



W.P.(MD) No.822 of 2019

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.(MD) No.822 of 2019
and
W.M.P.(MD) No.13481 of 2022

R.Maharajan

... Petitioner

-vs-

1.The Managing Director
Tamil Nadu Civil Supplies
Corporation Ltd.,
No.12, Thambusamy Road
Kilpauk, Chennai-10

2.The Regional Manager
Tamil Nadu Civil Supplies
Corporation Ltd.,
Madurai Region
Kuruvikaran Salai
Madurai

3.The General Manager (Administration)
Tamil Nadu Civil Supplies Corporation Ltd.,
No.12, Thambusamy Road
Kilpauk, Chennai-10
[R3 is impleaded vide order dated
15.09.2023 in W.M.P.(MD) No.
13475 of 2022]

... Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus to call for the records relating to the impugned order passed by the third respondent vide Na.Ka.No.AE5/7856/2019, dated 17.06.2022 and quash the same and consequential direction to the respondents to implement / give effect to the order passed by the second respondent vide Na.Ka.No.E7/9882/2016, dated 22.06.2017 and direct the respondents to provide seniority in pursuance of the above order.

[amended vide order dated 15.09.2023 in W.M.P.(MD) No.13479 of 2022]

For Petitioner : Mr.D.Shanmugaraja Sethupathi

For Respondents : Mr.G.Mohan Kumar

ORDER

This writ petition is filed for issuance of a writ of certiorarified mandamus to quash order, dated 17.06.2022, passed by the third respondent and to direct the respondents to implement / give effect to the order passed by the second respondent dated 22.06.2017 and provide seniority to the petitioner in pursuance of the above order.



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2. The case of the petitioner is that he was originally working as Helper in Modern Rice Mill, Kadachanenthall. While so, during January, 2014, due to dearth of hands in the post of Typist and since the petitioner had the qualification as Typist, his service was utilized as Typist by an oral order. Thereafter, by an order dated 05.11.2014, the petitioner was appointed in the post of Typist. Subsequently, he made a representation to the respondents to regularize his services in the cadre of Typist. While so, an order seems to have been passed by the second respondent, namely, the Regional Manager, Tamil Nadu Civil Supplies Corporation Limited, Madurai, on 22.06.2017, which reads that the request of the petitioner was considered and his service as Typist was regularized with effect from 01.09.2014. It is pertinent to note that if the petitioner's service is regularized from 01.09.2014, he will get additional benefit of seniority and consequential promotion etc. Even after the said order, the same was not implemented and therefore, the petitioner kept on making representations to fix his seniority by considering his service as Typist with effect from 01.09.2014. Since there was no positive response, this writ petition is filed.



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3. Pending this writ petition, the matter was taken up by the third respondent, namely, General Manager (Administration), Tamil Nadu Civil Supplies Corporation Limited and upon considering the issue, it was found by him that even though the second respondent passed the order dated 22.06.2017 regularizing the service of the petitioner as Typist with effect from 01.09.2014, the same was not communicated to the petitioner and further finding that even though by an oral order, the petitioner was working as Typist, he was appointed only by an order dated 05.11.2014 and he joined the service only from 06.11.2014 and as such, by order dated 17.06.2022, the third respondent cancelled the order of the second respondent dated 22.06.2017 and regularized the service of the petitioner as Typist only from 06.11.2014. Aggrieved by the said order, the petitioner sought amendment of relief, which is ordered today by this Court and as such, the order dated 17.06.2022, passed by the third respondent, is now under challenge in this writ petition.

4. Mr.D.Shanmugaraja Sethupathi, learned counsel appearing for the petitioner, would submit that firstly when the appropriate Authority, namely, the Regional Manager has passed an order regularizing the service of



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the petitioner, in the absence of any express provision under the regulations of the Tamil Nadu Civil Supplies Corporation enabling the third respondent / General Manager to cancel the same, such an exercise by the third respondent is not permissible and as such, the impugned order passed by the third respondent is without jurisdiction.

5. Secondly, the learned counsel for the petitioner would submit that when the order of the second respondent confers certain rights, including the right of seniority and when now the same is altered or taken away, the same could not have been done, without affording an opportunity and without hearing the petitioner. Therefore, learned counsel for the petitioner would submit that the impugned order is liable to be quashed and the writ petition is liable to be allowed.

6. Per contra, Mr.G.Mohan Kumar, learned counsel appearing for the respondents, would submit that the the order dated 22.06.2017 was erroneously passed by the second respondent and he did not even follow the mandatory procedures, which are required before passing the impugned order. In any event, the said order was not communicated to the petitioner and it was simply kept in the file. Even before communicating the said order to the



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petitioner, the same was called for by the General Manager being the Appellate Authority and overall Supervising Authority, who exercised his power and effected correction of the mistake. Therefore, there was no question of affording an opportunity or needing any enabling provision under the service regulations.

7. I have heard the rival submissions.

8. Firstly, it is pleaded that the order dated 22.06.2017 was passed by the Regional Manager, without following due process of law even for any reason, when the Regional Manager has passed an order, it is always open to the Higher Authority to call for the records relating to that order and correct the mistake, if any. Therefore, I am unable to agree with the submission of the learned counsel for the petitioner that there is no express power under the regulations. As a matter of fact, the petitioner was working as Helper in the Modern Rice Mill and due to exigencies of service, he has been absorbed as Typist. Regularising the service of the petitioner as Typist from 01.09.2014 is in essence appointing him to the post. When the appointing authority is bestowed with power to appoint under the Service Regulations, it would include the power to cancel such appointment. When the appointing



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authority itself is clothed with the power to cancel, the authority higher to that of the appointing authority shall also have the power and as such there need not be any express power under the Service Regulations. Therefore, it cannot be stated that the General Manager can have no power whatsoever to revise, alter or vary the order passed by the Regional Manager and accordingly, I reject the contention of the learned counsel for the petitioner in this regard.

9. As far as the second contention of the learned counsel for the petitioner is concerned, on perusal of the communication dated 22.06.2017 of the second respondent, it can be seen that the order is passed and in fact, the said order is also addressed to the petitioner. Merely because now belatedly it is contended on behalf of the Management that the order of the second respondent dated 22.06.2017 is not communicated, it cannot be pleaded by them that such an order was never passed at all. When the third respondent has chosen to cancel the order dated 22.06.2017 passed by the second respondent, then it goes without saying that such an order dated 22.06.2017 has come into force. As a matter of fact, the petitioner has also obtained a copy of the order under the Right to Information Act, 2005. In that view of the matter, when an order in favour of the petitioner has been passed, if it is required to be modified or cancelled, the same could not have been done



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without affording an opportunity to the petitioner. Therefore, I hold that the impugned order is in violation of the principles of natural justice.

10. Learned counsel for the petitioner submits that once the order dated 17.06.2022, passed by the third respondent, is held to be illegal, then the original order, namely, the order of the second respondent, dated 22.06.2017, is to be restored.

11. I am of the view that whenever an order of the Authority is set aside for violation of principles of natural justice, the matter has to be remitted back to the concerned Authority to continue from that stage. It is seen that in the instant case, the petitioner's service has been utilized from the month of January, 2014. Therefore, as and when an opportunity is granted, it would be open to the petitioner to plead before the Authority concerned that from the date of discharge of his duty as Typist, his service should be regularized.

12. Accordingly, this writ petition is disposed of with the following directions:



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- (i) The order dated 17.06.2022, passed by the third respondent, is set aside;
- (ii) However, liberty is granted to the third respondent to issue a show cause notice to the petitioner calling for his explanation if he still chooses to cancel the order passed by the second respondent;
- (iii) As and when such an explanation is called for, it is open to the petitioner to raise all his contentions, including the contention that his service should regularized from the date of availing of his services as Typist;
- (iv) No costs.
- (v) Consequently, connected miscellaneous petition is closed.

15.09.2023

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NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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