

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2016

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.10557 of 2013

and

M.P.Nos.1 of 2013

K.Sampath

.. Petitioner

Versus

- 1.The Managing Director,
Tamil Nadu State Marketing Corporation Ltd., (TASMAC)
Egmore, Chennai-600 008.
 - 2.The Senior Regional Manager,
TASMAC Regional Office, Salem-636 016.
 - 3.The District Manager,
Tamil Nadu 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 his proceedings Se.Mu.Na.Ka.A2/1064/CV/2010 dated 25.02.2012 as confirmed by the order of the 2nd respondent in Se.Mu.Na.Ka.No.858/2011/E dt.29.05.2012 as confirmed by the order of the 1st respndent in his proceedings Na.Ka.No.10367/R1/2012 dated 27.11.2012 and to quash the same and directing the respondents to reinstate the petitioner in service with continuity of service, back wages and other attendant benefits within a time limit.

For Petitioner : Mr.V.Rajinikanth

For Respondents:Mr.C.Kasirajan

Standing counsel (TASMAC)

O R D E R

The respondent had terminated the services of the petitioner by an order dated 27.11.2012, which is impugned in the present Writ Petition.

2. Heard Mr.V.Rajinikanth, learned counsel on behalf of the petitioner and Mr.C.Kasirajan, learned Standing Counsel on behalf of the respondents.

3.I have carefully considered the rival submissions made by the learned counsel for the petitioner. The petitioner, while working as a sales man in Shop.No.11146 at Sholingar, was served with a charge memo dated 08.11.2011 with charges of possessing adulterated liquor in the shop. By a reply dated 11.11.2011, the petitioner had denied the charges. Pursuant to that, the respondent had conducted an oral enquiry and based on the finding of the enquiry officer, he was terminated from his services through an impugned order.

4.The learned counsel for the petitioner would submit that the enquiry was not properly conducted and no due opportunity was given to him. According to the learned counsel for the petitioner, the third respondent had prepared some statements in his own handwriting and taken the signatures of the petitioner before passing the impugned order. Since, no opportunity was given to the petitioner to put forth his case, the entire procedure is in violence of the principles of natural justice.

5.Per contra, the learned counsel for the respondent would submit that due opportunity was given to the petitioner at the time of conducting an enquiry and on the basis of the written statement of the petitioner, he was dismissed from service.

6.A bare perusal of the impugned order as well as the documents produced before this Court, it is seen that, though an enquiry is said to have been conducted, no proper procedure was adopted to conclude that, due opportunity was given to the petitioner. Eventhough, he was proceeded for certain delinquency, the procedure contemplated for conducting disciplinary enquiry has not been complied with. The petitioner had relied on certain documents and the same have not been marked in the presence of the petitioner and hence it cannot be said that due opportunity was given to him.

7.This Court in an order dated 29.09.2016 passed in W.P.No.26977 of 2014 had set forth the principles for conducting a domestic enquiry by relying upon the judgment of Hon'ble Supreme Court in Meenglas Tea Estate V. Workmen reported in AIR 1983 SC 1719. The relevant portion of the said order is extracted below:

"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.The proper course for conducting an enquiry has been laid down in the above order. The respondent's conclusion that the petitioner had committed a misconduct deserving termination of services is therefore baseless, since no proper enquiry was conducted by the respondents in the present case and therefore, the impugned order is liable to be set aside.

9.In view of the above observations, the impugned punishment imposed by the respondent are set aside and the 3rd

respondent is directed to forthwith re-instate the petitioner into service. The issue is remanded back to the 3rd respondent, who shall conduct a full fledged enquiry, in the light of the above observations. The entire exercise shall be completed within a period of three months from the date of receipt of a copy of this order. It is made clear that the petitioner shall not be entitled for any backwages till the final order is passed by the enquiry officer.

10. With the above observations, the writ petition is allowed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Asst. Registrar (CS IV)

/true copy/

Sub Asst. Registrar

rm

To

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

- 1 cc to Mr.V. Rajinikanth, Advocate, Sr. 68880
1 cc to M/s.C. Kasirajan, Advocate, Sr. 68706

W.P.No.10557 of 2013
and
M.P.Nos.1 of 2013

SAI (CO)
kk 5/12