

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.08.2017

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.30230 of 2013  
and  
M.P.No.1 of 2013

K.Gopalakrishnan ... Petitioner

Vs.

1.The Managing Director,  
TASMAC Limited,  
Thalamuthu Natarajan Maaligai,  
Egmore, Chennai - 8.

2.The Senior Regional Manager,  
TASMAC Limited,  
No.54, Fairland, Salem - 16.

3.The District Manager,  
TASMAC, IMFC Depot (Retail Vending),  
Vellore - 1.

... Respondents

Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records of the first respondent in Na.Ka.No.10818/R1/2012 dated 12.07.2013 by confirming the order of the second respondent dated 29.05.2012 in Se.Mu.Na.Ka.No.866/2011/E and order of the third respondent dated 25.02.2012 in Se.Mu.Na.Ka.No.1065/A2/C.V./2010 and quash the same and consequently direct the respondents to reinstate the petitioner into service with backwages and all attendant benefits.

For Petitioner .. Mr.V.Rajinikanth

For Respondents.. Mr.P.Arumugha rajan

## ORDER

The petitioner has approached this Court seeking the following relief:

to issue a writ of certiorarified mandamus to call for the records of the first respondent in Na.Ka.No.10818/R1/2012 dated 12.07.2013 by confirming the order of the second respondent dated 29.05.2012 in Se.Mu.Na.Ka.No.866/2011/E and order of the third respondent dated 25.02.2012 in Se.Mu.Na.Ka.No.1065/A2/C.V./2010 and quash the same and consequently direct the respondents to reinstate the petitioner into service with backwages and all attendant benefits.

2.The case of the petitioner is that he was working as Salesman in one of the retail vending shops of TASMAC in Ponnai Village. While holding the post as Salesman, he was also directed to take additional charge of another retail outlet of the TASMAC shop located in Sholinghur. While the petitioner was holding the additional charge at Sholinghur, an inspection was conducted by the third respondent and it was found that ten bottles of liquor were adulterated and the same was sold in loose quantities. The charge against the petitioner was that he sold the liquor unauthorisedly in loose quantities. He was therefore placed under suspension on 22.12.2010. Thereafter, the petitioner was chargesheeted on 17.04.2011 alleging that he was selling inferior quality of liquor and allowed to run a bar unauthorisedly by some third party, which fact was not disclosed by the petitioner to the higher officials. Simultaneously, the termination order was also issued along with the charge sheet.

3.In the said circumstances, the petitioner filed an appeal before the second respondent and the second respondent vide proceedings dated 22.09.2011 set aside the order of the third respondent and remanded the matter to the third respondent for framing fresh charge and conducting a domestic enquiry into the allegations. After the remand, a fresh charge sheet was issued on 08.11.2011 on the same lines as that of the earlier one and no specific allegations had been mentioned nor list of witnesses and exhibits were shown in the charge sheet. Thereafter, a domestic enquiry was conducted into the charges and no proper opportunity was given to the petitioner to defend his case effectively. The said enquiry officer merely obtained his statement. According to the petitioner, no witnesses were examined and no exhibits were marked in the enquiry in support of the charges. It is the case of the petitioner that he denied the charges, but however, deposed before the enquiry officer

that in future, he would be careful to inform the higher officials in case of any unauthorised activity is noticed in the running of the shop. On the basis of the statement made by the petitioner, the enquiry officer seemed to have submitted a report on 28.12.2011 holding neither the charges proved nor disproved. However, strangely, the enquiry officer, in the report, recommended for reinstatement of the petitioner in terms of the Regulations of the Corporation.

4. However, the third respondent, notwithstanding the neutral enquiry report submitted by the enquiry officer, passed an order of dismissal on 25.02.2011 against which the petitioner filed an appeal before the second respondent, pointing out various infirmities in the conduct of the enquiry and also the final order passed by the third respondent. However, the appeal came to be mechanically rejected, thereby confirming the order of dismissal. In the said circumstances, the petitioner seemed to have preferred a revision on 22.06.2012 but no decision was taken on the revision and therefore, the petitioner was constrained to approach this Court in W.P.No.19153 of 2012. This Court was pleased to direct the third respondent to dispose of the revision petition within a particular period of time. In pursuance of the direction, the impugned order was passed on 12.07.2013 by the first respondent, confirming the order of the second and third respondents.

5. Mr. V. Rajinikanth, learned counsel appearing for the petitioner would strongly contend that the ultimate dismissal of the petitioner from service cannot be held to be valid in the eye of law since no proper procedure has been followed by the respondents while conducting the enquiry and while imposing the penalty of dismissal from service. He would contend that in the absence of clear findings against the petitioner, the action by the third respondent in dismissing the petitioner is totally invalid and the findings of the disciplinary authority as to the guilt of the petitioner in the absence of iota of evidence against him is not only incorrect but the same is perverse and cannot be sustained at all.

6. Learned counsel appearing for the petitioner would also draw this Court's attention to the order passed in similar circumstances in W.P.No.32809 of 2013 dated 14.07.2017. This Court has relied on the decision of the Division Benches of this Court for holding that by not following the procedure in consonance with the principles of natural justice, the impugned penalty, particularly harsh penalty of dismissal from service cannot be sustained in law. Learned counsel would particularly draw this Court's attention to paragraphs 6 and 7 of the order, in which the observations of the Division Benches have been incorporated, which are extracted hereunder:

6. In support of the legal contention, the learned counsel also relied upon the decision of the Division Bench of this Court dated 29.10.2013 in W.A.No.1801 of 2012, wherein, the Division Bench has extracted the observations of another Division Bench in its order in paras 6 & 7. For the sake of clarity, the same are extracted hereunder:

6.Expressing concern over lack of proper mechanism to initiate disciplinary proceedings against TASMAC employees and expressing the need to have a proper disciplinary procedure, in para 8 of the judgment in W.A.No.27 of 2009 dated 27.01.2009, the Division Bench has held as under:

"8.Be that as it may, we have come across a number of cases where allegations of adulteration and other serious misconduct levelled against the TASMAC salesmen, whose services came to be terminated based on certain letters said to have been given by the concerned TASMAC salesmen admitting their guilt on the spot. Since numerous cases of this nature are being reported, it is high time that the appellant corporation instead of resorting to such shortcut method of terminating the services, even after noting such serious allegations of misconduct by such TASMAC employees, they can well be advised to take proper disciplinary action before resorting to termination of the services of such employees in order to have effective disciplinary control over those employees. Such a procedure can be followed in the matter of taking disciplinary action against these employees, especially, for imposing the extreme punishment of dismissal. It is high time that the appellant corporation who is stated to have employed several thousand salesmen to run the TASMAC shops set up a separate machinery for following the proper disciplinary procedure so that any action taken by TASMAC can be justified when the same is challenged before the Court of law. It will also have an effective control over such employees in the matter of their day-to-day administrative control over their employees. Irrespective of serious allegations of adulteration, sale of empty bottles and such other misconduct, the

salesmen got away with such punishment for not following the proper disciplinary procedure while imposing the punishment on them....."

7. In respect of the similarly placed person in W.A.No.872 of 2009 dated 02.07.2009, the Division Bench, referring to the judgment of the Honourable Supreme Court in State of Haryana Vs. Satyendra Singh Rathore (2005 (7) SCC 518) took the view that there cannot be a summary dismissal of an employee, which causes stigma and has civil consequences. In para 5 and 6, the Division Bench has held as under:

"5. In our opinion, such an argument cannot be accepted. The Apex Court in the judgments reported in 2005 (7) SCC 518 and 1999 (3) SCC 60, referred supra, has held that when an order involves civil consequences and consequently amounts to stigma, the same cannot be passed without there being a charge memo, enquiry and finding as to those charges. Though in the judgment in Lakshmanakumar's case, cited supra, this Court on considering a summary dismissal, observed that the TASMAG was entitled to proceed against the employee in terms of the contract, that does not mean that such a summary dismissal can be ordered in the event such order causes stigma.

6. We have perused the nature of charges. The charges are very serious, particularly when they allege that the employee has adulterated the liquor and he has misappropriated the money, caused loss to the TASMAG and to the Government. These are all major misconducts, of course, warranting a serious punishment and in that case, a punishment of dismissal could be inflicted only on proper enquiry even in the case of a contract employee, especially when the employee had denied the charges by giving explanation."

7. Moreover, this Court, in para 10 of the order has held that the order of dismissal, which resulted in adverse civil consequences on the petitioner cannot be passed without

following due process of law. In the instant case, the respondents have not followed the due process of law, particularly while imposing the harsh punishment of dismissal from service.

8. Upon notice, Mr. P. Arumugham, learned counsel entered appearance on behalf of the respondents and also filed counter affidavit. Learned counsel appearing for the respondents would submit that unlike the other cases, in this case, the enquiry was held and the disciplinary authority, in terms of the Regulations, has a right to take independent decision regardless of the report of the enquiry officer. In the instant case, the disciplinary authority found there was some material against the petitioner and therefore he had taken a decision to impose the impugned penalty of dismissal from service.

9. The contention of the learned counsel for the respondents will have some force only if the disciplinary authority had followed the procedure. In case, the disciplinary authority decides to disagree with the findings of the enquiry officer, he is required to record his disagreement and issue a show cause notice to the petitioner along with the disagreement note to the petitioner calling for his explanation. In the instant case, the said procedure has not been followed and therefore, even assuming that the disciplinary authority has any material whatsoever to disagree with the findings of the enquiry officer, cannot be said to be valid in the eye of law. Even otherwise, it has to be seen that the enquiry report is completely silent on the guilt of the petitioner is concerned and the report does not anywhere even remotely deal with the charges being established in the enquiry. In such scenario, the eventual punishment meted out to the petitioner cannot have no legal backing.

10. In the light of the above narrative and the discussions, this Court has no hesitation in allowing the writ petition. In the said circumstances, the impugned orders dated 12.07.2013, 29.05.2012 and 25.02.2012 are set aside and the respondents are directed to reinstate the petitioner within a period of two weeks from the date of receipt of a copy of this order with all attendant and consequential service benefits except the backwages for the period from the date of his dismissal from service until the date of his reinstatement.

11.The writ petition is allowed on the above terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mmi

To

- 1.The Managing Director,  
TASMAC Limited,  
Thalamuthu Natarajan Maaligai,  
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- 2.The Senior Regional Manager,  
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No.54, Fairland, Salem - 16.
- 3.The District Manager,  
TASMAC, IMFC Depot (Retail Vending),  
Vellore - 1.

+1 cc to M/s.V.Rajinikanth Advocate sr 59217  
+1 cc to M/s.P.Arumuga rajan Advocate sr 59187

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