

N THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2015

CORAM

THE HONOURABLE MR. JUSTICE V.RAMASUBRAMANIAN

AND

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

W.A.No.663 of 2012
and M.P.No.1 of 2015

THE DISTRICT MANAGER [APPELLANT]/2nd Respondent
TAMILNADU STATE MARKETING
CORPORATION LTD
TASMAC LTD
MSR COMPLEX DAYALAN ST
GOUNDAMPALAYAM, COIMBATORE

Vs

1 K.VISWANATHAN

2 THE MANAGING DIRECTOR
TAMIL NADU STATE MARKETING
CORPORATION LTD (TASMAC LTD)
CMDA TOWERS, EGMORE
CHENNAI-8.

3 THE SENIOR REGIONAL MANAGER
TAMILNADU STATE MARKETING
CORPORATION LTD (TASMAC LTD)
MSR COMPLEX DAYALAN STREET
GOUNDAMPALAYAM
COIMBATORE- 641 030.

[RESPONDENTS]/Petitioner & Respondents 1 and 3

(R2 & R3 formal parties)

PRAYER: This Writ Appeal is filed under Clause 15 of the Letters Patent against the order of the learned Single Judge made in W.P.No.1943 OF 2010 dated 14.10.2011.

Writ Petition preferred under Article 226 of the Constitution of India praying for the issue of a writ of Declaration, that the action of the respondents in denying employment to the petitioner with effect from 1.5.2005 is illegal, against the principles of

natural justice, arbitrary, violative of Article 14 of the Constitution of India, and consequently direct the respondents to reinstate the petitioner in service w.e.f.1.5.2005 with full back wages, continuity of service, consequential and other attendant benefits.

For Appellant : Mr.S.Muthuraj

For Respondents : Ms.C.S.Monica(R1)

J U D G M E N T

(Judgment of the Court was made by
V.RAMASUBRAMANIAN, J)

The Tamil Nadu State Marketing Corporation Limited has come up with the above Writ Appeal, challenging an order passed by the learned Judge, declaring the action of the appellant in denying employment to the 1st respondent as illegal and consequently directing reinstatement with full backwages, continuity of service and other benefits.

2. Heard Mr.S.Muthuraj, learned Standing counsel for the appellant and Ms.C.S.Monika, learned counsel for the 1st respondent.

3. The 1st respondent was appointed as a Shop Salesman in a retail vending outlet of the appellant Corporation on 29.11.2003. All of a sudden, he was refused work from 01.05.2005. A show cause notice was issued on 02.05.2005 alleging that when the shop was inspected on 01.05.2005, it was found that the 1st respondent had sold liquor stealthy on the early morning of 01.05.2005.

4. It is relevant to note that 1st of May is not a holiday for the shops run by the appellant Corporation. Therefore, the 1st respondent gave a detailed reply. Thereafter, the appellant did not pass any orders. Therefore, the 1st respondent filed several representations, citing orders passed in favour of persons who are similarly situate, directing reinstatement. But the representations did not evoke any response. Therefore, the 1st respondent filed a writ petition seeking declaration that his non employment from 01.05.2005 was illegal and contrary to law and also for a consequential direction to the appellant to reinstate him with full backwages and continuity of service.

5. The said writ petition was allowed by a learned Single Judge of this Court by order dated 14.10.2011. The learned Judge allowed the writ petition together with cost of Rs.20,000/-, after finding that despite repeated orders passed by this Court, holding such non employment to be illegal, the appellant had continuously flouted those orders.

6. Aggrieved by the said order, the appellant Corporation is before this Court.

7. The main grievance of the appellant is that the 1st respondent was only a temporary employee and that he was refused permission to work as Salesman, on account of the irregularities.

8. But, unfortunately, as pointed out by the learned Judge, the appellant did not initiate any action for termination of the services of the 1st respondent for any misconduct. The learned Judge, as seen from paragraph No.10 of the order, directed the Corporation to produce the original file relating to the oral termination of the services of the 1st respondent. The file disclosed certain disturbing matters. The learned Judge has recorded what was contained in the file in paragraph No.10. Paragraph No.10 reads as follows:-

"10. The learned Standing Counsel was also directed to produce the original file relating to the termination of the petitioner, which was also produced. Instead of being a continuous running file containing the records arranged in a chronological order with numbered pages, few sheets were tagged together and kept in a brown folder and was circulated. Certainly, this is not the way where the respondents TASMAC should keep their official records. There must be proper maintenance of records as followed in all Government departments and public sector Corporations. In any event, the second respondent did not appear before this Court on 27.09.2011. Instead the learned Advocate General along with the Standing Counsel Mr.Muthuraj represented to this Court that the Officer namely, the District Manager, TASMAC, Coimbatore was deputed to receive nomination papers at Panchayat Union, Pollachi (South) in view of the notification of local body elections and because of the pressing election work, he could not appear and requested this Court that his personal appearance may be dispensed with. Therefore, this Court directed the learned Standing Counsel to file a memo to that effect. Accordingly, a memo was filed".

The learned Judge found from the file that there was no order of termination. He also found that the representations made by the 1st respondent were available in the file. In respect of similar employees by name Chandrasekaran and Prithiviraj, the appellant had passed orders of reinstatement in identical circumstances, after they had obtained Court orders.

9. In paragraph No.12 of his order, the learned Judge also

found that the counter affidavit contains false statements. The learned Judge consequently took a serious view of a false statement being made on oath before this Court. In paragraph No.12 of the order, the learned Judge has extracted the relevant portion of the counter affidavit and took exception to the attitude of the appellant.

10. From the above, it is clear (1) that there was no order of termination and (2) that after making allegations causing stigma upon the 1st respondent, the appellant chose not to issue any termination order and not to hold any disciplinary proceedings, but to terminate the 1st respondent from discharging duties. It is in such circumstances, that the learned Judge held that the summary dismissal from service by relying upon the terms and conditions of employment, cannot be accepted in the light of the express provisions of the Industrial Employment Standing Orders Act, 1946. The learned Judge referred to the Model Standing Order and held that the action of the appellant cannot be upheld.

11. In the above circumstances, we find no justification to interfere with the order of the learned Judge. As a matter of fact, the grounds of appeal filed by the Corporation would show that the appellant has been compelled to file the appeal, in view of the cost awarded by the learned Judge with a direction that it should be collected from the District Manager of the appellant. Apart from this, no valid ground has been raised by the appellant Corporation for interfering with the order of the learned Judge. Therefore, the Writ Appeal deserves to be dismissed insofar as it is directed against the substantial relief granted to the 1st respondent is concerned. However, taking into account the facts and circumstances, only that portion of the order of the learned Judge imposing cost upon the District Manager, shall stand removed subject to condition that the appellant complies with the other portions of the order within a period of four weeks from the date of receipt of a copy of this order. If the appellant fails to comply with the order of the learned Judge in respect of reinstatement and other reliefs, the concession granted by this order mainly with the removal of cost imposed by the learned Judge will not be available to the appellant.

The Writ Appeal is dismissed with the above direction. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

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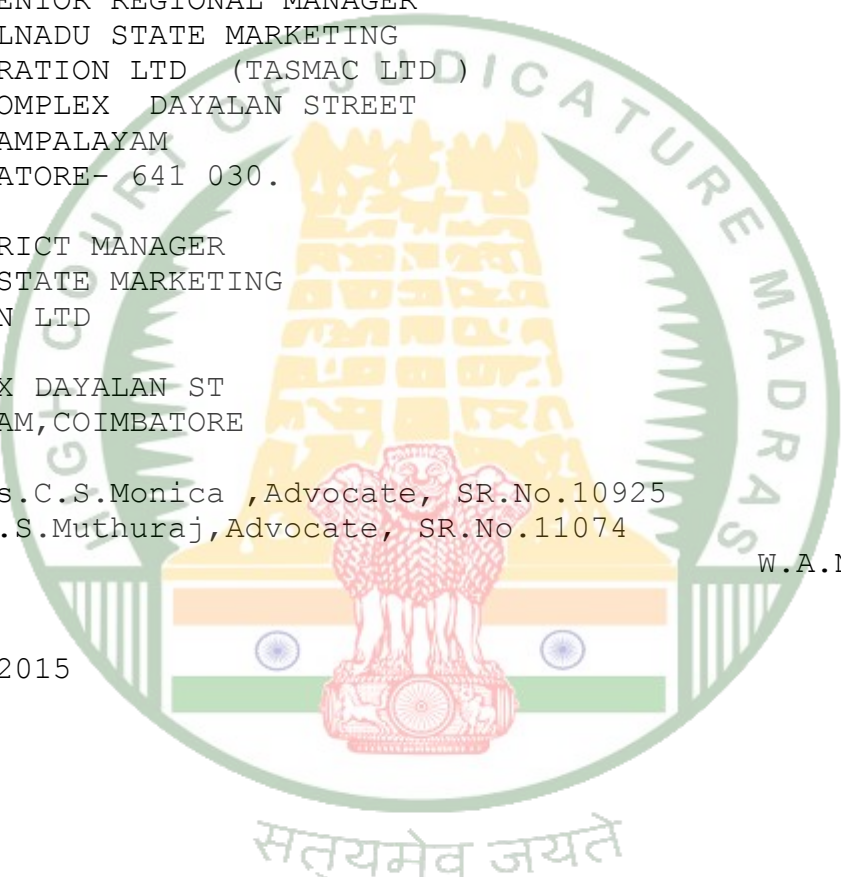
3.THE DISTRICT MANAGER
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1 cc to Ms.C.S.Monica ,Advocate, SR.No.10925

1 cc to Mr.S.Muthuraj,Advocate, SR.No.11074

W.A.No.663 of 2012

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