

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.9896 of 2012

Murugesan

.. Petitioner

Vs.

1. The Managing Director,
TASMAC Limited,
Egmore, Chennai.
2. The Senior Zonal Manager,
TASMAC Limited,
Egmore, Chennai.
3. The District Manager 1,
TASMAC Limited,
Coimbatore.

... Respondents

Prayer: Writ Petition is 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 3rd respondent in Na.Ka.No.751/2007/RV.1 dated 19.03.2009 and to quash the same and direct the respondents to reinstate the petitioner in service with all benefits.

For Petitioner : Mr.K.Balaji

For Respondents : Mr.K.Sathish Kumar

O R D E R

This Writ Petition is filed for issuance of writ of Certiorarified Mandamus to call for the records of the 3rd respondent in Na.Ka.No.751/2007/RV.1 dated 19.03.2009 and to quash the same and direct the respondents to reinstate the petitioner in service with all benefits.

2.The learned counsel appearing for the petitioner contended that the petitioner was working as salesman in Shop No.1772 at Thondamuthur, Coimbatore. On 17.07.2008, the third respondent came for surprise inspection. At that time, there was a shortage of Rs.3,58,544/-. The salesman Thangaraju, Assistant A.Sivam and

Supervisor A.Sivakumar admitted that they have taken a sum of Rs.3,58,544/- for their personal use and they agreed to pay the same within the stipulated time. They have paid the amount. At the time of enquiry on 04.11.2008 conducted by the third respondent, they have stated that out of fear, they admitted that they have taken the amount. Due to contradictory statement, these persons were terminated. Along with them, the petitioner also was terminated from service. The petitioner was not shown as accused in the enquiry. The petitioner gave a representation dated 13.04.2009 to the second respondent, who without considering the same on merits, rejected the representation and directed him to file an appeal before the first respondent. The petitioner did not file any appeal, as the third respondent promised to reinstate him in service. The other salesman Thangaraju filed Writ Petition No.209 of 2010 before this Court, challenging the order of termination. This Court, by the order 11.02.2011, allowed the Writ Petition wherein in paragraph Nos.5 to 7 of the order, it has been held as follows:

"...5.It must be noted that the contention of the petitioner was two fold. The first contention was that at no point of time, the petitioner's representation was not considered by the respondents. Secondly, before dismissing from service no enquiry was conducted as required under law. Both the contentions are well founded. From the beginning, the petitioner's statement was that he was not responsible for the misappropriation and the entire responsibility fell on the Shop Supervisor.

6.A perusal of the records shows that no enquiry was conducted in the presence of the petitioner in support of the charges. In fact, it is only in the revisional order, the first respondent spoke about the statement of Murugesan, another Salesman implicating the role of the petitioner.

7.In these circumstances, this Court is inclined to set aside the order of dismissal. Hence, the Writ Petition stands allowed. The impugned order stands set aside. However, liberty is given to the respondents to conduct enquiry afresh in the manner known to law. No costs."

The learned counsel appearing for the petitioner further contended that respondents did not conduct any enquiry and did not follow the procedure and they have not considered the contradictory statement given by the other persons and the fact that Supervisor A.Sivakumar paid the amount of Rs.3,58,544/-.

3.The respondents have not filed any counter statement.

4.Heard the learned counsel appearing for the petitioner as well Mr.K.Sathish Kumar, learned counsel appearing for the respondents and perused the entire materials on record.

5.From the materials available on record, it is seen that the respondents have not conducted any enquiry as per Law. They have also not proved that the petitioner has misappropriated the said amount along with Thangaraju (salesman), A.Sivam (Assistant) and A.Sivakumar (Supervisor). This Court by the order dated 11.02.2011 made in W.P.No.209 of 2010 filed by the salesman A.Thangaraj, has held that no enquiry was conducted in the presence of A.Thangaraj as per Law and representation of the said A.Thangaraj was not considered. In the present case also, no enquiry was conducted and representation of the petitioner was not considered.

6.For the above reason, the impugned order is set aside and the Writ Petition stands allowed. The respondents are directed to reinstate the petitioner with continuity of service and attendant benefits. The petitioner has not alleged and proved that he is not gainfully employed from the date of termination. In view of the same, the petitioner is not entitled to any backwages. However, liberty is given to the respondents to conduct enquiry afresh in the manner known to law. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Managing Director,
TASMAC Limited,
Egmore, Chennai.
2. The Senior Zonal Manager,
TASMAC Limited,
Egmore, Chennai.
3. The District Manager 1,
TASMAC Limited,
Coimbatore.

+1 cc to Mr.K.Balaji, Advocate, S.R.No.51274

+1 cc to Mr.K.Sathish Kumar, Advocate, S.R.No.50425.

W.P.No.9896 of 2012

EV(CO)
SSM(30/07/2019)



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