

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2017

CORAM

THE HON'BLE Mr. JUSTICE V.PARTHIBAN

W.P.No.4070 of 2012

S.Job Kamaraj

... Petitioner

Vs.

1.The Managing Director,
Tamil Nadu Corporation for
Development of Women Ltd.,
Annai Theresa Mahalir Valagam,
First Floor, Valluvar Kottam High
Road, Nungambakkam,
Chennai 600 034.

2.The Project Officer,
Project Implementation Unit,
Mahalir Thittam,
Krishnagiri.

... Respondents

Prayer : Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order of the first respondent passed in Proc.No.3371/A2/2011, dated 06.02.2012 and quash the same and consequently directing the respondents to reinstate the petitioner with arrears of salary from the date of termination till reinstatement with interest and also with all monetary and attendant benefits.

For Petitioner : Mrs.Kuyilmozhi for
M/s.K.Aruna Giri

For Respondents: Mr.K.Venkataramani
Addl. Advocate General, assisted by
Mr.P.Sanjay Gandhi

O R D E R

Heard Mrs.Kuyilmozhi, learned counsel appearing for the petitioner and Mr.Venkataramani, learned Additional Advocate General appearing for the respondents.

2. The petitioner has approached this Court for seeking the following relief,

"To issue a Writ of Certiorari Mandamus, to call for the records pertaining to the impugned order of the first respondent passed in Proc.No.3371/A2/2011, dated 06.02.2012 and quash the same and consequently directing the respondents to reinstate the petitioner with arrears of salary from the date of termination till reinstatement with interest and also with all monetary and attendant benefits."

3. The case of the petitioner is as follows:

The petitioner was appointed on contractual basis in the first respondent corporation vide order dated 29.10.2007 as Assistant Project Officer (Training). Although the order provided for contractual employment on consolidated pay for a period of two years, the petitioner was continued in service till 2012. On 06.02.2012, a termination order was issued against the petitioner. The said termination order is under challenge before this Court.

4. According to the learned counsel appearing for the petitioner, the termination order was preceded by an enquiry conducted on behalf of the respondent Corporation into certain allegations/complaints against the petitioner by the members of the public. An enquiry report was submitted, on the basis of which the termination order was issued. According to the learned counsel, the petitioner was not given any opportunity to explain that no notice issued to him calling for explanation. The petitioner was not enquired in respect of the allegations made against him. The statements obtained from public were behind the back of the petitioner and there was no semblance of opportunity afforded to the petitioner to defend his position in regard to the allegations made against him.

5. In the aforesaid circumstances, the learned counsel for the petitioner would submit that the termination order was founded on the serious allegations against the petitioner. No opportunity had been given to the petitioner to defend his position. The respondent Corporation had not followed the due process of law before issuing the impugned termination order. In support of her contention, the learned counsel would rely on the decision of this Court, in the case of V.L.Lakshmanakumar Vs. The District Manager, "TASMAC" Limited, and another, reported in 2006 (1) CTC 660, dated 25.11.2005 in W.P.No.6893 of 2005. The learned Judge of this Court as he then was as held any termination of an employee if not a termination simpliciter and which results in civil consequences or amounts to stigma, the same cannot be passed without there being a charge memo, enquiry and the findings as to the charges. The ratio laid down by the learned Judge of this Court has found in paragraph 7, which is extracted below:-

"7.The Apex Court, in more than one case, has held that when an order of termination involves civil consequences and consequently amounts to stigma, the same cannot be passed without there being a charge memo, enquiry and the finding as to those charges. This proposition of law has been recently reiterated by the Apex Court in the Judgment State of Hariyana Vs. Satyender Singh Rathore, 2005 (7) SCC 518. In that Judgment, the Supreme Court has relied upon the earlier Judgment Dipti Prakash Banerjee Vs. Satyendra Nath Bose National Centre for Basic Sciences, 1999 (3) SCC 60, and has held that if findings were arrived at in an enquiry as to misconduct behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as "founded" on the allegations and will be paid."

6. By the aforesaid legal position, the learned counsel for the petitioner would submit that in the instant case, no charge memo and no proper enquiry was conducted and therefore, the termination order though appearing to be termination simpliciter but actually founded on alleged misconduct. Therefore, the termination order issued against the petitioner suffers from illegality as being violative of the principles of natural justice.

7. Upon notice, the learned Additional Advocate General appearing for the respondents entered appearance and submitted his arguments. The learned counsel would submit that the petitioner being contractual employee, the termination is on the basis of the contract and since the termination being one of termination simpliciter, no notice for enquiry is required.

8. This Court has considered the arguments advanced by the learned counsel for the respondents and is of the view that the said arguments cannot be countenanced both in law and on facts. It is very clear from the records or from the facts as explained that the termination order was preceded by an enquiry into certain allegations made against the petitioner and therefore, the petitioner ought to have been granted adequate opportunity to defend his position on the basis of allegations. In the absence of such an opportunity, the termination order cannot be a valid order. Therefore, this Court is in agreement with the contention put forth by the learned counsel appearing for the petitioner.

9. In the above circumstances, the termination order dated 06.02.2012, which is impugned in the present writ petition is set aside and the petitioner is directed to be reinstated in service within a period of four weeks from the date of receipt

of a copy of this order. During the course of the arguments, it is represented by the learned counsel for the respondents that the stay petition moved by the petitioner was dismissed by this Court and in view of the same, the petitioner has not been in service from the date of termination and till date. In view of the same, the petitioner is not entitled to any back wages for the period of his non employment till the order of reinstatement, on the ground that "no work no pay".

10. It is also made clear that it is always been open to the respondent Corporation to proceed against the petitioner if they so advised after giving due opportunity in compliance with the established principles of the natural justice. By granting such liberty, the writ petition is allowed. No costs.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

gsk

To

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2.The Project Officer,
Project Implementation Unit,
Mahalir Thittam,
Krishnagiri.

+lcc to M/s.K.Aruna Giri, Advocate in sr.no.70034

GMR(CO)
NR 11/10/2017

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