



W.P(MD)No.13928 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.10.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.13928 of 2022

and

W.M.P.(MD)Nos.9909 & 9910 of 2022

T.Ramesh

... Petitioner

Vs.

1.The Managing Director,
Tamil Nadu State Marketing Corporation Ltd., (TASMAC)
C.M.D.A.Towers, 2nd Floor,
Egmore,
Chennai.

2.The Senior Regional Manager,
Tamil Nadu State Marketing Corporation Ltd., (TASMAC),
Trichy.

3.The District Collector,
Tamil Nadu State Marketing Corporation Ltd., (TASMAC),
BHEL Nagar,
Thuvakudi,
Trichirappalli 620 015.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order issued by the third respondent vide Na.Ka.No.CV2/283/2021, dated 08.11.2021 and quash the same as illegal and



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unconstitutional and consequently, directing the respondents to forthwith reinstate the petitioner as a Supervisor.

For Petitioner : Mr.M.Jerin Mathew

For Respondents : Mr.S.Sivanesan

ORDER

Heard the learned counsel on either side.

2. The writ petitioner was appointed as Supervisor in Shop No.10283 at Bharathiyar Salai, Railway Junction, Trichy District run by TASMAL. An allegation was made that a sum of Rs.7,49,155/- has been misappropriated by the petitioner. In this regard, a criminal case was also registered. The petitioner was removed from service also. However, it is stated that a copy of the termination order was not served on the writ petitioner. The petitioner filed W.P.(MD)No.18364 of 2021 for directing the respondents to reinstate him in service and permit him to join duty on the basis of his representation. Vide order dated 07.10.2021, a direction was given for taking appropriate decision on the petitioner's representation. Since the direction given by this Court was not complied with, the writ petitioner filed Contempt Petition (MD)No.102 of 2022. When the contempt petition was taken up, a copy of the impugned order dated 08.11.2021 rejecting the petitioner's request came to be served on him.



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Thereafter, a charge memo dated 14.02.2022 has been issued. The said charge memo contains three articles of charge. After giving his representation, the petitioner was also issued with enquiry notice dated 28.02.2022 calling upon him to appear on 08.03.2022. In this background, the present writ petition has been filed.

3. The respondents have filed a detailed counter affidavit and also the typed set of papers.

4. The learned counsel on either side reiterated the respective contentions. I carefully considered the same and went through the materials on record. There is no dispute that the writ petitioner was only a contractual employee. His service has been dispensed with in the year 2008 itself. The copy of the termination order dated 19.08.2008 passed by the third respondent herein has also been enclosed in the typed set of papers. There is nothing on record to show that this termination order was ever served on the petitioner. Be that as it may, the writ petitioner had kept quiet till 2021. For full long 13 years, he had not taken any legal action. When W.P.(MD)No.18364 of 2021 was filed by him, he could have been non-suited on the ground of laches. But fortunately, for the writ petitioner, a direction to consider his representation was



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issued. Pursuant to the said direction, the order impugned in the writ petition was issued on 08.11.2021. The petitioner's request for re-appointment has been rejected. The impugned order is very much in consonance with the termination order dated 19.08.2008.

5. The learned counsel appearing for the petitioner drew my attention to the order dated 22.11.2012 made in W.P.(MD)No.2636 of 2008. It has been held categorically in the said order that even in the case of contractual employee, if a stigmatic order of termination is passed, it should be preceded by the charge memo and enquiry. In this case, charge memo appears to have been issued on 13.06.2007. But no enquiry was conducted. That apart, the termination order was also not communicated to the writ petitioner. There is no proof of despatch. It is well settled that an order not communicated to the noticee or addressee is a nullity in law. Since the order impugned in this writ petition is corollary to the order dated 19.08.2008, it has to be necessarily set aside. The respondents have of-course now issued charge memo on 14.02.2022. When according to the respondents, they had already terminated the writ petitioner from service, the question of issuing charge memo at this point of time is not legally tenable.



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6. In this circumstances, the Writ Petition is disposed of with the following directions:-

(I) The order dated 19.08.2008 terminating the petitioner is nullity in law, since it has not been communicated to the writ petitioner and since it was not preceded by an enquiry.

(II) Since the order dated 08.11.2021 passed by the third respondent is based on the aforesaid order dated 19.08.2008, it is also liable to be set aside.

(III) The matter is remitted to the file of the respondents with liberty to issue a fresh charge memo.

(IV) Since the petitioner was only a contractual employee, the question of paying backwages or conferring continuity of service does not arise.

(V) The respondents are directed to conclude the enquiry within a period of 16 weeks.

(VI) Since the termination order passed in the year 2008 has been set aside, if the respondents propose to place the petitioner under suspension, they will have to pay him subsistence allowance from today.

7. The Writ Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes / No
Internet : Yes/ No
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