

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2015

CORAM:

THE HON'BLE MR. JUSTICE SATISH K. AGNIHOTRI
and
THE HON'BLE MR. JUSTICE M. VENUGOPAL

W.A. No.115 of 2015

M. Srinivasan

Appellant

vs.

The District Manager
Tamil Nadu State Marketing Corporation Ltd.
(TASMAC)
Suriyampalayam
Vasavi College Road
Erode District

Respondent

Writ Appeal filed under Clause 15 of the Letters Patent challenging the order dated 05.06.2014 passed in W.P. No.5036 of 2014.

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari Mandamus to call for the records of the respondent bearing proceedings in Na.Ka.No. 366/04/R1 dated 29.12.04 and quash the same insofar as the petitioner is concerned in terms of the order passed in WP.No. 2757 of 2009 dated 28.1.11 and WP.No.25150 of 2011 dated 1.11.2012 and consequently direct the respondent to reinstate the petitioner as Shop Salesman.

For appellant Mr. N. Umapathi

For respondent Mr. S. Muthuraj

JUDGMENT

(Judgment of the Court was delivered by SATISH K. AGHINOTRI, J.)

The instant intra-Court appeal arises from the order dated 05.06.2014 passed in W.P. No.5036 of 2014.

2. The appellant herein had filed the instant writ petition, questioning the legality and validity of the order dated 29.12.2004, whereby, he was terminated from service, seeking a relief in terms of the orders dated 28.01.2011 and 01.11.2012 passed in W.P. Nos.2757 of 2009 and 25150 of 2011 respectively.

3. The brief facts relevant for consideration of the matter

are that the appellant was working as a Salesman attached to TASMAC Shop No.3530 at Erode. On audit by the Divisional Excise Officer, several irregularities and malpractices were found in the shop. Accordingly, the appellant, along with one R.A. Murugesan, Shop Supervisor, one R.Anbazhagan, Salesman and yet another Salesman by name M.Srinivasan, was placed under suspension, by order dated 08.06.2004, with effect from 03.06.2004. Thereafter, a memo was issued to them in July 2004, levelling the following charges against them:

Charge No.1

Mixing of water in alcohol

Charge No.2

Causing loss of reputation for TASMAC company by mixing water in alcohol

Charge No.3

Causing malpractice by selling retail by breaking the bottles

Charge No.4

Disobeying the orders of the higher officials by neglecting them.

Charge No.5

Acting in violation of TASMAC company working conditions 4 and 5

By the aforesaid memo, they were also directed to submit their explanation to the charges within seven days. Subsequently, on consideration of the explanation submitted by them and not being satisfied with the same and also, not being satisfied with the statements given by them in the personal hearing on 11.08.2004, they were terminated from service by the respondent, by order dated 29.12.2004. By the said order, it was also ordered that a sum of Rs.44,370/-, being 60% towards collection of empty bottles, be recovered from their Security Deposit, jointly.

4 Out of the aforesaid employees, R.A. Murugesan, Shop Supervisor, preferred a writ petition in the year 2009, questioning the common termination order dated 29.12.2004 in W.P. No.2757 of 2009. The learned Single Judge found that neither any enquiry was conducted in the manner known to law nor the Enquiry Officer's report was furnished to the petitioner. It was also found that though the petitioner was a temporary employee, his services were terminated on certain allegations, casting stigma on him. Thus, the writ petition was allowed setting aside the termination order, with a direction to reinstate him into service.

5 Likewise, another employee, viz., M. Ramesh, Salesman, preferred a writ petition in 2011, being W.P. No.1941 of 2011, challenging the termination order arising from the same dispute, which was also set aside, with a direction to reinstate him into service.

6 Similarly, the third employee, viz., R. Anbazhagan, Salesman, preferred a writ petition in 2011, being W.P. No.25150 of 2011, questioning the common termination order dated 29.12.2004. The same was also set aside and a direction was issued to reinstate him into service.

7 But, in the case on hand, the appellant, who was similarly situated, preferred the writ petition in 2014, seeking the same relief, as granted in the case of other delinquent employees. The learned Single Judge dismissed the said writ petition on the ground of laches.

8 We have heard the learned counsel for the petitioner. We have also heard the learned Standing Counsel appearing for the respondent, who urged in support of the order passed by the learned Single Judge. We have also examined the case from all angles.

9 There is no dispute that the appellant had filed the writ petition belatedly, without any proper explanation. In normal course, it has to be held that the writ petition was rightly rejected on the ground of laches and delay. However, in the facts of the instant case, admittedly, the other similarly situated employees, viz., R.A. Murugesan, M. Ramesh and R. Anbazhagan filed writ petitions belatedly in the years 2009, 2011 and 2011 respectively and they were granted relief on the ground that their services were terminated, without following the due process of law, when allegation was levelled against them. It was held that no proper enquiry was held as is evident from the impugned order. It also transpires that all other three similarly placed employees have been reinstated in service.

10 Thus, at this stage, when the appellant had filed the instant writ petition immediately after a period of three years from the date, the last order in case of similarly situated employee was passed by a learned Single Judge in W.P. No.25150 of 2011, the appellant should not have been thrown at the threshold on the ground of laches and delay.

11 Consequently, we are of the considered opinion that in view of the admitted fact that no proper enquiry was held on the allegations of irregularities and misappropriation, coupled with the fact that the termination order was set aside in respect of other three similarly situated employees, the instant writ petition filed by the appellant deserves to be allowed.

12 Accordingly, we set aside the order dated 05.06.2014 passed by the learned Single Judge and also the order dated 29.12.2004 by which the services of the appellant were terminated. However, in the facts of the case, we make it clear that the appellant will not be entitled to either wages or seniority in service, on the basis of this order. It is further made clear that the appointment of the appellant shall be a fresh appointment as Salesman.

13 As a sequel, the writ appeal stands allowed . No costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

cad

To

The District Manager
Tamil Nadu State Marketing Corporation Ltd.
(TASMAC)
Suriyampalayam
Vasavi College Road, Erode District

+1 CC to Mr.S.Muthuraj, Advocate SR 14061
+1 CC to M/S.N.Umapathi, Advocate SR 13821

VD(CO)
PKS
20/03/2015

W.A. No.115 of 2015

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