

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 21.08.2019

CORAM

THE HON'BLE MR. JUSTICE V.PARTHIBAN

Writ Petition No.339 of 2019

K.Velmurugan

...Petitioner

Vs.

1.The Senior Regional Manager,
Tamil Nadu State Marketing Corporation
Limited, (TASMAC), Trichy.

2.The District Manager,
Tamil Nadu State Marketing Corporation
Limited, (TASMAC), Perambalur District.

...Respondents

Writ Petition filed under Article 226 of Constitution of India, for issuance of writ of certiorarified mandamus calling for the records of the second respondent in Na.Ka.No.926/C.V./2010/A1 dated 28.04.2011 and the consequential order passed by the first respondent in a proceeding Che.Mu.No.4846/2012/U dated 02.12.2013 and quash the same and consequently direct the respondents to reinstate the petitioner back into service.

For Petitioner : Mr.N.Balamuralikrishnan
for Mr.V.Rajinikanth

For Respondents: Mr.K.Sathish Kumar,
Standing Counsel

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ORDER

The petitioner was appointed as shop Salesman in the respondent Corporation on 28.01.2004. After serving in several places, the petitioner was posted as Salesman of shop No.6490 at Olaiyur. On 01.12.2010, an inspection was conducted by the second respondent in the shop, in which the petitioner was posted and found that there was adulteration of certain liquor bottles, for which the petitioner was held responsible. In the inspection, it is also found that there was shortage of cash.

2. In the above circumstances, the petitioner was placed under suspension on 02.12.2010, pending disciplinary enquiry. Thereafter, a charge memorandum was issued on 05.03.2011 containing three articles of charges. The petitioner, in the meanwhile, has approached this Court in W.P.No.8018 of 2011, challenging the order of suspension of the second respondent. On 30.03.2011, the said writ petition was disposed of by recording the statement of the respondent Corporation that within eight weeks the Disciplinary enquiry will be completed. This Court also directed the Corporation to give subsistence allowance to the petitioner. As against the order passed in W.P.No.8018 of 2011, the Corporation preferred a writ appeal in W.A.No.1472 of 2011. The writ appeal came to be disposed of on 22.06.2012 taking note of the fact that the second respondent had already passed an order of dismissal and the petitioner herein was directed to challenge the order in a manner known to law.

3. On conclusion of the disciplinary proceedings, the second respondent passed an order on 28.04.2011 dismissing the petitioner from service. At this, the petitioner submitted a representation on 08.06.2011 to the second respondent stating that no enquiry was held on the dates mentioned by the Enquiry Officer. In the meanwhile, the petitioner has also approached this Court in W.P.No.29719 of 2012 challenging the order of dismissal passed by the second respondent. The said writ petition was disposed of on 02.11.2012 directing the petitioner to approach the Appellate Authority.

4. As directed by this Court, an appeal was filed to the first respondent on 10.12.2012 and in the appeal, the petitioner has stated that no enquiry was held on the dates mentioned by the Enquiry Officer and the dismissal order came to be passed as if the petitioner did not participate in the enquiry. However, without considering the contention of the petitioner, the appeal came to be rejected by the first respondent on 02.12.2013. The order of dismissal, as confirmed in the appeal, is the subject matter of challenge in the present writ petition.

5. Mr. N. Balamuralikrishnan, learned counsel for the petitioner would submit that before passing the extreme order of dismissal from service, no opportunity had been given to the petitioner and all the principles of natural justice were given a go-by, by the Enquiry Officer as well as the Disciplinary Authority and also the appellate authority. When the petitioner has pointed out that no

enquiry was conducted, the disciplinary authority ought to have accepted the position and ought to have directed the Enquiry Officer to provide him an opportunity before submitting his report. Unfortunately, the disciplinary authority, over looking the violation of the principles of natural justice, has imposed the extreme penalty of dismissal from service. Moreover, when an appeal was preferred, the petitioner pointed out the non compliance of principles of natural justice, however, the appellate authority, without taking note of the crucial factor, has rejected the appeal routinely and mechanically, without due application of mind. Therefore, in all counts, the writ petition is liable to be allowed.

6.Per contra, Mr.K.Sathish Kumar, learned Standing Counsel entered appearance for the respondents and counter affidavit also has been filed.

7.The learned counsel appearing for the Corporation would submit that the dismissal order was passed in 2011 and the appeal was rejected on 02.12.2013. After a period of 6 years, the present writ petition has been filed and there is no proper explanation in the affidavit filed in support of the writ petition about the long delay in the petitioner approaching this Court. The learned counsel would also submit that in view of the long delay in the petitioner approaching this Court, the writ petition is liable to be dismissed on the ground of laches. In regard to the non-compliance with the established principles of natural justice, in the counter affidavit, the said contention had not been addressed at all. In fact contrary to the claim of the petitioner herein, nothing has been produced before this Court to show that full fledged enquiry was conducted by the Corporation, before imposing the extreme penalty of dismissal from service.

8.Heard the learned counsels appearing for either parties and perused the materials and pleadings placed before this Court.

9.Although on behalf of the respondent Corporation a contention was raised to the effect that there was a huge delay in the petitioner approaching this Court seeking to challenge the dismissal order passed on 28.04.2011, which was confirmed in appeal as early as on 02.12.2013, yet considering the fact that the petitioner was dismissed from service without providing him any opportunity at all, this Court under compelling circumstances has decided to entertain the writ petition.

10. When a specific plea of non-adherence to the principles of natural justice was taken by the petitioner in his representation before the disciplinary authority as well as before the appellate authority, the authorities ought to have addressed that plea before imposing the extreme penalty of dismissal from service and also before confirming the same. Unfortunately, both the disciplinary authority as well as the appellate authority have overlooked the crucial legal aspect in support of the petitioner's claim before this Court.

11. In the teeth of the complaint by the petitioner about non-compliance of the established principles of natural justice and in the absence of any convincing explanation emanating on the side of the respondent/Corporation in the counter affidavit, this Court has to conclude that the petitioner was denied proper and reasonable opportunity to put forth his defence in the face of allegation levelled against him. The hallmark of principles of natural justice is to provide adequate opportunity to the petitioner, who is charged with certain allegations of misconduct and in the absence of such opportunity, the entire disciplinary action stands vitiated. In fact, this Court, in a number of decisions in the past and even recently have taken consistent view in regard to the employees of the respondent/Corporation that termination of service without following the principles of natural justice, cannot be countenanced both on facts and in law. Therefore, this Court is also of the same view that the present order of dismissal from service cannot be countenanced both in law and on facts and therefore, the same is liable to be interfered with.

12. At the same time, the petitioner is to be faulted for approaching this Court belatedly after a period of 6 years, for which no proper explanation has been forthcoming in the affidavit filed in support of the writ petition. Therefore, in such view of the matter, although the writ petition is liable to be allowed, this Court has to conclude that the petitioner is not entitled to backwages for the period of his non employment i.e. from the date of dismissal from service till the date of reinstatement.

13. In the above circumstances, the impugned order passed by the second respondent in Na.Ka.No.926/C.V./2010/A1 dated 28.04.2011 and the consequential order passed by the first respondent in Proceedings Che.Mu.No.4846 /2012/U, dated 02.12.2013, are set aside and the respondents are directed to reinstate the

petitioner in service with all consequential and attendant benefits without backwages for the period of his non-employment. The respondents are directed to pass appropriate order in this regard within a period of four weeks from the date of receipt of copy of this Order. No costs.

Sd/-
Assistant Registrar(insp)

//True Copy//

Sub Assistant Registrar

msh/mrm

To

1.The Senior Regional Manager,
Tamil Nadu State Marketing Corporation
Limited, (TASMAC), Trichy.

2.The District Manager,
Tamil Nadu State Marketing Corporation
Limited, (TASMAC), Perambalur District.

+1cc to Mr. V.Rajinikanth, Advocate SR.No.71803

+1cc to Mr.Sathish kumar , Advocate SR.No. 71520

W.P.No.339 of 2019

A.SK(17/09/2019)

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