



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 25.04.2017
Delivered on : 07.06.2017

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CORAM :

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P (MD) .No.4358 of 2015 and
W.M.P. (MD) .Nos.1 to 3 of 2015

N.Indirani

... Petitioner

vs .

1. The State of Tamil Nadu,
Rep. by its Secretary,
Department of Industries and Commerce,
Fort St. George, Chennai - 600 009.
2. The Chairman and Managing Director,
TANSI Corporation Office,
Thiru-vi-ka Industrial Estate,
Industrial Estate, Guindy,
Chennai - 600 032.
3. The General Manager,
TANSI Corporation Office,
Thiru-vi-ka Industrial Estate,
Industrial Estate, Guindy,
Chennai - 600 032.
4. The Manager - Furniture,
TANSI Corporation Office,
Thiru-vi-ka Industrial Estate,
Industrial Estate, Guindy,
Chennai - 600 032.
5. The Director of Employment and Training,
Thiru-vi-ka Industrial Estate,
Industrial Estate, Guindy,
Chennai - 600 032.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of termination issued by the 2nd respondent Chairman and Managing Director (i/c) in Pro.No.537/EB1/2010-1, dated 04.03.2015, quash the same and further direct the 2nd respondent to reinstate the petitioner with in service with all attendant benefits including continuity of service and arrears of salary and allowances.



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For Petitioner : Mr. Isaac Mohanlal
Senior Counsel for
Mr. T. Cibi Chakraborty.

For R1 and R5 : Mr. N. S. Karthikeyan
Additional Government Pleader

For R3 : Mr. A. Thiyagarajan
Senior Counsel for
Mr. S. Karunakar

For R2 and R4 : No appearance

ORDER

This Writ Petition is filed for issuing a Writ of Certiorarified Mandamus to quash the order of termination issued by the second respondent dated 04.03.2015 and to direct the second respondent to reinstate the petitioner forthwith with all attendant benefits including continuity of service and arrears of salary.

2. The brief facts that are necessary for the purpose of disposing the above Writ Petition are as follows:

2.1. The petitioner is a diploma holder in Mechanical Engineering having additional diploma in Auto Cad (CAAD). The petitioner also registered herself in Dindigul District Employment Exchange on 14.08.1995. The petitioner belonged to backward class and dependent of Ex-servicemen holding Ex-Servicemen Dependent Certificate as her husband was an Ex-Serviceman served in the Army under Corps of Electronic and Mechanical Engineering (EME), till 2008.

2.2. The petitioner's name was sponsored by the Employment Exchange for the post of Foreman Grade-II. Subsequently, the second respondent, namely, the Managing Director of Tamil Nadu Small Industries (TANSI) called the petitioner for an interview by letter dated 10.11.2010. It is pertinent to mention that the petitioner was specifically required to produce all certificates including the Ex-Servicemen Dependant Certificate in original. The petitioner produced all the certificates and after final interview, the petitioner was selected and order of appointment was issued to the petitioner on 31.01.2011. It is to be noted that in the order of appointment issued to the petitioner, the petitioner was appointed in priority category - BC-Woman. Even in the remarks column, it is indicated that the petitioner is the ~~senior-most candidate~~ in B.C., Ex-Servicemen Dependent.

2.3. After the appointment of the petitioner in the post



of Foreman Grade-II, the second respondent issued further posting order posting the petitioner as Foreman Grade-II at TANSI Furniture Works, Kappalur, Madurai. The order of appointment stipulates that the petitioner shall undergo the period of probation of two years within the continuous period of three years. As per the order of appointment, the second respondent reserved the right to cancel the appoint, if the documents furnished are found defective or suffers infirmity and not in consonance with the priority / selection rules prescribed in various Government Orders. After completion of more than three years, without any break or blemish in service, the petitioner also was assigned with additional charge as Works Manager of TANSI Furniture Works, Madurai, by the second respondent by order dated 08.04.2014.

2.4. However, by order, dated 04.03.2015, the second respondent terminated the petitioner from service with immediate effect. Except stating that the petitioner was entitled to get three months salary in lieu of the notice period as stipulated under Rule 27(d) of TANSI Rules, 1992, no prior notice or enquiry was conducted before terminating the service of the petitioner. It is stated in the impugned order that the second respondent had been informed by the fifth respondent, namely, the Director of Employment and Training by his letter dated 30.08.2012 stating that the petitioner did not come under any priority category and that she was appointed without following the norms fixed by the Government. Aggrieved by the order of second respondent, the above Writ Petition is filed by the petitioner.

2.5. The specific case of the petitioner is that the reservation with regard to physically handicapped person, women, Ex-servicemen, Scheduled Castes and Scheduled Tribes are all equally applicable to TANSI. Hence, the petitioner being the wife of an Ex-Serviceman was considered under priority category as a dependent of Ex-servicemen. Hence, the reason given in the impugned order that the petitioner did not come under any priority category is illegal. It was further contended by the petitioner that the second respondent has taken upon the matter to the State Government for ratification mistakenly and the Government turned down the request by referring to the prior instructions. According to the petitioner, the impugned order was passed on the basis of an inconsistent stand that was taken by the second respondent who failed to bring it to the notice of the fifth respondent, the true facts and the relevant circumstances. It is also contended by the petitioner that the petitioner is eligible to be considered under priority category in terms of Rule 13 of TANSI Service Rules and in terms of G.O.Ms.No.188, Personnel and Administrative Reforms (Personnel - P) Department, dated 28.12.1976. The petitioner also contended that in terms of Rule 16(d) of TANSI Service Rules, regarding completion or termination on probation, the petitioner should be deemed to have completed

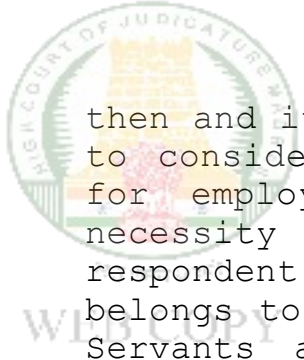
her probation and that the impugned order issued to the petitioner is unconstitutional apart from illegal for reasons stated in the various grounds raised by the petitioner.

3. The first respondent has filed a counter affidavit adopting counter affidavit filed on behalf of the respondents 2 and 3. Except to pray leave of this Court to permit the first respondent to adopt the counter affidavit filed by respondents 2 and 3, the first respondent has not traversed the material allegations and averments in the affidavit filed in support of the Writ Petition. The respondents 2 and 3 filed a detailed counter affidavit contesting the Writ Petition on various grounds. It was contended by the respondents 2 and 3 that the petitioner has no legal or statutory right to claim her appointment as Foreman Grade-II as valid since the same has been declared illegal by the fifth respondent. It was further contended that the appointment was made in violation of prior instructions specified in the letter furnished to the second respondent dated 17.09.2010. Since specific instructions / guidelines were given to the selection authorities not to consider the dependents of the Ex-servicemen or serving personnel under priority category and only if there are no candidates having priority persons who are contracted inter-caste marriage or the legal heirs of Tamil servants or legal heirs of freedom fighters or the dependents of Ex-servicemen can be considered. Since the petitioner is not eligible to be considered under any priority category, the respondents 2 and 3 took the stand that the second respondent inadvertently selected the Writ Petitioner and issued appointment order appointing her as Foreman Grade-II by order dated 31.01.2011. Since the third respondent came to know about the mistake happened in the selection of Writ Petitioner only when the fifth respondent pointed out on perusal of the selected candidates list received from TANSI and TANSI had reserved right to cancel any appointment order if the selection or appointment is contrary to any Government Order or other guidelines, the impugned order cannot be termed as illegal or improper. In the counter affidavit, it is also admitted that the second respondent approached the first respondent for ratification of the petitioner's appointment and pointed out that the first respondent replied negatively stating that the second respondent's request is not feasible of compliance.

4. Regarding the contention of the petitioner that the impugned order without issuing notice is in violation of the principles of natural justice, it was contended that the appointment was rendered illegal by the second respondent and hence, no prior notice is necessary especially when the petitioner was paid three months gross pay in lieu of loss of employment as per Rule 27(d) of TANSI Service Rule, 1993.

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

5. With regard to Rule 13 of TANSI Service Rule, it is submitted that the fifth respondent used to give order now and



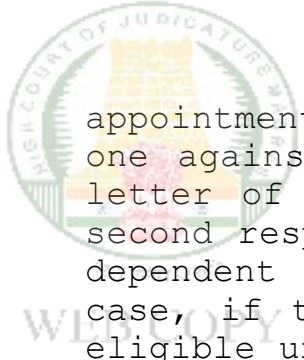
then and it is only the Government which has got prerogative right to consider and issue orders on the priority reservation policy for employment based on the assessment of the strength and necessity in the particular category of caste. Since the fifth respondent has categorically instructed that only candidates who belongs to legal heirs of freedom fighters / legal heirs of Tamil Servants and persons who have contracted inter-caste marriage should be considered for appointment under priority category, the petitioner's appointment is contrary to the policy decisions of the first respondent and the instructions given by the fifth respondent vide its letter dated 05.02.2010. Since the petitioner was appointed under dependent of Ex-servicemen category appointment is not valid and she does not come under any priority category, the second respondent has terminated the service of the petitioner. This factual position relying upon the instructions of the fifth respondent by letter dated 05.02.2010 was reiterated in the counter affidavit and the appointment of the petitioner was described as one by mistake and it is admitted that the second respondent corporation had committed an error by infracting the specific direction of the fifth respondent. Since the respondents 2 and 3 have adopted the stand of the fifth respondent in filing the counter affidavit the fifth respondent has not filed any independent counter.

6.Mr.Isaac Mohanlal, learned Senior Counsel appearing for the petitioner raised the following contentions:

(i) The impugned order passed by the second respondent terminating the petitioner from service is arbitrary, illegal, unconstitutional and violative of principles of natural justice.

(ii) The petitioner's name was entered under priority category in the District Employment Office at Dindigul, her name was considered for selection by the second respondent and the petitioner was called for interview as per the letter dated 10.11.2010. Even in this letter, the petitioner was required to produce the certificate in original to show that she comes under priority category as a dependent of Ex-servicemen. The order of appointment also is very clear that she was appointed as she is the first candidate among dependent of Ex-servicemen category. Hence, the petitioner was not at fault nor she ever made any misrepresentation or produced false certificate for getting the appointment. In such circumstances, the respondents cannot terminate the service of the petitioner after allowing her to continue for more than four years, especially after rendering an unblemished and meritorious service to the satisfaction of all the authorities.

(iii) The appointment of the petitioner is not contrary to TANSI Service Rules, vide G.O.Ms.No.188, Personnel and Administrative Reforms (Personnel - P) Department, dated 28.12.1976. Since the policy of Government regarding reservation in appointments shall apply to all classes and categories of



appointment, the appointment of the petitioner cannot be held as one against the policy decision of the Government. Even in the letter of the fifth respondent which is much relied upon by the second respondent in the counter affidavit, it is stated that the dependent of Ex-servicemen can be considered for appointment, in case, if there are no other candidates who are recognised to be eligible under the priority category, namely, inter-caste marriage or legal heirs of patrons of Tamil or freedom fighters. Hence, the termination of the petitioner's services on the ground of non-observance of guidelines after allowing the petitioner for a period of more than four years is not warranted.

(iv) The petitioner is aged 33 years at the time of appointment and because of the petitioner's appointment, she lost her opportunity in getting any employment through Employment Exchange. Since the petitioner was not at fault, even assuming that she was wrongly appointed, the same cannot be put against her for making the position worse for her as she may not get any employment because of her age and other constraints.

(v) The learned Senior Counsel appearing for the petitioner pleaded that in equity, the petitioner is entitled to protect her employment and to challenge the unilateral termination of service. As per Rule 16(d) of TANSI Service Rules, 1993, if no order of completion, extension or termination is issued within six months from the date of expiry of the extended period of probation, the probationer shall be deemed to have completed his probation. In this case, the petitioner shall be deemed to have completed her probation as there was no order of completion, extension or termination is issued. After completion of probation, order of appointment cannot be terminated that too without notice or enquiry.

(vi) Since the petitioner has served for more than four years at the time of the impugned order without any break or blemish, the first respondent ought to have considered the request of the second respondent to ratify the appointment of the petitioner. Though the learned Senior Counsel appearing for the petitioner advanced arguments on other issues which are also raised by way of grounds in the writ petition, this Court need not go into all those grounds having regard to the points on which this Court is inclined to dispose of this Writ Petition.

7. The learned Senior Counsel appearing for the petitioner relied upon the judgment of the Hon'ble Supreme Court in the case of **D.K. Yadav v. J.M.A. Industries Ltd.** reported in **(1993) 3 SCC 259** wherein the Hon'ble Supreme Court has held in paragraph 11 as follows:

<https://hcservices.ecourts.gov.in/> must therefore be now taken to be well-settled that procedure prescribed for depriving a person of livelihood must meet the challenge of Art. 14. and



such law would be liable to be tested on the anvil of Art. 14 and the procedure prescribed by a statute or statutory rule or rules or orders effecting the civil rights or result in civil consequences would have to answer the requirement of Art. 14. So it must be right, just and fair and not arbitrary, fanciful or oppressive. There can be no distinction between a quasi-judicial function and an administrative function for the purpose of principles of natural justice. The aim of both administrative inquiry as well as the quasi-judicial enquiry is to arrive at a just decision and if a rule of natural justice is calculated to secure justice or to put it negatively, to prevent miscarriage of justice, it is difficult to see why it should be applicable only to quasi-judicial enquiry and not to administrative enquiry. It must logically apply to both."

8. The learned Senior Counsel appearing for the petitioner further relied upon a judgment of the Hon'ble Supreme Court in the case of **Balmer Lawrie & Company Limited and others v. Partha Sarathi Sen Roy and others** reported in (2013) 8 SCC 345 wherein the Hon'ble Supreme Court after referring to several judgments, has held as follows:

"30. Where the actions of an employer bear public character and contain an element of public interest, as regards the offers made by him, including the terms and conditions mentioned in an appropriate table, which invite the public to enter into contract, such a matter does not relegate to a pure and simple private law dispute, without the insignia of any public element whatsoever. Where an unfair and untenable, or an irrational clause in a contract, is also unjust, the same is amenable to judicial review. The Constitution provides for achieving social and economic justice. Article 14 of the Constitution guarantees to all persons, equality before the law and equal protection of the law. Thus, it is necessary to strike down an unfair and unreasonable contract, or an unfair or unreasonable clause in a contract, that has been entered into by parties who do not enjoy equal bargaining power, and are hence hit by Section 23 of the Contract Act, and where such a condition or provision becomes unconscionable, unfair, unreasonable and further, is against public policy. Where inequality of bargaining power is the result of great disparity between the economic strengths of the contracting parties, the aforesaid principle would automatically apply for the reason that, freedom of contract must be founded on the basis of equality of bargaining power between such contracting parties, and even though ad idem is assumed, applicability of standard form of contract is the rule. Consent or consensus ad

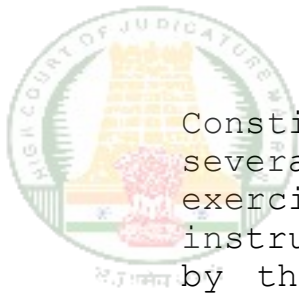


idem as regards the weaker party may therefore, be entirely absent. Thus, the existence of equal bargaining power between parties, becomes largely an illusion. The State itself, or a state instrumentality cannot impose unconstitutional conditions in statutory rules/regulations vis-à-vis its employees, in order to terminate the services of its permanent employees in accordance with such terms and conditions. (Vide: Central Inland Water Transport Corporation Ltd. v. Brojo Nath Ganguly, AIR 1986 SC 1571; D.T.C. v. D.T.C. Mazdoor Congress, AIR 1991 SC 101; LIC of India (supra); K.C. Sharma v. Delhi Stock Exchange & Ors., AIR 2005 SC 2884; and Punjab National Bank by Chairman & Anr. v. Astamija Dash, AIR 2008 SC 3182)."

9. Relying upon the two judgments, the learned Senior Counsel appearing for the petitioner pointed out that the impugned order in this case, without issuing show cause notice or opportunity of hearing to the petitioner is unfair and unjust and hence, liable to be quashed. The learned Senior Counsel appearing for the petitioner also pointed out that despite specific clause in the order of appointment that the same can be revoked without any further notice in case of any irregularity, there cannot be any termination of service after four years on any ground which is not attributable to any fraud or misrepresentation or suppression or any other illegality committed by the petitioner. The impugned order is one in violation of principles of natural justice and hence, liable to be quashed.

10. The learned Senior Counsel appearing for the petitioner relied upon a judgment of the Hon'ble Supreme Court in the case of **West Bengal State Electricity Board and others v. Desh Bandhu Ghosh and others** reported in (1985) 3 SCC 116. The Hon'ble Supreme Court had an occasion to deal with the power of West Bengal State Electricity Board to terminate the services without notice in terms of Regulations 33 and 34 of the Board's Regulations. The Hon'ble Supreme Court has held as follows:

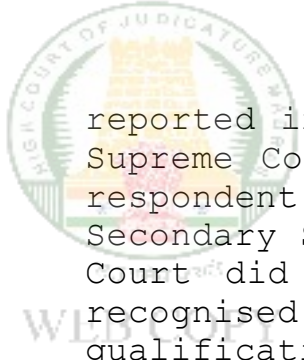
"4. We are not impressed with the submission of the learned counsel for the Board- On the face of it, the regulation is totally arbitrary and confers on the Board a power which is capable of vicious discrimination- It is a naked 'hire and fire' rule, the time for banishing which altogether from employer-employee relationship is fast approaching. Its only parallel is to be found in the Henry VIII class so familiar to administrative lawyers In Moti Ram Deka v. North East frontier Railway [AIR 1964, S C. 600] Rules 148 (3) and 149 (3) of the Indian Railway Establishment Code were challenged on the ground that they were contrary to Art. 311 (2) of the Constitution. The challenge was upheld though no opinion was expressed on the question whether the rule offended art 14 of the



Constitution. Since then Art. 14 has been interpreted in several decisions of this Court and conferment and exercise of arbitrary power on and by the State or its instrumentalities have been frowned upon and struck down by this court as offending Art. 14. In *S. S. Muley v. J.R. D. Tata and Ors.* [[1979] 2 S.L.R. 438] P. B- Sawant, J. of the Bombay High Court considered at great length Regulation 48 (a) of the Air India Employee's Service Regulations which conferred similar power on the Corporation (2) . as Regulation 34 confers on the Board in the present case. The learned judge struck down Regulation 48 (a) and we agree with his reasoning and conclusion. In *Workman, Hindustan Steel Ltd. v. Hindustan Steel Ltd.* [AIR 1985 SC 251] this Court had occasioned to hold that a Standing Order which conferred such arbitrary, uncanalised and drastic power to enable the employer to dispense with an inquiry and to dismiss an employee, without assigning any reason, by merely stating that it was expedient and against the interest of the security to continue to employ the workman was violative of the basic requirement of natural justice."

11.The learned Additional Government Pleader appearing for the respondents 1 and 5 relied upon the Judgement of the learned Single Judge of this Court dated 30.01.2013 in W.P.(MD) No.13203 of 2010 in the case of *M.Nazeer Ahamed v. The Managing Director, TN TANSI and another.* The petitioner therein was selected on the basis of his claim for priority category. The petitioner therein received notice from the Managing Director of TANSI directing to produce the certificates to show that he was entitled to claim employment under a specified priority category. This notice was challenged. The petitioner was directed to produce any one of the certificates to show that the petitioner was either a legal heir of freedom fighter or Tamil servant or a spouse of inter-caste marriage. The petitioner was appointed on the basis of his claim that he was a dependent of Ex-servicemen, despite the fact that the Director of Employment Exchange directed the department not to consider the petitioner's claim under the priority category. The directions / guidelines were made clear and the respondents 2, 3 and 5 have intimated the policy of Government and the non-entitlement of any other person to apply under priority category. It was only on the facts and circumstances of that case, this Court declined to entertain the Writ Petition. The factual position in the present case is entirely different where the petitioner did not misrepresent nor guilty of any suppression during the process of selection.

12.Further, the learned Senior Counsel appearing for the petitioner relied upon a judgment of the Hon'ble Supreme Court in the case of ***Dr.M.S.Mudhol and another v. S.D.Halegkar and others***



reported in **(1993) 3 SCC 591**. The controversy before the Hon'ble Supreme Court in the said case is about eligibility of the first respondent to hold the post of Principal of Delhi Kannada Senior Secondary School. The first respondent before the Hon'ble Supreme Court did not have Masters degree with second division from a recognised university, which is one of the essential qualifications under the statute. Since the appointment was approved and the first respondent before the Hon'ble Supreme Court was allowed to work, for few years, the Hon'ble Supreme Court after taking into consideration the facts in that case declined to interfere with the appointment of the first respondent before the Hon'ble Supreme Court. Paragraphs 6 and 7 of the judgment are relevant and hence, extracted as follows:

"6. Since we find that it was the default on the part of the second respondent, Director of Education in illegally approving the appointment of the first respondent in 1981 although he did not have the requisite academic qualifications as a result of which the 1st respondent has continued to hold the said post for the last 12 years now, it would be inadvisable to disturb him from the said post at this late stage particularly when he was not at fault when his selection was made. There is nothing on record to show that he had at that time projected his qualifications other than what he possessed. If, therefore, in spite of placing all his cards before the selection committee, the selection committee for some reason or the other had thought it fit to choose him for the post and the 2nd respondent had chosen to acquiesce in the appointment, it would be inequitable to make him suffer for the same now. Illegality, if any, was committed by the selection committee and the 2nd respondent. They are alone to be blamed for the same.

7. Whatever may be the reasons which were responsible for the non-discovery of the want of qualifications of the 1st respondent for a long time, the fact remain that the court was moved in the matter after a long lapse of about 9 years. The post of the Principal in a private school though aided, is not of such sensitive public importance that the court should find itself impelled to interfere with the appointment by a writ of quo warranto even assuming that such a writ is maintainable. This is particularly so when the incumbent has been discharging his functions continuously for over a long period of 9 years when the court was moved and today about 13 years have elapsed. The infraction of the statutory rule regarding the qualifications of the incumbent pointed out in the present case is also not that grave taking into consideration all other relevant facts. In the circumstances, we deem it unnecessary to



go into the question as to whether a writ of quo warranto would lie in the present case or not, and further whether mere laches would disentitle the petitioners to such a writ."

13. The learned Senior Counsel appearing for the petitioner then relied upon another judgment of the Hon'ble Supreme Court in the case of **Ravinder Kumar v. State of Haryana and others** reported in (2010) 5 SCC 136. The appellant before the Hon'ble Supreme Court filed a Writ Petition challenging the termination of his service on the ground that the appellant's selection and appointment earlier was improper. The Hon'ble Supreme Court ultimately held in paragraph 19 as follows:

"19. It is evident from the above that in Ex-servicemen (General) category the last two candidates, namely, Subhash Chander and Taket Singh had score only 25 marks each. Sube Singh and Veer Bhan selected in Ex-servicemen BC (B) category had however scored more marks than Subhash Chander and Taket Singh. Sube Singh and Veer Bhan could and indeed ought to have been selected against the vacancies in Ex-servicemen (General) category as per their merit. This in other words would require the select list to be recast and candidates suitably shifted from the reserved category to the general category in which event appointments can be offered to other candidates in the Ex-servicemen BC(B) category depending on their merit. Such an exercise long after the selection process was completed may unsettle the settled position and lead to removal of candidates who stand already selected and who have been serving for a long time after undergoing the prescribed training. This may also mean that candidates who have accepted the result of the selection and may even have become overage may have to be brought in. We do not see any compelling reason for us to adopt that course at this distant point of time especially when the same would upset what stands settled for a long time."

14. The Hon'ble Supreme Court also in the case of **Buddhi Nath Chaudhary and others v. Abahi Kumar and others** reported in (2001) 3 SCC 328 has held as follows:

"6. The selected candidates, who have been appointed, are now in employment as Motor Vehicle Inspectors for over a decade. Now that they have worked in such posts for a long time, necessarily they would have acquired the requisite experience. Lack of experience, if any, at the time of recruitment is made good now. Therefore, the new exercise ordered by the High Court will only lead to anomalous results. Since we are disposing of these matters on equitable consideration, the learned counsel for the contesting



respondents submitted that their cases for appointment should also be considered. It is not clear whether there is any vacancy for the post of Motor Vehicle Inspectors. If that is so, unless any one or more of the selected candidates are displaced, the cases of the contesting respondents cannot be considered. We think that such adjustment is not feasible for practical reasons. We have extended equitable considerations to such selected candidates who have worked in the post for a long period, but the contesting respondents do not come in that class. The effect of our conclusion is that appointments made long back pursuant to a selection need not be disturbed. Such a view can be derived from several decisions of this Court including the decisions in Ram Sarup v. State of Haryana (1979) 1 SCC 168 : 1879 SCC (L&S) 35 ; District Collector & Chairman, Vizianagaram Social Welfare Residential School Society v. M. Tripura Sundari Devi (1990) 3 SCC 655 : 1990 SCC (L&S) 520 : (1990) 14 ATC 766 and H.C. Puttaswamy v. Hon'ble Chief Justice of Karnataka High Court, Bangalore 1991 Supp (2) SCC 421 : 1992 SCC (L&S) 53 : (1992) 19 ATC 292. Therefore, we must let the matters lie where they are."

15. From the reading of the judgments of the Hon'ble Supreme Court in the three cases above referred to, the Hon'ble Supreme Court has declined to interfere with the appointment made long back pursuant to a selection and the same principle has been reiterated in several judgments of the Hon'ble Supreme Court referred to by the Hon'ble Supreme Court in those three judgments. In the present case, the facts are not in dispute. As pointed out earlier, the petitioner was appointed by following a process of selection on the basis of list called for from Employment Exchange. The appointment order clearly indicate that the petitioner was appointed as against a regular vacancy and that the petitioner was considered under priority category, namely, dependent of Ex-servicemen. The petitioner cannot be blamed and it is not the case of the respondent that the petitioner has committed any illegality or irregularity in the process of selection. It is also not in dispute that the petitioner is not qualified to the post in which she was appointed in the year 2011. Even the dependent of Ex-servicemen are entitled to have their name considered subject to the availability or after considering the other candidates who were to be given priority. In such circumstances, the qualification of the petitioner is not in issue. The petitioner was appointed by order dated 31.01.2011. Though the petitioner was found mistakenly appointed by treating her candidature under priority category, the impugned order was passed only on 04.03.2015 even without following the principles of natural justice. It is also pertinent to mention that the petitioner was even in charge of the promotional post and has shown very good performance in terms of making profit in the unit



in which she was in charge. The specific plea raised by the petitioner in this regard is not disputed. In the communication dated 23.07.2013 from the second respondent to the first respondent, the second respondent has stated as follows:

"3. We also wish to state that the letter of the Director of Employment & Training has been received at this Office, after the lapse of 13 months from the date of intimation of her appointment. Had the Director of Employment & Training replied immediately on receipt of our report, TANSI would have initiated necessary action to terminate her other candidates as per rules. It is unfair to terminate the services of Tmt. N. Indirani at this distance of time (i.e., after almost two years) as if would affect her future especially since she has lost opportunity for appointment in some other Department."

16. The impugned order itself was passed only by the second respondent on the basis of the direction of the first respondent. Even in the impugned order, there is no adverse remarks against the petitioner. After referring to the decision of the Government on the recommendation for ratification of petitioner's appointment by the second respondent, the second respondent has passed the order terminating the services of the petitioner with immediate effect along with three months notice pay in compliance of Rule 27(d) of TANSI Service Rules, 1993. This order is certainly in violation of principles of natural justice. However, the fact remains that the petitioner's appointment strictly was not in terms of the reservation policy of the first respondent as evident from the instructions issued by the first respondent, the instructions given by the fifth respondent to the competent authority, namely, the second respondent. However, considering the facts narrated above regarding the age of the petitioner and the fact that the petitioner is not at fault for getting appointment, this Court by applying the principles of equity and good conscience, is inclined to allow the Writ Petition. The impugned order of termination issued by the second respondent vide Proceedings No.537/EB1/2010-1, dated 04.03.2015 is quashed. Consequently, the second respondent is directed to reinstate the petitioner forthwith in service with all attendant benefits including continuity of service and arrears of salary and allowances. The Writ Petition is allowed and there is no order as to costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

/True Copy/



To

1. The Secretary,
Department of Industries and Commerce,
Fort St. George,
Chennai - 600 009.
2. The Chairman and Managing Director,
TANSI Corporation Office,
Thiru-vi-ka Industrial Estate,
Industrial Estate, Guindy,
Chennai - 600 032.
3. The General Manager,
TANSI Corporation Office,
Thiru-vi-ka Industrial Estate,
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Industrial Estate, Guindy,
Chennai - 600 032.
5. The Director of Employment and Training,
Thiru-vi-ka Industrial Estate,
Industrial Estate, Guindy,
Chennai - 600 032.

+ 1 CC TO Mr.XAVIER RAJINI, ADVOCATE IN SR No. 59162
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 59406

SRM

TE/RSK/SAR-I : 14/06/2017 : 14P/8C

W.P(MD) .No.4358 of 2015 and
W.M.P. (MD) .Nos.1 to 3 of 2015
07.06.2017