

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2016

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.4462 of 2012

A.Gopinathan

.. Petitioner

Versus

1. The Managing Director,
Tamilnadu State Marketing Corporation Ltd., (TASMAC)
Chennai-600 008.
 2. The Senior Regional Manager,
TASMAC Regional Office,
Salem-636 016.
 3. The District Manager,
Tamilnadu State Marketing Corporation Ltd., (TASMAC)
Vellore-632 001.
- .. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus calling for the records of the 3rd respondent passed in Se.Mu.Na.Ka.No.A2/1226/CV/2010 dated 19.12.2011 and to quash the same and directing the 3rd respondent to reinstate the petitioner in service with effect from 05.05.2011 (on the date of earlier order of dismissal) with continuity of service and backwages till the petitioner is reinstated in service.

For Petitioner : M/s.T.Dharani

For Respondents : Mr.C.Kasirajan,
Standing Counsel (TASMAC)

O R D E R

The Writ Petition has been filed seeking for a Writ of Certiorarified Mandamus calling for the records of the 3rd respondent passed in Se.Mu.Na.Ka.No.A2/1226/CV/2010 dated 19.12.2011 and to quash the same and directing the 3rd respondent to reinstate the petitioner in service with effect from 05.05.2011 (on the date of earlier order of dismissal) with continuity of service and backwages till the petitioner is reinstated in service.

2. Heard Mr.T.Dharani, learned Counsel on behalf of the petitioner and Mr.C.Kasirajan, learned Standing Counsel (TASMAC) on behalf of the respondents.

3. The petitioner who was employed as a salesman on a contract basis by the third respondent was dismissed from services on 05.05.2011 for certain irregularities. Challenging the order of dismissal, the petitioner is before this Court with this writ petition.

4. The main ground raised in the Writ Petition is that an order of dismissal was passed by the third respondent without an appropriate enquiry.

5. It is seen from the records produced by the petitioner that the third respondent has suspended the petitioner on 13.12.2010 for certain irregularities. During the suspension period, the petitioner was called upon to submit his explanation before the third respondent. According to the petitioner, the third respondent had prepared a statement whereby he was called upon to sign a statement on the pretext that he would be given an employment. However, based on the statement, the third respondent by proceedings dated 05.05.2011 in Se.Mu.Na.Ka.No.A2/1226/CV/2010 had dismissed the petitioner from services.

6. Mr.C.Kasirajan, learned standing counsel appearing for the respondents on the other hand would submit that the petitioner had given a statement admitting of having committed the irregularities and therefore, an order of dismissal was passed based on his statement.

7. On a perusal of the counter affidavit, it is seen that the respondents have not conducted a proper enquiry before passing the impugned order of dismissal. No opportunity has been given to the petitioner to examine witnesses or produce documents to establish his case. The respondents have also not let in any oral or documentary evidences during the enquiry to substantiate that the petitioner was guilty of the charges. As such, the respondent's claim to have conducted an enquiry, in my opinion is not a proper enquiry. The respondents have also not substantiated the specific ground raised by the petitioner that the statement admitting his irregularities was taken by the third respondent under a false representation that he would be offered an employment. This Court in an order dated 26.11.2010, made in W.P.No.23488 of 2010 had discussed the procedures for conducting a domestic enquiry. The relevant portion of the order is extracted hereunder:

"6. It must be noted that this Court in B.Sivakumar Vs. The Managing Director, TASMAC Ltd., in W.P.No.6304 of 2009 dated 15.03.2010 after analyzing the provisions of various enactments applicable to TASMAC has finally

held that the provisions of Section 41(1) of Tamil Nadu Shops and Establishments Act, 1947 and the Model Standing Orders framed by the State Government under Industrial Employment Standing Orders Act 1946 will apply. In the present case, the order of termination given to the petitioners do no measure to the standard prescribed therein. Inasmuch so no worthwhile enquiry was conducted, the impugned order is liable to be set aside.

7. As to what is the elementary principles of conducting a domestic enquiry came to be considered by the Supreme Court vide its judgment in Meenglas Tea Estate V. Workmen reported in AIR 1983 SC 1719. In that case, the Supreme Court took exception that in the name of enquiry, only the charge sheeted workman alone would be examined and there was no evidence let in by the employer who charge sheeted the workman. In that context, in paragraph 4, the Supreme Court has held as follows:

"4The Tribunal held that the enquiry was vitiated because it was not held accordance with the principles of natural justice. It is contended that this conclusion as erroneous. But we have no doubt about its correctness. The enquiry consisted of putting questions to each workman in turn. No witness was examined in support of the charge before the workman was questioned. It is an elementary principle that a person who is required to answer a charge must know not only the accusation but also the testimony by which the accusation is supported. He must be given a fair chance to hear the evidence in support of the charge and to put such relevant questions by way of cross examination as he desires. Then he must be given a chance to rebut the evidence led against him. This is the barest requirement of an enquiry of this character and this requirement must be substantially fulfilled before the result of the enquiry can be accepted. A departure from this requirement in effect throws the burden upon the person charged to repel the charge without first making it out against him. In the present case neither was any witness examined nor was any statement made by any witness tendered in evidence. The enquiry, such as it was,

made by Mr.Marshall or Mr.Nichols who were not only in the position of judges but also of prosecutors and witnesses. There was no opportunity to the persons charged to cross-examine them and indeed they drew upon their own knowledge of the incident and instead cross-examined the persons charged. This was such a travesty of the principles of natural justice that the Tribunal was justified in rejecting the findings and asking the Company to prove the allegation against each workman de novo before it."

8. In the present case, the enquiry claimed to have been conducted is not an enquiry at all in the eye of Law. Under such circumstances, the impugned order of dismissal dated 19.12.2011, is quashed. The third respondent is directed to reinstate the petitioner in service with effect from the date of his dismissal i.e., 05.05.2011 (date of earlier order of dismissal), together with continuity of service and backwages within a period of four weeks from the date of receipt of copy of this order. Accordingly, the Writ Petition is allowed. No Costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

rm
To

1. The Managing Director,
Tamilnadu State Marketing Corporation Ltd., (TASMAC)
Chennai-600 008.

2.The Senior Regional Manager,
TASMAC Regional Office,
Salem-636 016.

3.The District Manager,
Tamilnadu State Marketing Corporation Ltd., (TASMAC)
Vellore-632 001.

+1cc to Mr.T.Dharani, Advocate sr.70285

+1cc to Mr.C.Kasirajan, Advocate sr.70330

W.P.No.4462 of 2012

eu(co)
ss(1/2/2017)

<https://hcservices.ecourts.gov.in/hcservices/>