



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.01.2022

CORAM :

WEB COPY

THE HON`BLE MR.JUSTICE B.PUGALENDHI

W.P(MD) No.4397 of 2020 and

WMP(MD) Nos.3692 & 3693 of 2020

T.Mayee

Petitioner

Vs.

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

2.The Senior Regional Manager,
The Tamil Nadu State Marketing
Corporation Limited, (TASMAC)
No.100, Anna Nagar,
Madurai - 20.

3.The District Manager,
The Tamil Nadu State Marketing
Corporation Limited,
Madurai North,
Madurai.

4.The District Manager,
The Tamil Nadu State Marketing
Corporation Limited,
Madurai South,
Madurai.

Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the respondent No.4 in Na.Ka.No.15/2017/A dated 23.01.2020 and consequently direct the respondents to reinstate the petitioner to the post of salesman in TASMAC Shop at No.5512 or any other shop at Madurai District with consequential benefits within the time stipulated by this Court.



For Petitioner

:Mr.T.Thirumurugan

For Respondents

:Mr.H.Arumugam

Standing Counsel

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O R D E R

This writ petition is filed as against the order passed by the fourth respondent in Na.Ka.No.15/2017/A dated 23.01.2020. By the order impugned in this writ petition, the petitioner's request for reinstatement was rejected.

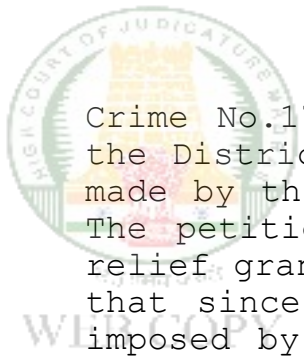
2.The learned counsel appearing for the petitioner submits that the petitioner was working as salesman in TASMACH Shop No.5512 from the year 2003. He was implicated in the criminal case registered in Crime No.17 of 2007, on the file of the Vickramangalam Police station. He was also arrested in that case. Subsequently, he was convicted in the criminal case, before the V Additional Sessions Judge, Madurai on 19.07.2012. Accordingly, he was remanded to Prison. The said period was considered as un-authorized absent and the petitioner was placed under suspension by order dated 19.07.2012. As against the order of conviction, appeal was filed before this Court in CrI.A.No.157 of 2012 and the same was allowed by the Division Bench of this Court in the following terms:-

"12. Considering all the above fact, we are of the view that there are lot of doubts in the case of the prosecution, which have not been obviated by the prosecution at all. The accused are, therefore, entitled for the benefit arising out of such doubts. In such view of the matter, we hold that the prosecution has failed to prove the case beyond all reasonable doubts against the accused and therefore, they are entitled for acquittal.

13.In the result, these appeals are allowed and the conviction and sentence imposed by the trial Court I S.C.No.287 of 2010 against all the appellants/accused is set aside and the are acquitted. The bail bond, if any, executed by them shall stand terminated. The fine amount, if any, paid by them shall be ordered to be refunded."

3.Thereafter, the petitioner made a request to the respondents to consider the case of the petitioner to reinstate him in the post of Salesman in the TASMACH Shop and the same was rejected by the order impugned in this writ petition. Hence, this petition.

4.The learned counsel appearing for the petitioner relied upon the proceedings of the District Collector in Na.Ka.No.28769 / 2019/5-1 dated, 12.09.2019 that the co-accused, namely, one <https://hcservicescourts.gov.in/hcservices> was also similarly convicted by the trial Court in



Crime No.17 of 2017 and subsequently reinstated, by the orders of the District Collector, dated 12.09.2019, based on the observations made by this Court in Crl.A.156 and 157 of 2012, dated 14.10.2015. The petitioner is also seeking the same benefits, as that of the relief granted to the said Panchavarnam. The learned counsel claims that since the petitioner was arrested pursuant to the conviction imposed by the trial Court, he could not attend the office during the relevant point of time.

5.Per contra, Mr.H.Arumugam, learned Standing Counsel appearing for the TASMACH shop submits that the petitioner was engaged by the respondent on contract basis, temporarily. The petitioner cannot claim as a matter of right to reinstate him in the service as per the existing Rules. Accordingly, this petitioner was placed under suspension, for his un-authorised absent for more than 30 days. The petitioner was suspended in the year 2012 and he made request during 2015 and the same was rejected. The learned counsel has also relied on the judgment of the **Honourable Supreme Court in Hindustan Paper Corporation Vs Purnendu Chakrobarty and others, reported in 1996 11 Supreme Court Cases 404**, wherein, it was held as follows:-

15.....For our case the relevant sub clause is (vi) (E) which says that proceeding on leave without prior sanction and remaining unauthorisedly absent for more than 8 consecutive days; and/or overstaying his sanctioned leave beyond the period originally granted or subsequently extended for more than 8 consecutive days would result in loss of lien of the appointment of the employee. In this case, we have seen that the first respondent had proceeded on leave without prior sanction and remained unauthorizedly absent for more than six months consecutively which obliged the appellant Corporation to issue communication to the first respondent calling upon him to explain. Unfortunately, the first respondent, for reasons best known to him, has not availed himself of the opportunity as seen earlier but replied in a half-hearted way which resulted in the impugned order. Therefore, under the circumstances, it cannot be said that the principles of natural justice have not been complied with or the circumstances require any enquiry as contemplated under Rule 25. In the case cited by the learned counsel for the first respondent, this Court has held

"that the law must, therefore, be now taken to be well settled that procedure prescribed for depriving a person of livelihood must meet the challenge of Article 14 and such law would be liable to be tested on the anvil of Article 14 and the procedure prescribed by a statute or statutory rule or rules or orders affecting the rights or result in civil consequences would



have to answer the requirement of Article 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 principle of natural justice. The aim of both administrative inquiry as well as the quasi-judicial inquiry is to arrive at a just decision and if a rule of natural justice is calculated to secure justice to put it negatively, to prevent miscarriage of justice, it is difficult to see why it should be applicable only to quasi-judicial inquiry and not to administrative inquiry. It must logically apply to both"

16. On a consideration of the entire facts, we are of the view that the test laid down by this Court, as extracted above, has been satisfied by the appellant-Corporation and therefore when viewed from the point of Rule 23 (vi) (E), there was no good reason for the High Court to interfere with the impugned order of the appellant-Corporation, dated 05.01.1989."

6. The learned Standing Counsel has also relied on the Judgment of the Honourable Supreme Court in **P.Sakthivel Vs The District Manager, Tamilnadu State Marketing Corporation Ltd., reported in 2015 0 Supreme (Mad) 622**, wherein, it was held as follows:-

3. On consideration, we find that the appointment of the writ petitioner/appellant was purely temporary on contract basis. The writ petitioner left the job without any information or permission in February, 2007. Thereafter, he made a representation on 18.07.201. It is well settled that the Court should refrain from passing an order to consider the representation if there is no merit in the representation as sometimes the direction to consider the representation is taken as a positive direction to grant the relief. We have considered the representation of the writ petitioner. We do not find any merit as the writ petitioner has not acquired any right to continue or to rejoin the post as the writ petitioner was appointed temporarily on contract basis in the month of January, 2004 and the petitioner abandoned the job in February, 2007. Thus, the impugned order passed by the writ Court is flawless, warranting no interference."

7. This Court paid its anxious consideration to the rival submissions made and also perused the materials placed on record.



8.The petitioner, who was working as Salesman in TASMACH Shop No.5512, was convicted by the trial Court in the year 2012, for his involvement in a criminal case. The petitioner preferred an appeal before this Court in CrI.A.157 of 2012 and the same was allowed by this Court. The main contention of the petitioner's counsel is that the co-accused in the criminal case was reinstated into service by the District Collector, Madurai by his proceedings dated 12.09.2019. In reply, the learned Standing Counsel submits that the order of the District Collector, instating the co-accused, who is an permanent employee, cannot be taken as a ground for considering the case of the petitioner, who is working on temporarily and on contractual basis. The fact remains that the petitioner has made request for reinstatement after three years. The Honourable Supreme Court has also held that the person, who was appointed temporarily on contract basis has not acquired any right to continue or to rejoin the post.

9.In view of the foregoing reasons, this Court is not inclined to allow this writ petition and quash the impugned order. However, it is open to the petitioner to make a mercy petition to the respondent Corporation and it is open to the respondent to consider the same.

10. With the above observations, this writ petition is dismissed. No costs. Consequently, connected Miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

vrn

Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Managing Director,
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<https://hcservices.ecourts.gov.in/hcservices/>



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The Tamil Nadu State Marketing
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Madurai South,
Madurai.

+1 CC to M/s.T.THIRUMURUGAN, Advocate (SR-2521[F] dated
25/01/2022)

+1 CC to M/s.H.ARUMUGAM, Advocate (SR-2704[F] dated 27/01/2022)

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