

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 29.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.26977 of 2014

R.Ramkumar

... Petitioner

-vs-

The District Manager,
Tamil Nadu State Marketing
Corporation Limited (TASMAC),
Vellore District.

... Respondent

Writ petition has been filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus, calling for the proceedings of the respondent in its Che.Mu.Na.Ka.No.A2/577/C.V/2014 dated 18.06.2014 and quash the same and consequently direct the respondent to reinstate the petitioner back into service.

For Petitioner : Mr.V.Rajinikanth
For Respondent : Mr.C.Kasirajan
Standing Counsel for TASMAC

O R D E R

This writ petition has been filed by the petitioner praying for issuance of a writ of Certiorarified Mandamus, to call for the proceedings of the respondent in its Che.Mu.Na.Ka.No.A2/577/C.V/2014 dated 18.06.2014 and to quash the same and consequently, to direct the respondent to reinstate the petitioner back into service.

2.It is stated by the petitioner that he was appointed as Shop Supervisor of TASMAC Retail Shop No.11317 at Narayanapuram, by an order dated 31.12.2003 of the respondent. He was paid a consolidated salary of Rs.3,000/- per month. Thereafter, he was transferred to Vellakal Natham TASMAC Retail Shop No.11306 in the same capacity, due to shortage of staff members. On 25.06.2013, a flying squad headed by Senior Regional Manager came for a surprise inspection. At that time, the petitioner was looking after the accounts of the said shop. However, on that day, there was no irregularity found by the squad team. While so, on 01.07.2013, the petitioner was shocked and surprised to receive a proceedings from the respondent,

placing him under suspension, pending enquiry in respect of some irregularities alleged to have taken place at the time of inspection on 25.06.2013. Though the petitioner was placed under suspension, no subsistence allowance was paid to him. On 10.09.2013, a chargememo came to be issued, for which the petitioner gave a detailed reply denying the allegations levelled against him. On 19.09.2013, he was asked to appear for an enquiry on 25.09.2013 at 3.00 pm. As directed, the petitioner appeared for the enquiry before the inquiry officer. Except asking the petitioner, to narrate the incident alleged to have taken place on the date of inspection by the flying squad, nothing transpired on that date. The petitioner once again denied his involvement in the irregularities alleged to have taken place. While the petitioner was hopeful that he would be called for an enquiry on subsequent dates for letting in evidence by the authorities, marking of documents relied by the authorities and also for cross-examination of witnesses, he was shocked and surprise to receive an order dated 18.06.2014 dismissing him from service. In the dismissal order it has been stated that if he desires, he can prefer an appeal to the appellate authority within a period of 30 days. According to the petitioner, the principles of natural justice have been violated and the petitioner has been denied opportunity to defend himself. Hence, the petitioner has come forward with the present writ petition.

3. When the matter is taken up for consideration, the learned counsel appearing for the petitioner would submit that there is no proper enquiry conducted by the respondent before passing the impugned dismissal order and that the issue involved in this Writ Petition is covered by the decision of this Court made in W.P.Nos.18592 & 18593 of 2009, dated 19.04.2010, (A.Arivu Selvam & another Vs. The District Manager, Tamil Nadu State Marketing Corporation Ltd., Perambalur District). The learned Standing Counsel appearing for the respondent has not disputed the said submission. In the said order, dated 19.04.2010, this Court has held as follows_

"3. Both the petitioners raised an identical contention viz., that after their explanation, an enquiry was ordered to be conducted by the Depot Manager and during the enquiry, no witness was examined and no documents were produced and proved in the manner known to law. The enquiry was nothing but questioning the petitioners of their conduct. This would amount to transferring the burden of proof on the petitioners.

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6. It must be noted that this Court in *B. Sivakumar v. The Managing Director, TASMAL Ltd.* in W.P. No. 6304 of 2009 dated 15.03.2010 after analysing the provisions of various enactments applicable to TASMAL 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 as 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 chargesheeted workman alone would be examined and there was no evidence let in by the employer who chargesheeted the workman. In that context, in paragraph 4, the Supreme Court has held as follows:

"4. The 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 was 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 light of the above and there being no worthwhile enquiry conducted by the employer, the impugned orders will stand set aside. Both the writ petitions will stand allowed. No costs. Consequently, connected miscellaneous petitions are closed. However, it is open to the respondent TASMALCO if they so desire to conduct a proper enquiry in accordance with law and in the light of the observation made by the judgment referred to above."

3.Heard both sides. As admitted by both sides, the above cited order dated 19.04.2010, in W.P.Nos.18592 & 18593 of 2009, dated 19.04.2010, (A.Arivu Selvam & another Vs. The District Manager, Tamil Nadu State Marketing Corporation Ltd., Perambalur District), is squarely applicable to the present facts of the case also. Hence, applying the same, the impugned order dated 18.06.2014 is set aside. The respondent is directed to reinstate the petitioner into service forthwith, without backwages. It is open to the respondent, if they so desire, to conduct proper enquiry, in accordance with law and in the light of the observations made in the decisions referred above.

With the above terms, the writ petition is allowed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

The District Manager,
Tamil Nadu State Marketing
Corporation Limited (TASMAC),
Vellore District.

+1cc to Mr.V.Rajinikanth, Advocate Sr.55879

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