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W.P. No. 25102 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2025

CORAM

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P. No. 25102 of 2018

T. Mahesh Kumar

... Petitioner

Vs.

1.The Managing Director,
Tamil Nadu State Marketing Corporation Ltd.,
(TASMAC Ltd.),
Thalamuthu Natarajan Maaligai,
Egmore, Chennai – 600 008.

2.The Senior Regional Manager,
Tamil Nadu State Marketing Corporation Ltd.,
(TASMAC Ltd.),
Coimbatore Region,
Coimbatore.

3.The District Manager-I,
Coimbatore District (North),
Tamil Nadu State Marketing Corporation Ltd.,
(TASMAC Ltd.),
Coimbatore.

... Respondents

Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records of the impugned order passed by the second respondent in Na.Ka.No.579/2016/Aa1 dated 09.11.2016 in confirming order of 3rd respondent in Na.Ka.No.758/RV-1/2015 dated 02.07.2015 by terminating the petitioner from service and quash the same and consequently direct the respondents to reinstate the petitioner as Salesman with continuity of service with



W.P. No. 25102 of 2016

all other attendant benefits.

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For Petitioner : Mr. M.R. Jothimanian
For Respondents : Mr. K. Sathish Kumar,
Standing Counsel

ORDER

This Writ Petition has been filed to issue a writ of certiorarified Mandamus, to call for the records of the impugned order passed by the second respondent in Na.Ka.No.579/2016/Aa1 dated 09.11.2016 in confirming order of 3rd respondent in Na.Ka.No.758/RV-1/2015 dated 02.07.2015 by terminating the petitioner from service and quash the same and consequently direct the respondents to reinstate the petitioner as Salesman with continuity of service with all other attendant benefits.

2. The case of the petitioner is that, he was appointed as Salesman in the Shop of third respondent on 21.11.2003 and he was directed to take charge at TASMACH Shop No.1526, Coimbatore. Subsequently, he was transferred to Shop No.1547 and he was working there. From the date of joining, he has been discharging his duties without any blemish to the satisfaction of the concerned authorities. Due to his sudden illness, he was absent from duty with effect from 23.10.2013 onwards and also, the Shop Supervisor granted leave. Since the petitioner was suffered with Jaundice, he was admitted in the Hospital and as per the advice of the Doctor, he took rest as he could not attend to the duty from 23.10.2013 to 02.04.2014. After recovery of illness, on 03.04.2014, he appeared before the third respondent and



requested to allow him to work as Salesman. The third respondent directed him to approach the second respondent to get permission. The petitioner approached the second respondent on 15.05.2014, but there was no proper reply. He made a representation on 21.07.2014 and 17.11.2014 requesting to allow him for duties. On 28.04.2015, the first respondent issued a notice calling the petitioner to appear for enquiry with regard to unauthorised absent from 23.10.2013.

2.2. During the enquiry, the petitioner has produced the medical certificates to substantiate his unauthorised absent. But the third respondent without considering the same, terminated the service of the petitioner vide order dated 02.07.2015. Aggrieved by the said order, the petitioner preferred an appeal before the second respondent and the same was dismissed by the second respondent vide order dated 09.11.2016 by confirming the order of the third respondent. Aggrieved by the order of the third respondent in terminating the service of the petitioner which was confirmed by the second respondent in appeal are under challenge in the present writ petition.

3. On behalf of the respondents, a counter affidavit has been filed. It is averred in the counter affidavit that, the petitioner has stayed away from duty from the month of October 2013. For his unauthorised absent, the respondent conducted personal enquiry and thereafter, he was terminated from service by the third respondent and the said order was confirmed by the second respondent in appeal. It is further averred in the counter that the petitioner has indulged in illegal. As the conduct of the



petitioner is not good, the order of the termination is legal and the same is warranted.

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4. During the course of hearing, the learned counsel for the petitioner and the learned Standing Counsel for the respondents submitted their arguments as per the averments made in the affidavit and counter affidavit filed by their clients.

5. Having considered the submissions of the respective counsel and upon careful examination of the materials available on record, it appears that admittedly the petitioner was absent from duties with effect from 23.10.2013 and he reported back only on 03.04.2014. Though the petitioner is contending that, concerned supervisor of the Shop granted leave to him, but there is no any substantial evidence to prove the same. The case of the petitioner is that, he suffered serious ill health and it is diagnosed by a Doctor, as Jaundice and he took treatment. As per the advice of the Doctor, he took rest, during that period. After he become normal and recovered from the health, he reported to duty on 03.04.2014. It appears that during the course of enquiry, he produced medical certificates issued by concerned Doctor. But it appears that the third respondent did not satisfied with those certificates.

6. On perusal of the orders under challenge in this writ petition, it appears that there is no complaints against the petitioner about his performance while discharging his duties, as Salesman. At any point of time, he is not subjected to any disciplinary



proceedings. As such, the contention of the respondents in their counter that the petitioner has indulged in illegal and he is always lethargic in nature and he has no integrity over the job and has no substance. It is also stated in the counter that the petitioner has guilty of laches in filing appeal. But on perusal of the order passed by the appellate authority, it appears that though the petitioner filed appeal before the second respondent on 13.07.2015, that appeal was disposed of only on 09.11.2016, nearly around 1 ½ years. As such, there is a delay on the part of the second respondent also, in disposing the appeal filed by the petitioner and as such, they cannot contend that there is laches in filing the appeal. Due to the reason that, against the order passed by the third respondent dated 02.07.2015, immediately on 13.07.2015, he preferred appeal though 30 days time is permitted to prefer an appeal.

7. As seen from the order of termination dated 02.07.2015, the supervisor of the concerned shop who worked at the relevant point of time i.e., before 23.10.2013 has not been examined by the enquiry officer, to ascertain the fact whether the said supervisor granted leave to the petitioner or not. By non-examination of the concerned shop supervisor in the enquiry conducted against the petitioner, this Court can draw inference against to the third respondent in not conducting the enquiry in fair manner.

8. Considering all these aspects, in our considered view, the order of



W.P. No. 25102 of 2016

termination passed against the petitioner is disproportionate and accordingly, it is liable to be quashed. Consequently, the order of the appellate authority, wherein the termination order was confirmed, is also liable to be quashed.

9. For the above said reasons, this Writ Petition is allowed with the following direction: -

i) The order dated 02.07.2015 passed by the third respondent and order dated 09.11.2016 passed by the second respondent, are hereby quashed.

ii) The respondents are directed to reinstate the petitioner into service forthwith.



W.P. No. 25102 of 2013

WEB COPY

iii) It is made it clear that the petitioner is not entitled for any wages from 23.10.2013 to till the date of his reinstatement.

10. There shall be no order as to costs.

24.01.2025

Index :Yes/No

Neutral Citation :Yes/No

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WEB COPY



W.P. No. 25102 of 2018

BATTU DEVANAND, J.

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W.P. No. 25102 of 2018

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