

9IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 21.02.2018
CORAM
THE HONOURABLE Mr.JUSTICE V.PARTHIBAN
W.P.No.9178 of 2011

M.Munusamy

... Petitioner

Vs

The District Manager,
Tamil Nadu State Marketing
Corporation Ltd., (Salem Region),
Namakkal.

... Respondent

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, calling for the proceedings of the respondent in Na.Ka.No.02/B2/2005 dated 04.01.2005 and quash the same and consequently direct the respondent herein to reinstate the petitioner with all consequential and attendant benefits.

For Petitioner : Mr.P.Athi Veera Rama Pandian

For Respondents : Mr.K.Sathish Kumar
Standing Counsel for R1

O R D E R

The petitioner has approached this Court, seeking the following relief,

"To issue a Certiorarified Mandamus, calling for the proceedings of the respondent in Na.Ka.No.02/B2/2005 dated 04.01.2005 and quash the same and consequently direct the respondent herein to reinstate the petitioner with all consequential and attendant benefits. "

3. The petitioner was appointed as the Shop Supervisor in the TASMAC Retail Outlet in Shop No.6014. He was given a consolidated pay of Rs.3,000/- per month. He had also deposited an amount of Rs.50,000/- as security deposit. According to the petitioner, from the date of his appointment, he has been discharging his duties sincerely and utmost satisfaction of his superiors and there was no complaint against him.

3. While so, an inspection was carried out by flying squad in the shop No.6014 on 02.01.2005 and it was found that some of the liquor bottles were adulterated with water and therefore,

immediately on 04.01.2005, an order was passed, dismissing the petitioner from service. Although this order was passed in 2005, the same was put to challenge only in the year 2011 in the present writ petition.

4. Upon notice, Mr.K.Sathish Kumar, the learned Standing Counsel entered appearance on behalf of the first respondent and filed a counter affidavit.

5. The learned counsel appearing for the respondent Corporation would submit that the writ petition itself would not be maintainable for the reason that there was appeal remedy available and the same was not exhausted but the petitioner has straight away invoked the jurisdiction of this Court under Article 226 of the Constitution of India. He would further submit that the writ petition is also not maintainable for the reason that the same has been filed after inordinate delay of six years and the same has to be dismissed on the ground of laches also.

6. At this, the learned counsel appearing for the petitioner would submit that this Court under similar circumstances has allowed several writ petitions on the ground that no charge memo was issued or enquiry was conducted before the order of termination was issued. In fact, many of those writ petitions were filed by the employees whose services were terminated in the year 2005 and such of those employees were allowed to be reinstated without any back wages in view of the delayed approach by those petitioners.

7. The learned counsel would draw the attention of this Court to the order passed by the learned Judge of this Court in W.P.Nos.25235 and 25236 of 2010, dated 09.11.2010 in which those writ petitioners who are also working along with the petitioner herein were terminated and the learned Judge allowed the said writ petitions on the basis of the earlier order passed by this Court which was also reported. The order passed by the learned Judge paragraphs, 2, 3, and 4 are extracted below:

"2. The learned counsel for the petitioners submitted that before passing the order of termination, no show cause notice or opportunity of hearing was given to the petitioners and hence the principle of natural justice is violated.

3. Similar writ petition filed before this Court was allowed by this Court vide order reported in 2006 (1) CTC 660 (V.L.Lakshmanakumar v. The District

Manager, "TASMAC" Limited, Madurai District, Madurai and another), following the Judgments of the Supreme Court reported in (2005) 7SCC 518 (State of Haryana v. Satyeddar Singh Rathor) and (199) 3 SCC 60 (Dipti Prakash Banerjee v. Satyendra Nath Bose National Centre for Basic Sciences). The Division Bench of this Court, in which I was also a party, in W.A.No.1669 of 2009 by judgment dated 01.12.2009 also took the same view. The First Bench of this Court reiterated the same view in the judgment dated 8.7.2010 made in W.A.Nos.1210 to 1212 of 2010.

4. Following the above cited decisions, these writ petitions are allowed and the impugned orders of termination dated 4.1.2005 are set aside. The respondent is directed to reinstate the petitioners, but without backwages, within a period of four weeks from the date of receipt of a copy of this order. It will be open to the respondent to hold an enquiry against the petitioners and take necessary decision, after affording opportunity to the petitioners, if it is warranted. No costs. Consequently, all connected miscellaneous petitions are closed."

8. According to the learned counsel, a number of cases had been allowed on similar line in view of the admitted fact that no proper procedure followed before passing the order of termination. In this case also nothing is demonstrated before this Court as to any procedure followed before issuing impugned termination. But it appears that the respondents without following any kind of procedure has directly terminated service of the petitioner on the basis of certain allegations. Such action of the respondents is contrary to the well settled principles of natural justice and the same cannot be countenanced in law or on facts.

9. In any event, this Court has allowed similar writ petitions on the same ground as set out by the petitioner herein and this Court does not see any justification for taking a different view.

10.In the above said circumstances, the impugned order in Na.Ka.No.02/B2/2005, dated 04.01.2005, of the respondent, is hereby set aside and consequently, the respondent is directed to reinstate the petitioner without any backwages. The direction shall be complied with by the respondent within a period of eight weeks from the date of receipt of a copy of this order.

11.With the above direction, this writ petition is disposed of. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

The District Manager,
Tamil Nadu State Marketing
Corporation Ltd., (Salem Region),
Namakkal.

+1 cc to Mr.P.Athiveera Rama Pandian Advocate sr 13034

+1 cc to Mr.K.Sathish kumar Advocate sr 13034

W.P.No.9178 of 2011

aa19/03/2018

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