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W.A. No. 1926 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2025

CORAM

THE HONOURABLE MR. JUSTICE S.S SUNDAR

AND

THE HONOURABLE MR. JUSTICE C. SARAVANAN

W.A. No. 1926 of 2022

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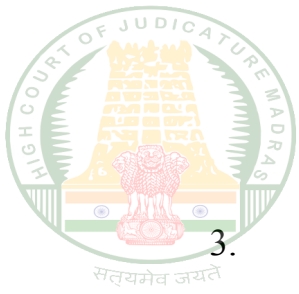
C.M.P. No. 14123 of 2022

P. Mihiran

..Appellant

Vs.

1. The Managing Director,
Tamil Nadu State Marketing
Corporation Ltd.,
Chennai – 600 008.
2. The Senior Regional Manager,
Tamil Nadu State Marketing
Corporation Ltd.,
Old District Collector's office,
Trichy.



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3. The District Manager,
Tamil Nadu State Marketing
Corporation Ltd.,
Cuddalore District,
Cuddalore – 5.

..Respondents

Prayer: Writ Appeal under Clause 15 of Letters Patent to set aside the
order dated 10.08.2022 passed in W.P. No. 359 of 2015.

For Petitioner	::	Mr.D. Selvaraja for Mr.V. Neethidurai
For Respondents	::	Mr.C. Ramesh, Standing Counsel for R1 to R3

J U D G M E N T

(Delivered by S.S. SUNDAR,J.)

The intra court appeal is directed against the order dated
10.08.2022 passed in W.P. No. 3359 of 2015.

2. The summation of facts, in brief, necessary for the
disposal of this writ appeal is as hereunder:

The appellant/writ petitioner joined the services of the
respondent Corporation as Temporary Salesman on contract basis vide
proceedings dated 29.11.2003. Thereafter, the writ petitioner made an
application to absorb/promote him as Bar Supervisor in the existing vacancy



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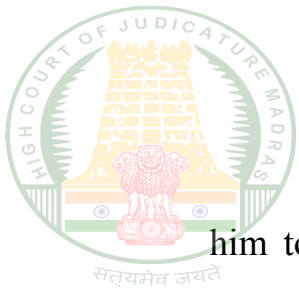
and he had also made the requisit security deposit of Rs.50,000/-. His case was recommended and he was promoted as Supervisor by proceedings dated 20.02.2006. While so, the respondent Corporation issued an order dated 19.07.2013 reverting the writ petitioner to the post of Salesman. Aggrieved by the said order, the writ petitioner filed W.P. No. 20146 of 2013 and by order dated 23.07.2013, Writ Court allowed the said writ petition and remanded the matter back to the 3rd respondent to provide an opportunity to the writ petitioner and to take a decision on merits. Pursuant to the said order, the respondent Corporation issued a notice dated 03.06.2014 providing him an opportunity to submit his objections/explanations with regard to the reasons stated for reversion. However, the writ petitioner did not respond resulting in the respondent Corporation issuing yet another notice dated 05.06.2014, which was also not responded to by the writ petitioner. Hence, the respondent Corporation, by proceedings dated 27.01.2015, reverted the writ petitioner from the post of Supervisor to the post of Salesman. Assailing the said order, the writ petitioner filed W.P. No. 3359 of 2015, which came to be dismissed by the order under challenge. Hence, the present writ appeal.



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3. Learned counsel for the appellant/writ petitioner would submit

that while observing that the respondent Corporation had not framed Rules for appointments and promotions even after 19 years from the constitution of the respondent Corporation, the learned Single Judge ought not to have dismissed the writ petition confirming the order of reversion on the ground that the writ petitioner/appellant is unable to produce any the Rule for promotion to the post of Supervisor. Further, the learned counsel would submit that when similarly placed persons like the writ petitioner/appellant, had approached this Court challenging the order of reversion in W.P. Nos. 20321 to 2038 of 2013 and by order dated 24.07.2013, the said writ petitions were disposed of remanding the matters to the authority concerned for fresh consideration after affording an opportunity to the petitioners therein and according to the learned counsel, all those persons were allowed to work as Supervisors and no action has been taken whereas it is only the writ petitioner/appellant, who has been reverted to the post of Salesman. It is also the submission of the learned counsel for the petitioner/appellant that having utilised his services all these years, for nearly two decades, without regularising his services, the act of the respondent Corporation in reverting



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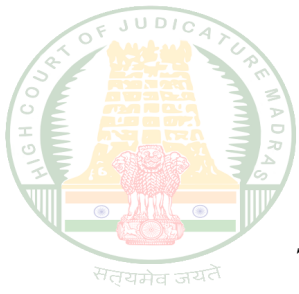
him to the post of Salesman is totally unjustified. Moreover, the learned counsel would submit that there cannot be a policy decision for the respondent Corporation to adopt different yardsticks for the writ petitioner/appellant and other similarly placed employees. Therefore, the learned counsel would pray for setting aside the impugned order.

4. The respondent Corporation has filed counter affidavit and the relevant portions are reproduced hereunder:

'It is humbly submitted that the petitioner made a request for the promotion from the post of Salesman to Bar Supervisor on 10.02.2006 and the then District Manager at that time by its order vide Na.Ka.En.RV1/1949/2006 dated 2002.2006 promoted the petitioner from salesman to supervisor. It is further submitted that there is no approval has been obtained from the Managing Director or from Government there is no any service rule for the TASMAC Employees like Salesman and Supervisor to promote them to the higher post. Hence, the Appellant cannot claim promotion from Salesman to Supervisor.

...

8. *I further respectfully submit that the appellant is alleging in the present appeal that 140 temporary supervisors were appointed those appointments were made without the approval of the Managing Director TASMAC and an explanation were called from 14 temporary supervisors. However the appellant has been*



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signed out and reverted back as salesman. It is specific stand of the 3rd respondent Salesman cannot be promoted as supervisor salesman appointed once in the Tasmac they can continue as Salesman no promotion can be given by the Tasmac. The promotion given by the Senior Regional Manager, Trichy has been cancelled by the Managing Director Tasmac by a circular in Na.Ka.No. 11787/R/213 dated 09.07.2013 for the reason the Senior Regional Manager, Trichy has wrongly promoted the Appellant. Hence, the case of the appellant cannot be equated with the other 140 temporary supervisors as alleged in the writ appeal. The appointment order of the appellant is hired on a purely part time/temporary and on contract basis. Therefore the appellant cannot claim promotion as Sales Supervisor. Hence, the revision order is legal no illegality and in accordance with the Governing Rules of the Tasmac, the order of the learned Single Judge is legal the appellant was appointed as part time consolidated pay salesman and his services were not regularized therefore the regular salesman only can seek promotion.'

The learned counsel for the respondent Corporation would submit that the appellant cannot be equated with 140 Supervisors as alleged in the writ appeal.

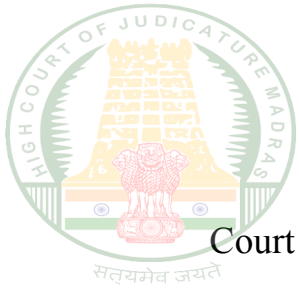
5. Heard both sides.
6. Admittedly, 140 persons, who were working as Salesmen were



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promoted to the post of Bar Supervisor along with the appellant. However, the grievance of the appellant seems to be that while others were allowed to continue as such, he alone was reverted to the post of Salesman. This Court wanted the respondent Corporation to explain the circumstance which necessitated the Corporation to discriminate the appellant alone and the respondent Corporation relied upon the counter affidavit, the relevant portions of which have been extracted supra. Though it is stated in the counter affidavit that the appellant cannot seek promotion as a matter of right especially when there is no Rule to promote Salesman appointed on temporary basis to the post of Bar Supervisor, we are unable to countenance the said stand taken by the respondent Corporation as all the 140 persons, who were promoted along with the appellant to the post of Bar Supervisor were also reverted earlier and now working as Salesman and there is no answer to the specific issue raised by the appellant as to why he was singled out from similarly placed employees. It is also to be noted that the appellant has been absorbed/promoted as Bar Supervisor on payment of security deposit of Rs.50,000/- like others.

7. Therefore, on the facts and circumstances of the case, this



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Court is unable to find any justification for the discrimination for treating the appellant differently. As a matter of fact, the appellant as well as others, who are now holding the post of Bar Supervisor were appointed on temporary basis by an order, which is uniform in all the cases. That being so, this Court finds that the appellant has been discriminated. Therefore, the order under challenge is set aside and the writ appeal stands allowed. The Writ petition stands allowed. No costs. Connected C.M.P. is closed.

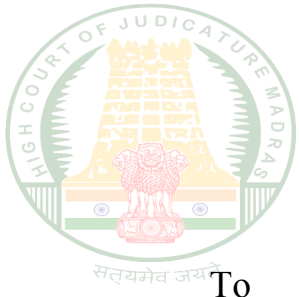
nv

(S.S.S.R.J.) (C.S.N.J.)
14.02.2025

Index: Yes/No

Speaking Order/Non-Speaking Order

Neutral Citation: Yes/No



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