

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 29.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.40429 of 2015 &

M.P.Nos.1 to 3 of 2015

B.Sankar ... Petitioner

-vs-

1.The Managing Director,
Tamil Nadu State Marketing
Corporation Ltd (TASMAC),
Thalamuthu Natarajan Maaligai,
4th Floor, C.M.D.A.Building,
Egmore, Chennai - 600 008.

2.The Senior Regional Zonal Manager,
Chennai Region,
Tamil Nadu State Marketing
Corporation Ltd (TASMAC),
Salem, Salem District.

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

... Respondents

Writ petition has been filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus, calling for the records relevant to the order in Se.Mu.No.3608/2015/A dated 19.09.2015 passed by the second respondent by confirming the order of the third respondent in Se.Mu.Na.Ka.A2/687/C.V./2012 dated 06.04.2015 and quash the same as illegal, improper against the natural justice and thereby direct the respondents to reinstate the petitioner into service with all service benefits to him immediately.

For Petitioner	:	Mr.A.Rajesh Kanna
For Respondents	:	Mr.C.Kasirajan for TASMAC

O R D E R

This writ petition has been filed by the petitioner praying for issuance of a Certiorarified Mandamus, to call for the records relevant to the order in Se.Mu.No.3608/2015/A dated 19.09.2015 passed by the second respondent, confirming the order of the third respondent in Se.Mu.Na.Ka.A2/687/C.V./2012 dated 06.04.2015, and to quash the same as illegal, improper against the natural justice and consequently, to direct the respondents to reinstate the petitioner into service with all service benefits immediately.

2.It is stated by the petitioner that he was initially appointed as a salesman in Shop No.11261, by the 3rd respondent vide proceedings dated 31.12.2003. Subsequently, he was transferred to many other shops within the jurisdiction of the 3rd respondent. When the petitioner was working as a salesman in Shop No.11118, Pallikonda, Vellore Taluk and District, on 31.07.2012, the 3rd respondent conducted a surprise inspection and alleged to have found that the petitioner himself sold the stocks for excess of rate and also indulged in loose sale of the stocks. In respect of the said allegation, the 3rd respondent by his proceedings dated 17.08.2012 placed the petitioner under suspension and called for explanation from the petitioner. The petitioner submitted his explanation on 07.06.2013 to the 3rd respondent to revoke the order of suspension; but, the same was not considered by the 3rd respondent. Hence, the petitioner had earlier filed a writ petition in W.P.No.28019/2013, challenging the order of suspension. The said writ petition was disposed of by this Court by order dated 09.10.2013, directing the respondents to consider the representation of the petitioner dated 07.06.2013.

3.It is further stated by the petitioner that without providing any opportunity of fair hearing in the departmental proceedings, the 3rd respondent passed the impugned order in Se.Mu.Na.Ka.A2/C.V./2012, dated 06.04.2015 and removed the petitioner from service. It is the case of the petitioner that no enquiry was conducted and no opportunity was provided to him to cross-examine any of the witness of the 3rd respondent. Further, according to the petitioner, the enquiry was conducted in an arbitrary manner by the 3rd respondent. Against the order of the 3rd respondent, the petitioner had filed an appeal before the 2nd respondent on 13.05.2015. The 2nd respondent has also not provided any opportunity of fair hearing to the petitioner and he simply confirmed the order of the 3rd respondent vide his proceedings in Se.Mu.No.3608/2015/A, dated 19.09.2015. Hence,

the petitioner has filed the present writ petition for the relief as stated supra.

4. 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 3rd respondent before passing the dismissal order and on appeal, the 2nd respondent has also not provided any opportunity of fair hearing to the petitioner and he simply confirmed the order of the 3rd respondent vide the impugned order in Se.Mu.No.3608/2015/A, dated 19.09.2015. The learned counsel for the petitioner would further submit 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 submissions made by the learned counsel for the petitioner. 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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5.....

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 TASMAL 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."

5. 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 19.09.2016 passed by the 2nd respondent is set aside and consequently, the order dated 06.04.2015 passed by the 3rd respondent is also set aside. The respondents are directed to reinstate the petitioner into service forthwith, without backwages. It is open to the respondents, 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. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sri/ssv

To

- 1.The Managing Director,
Tamil Nadu State Marketing
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- 3.The District Manager,
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Corporation Ltd (TASMAC),
Vellore, Vellore District.

+1cc to Mr.A. Rajeshkanna, Advocate, S.R.No.56011

rk (CO)
md (08/11/2016)

W.P.No.40429 of 2015