

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.07.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN
W.P.No.3674 of 2012

K.Subramanian

... Petitioner

Vs

1.The Managing Director,
Tamil Nadu State Marketing
Corporation Ltd.,
CMDA Tower II,
IV Floor, Gandhi Irwin Road,
Egmore, Chennai 600 008.

2.The Senior Regional Manager,
Tamil Nadu State Marketing
Corporation Ltd., Salem Region,
56, Brindavan Road, Azhagapuram,
Salem 636 016.

3.The District Manager,
Tamil Nadu State Marketing
Corporation Ltd., (Salem Region),
2/92, Sandhiyur Village,
S.Attaiyampatti (PO),
Salem 636 203.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the proceedings of the second respondent in Se.Mu.No.370/2008/E dated 24.12.2011, confirming the order of the 3rd respondent in Na.Ka.No.155/A3/2007/CV dated 29.01.2010 and quash the same in respect of the petitioner herein and consequently direct the respondents herein to reinstate the petitioner with all consequential and attendant benefits.

For Petitioner : Mr.P.Athiveera Ramapandiyan
For Respondents : Mr.K.Sathish Kumar

O R D E R

Heard Mr.P.Athiveera Ramapandiyan, learned counsel for the petitioner and Mr.K.Sathish Kumar, learned counsel appearing for the respondents.

2. The petitioner has approached this Court, seeking the following relief:-

"To issue a Writ of Certiorarified Mandamus, to call for the proceedings of the second respondent in Se.Mu.No.370/2008/E dated 24.12.2011, confirming the order of the 3rd respondent in Na.Ka.No.155/A3/2007/CV dated 29.01.2010 and quash the same in respect of the petitioner herein and consequently direct the respondents herein to reinstate the petitioner with all consequential and attendant benefits."

3. The case of the petitioner is as follows:-

The petitioner was working as Bar Attender in TASMAR Retail Outlet in Shop No.7494. He was paid consolidated amount of Rs.1500/- per month. On 31.01.2009, there was a sudden inspection and in the inspection, it was found that certain liquor bottles were adulterated with water. The petitioner who was working in the bar, was placed under suspension. Thereafter, an enquiry was ordered and the same was conducted with the petitioner along with two other persons who were working in the same Outlet viz., Supervisor and Salesman. The Enquiry officer concluded that the charge was proved against the petitioner on the basis of the initial statement obtained from the petitioner.

4. The disciplinary authority accepted the report as against the petitioner and passed an order on 29.01.2010, dismissing the petitioner from service. As against which, the petitioner preferred an appeal on 16.02.2010 and the appeal came to be eventually rejected on 24.12.2011. The order of dismissal from service and which is confirmed in the appeal, are put to challenge in the present writ petition.

5. Upon notice, learned counsel appearing for the respondents, entered appearance and filed a detailed counter affidavit.

6. The learned counsel for the petitioner would submit that there was no proper enquiry conducted by the respondents in order to establish the charge framed against the petitioner. The enquiry was concluded merely on the basis of the initial statement obtained from the petitioner and the conclusion by the Enquiry Officer as such suffered from mandatory procedural infirmity and cannot be relied upon. According to the learned counsel, the petitioner while giving reply to the charge memo, has stoutly denied the charges. According to him, the Enquiry Officer has taken statement given by the petitioner, out

of context and held against him on the basis of the flawed enquiry report. On the basis of the report, the petitioner was dismissed from service. The dismissal order was also confirmed in appeal.

7. While dismissing the petitioner from service, the disciplinary authority had exonerated the other two employees who were also admittedly working in the same outlet along with the petitioner. The learned counsel for the petitioner would submit that the order of the disciplinary authority is a non-speaking order and so is the order passed by the appellate authority.

8. Per contra, learned counsel appearing for the respondents would submit that it was a clear case of proved misconduct and therefore, the petitioner was rightly dismissed by the disciplinary authority and the same was rightly confirmed by the appellate authority.

9. This Court has considered the rival submissions of the learned counsel on either side and perused the relevant materials and pleadings placed on record. From the orders passed by the disciplinary authority, this Court is unable to appreciate on what basis, the disciplinary authority has come to the conclusion about the guilt of the petitioner. There appears to be no reference to the report of the Enquiry Officer by the disciplinary authority at all. It appears that the disciplinary authority on his own has come to the conclusion without any iota of reference to the evidence or any materials placed before the enquiry.

10. Further, the order of the appellate authority is also a non-speaking order and appears to have not appreciated any worthwhile materials that were made available in the departmental action initiated against the petitioner in support of the charges. The appellate authority was merely guided by the conclusion of the disciplinary authority. From the proceedings of the disciplinary authority as well as the appellate authority, this Court is unable to find any credible evidence against the petitioner for establishing the charges, except a reference to some initial statement given by the petitioner.

11. Further, this Court in the past time and again interfered with such arbitrary exercise of power by the respondents. The learned Judge of this Court in W.P.No.15751 of 2009 dated 26.04.2010, has allowed similar writ petition. The operative portion of the order as found in paragraph Nos.5 and 6 are extracted below:-

"5. In the present case, except in

initial statement, which contains the signature of the petitioner, during the enquiry and also in his explanation, the petitioner specifically denied the charges and there was no material found except the chemical analysis report. Unless the report relates to the activity of the petitioner, the petitioner cannot be found guilty of the charges. On the other hand, the Shop Supervisor was let off in transfer to some other shop.

6. In the light of the above, this Court has no hesitation to set aside the impugned order. Accordingly, the impugned order dated 26.03.2009 passed by the first respondent stands set aside and the writ petition stands allowed. However, it is open to the respondents - TASMAC to conduct any fresh enquiry in accordance with law, if they so desire. No costs."

12. Apart from the above order, the learned Division Bench of this Court in W.A (MD) No.27 of 2009 dated 27.01.2009, has held as follows in paragraph No.8, is extracted below:-

"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 Salesman, whose services came to be terminated based on certain letters said to have been given by the concerned TASMAC Salesman 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 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. We hope and trust that the appellant Corporation will appreciate our observations in the proper perspective and take necessary measures to implement the proper procedure in taking disciplinary action against its employees in future."

13. In this case also this Court finds that there was no proper enquiry conducted against the petitioner and any findings rendered on the basis of such defective enquiry, can only be held as perverse and unacceptable.

14. In view of the above circumstances, this Court has no hesitation in allowing the writ petition. The impugned orders in Se.Mu.No.370/2008/E dated 24.12.2011 and Na.Ka.No.155/A3/2007/CV dated 29.01.2010 passed by the second and third respondents, are hereby set aside. The respondents are directed to reinstate the petitioner forthwith. It is made clear that the petitioner is not entitled to back wages for the period of his non-employment. However, the petitioner is entitled to other attendant benefits. The respondents are directed to implement the order, within a period of eight weeks from the date of receipt of a copy of this order.

15. With the above direction, the writ petition stands allowed. No costs.

Sd/-

Assistant Registrar(CS vi)

//True Copy//

Sub Assistant Registrar

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To

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+1cc to Mr.P.Athiveera Ramapandiyar, Advocate SR.No.
48309

+1cc to Mr.K.Sathish kumar , Advocate SR.No. 48275

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PVS (CO)
ASK(07/09/2018)



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