

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.10.2016

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.6548 of 2013

and

M.P.No.1 of 2013

P.Jabamalai

.. Petitioner

Versus

1. The Managing Director
TASMAC Limited
CMDA Tower-II, IV Floor,
Gandhi Irwin Bridge Road,
Egmore, Chennai-600 008.

2. The Senior Divisional Manager,
TASMAC Limited
Coimbatore
Coimbatore District.

3. The District Manager,
TASMAC Ltd.,
Erode
Erode District.

.. 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 relating to the order dated 19.12.2004 passed by the 3rd respondent in his office ref.Na.Ka.No.430/04 R-1 and the order dated 08.01.2013 passed by the 2nd respondent in his office Ref:Na.Ka.No.0018/2013/A1, quash the same and direct the respondents to reinstate the petitioner in service as Salesman with continuity of service and service benefits.

For Petitioner : Mr.P.Mani

For Respondents : Mr.C.Kasirajan
Standing Counsel-TASMAC

O R D E R

Heard Mr.P.Mani, learned counsel appearing for the petitioner and Mr.C.Kasirajan, learned Standing Counsel - TASMAL appearing for the respondents.

2. By an impugned order dated 08.01.2013, the petitioner alongwith the supervisor and another salesman was terminated on the allegation that they had sold liquor by mixing water. The said order is challenged in this Writ Petition.

3. The Supervisor, who was terminated alongwith the petitioner had earlier filed a Writ Petition No.23488 of 2010 challenging his termination order, whereby this Court had passed an Order dated 26.11.2010 observing as follows:

"6. It must be noted that this Court in B.Sivakumar Vs. The Managing Director, TASMAL Ltd., in W.P.No.6304 of 2009 dated 15.03.2010 after analyzing 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 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."

सत्यमेव जयते

4. Since, the cause of action for filing this present Writ Petition is same as that of the Supervisor's case, the above Order dated 26.11.2010 passed by this Court in W.P.No.23488 of 2010 would be squarely applicable to the present case. Under such circumstances, the Writ Petition shall stand allowed.

5. However, it is open to the respondent-TASMAC, if they so desire to conduct an appropriate enquiry in accordance with law and in the light of the above observation made by the judgment referred to above. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

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To

1. The Managing Director
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1 cc to Mr.C.Kasirarajan, Advocate, sr. 60267

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