

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Writ Petition No.19021 of 2013

Dhatsanamoorathi

... Petitioner

vs.

1. The Secretary to Government,
(Social Welfare),
Chief Secretariat,
Beach Road,
Puducherry - 605 001.
2. Pondicherry Backward Classes and
Minorities Development Corporation Ltd.,
rep. by its Chairman,
No.5, Zamindar Garden,
Pondicherry - 605 011.
3. The Managing Director,
Pondicherry Backward Classes and
Minorities Development Corporation Ltd.,
No.5, Zamindar Garden,
Pondicherry - 605 011.
4. S.Mohandoss
5. K.Sivalingam

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Declaration, declaring the oral termination of the Petitioner's services by the 3rd Respondent on 18.10.2011 as invalid and illegal and to direct the Respondents to reinstate the Petitioner in service to the post of Lab Assistant w.e.f. 18.10.2011, with all consequential benefits including arrears of pay and allowances.

(Prayer amended as per order dated 16.12.2014 in M.P.No.1 of 2013 in W.P.No.19021 of 2013)

For Petitioner	:	M/s.Giridhar & Sai
For 1 st Respondent	:	Mrs.N.Mala, Government Pleader (Pondy)

For Respondents 2 & 3 : Mr.R.Udhayakumar
For 4th Respondent : No appearance
For 5th Respondent : Mr.Adithya Reddy

ORDER

Petitioner has come up with this Writ Petition seeking to declare the oral termination of his services by the 3rd Respondent on 18.10.2011 as invalid and illegal, and to direct the Respondents to reinstate him in service to the post of Lab Assistant w.e.f. 18.10.2011, with all consequential benefits including arrears of pay and allowances.

2. According to the Petitioner, he joined the services of the 2nd Respondent viz. Pondicherry Backward Classes and Minorities Development Corporation Limited, as Lab Assistant on 21.12.2005 on daily-rated basis at Rs.185/- per day and has been continuously working without any break in service. While so, on 18.10.2011, the 3rd Respondent called upon the Petitioner to his office and orally terminated him from service, without assigning any reason. It is stated by the Petitioner that, he had never been communicated with any order of termination till date. In the meanwhile, the 4th Respondent, through the 2nd Respondent, recruited one K.Sivalingam, the 5th Respondent herein as Computer Instructor in the place of the Petitioner.

3. The case of the Petitioner is that, when no Show Cause Notice was issued to him and when no charges were framed against him and when no enquiry was conducted, orally terminating him from service is in violation of the principles of natural justice.

4. In respect of his grievance, the Petitioner submitted a representation dated 12.11.2012 to the 3rd Respondent seeking to permit him to resume work from 18.01.2012 onwards. As there was no response, the Petitioner sent a legal notice dated 06.02.2012 to him. Thereafter, on 21.02.2012, the Petitioner received a reply from the counsel of the 3rd Respondent, making unfounded allegations against the Petitioner that, on 10.10.2011, students at Kathirkamam Centre complained that, computers were working slowly and that, they could not complete their work in time; that, on inspection it was found that, there were unwanted files stored in the Computers; that, permission was sought to delete unwanted files and in the process of deleting unwanted files, some obscene pictures and movies, which were occupying more space were kept in a folder including the family photos of the Petitioner and that, the said Computer was detained and thereafter, the 3rd Respondent called upon the Petitioner and sought his explanation and that, the Petitioner admitted his mischief and abandoned his service.

5. It is argued by the learned counsel for the Petitioner that, no preliminary enquiry was conducted before orally

terminating the Petitioner from service and the same is in violation of the principles of natural justice. Hence, he prayed for a direction to the official Respondents to reinstate the Petitioner in service.

6. In reply, learned Government Pleader (Pondy) appearing for the 1st Respondent submitted that, the order of appointment of the Petitioner makes it clear that, the Petitioner was engaged temporarily on a daily-rated basis. Hence, he is not entitled to the relief sought for by him.

7. Heard the learned counsel on either side and perused the material documents available on record.

8. On a perusal of the Appointment order dated 12.01.2006 issued to the Petitioner, it is clear that, the Petitioner was engaged on a temporary basis in the Respondent/Corporation at Rs.185/- per day. The allegation against the Petitioner is that, he had stored unwanted files including obscene videos in the Computers used by students at Kathirkamam Centre. According to the 3rd Respondent, when he enquired the Petitioner about the same, he admitted his guilt. Considering the nature of the Petitioner's misconduct, the 3rd Respondent orally terminated the Petitioner from service on 18.10.2011.

9. When an employee acts in a manner by which the Management loses confidence in him, his reinstatement cannot be ordered, because it would neither be desirable nor expedient to continue the employee in service. It may also be detrimental to the discipline or security of the establishment. Further, reinstatement of an employee terminated for the loss of confidence cannot be ordered even if the enquiry held by the employer has been held to be bad. Reinstatement is also denied when an employee has been found to be guilty of prejudicial activities.

10. In the case on hand, the alleged misconduct against the Petitioner is certainly prejudicial to the interest of the Management and the students pursuing Computer Course. In such circumstances, this Court cannot direct the 3rd Respondent herein to reinstate the Petitioner in service, when he is not a permanent employee.

Thus, in view of the foregoing, this Writ Petition stands dismissed as devoid of merits. No costs.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

(aeb)

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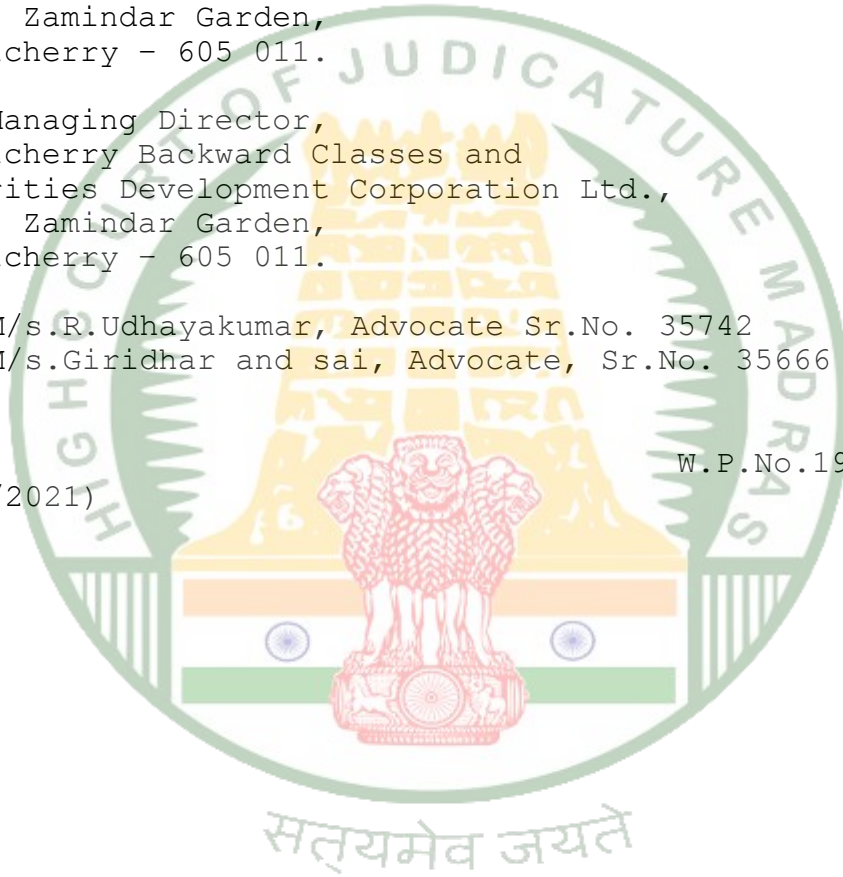
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+1 cc to M/s.R.Udhayakumar, Advocate Sr.No. 35742

+2ccs to M/s.Giridhar and sai, Advocate, Sr.No. 35666

W.P.No.19021 of 2013

RMP (19/01/2021)



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