



W.P.No.697 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2023

CORAM :
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Writ Petition No.697 of 2020

A.Thiyagarajan

... Petitioner

Vs.

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

2.The District Manager,
Tamil Nadu State Marketing Corporation Limited,
SIDCO Industrial Estate Complex,
Kudikadu,
Cuddalore – 607 005.

... Respondents

Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the records relating to impugned order in Sa.Mu.Ka.2534/R.V.1/2010 dated 11.02.2010 passed by the second respondent and quash the same, consequently direct the respondents to reinstate the petitioner with backwages, continuity of service



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and all attendant benefits.

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For Petitioner : Mr.A.Velmurugan

For Respondents : Mr.C.Ramesh,
Standing Counsel for
TASMAC

ORDER

This writ petition has been filed by the petitioner to call for the records relating to impugned order in Sa.Mu.Ka.2534/R.V.1/2010 dated 11.02.2010 passed by the second respondent and quash the same, consequently direct the respondents to reinstate the petitioner with backwages, continuity of service and all attendant benefits.

2. The facts of the case in a nutshell:

The petitioner was appointed as sales personnel of the Tamil Nadu State Marketing Corporation Ltd (for brevity TASMAC), Cuddalore region and by proceeding of the second respondent vide No.A1/390/03 dated 14.01.2003, he was serving as sales personnel in Nanjalur till 31.08.2005 from the date of the appointment and then transferred to Chidambaram and



Bhuvanagiri. Thereafter, he was transferred to Vadaku Thittai (Shop No.2534) and was working from 20.04.2007 till 10.02.2010. On 11.02.2010, article was published in Dinamalar Tamil Daily stating that a case was registered against the petitioner and he was absconded. Despite of the above said paper news; the second respondent has not given any opportunity to the petitioner to explain the circumstances and dismissed from service by letter vide in Sa.Mu.Ka.2534/R.V.1/2010 dated 11.02.2010. Thereafter, criminal case was also registered against the petitioner in C.C.No.19 of 2012 and later, he was acquitted from the same by District Munsif cum Judicial Magistrate, Parankipettai vide order dated 15.03.2019. Subsequent to the same, the petitioner has approached the second respondent by way of representation dated 01.07.2019 along with the judgment in C.C.NO.19 of 2012 for reinstatement and the second respondent has not taken any steps to reinstate the petitioner. Hence, the petitioner has come forward with the present writ petition.

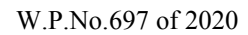
3. Learned counsel for the petitioner submitted that only based on the news article in Tamil daily Dhinamalar dated 11.02.2010, the second



respondent dismissed the petitioner from service, which is violation of principles of natural justice. The criminal case which was filed against the petitioner vide C.C.No.19 of 2012 on the file of District Munsif Cum Judicial Magistrate, Parankipettai also ended in acquittal by judgment dated 15.03.2019. Despite the acquittal made by the concerned criminal court, the second respondent did not reinstate the petitioner. Hence he has given representation to the second respondent dated 01.07.2019 to reinstate the petitioner based on the order passed by the criminal court in C.C.No.19 of 2012 dated 15.03.2019 but the second respondent did not initiate any action to reinstate the petitioner into service of the TASMAL.

4. Learned counsel for the petitioner would further submit that no show cause notice, no enquiry, no opportunity was given to the petitioner by the second respondent, before passing the order of dismissal dated 11.02.2010. The above termination order dated 11.02.2010 is in violation of fundamental rules as enshrined in the Constitution of India.

5. Learned counsel for the petitioner contended that the second





better appreciation, the relevant paragraphs are extracted hereunder:

“7. It is further submitted that his appointment is temporary in nature and he involved in various activities and manufactured duplicate liquors and bottles. And further the petitioner caused loss to the Government, so dismissal from service on 11.02.2010.

8. It is further submitted that even though the petitioner has acquittal from the criminal case, there is no bar to proceed by the department enquiry and take action separately against the petitioner, so the impugned order passed by the second respondent by dismissing the petitioner from service on 11.02.2010 is valid.”

8. Learned standing counsel appearing for the respondents on instruction submitted that no enquiry has been conducted till date, since the petitioner was only appointed on temporary basis.

9. Heard the learned counsel on either side and perused the materials available on record.

10. In the present case on hand, the petitioner was dismissed from service on 11.02.2010 by the second respondent based on the newspaper news, which was published in Tamil Daily called Dhinamalar dated 11.02.2010, wherein, it was mentioned that the petitioner was running a fake wine factory at Bhuvanagiri and it is in violation of rules and regulation of



TASMAC and hence, the petitioner is terminated and in the impugned order it was mentioned that since the petitioner is a temporary employee and in the interest of the administration, pending enquiry, he was dismissed from service with effect from 11.02.2010 A.N.

11. The main grievance of the petitioner is that no show cause notice, no opportunity of hearing, no enquiry was conducted before the order of dismissal dated 11.02.2010 was issued by the second respondent. Even though it is mentioned in the dismissal order dated 11.02.2010 (impugned order), pending enquiry, the petitioner is relieved from service with effect from 11.02.2010 A.N. and in this aspect, learned counsel appearing for the second respondent was directed by this Court to get instruction whether any enquiry was pending as on date and the learned counsel on instruction submitted that no enquiry is pending as mentioned in the impugned order and till date, even after 13 years, the second respondent has not proposed to initiate any proceedings against the petitioner.

12. The criminal case was also registered against the petitioner in



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Crime No.29 of 2010 for the offences under Section 420, 468, 471 read with 109, 37 IPC and Section 4(1) (i) (TNP) Act read with 4(1) (aaa) Transport TNP Act and the same was ended in acquittal vide order dated 15.03.2019 by the District Munsif cum Judicial Magistrate, Parankipettai. After acquitting from the criminal case, the petitioner has given representation before the second respondent, however, the same was not considered.

13. Even though the petitioner is a temporary staff as per the appointment order issued by the second respondent dated 14.01.2003 and appointed on contract basis for consolidated pay of Rs.2000/-0, the second respondent without relying on the newspaper news published in Dhinamalar Newspaper dated 11.02.2010, ought to have enquired, whether the petitioner is having a fake wine factory at Bhuvanagiri, which he has failed to do so. Further, this Court in similar case passed similar orders in W.P.Nos. 17409 of 2012 and 12.04.2010 and the relevant paragraphs are extracted hereunder:

(i) In the case of P.Murugesan Vs. The Senior Regional Manager, TASMAL, Tiruchirapalli District and another in W.P.No.17409 of 2012 dated 21.08.2017, it was held as follows:

“10. Even otherwise, the facts and circumstances of the



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case warrant the interference of this Court, since the order of dismissal, which resulted in adverse civil consequences on the petitioner, cannot be passed without following the due process of law. Hence, the order of dismissal of the petitioner from service cannot be allowed to stand any further.

11. In the light of the above narrative and the legal position as per the order passed by the Division Bench, this Court has no hesitation to allow the writ petition. In the circumstances, the impugned orders dated 12.03.2011 and 13.08.2011 are set aside and the respondents are directed to reinstate the petitioner in service with all benefits except backwages for the period of non-employment. The said direction shall be complied with, within a period of two weeks from the date of receipt of a copy of this order.”

(ii) In the case of TASMAL Paniyalargal Sangam (AITUC), Rep. by its President Vs. The Tamil Nadu State Marketing Corporation Limited, Rep. by its Chairperson, Egmore, Chennai and others in W.P.No.31390 of 2007 dated 12.04.2010, it was held as follows:

“The writ petition is filed by a trade union of employees engaged by respondents TASMAL. They have come forward to challenge the Service Rules framed by the respondent TASMAL with reference to the employees engaged by them. The union is aggrieved by Rule 11(1), which reads as follows:

11.TERMINATION OF SERVICES: In the event of the Corporation not having any further need of any employee's services, the appointing authority can dispense with the services



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of an employee as follows:-

(i) in the case of a temporary employee with immediate notice of termination.

2. This Court in B.Sivakumar Vs. The Managing Director, TASMAC Ltd. in W.P.No.6304 of 2009 dated 15.03.2010, in paragraph 12 held as follows:

Therefore, in the light of the above, when a workman is completely covered by the provisions of Section 41 of the Tamil Nadu Shops and Establishments Act, 1947 as well as the Model Standing Orders framed under Industrial Employment (Standing Orders) Act, 1946, the application of which is guaranteed by virtue of Section 12A Industrial Employment (Standing Orders) Act, 1946, any termination contrary to these enactments would be void.”

Therefore, merely because, the contractual terms are framed as a Rule, it does not mean that the employees are without statutory remedy as held by this Court in the above said case.

3. Therefore, it is unnecessary to strike down the Rule framed by the Corporation. It is suffice to state that in case of termination, the Corporation will also take note of other statutory safeguards which are provided for employees and it is in their own interest, they follow the various labour enactment which are applicable to them. This care taken by the TASMAC will reduce the number of cases which are filed before this Court on technical violation in dispensing with their service.”

14. In view of the above factual matrix of the case, this Court is of the



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considered view that the impugned order passed by the second respondent is liable to be quashed and the same is hereby quashed. Hence, the respondents are directed to reinstate the petitioner with back wages, continuity of service and all attendant benefits, within a period of 12 weeks (three months) from the date of receipt of a copy of this order.

15. In the result, this writ petition stands allowed with the aforesaid observation and direction. No costs.

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Index : Yes/No

Speaking Order : Yes/No

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