

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2017

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.32809 of 2013
and M.P.No.1 of 2013

E.Dhanasekar

.. Petitioner

Vs.

1. The Senior Regional Manager,
TASMAC Ltd.,
Office of the Senior Regional Manager,
Chennai Region,
4th Floor, M.L.A.Building,
745, Anna Salai, Chennai 600 002.

2. The District Manager,
TASMAC Ltd.,
Chennai South District,
B-4, Ambattur Industrial Estate,
Chennai-600 058.

... 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 Na.Ka.No.206/2011/A3 dated 24.05.2011 and the records of the second respondent Na.Ka.No.1969/A2/2007 dated 12.06.2008 and quash the same and consequently direct the respondents to reinstate the petitioner in the shop number 520 situated at No.61, Corporation Colony, Rangarajapuram, Chennai 24 as salesman.

For Petitioner .. Mr.V.Rajinikanth

For Respondents .. Mr.N.Needuchenzhiyan

ORDER

Challenging the order of the first respondent dated 24.05.2011 and second respondent dated 12.06.2008 and for a consequential direction to the respondents to reinstate the petitioner in the shop number 520 situated at No.61, Corporation Colony, Rangarajapuram, Chennai 24 as salesman, the present writ

petition has been filed.

2. The case of the petitioner is that he was working as a salesman in one of the outlets run by the respondent-TASMAC Limited. On 27.11.2007, the second respondent appeared to have made sudden inspection in the outlet, where the petitioner was working and found selling adulterated liquor bottles. He was directed to give statement as to how adulterated liquor bottles were found in the outlet and on the spur of the moment without being aware of the legal implication, the petitioner signed the papers under intimidation and threat. Thereafter, the petitioner was suspended on 27.11.2007. However, without framing any charge sheet or conducting any enquiry. He was eventually dismissed from service, by an order dated 12.06.2008. Against the dismissal order, the petitioner preferred an appeal dated 12.06.2008 before the first respondent. He has also given a representation to the first respondent dated 24.07.2008 stating that no opportunity was given and no proper enquiry was conducted by the second respondent before passing the order of dismissal. It is also the case of the petitioner that the second respondent is said to have inspected the place, where the petitioner was working on 27.11.2007. Both the prosecutor and the disciplinary authority were one and the same, who had taken action against the petitioner although he was the prime witness to the inspection.

3. Ultimately the impugned order was passed by the second respondent, against which, appeal was filed by the petitioner. But unfortunately, the Appellate Authority viz., the first respondent herein without proper appreciation and the examination of points raised in the appeal, rejected the same, vide order dated 24.05.2011, thereby confirming the order passed against the petitioner. In such circumstances, the petitioner was constrained to approach this Court seeking the relief as stated supra.

4. Upon notice Mr.Nedunchengzhian, learned counsel entered appearance on behalf of the respondents and filed counter statement. According to the counter affidavit, the petitioner has given an opportunity of show cause notice and since there was no reply to show cause notice, order of dismissal was passed, considering the serious nature of the misconduct committed by the petitioner and on the basis of the statement ultimately given by the petitioner himself. Therefore, there is no infirmity in the order passed by the respondents and the petitioner is not entitled for any relief.

5. Mr. V.Rajinikanth, learned counsel appearing for the petitioner vehemently contended that no enquiry was conducted before the order of dismissal was passed. In fact, the respondent, while dismissing the appeal filed by the petitioner

and confirming the order of dismissal, has stated that the petitioner was not in a position to disprove the charge against him. Needless to mention that in terms of the legal position, it was incumbent upon the prosecution to prove the charge against the petitioner and not otherwise. Moreover, every administrative action, which results in civil consequences has to satisfy established principles of natural justice and in the instant case, no such procedure has been followed by the respondents. Not following the established principles of natural justice, it has to be held that the order of dismissal passed against the petitioner is per se illegal and void.

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 TASMAC 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 TASMAC 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. In that case also, the facts are almost identical and the Division Bench of this Court categorically held that the authorities have to conduct enquiry so as to comply with the principles of natural Justice before passing the order of dismissal of the employee. Accordingly, the Hon'ble Division Bench directed to reinstate the appellant therein in service, without any backwages.

8. This Court has given its anxious consideration of the legal submission and the factual aspects after perusing the materials and the pleadings.

9. The issue raised on the compliance in terms of law, is squarely covered by the decision of the learned Division Bench of this Court in W.A.No.1801 of 2012 dated 29.10.2013 as extracted above.

10. Even otherwise, the facts and circumstances of the case warrant the interference of this Court, since the order of dismissal, which resulted in adverse civil consequences on the petitioner, cannot be passed without following the due process of law. Hence, the order of dismissal of the petitioner from service cannot be allowed to stand any further.

11. In the light of the above narrative and the legal position as per the order passed by the learned Division Bench, this Court has no hesitation to allow the writ petition. In the circumstances, the impugned orders dated 12.06.2008 and 24.05.2011 are set aside and the respondents are directed to reinstate the petitioner in service with all benefits except backwages for the period of non-employment. The said direction shall be completed within a period of two weeks from the date of receipt of a copy of this order.

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

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

To

1. The Senior Regional Manager,
TASMAC Ltd.,
Office of the Senior Regional Manager,
Chennai Region,
4th Floor, M.L.A.Building,
745, Anna Salai, Chennai 600 002.

2. The District Manager,
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Chennai South District,
B-4, Ambattur Industrial Estate,
Chennai-600 058.

+1 CC to Mr.V. Rajinikanth, Advocate sr 49280

+1 CC to Mr.B. Nedunchexhiyan, Advocate sr 49512

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and M.P.No.1 of 2013

SP(24/07/2017)



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