



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 25.04.2019
CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P (MD) No.6601 of 2019
and W.M.P (MD) No.5281 of 2019

N.Kannan

... Petitioner

Vs.

1.The Government of Tamil Nadu,
Rep. by its Secretary (Home)
Prohibition and Excise (XIV),
Fort St. George,
Chennai - 9.

2.The Managing Director,
Tamil Nadu State Marketing Corporation Limited,
CMDA Tower II, 4th Floor,
Egmore, Chennai - 600 008.

3.The Senior Regional Manager,
Tamil Nadu State Marketing Corporation Limited,
District Collectorate Office,
Old Building Complex, 1st Floor,
Tiruchirappalli.

4.The Deputy Collector/District Manager,
Tamil Nadu State Marketing Corporation Limited,
Thanjavur District,
Thanjavur.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus calling for the records relating to the order of termination passed by the fourth respondent in Na.Ka.No.7944/2016/RV-2, dated 10.02.2017 and the order of the third respondent in O.Mu.No.2460/2017 (U) dated 01.08.2017 as well as the order in O.Mu.No.1838/2017 (U) dated 12.06.2017 signed on 22.08.2017 and the second respondent made in Na.Ka.R.1/12564/2017, dated 20.12.2017 and quash the above orders thereby directing the respondents to reinstate the petitioner with all backwages and emoluments from 30.06.2016 onwards with continuity of service.

For Petitioner : Mr.M.Joseph Thatheus Jerome
For R - 1 : Mr.C.M.Mari Chelliah Prabhu,
Additional Government Pleader.

For R - 2 : Mr.H.Arumugam

**ORDER**

Challenging the orders passed by the respondents 2, 3 and 4, terminating the petitioner from service, the present writ petition has been filed before this Court. The petitioner has also sought a direction to the respondents to reinstate him with all backwages and emoluments from 30.06.2016 with continuity of service.

2.The brief facts leading to the filing of this writ petition, are thus:

2.1 The petitioner was appointed as Salesman on 23.01.2004 in Shop No.7944 Philomena Nagar, Thanjavur and had been continuously working without any complaint. Alleging certain irregularities committed by the petitioner and another, a case in Crime No.394 of 2016 has been registered against them and the same has been taken on file as C.C.No.61 of 2016, by the Judicial Magistrate No.1, Thanjavur.

2.2 Due to the initiation of the criminal proceedings against the petitioner, the fourth respondent, by proceedings dated 30.06.2016, suspended him from service and issued a charge memo, dated 30.09.2016, calling upon the petitioner to submit his explanation within 7 days. On receipt of the same, the petitioner duly submitted his explanation. After enquiry, the fourth respondent, by order, dated 10.02.2017, terminated the petitioner from service.

2.3 In the mean time, vide judgment dated 11.05.2017 passed in CC No.61 of 2016, the learned Judicial Magistrate acquitted the petitioner from the charges. Pursuant to the same, the petitioner preferred an appeal before the third respondent, who in turn, passed a cryptic order, dated 01.08.2017, refusing to entertain the appeal on the ground that the petitioner has not preferred the same within a period of one month from the date of dismissal order. Challenging the same, the petitioner filed a further appeal, which was also dismissed by the second respondent, vide order dated 20.12.2017. Aggrieved over the same, the petitioner has come up with this writ petition for the aforesaid relief.

3.The learned counsel appearing for the petitioner submitted that without examining any witness nor affording an opportunity to the petitioner with regard to the proposed punishment, the fourth respondent passed the impugned order, dated 10.02.2017 terminating the petitioner from service and hence, the same is arbitrary, illegal and in violation of the principles of natural justice. The learned counsel further submitted that without considering the acquittal order passed by the Judicial Magistrate No.1, Thanjavur in CC No.61 of 2016 in a proper perspective, the respondents 2 and 3 have passed cryptic orders, thereby confirming the order of termination passed by the fourth respondent. Thus, the learned counsel sought to allow this writ petition by setting aside the orders impugned herein.



4. Per contra, the learned counsel appearing for the respondents submitted that after examining all the evidence, the respondents 2 to 4 have passed the impugned orders and hence, the same need not be interfered with by this Court.

5. This Court considered the rival submissions and perused the materials available on record.

6. Concededly, the petitioner was implicated in a criminal case, based on which, departmental proceedings was initiated against him. The said criminal case ultimately ended in acquittal vide judgment dated 11.05.2017 passed by the Judicial Magistrate No.1, Thanjavur in CC No.61 of 2016. However, the fourth respondent concluded the disciplinary proceedings against the petitioner by the order of termination, which was also confirmed by the appellate authorities.

7. According to the petitioner, without properly conducting enquiry and in violation of the principles of natural justice, the fourth respondent passed the order dated 30.06.2016 thereby terminating the petitioner from service; without considering the order of acquittal passed by the criminal court, the respondents 2 and 3 dismissed the appeals preferred by the petitioner and confirmed the said termination order, in cryptic, non-reasoned and non-speaking orders; and hence, the orders impugned herein are arbitrary, illegal and contrary to law. Such contentions raised by the petitioner were seriously resisted on the side of the respondents.

8. A reading of the orders impugned herein would reveal that there is non-application of mind on the part of the respondent authorities and there is no analysis with regard to the grounds raised by the petitioner in his appeals. Nor there is any analysis on the proportionality of punishment vis-a-vis the proved misconduct. Further, the reasons to reject the appeals preferred by the petitioner, have not been reflected in the impugned orders. Thus, the same are cryptic, non-reasoned and non-speaking orders.

9. As it is settled principle that the giving of reasons is one of the fundamentals of good administration; failure to give reasons amounts to denial of justice; reasons are live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrived at; and if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision, this Court has no hesitation to quash the orders impugned herein.

10. Accordingly, the orders passed by the respondents 2, 3 and 4 are quashed and the matter is remitted back to the respondent concerned for reconsideration, without raising any ground in regard to the limitation and passing orders, on merits and as per law,



after providing due opportunity of hearing to the petitioner. While doing so, the respondent concerned shall take into account the order of acquittal passed in the criminal case initiated against the petitioner. Such an exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order.

11. This writ petition stands allowed to the extent as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

sd/
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS)

To

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+1 CC to Mr.S.ALAGUSUNDAR, Advocate (SR-62632[F] dated 25/04/2019)
+1 CC to SPL GP (SR-62849[F] dated 26/04/2019)
+1 CC to Mr.H.ARUMUGAM, Advocate (SR-63175[F] dated 27/04/2019)

W.P(MD)No.6601 of 2019
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PS/RK

MK (19.06.2019) 4P 8C