



W.P.No.19672 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2023

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

W.P.No.19672 of 2015

and

M.P.No.1 & 2 of 2015

J.Hari

.... Petitioner

VS

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

2. The District Manager,
Tamil Nadu State Marketing Corporation Limited
Chennai (North) District. Respondents

Writ Petition filed under Article 226 of the Constitution to issue a Writ of Certiorarified Mandamus to call for the records connected with the impugned order of termination passed by the respondent No.2 in Se.Mu.No.A1/67/175/2007 dated 16.11.2007 and quash the same and direct the respondents to reinstate the petitioner in service with backwages and other monetary benefits.



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For Petitioner : Mr.R.Sivaraman
for Mr.T.P.Senthilkumar

For Respondents : Mr.K.Sathishkumar
Standing Counsel for TASMACH

ORDER

This writ petition has been filed by the petitioner challenging the order of termination passed by the 2nd respondent dated 16.11.2007 and to direct the respondents to reinstate the petitioner in service with backwages and other monetary benefits.

2. The case of the petitioner is that the petitioner was selected and appointed through District Employment Office as the Shop Salesman in the TASMACH Shop No.92/2 originally and lastly, he was working at Shop No.252 Perambur, Chennai. While so, an inspection was carried out by flying squad in the shop on 16.03.2007 and it was found that the petitioner misappropriated money. He had been found selling liquor (Beer) fixing Rs.10/- above the maximum retail price. The petitioner was issued with the termination order on 16.11.2007. No charge memo was issued or enquiry was conducted before the order of termination was issued. The petitioner



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sent detailed representation to the respondents and requested to revoke the said order of termination and to reinstate him. The 2nd respondent enquired with the then supervisor of shop No.252 and after receiving letter of good conduct from the supervisor, accepted to reinstate the petitioner on condition of payment of Rs.3000/-. Though the petitioner have not committed any crime, he accepted and paid Rs.3000/- in order to get reinstatement as his entire family is dependent of his salary and the amount was paid by way of Demand Draft dated 18.04.2012 drawn in favour of the 2nd respondent and the 2nd respondent also received the same and till date the respondents have not taken any action.

3. Heard the learned counsel for the petitioner and the learned Standing Counsel appearing for the respondents.

4. Learned counsel for the petitioner would submit that no charge memo was issued or enquiry was conducted before the order of termination was issued. The 2nd respondent, having received the money from the petitioner and promised to reinstate the petitioner, cannot turn around and say that the petitioner cannot be reinstated.



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5. The learned counsel appearing for the respondent Corporation would submit that the writ petition itself would not be maintainable for the reason that there was appeal remedy available and the same was not exhausted, but the petitioner has straight away invoked the jurisdiction of this Court under Article 226 of the Constitution of India. He would further submit that the writ petition is also not maintainable for the reason that the same has been filed after inordinate delay of seven years and the same has to be dismissed on the ground of laches also.

6. At this, the learned counsel appearing for the petitioner would submit that this Court, under similar circumstances, has allowed several writ petitions on the ground that no charge memo was issued or enquiry was conducted before the order of termination was issued. In fact, many of those writ petitions were filed by the employees whose services were terminated in the year 2005 and such of those employees were allowed to be reinstated without any back wages in view of the delayed approach by those petitioners.



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7. The learned counsel would draw the attention of this Court to the order passed by the learned Judge of this Court in W.P.Nos.25235 and 25236 of 2010, dated 09.11.2010, in which, the learned Judge allowed the said writ petitions on the basis of the earlier order passed by this Court which was also reported. In paragraph Nos. 2,3 & 4 of the order passed by the learned Judge are extracted below:

"2. The learned counsel for the petitioners submitted that before passing the order of termination, no show cause notice or opportunity of hearing was given to the petitioners and hence, the principle of natural justice is violated.

3. Similar writ petition filed before this Court was allowed by this Court vide order reported in 2006 (1) CTC 660 (V.L.Lakshmanakumar v. The District Manager, TASMAC Limited, Madurai District, Madurai and another), following the Judgments of the Supreme Court reported in (2005) 7SCC 518 (State of Haryana v. Satyeddard Singh Rathor) and (199) 3 SCC 60 (Dipti Prakash Banerjee v. Satyendra Nath Bose National Centre for Basic Sciences). The Division Bench of its Court, in which I was also a party, in W.A.No.1669 of 2009, by judgment dated 01.12.2009, also took the same view. The First Bench of this Court reiterated the same view in the judgment dated 8.7.2010 made in W.A.Nos.1210 to 1212 of 2010.

4. Following the above cited decisions, these writ



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petitions are allowed and the impugned orders of termination dated 4.1.2005 are set aside. The respondent is directed to reinstate the petitioners, but without backwages, within a period of four weeks from the date of receipt of a copy of this order. It will be open to the respondent to hold an enquiry against the petitioners and take necessary decision, after affording opportunity to the petitioners, if it is warranted. No costs. Consequently, connected miscellaneous petitions are closed."

8. According to the learned counsel, a number of cases had been allowed on similar line in view of the admitted fact that no proper procedure was followed before passing the order of termination. In this case also, nothing is demonstrated before this Court as to any procedure followed before issuing the impugned order of termination. But it appears that the respondents without following any kind of procedure has directly terminated the service of the petitioner on the basis of certain allegations. Such action of the respondents is contrary to the well settled principles of natural justice and the same cannot be countenanced in law or on facts.

9. In any event, this Court has allowed similar writ petitions on the



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same ground as set out by the petitioner herein and this Court does not see any justification for taking a different view.

10. In the above said circumstances, the impugned order passed in Se.Mu.No.A1/67/175/2007 dated 16.11.2007 by the 2nd respondent, is hereby set aside and consequently, the respondents are directed to reinstate the petitioner, but without backwages. The said direction shall be complied with by the respondents within a period of eight weeks from the date of receipt of a copy of this order.

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

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Index: Yes/No
Speaking/Non-speaking order
vsi



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