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W.P.No.30571 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : .03.2024

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

Writ Petition No.30571 of 2012

S.Ravi

... Petitioner

Vs.

1.The Principle Secretary,
Industries Department,
Chairman, TASCO,
Secretariat, 9th Floor,
Chennai – 600 009.

2.The Managing Director,
Tamil Nadu Sugar Corporation Ltd.,
690, Anna Salai,
Periyar EVR Buildings II Floor,
Chennai – 600 035.

... Respondents

Writ Petition has been filed under Article 226 of Constitution of India to issue a Writ of Certiorarified Mandamus calling for the concerned records relating to the impugned retrenchment order No.2735/2004/E2 dated 30.04.2005 passed by the second respondent and the impugned rejection order No.10644/MIC2/2005-18 dated 15.10.2012 passed by the First respondent and quash the same and to direct the respondent to reinstate the petitioner into service immediately and to give all consequential benefits i.e., service/monetary benefits.



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For Petitioner : Mr.S.Ramaswamyrajarajan
For Respondent 1 : Mr.M.Rajendiran,
Additional Government Pleader
For Respondent 2 : Mr.R.Parthiban
Mr.C.Vigneswaran

ORDER

The relief sought by the petitioner in this writ petition is to call for the concerned records relating to the impugned retrenchment order No.2735/2004/E2 dated 30.04.2005 passed by the second respondent and the impugned rejection order No.10644/MIC2/2005-18 dated 15.10.2012 passed by the First respondent and quash the same and to direct the respondent to reinstate the petitioner into service immediately and to give all consequential benefits i.e., service/monetary benefits.

2. The case of the petitioner is that the petitioner had joined as Junior Assistant in Tamil Nadu Sugar Corporation Limited in the year 1982 and was promoted as Assistant in the year 1990 and he got selection grade thereafter. This being the case, when the petitioner was working as Selection Grade



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Assistant under the second respondent, Voluntary Retirement Scheme had been brought by way of issuing notice dated 30.10.2004 for the employees working in the Tamil Nadu Sugar Corporation Limited that too to the surplus employees in certain categories in Registered Office/Head Office of Tamil Nadu Sugar Corporation Limited and Perambalur Sugar Mills Limited due to the reduction of 29 posts out of 53 posts and had requested therein to avail the said scheme on or before 30.11.2004 or otherwise they will be retrenched. Challenging the said Voluntary Retirement Scheme brought in the Notice dated 30.10.2004, the Chief Sugar Engineer as well as Tamil Nadu Sugar Corporation Limited Employees Union had preferred writ petition before this Court in W.P.Nos.33102 & 33884 of 2004.

3. Initially this Court has stayed the Voluntary Retirement Scheme Notice dated 30.10.2004 and finally dismissed those writ petitions on 24.04.2005. Thereafter, the respondents had issued Second Notice dated 25.04.2005 and once again called for willingness when the employees emphasizing the conditions which was stipulated in earlier Voluntary Retirement Scheme Notice dated 30.04.2004 putting special condition that



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the willingness from the employees should reach on or before 30.04.2005.

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4. The aforesaid Notice dated 25.04.2005 was sent to the petitioner by the second respondent and the same was received by him on 26.04.2005, wherein it is stated that the earlier Notice dated 30.10.2004 will applicable only to the employees of TASCO and the de-linking of TASCO and Perambalur Sugar Mill were for accommodating the incumbent immediately below or in the seniority list and in addition to that he had requested therein to take follow up action as per the Rules position and if the rule is strictly followed, the petitioner should be retained as Assistant in the Head Office.

5. The petitioner's request was to retain him in the Head Office and the second respondent ought to have treated that he has given unwillingness for the said Voluntary Retirement Scheme and when the petitioner was waiting for favourable order, he has received the illegal retrenchment order vide No.2735/2004/E2, dated 30.04.2005 from the second respondent, wherein it has been mentioned that since the petitioner has not given his willingness to



avail the Voluntary Retirement Scheme offered in the Notice dated 25.04.2005, he has been retrenched from service of Tamil Nadu Sugar Corporation Limited with effect from 30.04.2005 and he was also retrenched immediately on the afternoon of 30.04.2005.

6. Challenging the aforesaid illegal retrenchment order dated 30.04.2005, the petitioner has made an appeal before the first respondent on 20.05.2005 with a request to consider his appeal and to reinstate him in service. The petitioner has made a representation dated 25.05.2005 to the second respondent stating that till the disposal of the appeal dated 20.05.2005, the petitioner is not competent to receive retrenchment compensation. This being so, there was no response from the first respondent to the appeal dated 20.05.2005. Hence, the petitioner has made several reminders on various dates i.e., 25.05.2005, 17.12.2008, 19.10.2010 & 14.06.2011 respectively and had requested therein to dispose his appeal on verifying the submissions made by the him and to pass orders early. However, no order has been passed.



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7. Therefore, the petitioner has filed a writ petition before this Court in W.P.No.20510 of 2012 seeking direction to the first respondent to dispose his appeal dated 20.05.2005 and the same was allowed on 02.08.2012. Hence, the petitioner has made another representation dated 10.09.2012 to the first respondent to consider his case and dispose his appeal. Thereafter, the first respondent has rejected the aforesaid appeal on 15.10.2012 vide order No.10644/MIC2/2005-18 stating that as per Rule 65 of Service Rules of TASCO Limited, the representation of the petitioner dated 20.05.2005 cannot be treated as an appeal and the decision regarding the retrenchment of petitioner was taken by the Board of Directors and one Sri.S.Sundaramoorthy of Perambalur Sugar Mills Limited is senior to him. Aggrieved over the said dismissal order dated 15.10.2012 passed by the first respondent and the order of retrenchment dated 30.04.2005, passed by the second respondent, the petitioner has come forward with the present writ petition.

8. Learned counsel for the petitioner would submit that the action itself shows that the second respondent had taken decision on the date of issuance of notice dated 25.04.2005 to retrench the petitioner when the petitioner's



representation dated 29.04.2005 which was given for retaining him in the Corporation is pending. As far as the Tamil Nadu Sugar Corporation Limited Service Rules is concerned, there is no provision to send their employees irrespective of the cadre on following the instrument of retrenchment and employees would not be retrenched under Voluntary Retirement Scheme. Further, no specific notice was sent to the petitioner by the second respondent before passing the illegal retrenchment order dated 30.04.2005. Because the impugned show cause notice which was issued to the petitioner was only on Voluntary Retirement Scheme and not on the point of retrenchment by following the conditions available under Industrial Disputes Act, 1947.

9. Learned counsel for the petitioner would further submit that the petitioner has preferred an appeal before the first respondent on 20.05.2005 and the same was disposed of only on 15.10.2012 and that too on the direction of this Court and thus, there is abnormal delay and latches on the side of the first respondent. In case of reduction of work or shortfall in the work or surplus among staff, the authorities of the Corporation would have taken an endeavor to adjust them in alternative work but the said system has



not been followed in the case on hand.

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10. Learned counsel for the petitioner would further submit that in the second impugned order, the first respondent had mentioned that there is no provision in the Rules of TASCO Limited to make an appeal against the retrenchment order. But he has not applied his mind towards the point that there is no provision in the Rules, which relied upon by the respondents to make retrenchment under Voluntary Retirement Scheme so, that itself shows that TASCO had violated human dignity and the powers conferred upon the statutory authorities of TASCO. The petitioner was retrenched only with a malafide intention and to harras him. There is no justification at the end of the respondents on any ground to send the petitioner out of TASCO on retrenchment that too on mis-interpretation of the rules and regulations of TASCO and the Chairman and the other members of the Board ought to have considered the representation of the petitioner on giving importance to the word “unwillingness”.

11. Learned counsel for the petitioner would further submit that in the



order passed by the second respondent, it has been mentioned that one

Mr.S.Sundaramoorthy is senior to the petitioner in the cadre of Assistant.

Therefore he was retained and the petitioner was retrenched from service. But it is not true at all because Mr.S.Sundaramoorthy and the petitioner had joined as Assistant on the same day i.e., on 11.10.1990 and based on the date of birth, the petitioner was considered as senior to Mr.S.Sundaramoorthy as the petitioner date of birth is 25.05.1955, whereas the date of birth of Mr.S.Sundaramoorthy is 13.06.1955 and thus, the petitioner is elder than Mr.S.Sundaramoorthy. Therefore, the contention of the first respondent that Mr.S.Sundaramoorthy is senior to the petitioner is not correct.

12. There is no provision in TASCO Limited service rules for retrenchment. Therefore unless the Articles of Association or the Rules framed by the TASCO itself provides they can not make retrenchment of the petitioner under Voluntary Retirement Scheme. Therefore the entire action of the respondent is arbitrary and in violation of rules and regulations of the TASCO and Articles 16, 309 & 311 of the Constitution of India and against the Industrial Disputes Act, 1947.



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13. Learned counsel for the petitioner drew the attention of this Court to the seniority list of Tamil Nadu Sugar Corporation Limited dated 05.12.2002, wherein it is mentioned that the petitioner was born on 25.05.1955 and joined the service of TASCO Limited on 11.10.1990, whereas, the said S.Sundaramoorthy was born on 13.06.1955 and joined the service of Perambalur Sugar Mills Limited on 11.10.1990. Hence, as per the date of birth, the petitioner is senior to the said S.Sundaramoorthy.

14. Learned counsel for the petitioner would further drew the attention of this Court to the proceedings of the Managing Director, Tamil Nadu Sugar Corporation Limited vide No.2005/82/E, dated 03.11.1982, wherein, clause 7 states that “In case of resignation or termination of his services after the completion of probation, one month's notice on either side should be given or one month's salary shall be paid in lieu thereof as compensation on either side” and no where it is mentioned that the employee will be retrenched and also there is no provision of retrenchment in the service rules of the TASCO Limited.



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15. Learned counsel for the petitioner has also relied on the judgment passed by the *Hon'ble Supreme Court of India in the case of Dayaram Dayal Vs., State of Madhya Pradesh and another, reported in (1997 SCC L&S 1797)*, wherein, it has held that in the case of invalid termination, the worker entitled to all arrears of emoluments from the date of termination to the date of reinstatement with all consequential benefits in accordance with law.

16. Learned counsel for the petitioner drew the attention of this Court to the letter dated 24.07.2009 in letter No.1219/2005/E2, written by the Chairman cum Managing Director of TASCO, wherein, it is stated that “the TASCO Limited is governed by a separate service rules approved by Government and Committee of Directors assessed the work load of staff of H.O. And identified surplus staff. Thereafter, the Board of Directors resolved to implement VRS without Government's financial support and offered VRS to surplus staff Thiru S.Ravi a former Assistant who is a surplus employee declined to avail VRS. Hence, he was retrenched by issuing proper



notice. The retrenchment compensation paid to him is equal to the compensation as stated under Industrial Dispute Act. The retrenchment took place in April 05, four years have since lapsed. The issue has already settled. This is for kind information of Government.”

17. The counter affidavit was filed on behalf of the second respondent on 12.01.2013. For better appreciation, the relevant paragraph is extracted hereunder:

“7. The Committee of Directors have clubbed the staff strength of the Tamil Nadu Sugar Corporation Limited and Perambalur Sugar Mills. But 3 staff (1 Superintendent, 1 Assistant and 1 Steno-typist) belonging to Perambalur Sugar Mills Head Office. Appointment orders were given to them in Perambalur Sugar Mills Letter-head only. Upon representation that inclusion of staff of Perambalur Sugar Mills Head Office in the surplus list proposed by Tamil Nadu Sugar Corporation Limited is not correct since Perambalur Sugar Mills is a separate Corporate entity, these 3 staff were delinked and kept separately by the Board of Perambalur Sugar Mills Ltd., in their 137th Meeting held on 01.02.2005 and this was also reported in the 146th Board Meeting of Tamil Nadu Sugar Corporation Limited held on 23.03.2005. The contention of the petitioner that he was retrenched straightway was not true. He was well aware that he was a Junior in the Assistant cadre and if no



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senior had opted for Voluntary Retirement Service, then he had to go under VRS or face retrenchment. The notice of VRS was given to him on 30.10.2004 (received by him on 02.11.2004) with a reasonable time for offering option., i.e., upto 30.11.2004. There was no response from him. Again, after disposal of Writ Petition, a fresh notice dated 25.04.2005 was issued to him with option time extended upto 30.04.2005 and for this also he had not given his option.”

18. The counter affidavit was filed on behalf of the first respondent on 26.06.2013. For better appreciation, the relevant paragraph is extracted hereunder:

“2-A. The subject matter of the instant case is an industrial dispute within the meaning of the Industrial Disputes Act, 1947 (Act 14 of 1947). The Hon'ble Supreme Court has held in a number of cases that if the dispute is an industrial dispute, the only remedy provided in the Act should alone be resorted to and on that ground alone the Writ Petition is liable to be dismissed.

B. It is submitted that the petitioner herein was retrenched under section 25-F of the Industrial Disputes Act, 1947 on 30.04.2005. Even though there is no appeal provision available against the order of retrenchment passed by the second respondent, inspite of it the petitioner preferred an appeal before the first respondent and the first respondent passed an order on 15.10.2012. The first respondent herein submits that incompetence of appeal should not be taken as a



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cause of action for filing the above writ petition. There is a substantial delay from the year 2005 in approaching this Hon'ble Court and on the ground of laches alone the above writ petition is liable to be dismissed.

7. The management took efforts to redeploy surplus staff at Arignar Anna Sugar Mills (unit of Tamil Nadu Sugar Corporation Limited). But the petitioner herein declined to avail this opportunity and this was recorded in the retrenchment order in paragraph 4, which was not disputed by the petitioner.

10. That there is no appeal provision in the Service Rules of the second respondent against Voluntary Retirement Scheme/Retrenchment. Appeal provision is available only in case of disciplinary matter. Voluntary Retirement Scheme/Retrenchment are not disciplinary issues and there is no violation of Article 311 of the Constitution of India.

14. As per condition No.7 of the appointment order, the services of the petitioner can be terminated after due compliance of the provisions; viz. Retrenchment compensation along with one month pay in lieu of notice period and this was sent to the petitioner but the envelope containing the above was returned with endorsement "refused".

20. Thiru.S.Sundaramoorthy was not an employee of the second respondent undertaking but an employee of Perambalur Sugar Mills Limited, which is a separate entity, and hence the petitioner cannot be compared with Thiru.S.Sundaramoorthy. It is further submitted that, without prejudice to the above contentions, even assuming that Thiru.S.Sundaramoorthy and the petitioner herein joined as Assistant on 11.10.1990, the date of joining in the lower post i.e., in the feeder category has to be



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taken into account for seniority purposes in the Assistant Cadre. While the petitioner joined as Junior Assistant in the second respondent's office only on 11.11.1982, the said S.Sundaramoorthy had joined as Junior Assistant in Perambalur Sugar Mills Limited much earlier to the petitioner i.e., on 01.05.1979. Hence, Thiru.S.Sundaramoorthy is much senior to the petitioner and the averment made in ground (k) of the affidavit is liable to be rejected, on both these grounds.”

19. Learned Additional Government Pleader appearing for the first respondent would submit that there is a delay of seven years in approaching this Court when the retrenchment order was issued on 30.04.2005, whereas this writ petition was filed in the year 2012. He also drew the attention of this Court to the notice dated 25.04.2005 vide Ref.No.2735/2004/E2 and for better understanding, the relevant paragraphs are extracted hereunder:

“Accordingly the employees are informed that there is no change in the Voluntary Retirement Scheme communicated along with the Notice No.2735/2004/E2 dated 30.10.2004. A copy of the Notice dated 30.10.2004 along with the scheme is enclosed again, for ready reference. In view of the reasons stated in the Notice and the vacation of the stay ordered by the Hon'ble High Court and in order to facilitate the employees to avail the VRS, the last date for receipt of the option for VRS is fixed as 30.04.2005.

The employees are further informed that, if the option for



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VRS is not received from them on or before the last date mentioned above, they will be retrenched as per Rules.”

20. Learned Additional Government Pleader appearing for the first respondent further drew the attention of this Court to the letter No.10644/MIC.2/2005-18, dated 15.10.2012 passed by the first respondent. For better appreciation and understanding, the relevant paragraphs are extracted hereunder:

“2. In this connection, I am to state that your appeal was considered in consultation with TASCOT Ltd., and the same is rejected due to the following reasons:

(i) As per Rule 65 of the Service Rules of TASCOT Ltd., aggrieved by an order passed by the M.D. in case of the disciplinary matter, an appeal lies to Chairman. But in the instant case, decision was taken by Board of Directors for your retrenchment and hence your representation dated 20.05.2005 can not be treated as an appeal under the existing service rule of Tamil Nadu Sugar Corporation Ltd.,

(ii) The Board of Directors of Perambalur Sugar Mills Ltd., has duly approved the de-linking of Perambalur Sugar Mills Ltd., from the TASCOT Ltd., and the de-linking of the employees of PSM from TASCOT's sanctioned strength was also reported to the Board of TASCOT in the 146th Board Meeting held on 23.03.2005.

(iii) You and Thiru N.Sundaramurthy of Perambalur



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Sugar Mills Ltd., joined on 11.10.1990 in the Assistant post and hence the date of joining the lower post i.e., feeder post has been considered for seniority purpose in the Assistant cadre. You have joined in the Junior Assistant Post on 11.11.1982. since Thiru S.Sundaramurthy has joined prior to you in the Junior Assistant post (on 01.05.1979), Thiru S.Sundaramurthy is senior to you. Therefore, your contention that you are senior to Thiru.S.Sundaramurthy is totally incorrect and baseless.”

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

22. The petitioner was born on 25.05.1955 and initially joined the service as Junior Assistant in Tamil Nadu Sugar Corporation Limited on 03.11.1982 vide appointment order No.2005/28/2 by the Managing Director/Second respondent of TASCOC, Chennai-35. The notice for Voluntary Retirement Scheme was announced on 30.10.2004 with a request to submit on or before 30.11.2004. Thereafter, the TASCOC employees union filed a writ petition in W.P.No.33884 of 2004 and another writ petition in W.P.No.33102 of 2004 against the Voluntary Retirement Scheme. Initially an interim order was granted by this Court and the final order was passed on



24.04.2005, dismissing the writ petitions. Thereafter, second notice for Voluntary Retirement Scheme was issued on 25.04.2005 and the option was extended upto 30.05.2005 and the petitioner has not given his option for Voluntary Retirement Scheme.

23. The petitioner's request was to retain him in the Head Office. This being so, the petitioner has received a retrenchment order on 30.04.2005 from the second respondent, wherein it has been mentioned that since, he has not given any willingness to avail the Voluntary Retirement Scheme offered in the notice dated 25.04.2005, he has been retrenched from the services of Tamil Nadu Sugar Corporation Limited with effect from 30.04.2005 A.N. Thereafter, the petitioner filed an appeal before the Chairman, TASCO/the first respondent on 20.05.2005. Since no order has been passed in the said appeal, the petitioner has filed a writ petition in W.P.No.20510 of 2012 before this Court and the same was disposed of on 02.08.2012 with a direction to the respondents therein to consider the appeal of the petitioner dated 20.05.2005, within a period of three months from the date of receipt of a copy of this order.



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24. The petitioner also made representation to the first respondent on 10.09.2012 and requested to consider his case sympathetically and on humanitarian ground, however, the appeal was rejected by the first respondent on 15.10.2012 stating that as per Rule 65 of Service Rules of TASCO, a representation cannot be treated as an appeal and in this case, the Board of Directors have taken decision of his retrenchment and one Mr.S.Sundaramoorthy is senior to him. Hence, the said S.Sundaramoorthy is retained in the post of Assistant.

25. As per the seniority list of Assistant in TASCO dated 05.12.2002, the petitioner was joined as Assistant in TASCO Limited on 11.10.1990 and his Date of Birth is 25.05.1955, whereas Mr.S.Sundaramoorthy joined Perambalur Sugar Mills Limited on the same date i.e., on 11.10.1990 but his Date of Birth is 13.06.1955. Accordingly, the petitioner is senior to the said S.Sundaramoorthy. Even in the appointment order of the petitioner dated 03.11.1982 in Clause 7, it is mentioned that “In case of resignation or termination of



his services after the completion of probation, one month's notice on either side should be given or one month's salary shall be paid in lieu thereof as compensation on either side". According to which, there is no provision of retrenching the petitioner under the service rules of TASCO. Hence, the retrenchment of the petitioner by invoking Industrial Disputes Act, 1947 is unsustainable in law.

26. It is crystal clear and evident since there is no provision for retrenching the employees according to the service rules of TASCO, the second respondent has cleverly invoked section 25(f) of the Industrial Disputes Act, 1947 to retrench the petitioner by paying one month salary as compensation in order to bring the case under the jurisdiction of Labour Court. In this regard, the learned counsel for the petitioner has relied on the decision of the *Hon'ble Supreme Court of India in the case of Dayaram Dayal Vs., State of Madhya Pradesh and another, reported in 1997 SCC L&S 1797.*

27. It is pertinent to note that there are various penalties



mentioned in Clause 55 of the Tamil Nadu Sugar Corporation Limited service rules and no whereas it is mentioned that the employee can be retrenched from service and it is only mentioned as the employee can be dismissed from the service of TASCOT Limited. Moreover, invoking of Industrial Disputes Act, 1947 by the second respondent is in total violation of TASCOT service rules since it does not provide for retrenchment of the employee and even in the appointment order of the petitioner dated 13.11.1982 only two words were mentioned i.e., resignation or termination of service and nowhere, the word retrenchment was mentioned. Hence, the order of retrenchment issued by the second respondent is liable to be quashed on the following grounds:

(i) The TASCOT service rules does not provide for retrenchment of an employee under Section 25(f) of the Industrial Disputes Act, 1947.

(ii) According to the seniority list of Assistant of TASCOT published on 05.10.2002, the petitioner joined the TASCOT on 11.10.1990 and his date of birth is 25.05.1955 whereas, one Mr.S.Sundaramoorthy has joined the service of TASCOT on 11.10.1990 and his date of birth is



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13.06.1955. Hence, petitioner is senior to the said Mr.S.Sundaramoorthy.

(iii) The reason given for terminating the petitioner is that he is junior to said Mr.S.Sundaramoorthy. Hence, Mr.S.Sundaramoorthy is retained and the service of the petitioner is retrenched is unsustainable for the reason that the date of the birth of the petitioner is 25.05.1955, whereas, the date of birth of Mr.S.Sundaramoorthy is 13.06.1955. So, the petitioner is senior.

(iv) In the impugned order dated 15.11.2012, it is mentioned that as per Rule 65 of the Service Rules of TASCOT Limited, aggrieved by an order passed by the M.D. in case of the disciplinary matter, an appeal lies to Chairman. But in the instant case, decision was taken by Board of Directors for your retrenchment and hence your representation dated 20.05.2005 cannot be treated as an appeal under the existing Service Rule of Tamil Nadu Sugar Corporation Limited. **The above Rule 65 of the Service Rules of TASCOT Limited is not applicable to the petitioner's case for the reason that in the retrenchment order dated 30.04.2005 issued by the second respondent nowhere it is mentioned that the decision was taken by the**



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Board of Directors for retrenching the petitioner from the service of TASCO Limited. Hence, the order passed in the appeal is also liable to be quashed.

28. In view of the above factual matrix of the case, this Court is of the considered view that the retrenchment order No.2735/2004/E2, dated 30.04.2005 passed by the second respondent and the rejection order No.10644/MIC 2/2005-18, dated 15.10.2012 passed by the first respondent are liable to be quashed and the same is hereby quashed.

29. In the result, this writ petition is allowed and the first respondent is directed to reinstate the petitioner into service and to give all consequential benefits i.e., service/monetary benefits as per the rules and regulations in force, within a period of eight weeks from the date of receipt of a copy of this order. No costs.

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Speaking Order : Yes/No
Neutral Citation : Yes/No

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To:

- 1.The Principle Secretary,
Industries Department,
Chairman, TASCO,
Secretariat, 9th Floor,
Chennai – 600 009.
- 2.The Managing Director,
Tamil Nadu Sugar Corporation Ltd.,
690, Anna Salai,
Periyar EVR Buildings II Floor,
Chennai – 600 035.

J.SATHYA NARAYANA PRASAD,J.

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