

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2016

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBBIAH

W.P.No.3610 of 2016

S.Ezhumalai

.. Petitioner

vs.

1.The Senior Regional Manager,
Tamil Nadu State Marketing
Corporation Ltd. (TASMAC)
Salem.

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

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the respondents relating to the impugned order of the second respondent bearing reference Na.Ka.A2/1463/CV/2013 dated 06.04.2015 which is confirmed by the first respondent bearing reference Sae.Mu.No.5848/2015/A dated 01.12.2015, quash the same and consequently direct the respondents to reinstate the petitioner in service as a "Supervisor" in the TASMAC shop at Chennai with continuity of service, backwages and all other attendant benefits.

For Petitioner : M/s.P.R.Thiruneelakandan

For Respondents : Mr.C.Kasirajan,
Standing Counsel for TASMAC

O R D E R

This Writ Petition has been filed praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the respondents relating to the impugned order of the second respondent bearing reference Na.Ka.A2/1463/CV/2013 dated 06.04.2015 which is confirmed by the first respondent bearing reference Sae.Mu.No.5848/2015/A dated 01.12.2015, quash the same and consequently direct the respondents to reinstate the petitioner in service as a "Supervisor" in the TASMAC shop at Chennai with continuity of service, backwages and all other attendant benefits.

2. The petitioner was employed as Salesman sponsored through Employment Exchange during the year 2003 and while he was working as Salesman in TASMAC Shop No.11218 at Pallur, Vellore District, an

inspection was conducted on 29.11.2013 by the District Manager and they allegedly found that liquor were sold in loose sales and based on the inspection, the petitioner was relieved from service on 02.12.2013 and thereafter, he was charge sheeted on 13.03.2014 and he was directed to appear for enquiry before the District Manager and offer his explanation and accordingly, the petitioner had done so and inspite of that, the District Manager, vide order dated 08.05.2014, appointed an Enquiry Officer to enquire into the charges. The Enquiry Officer did not conduct any enquiry and no witness was examined and no document was marked to substantiate the charges levelled against the petitioner. While so, to the shock and surprise, a second show cause notice was issued to the petitioner on 16.03.2014 to submit his explanation over the Enquiry Report, but he was not furnished with the Enquiry Report. The petitioner submitted his explanation to the second show cause notice dated 26.03.2015 and however, the first respondent without considering his explanation on the alleged Enquiry Report in proper perspective, issued the impugned order dated 06.04.2015 terminating his service. Aggrieved by the same, the petitioner preferred an appeal before the second respondent and the same was dismissed on 01.12.2015, confirming the order of the first respondent dated 06.04.2015. Hence the present writ petition.

3. When the matter was taken up for consideration, the learned counsel appearing for the petitioner would submit that though the Enquiry Officer in the Enquiry Report stated that the petitioner has not admitted the charges levelled against him, on a erroneous conclusion, has passed the impugned order and further during the course of enquiry, no witness was examined and no document was produced and therefore, the principles of natural justice has not been properly followed and prays for dismissal of this writ petition.

4. Countering the same, Mr.C.Kasirajan, learned Standing Counsel for TASMAC would submit that principles of natural justice was strictly followed while conducting enquiry and the petitioner was given sufficient opportunity to put forth his defence and thereafter only, the impugned order came to be passed. The learned Standing Counsel appearing for the respondents/TASMAC would further contend that without exhausting the review remedy, the petitioner has came forward with this petition and prays for dismissal of this writ petition.

5. In response to the same, the learned counsel appearing for the petitioner submitted that the review petition is not a statutory remedy.

6. It appears that during the course of enquiry, no witness was examined and no document was marked and the petitioner was not given sufficient opportunity to put forth his case, which is in clear violation of the principles of natural justice and hence, on the sole ground, the impugned order warrants interference.

7. In the result, this Writ Petition is partly allowed and the impugned order of the second respondent bearing reference Na.Ka.A2/1463/CV/2013 dated 06.04.2015 which is confirmed by the first respondent bearing reference Sae.Mu.No.5848/2015/A dated 01.12.2015 are set aside and the matter is remanded back to the second respondent for fresh consideration and the second respondent shall conduct enquiry by affording sufficient opportunity to the petitioner and pass orders within a period of six weeks from the date of receipt of a copy of this order. No costs.

jvm

Sd/-

Assistant Registrar (CS-III)

/TRUE COPY/

Sub-Assistant Registrar

To

1.The Senior Regional Manager,
Tamil Nadu State Marketing Corporation Ltd. (TASMAC)
Salem.

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

+1CC to MR.P.R.THIRUNEELAKANDAN Advocate SR.NO.53452

+1CC to MR.C.KASIRAJAN Advocate SR.NO.54398

W.P.No.3610 of 2016

MI[CO]

MK:25/10/2016

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21.09.2016