of increment without cumulative effect. However, it is made clear that the petitioner is not entitled to any monetary benefits during the period of absence, but entitled to continuity of service for the said period.

8. With the above said directions, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AE)

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Sub Assistant Registrar(CS)

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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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RK(04/05/2022) 4P 4C