

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 06.06.2019

Delivered On: 12.06.2019

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

WP.No.17767 of 2018

S.Indirarajan

.. Petitioner

Vs.

1. The Managing Director,
Tamil Nadu State Marketing
Corporation Limited,
4th Floor, CMDA Tower 02,
Egmore, Chennai-600 008.

2. The Senior Regional Manager,
Tamil Nadu State Marketing
Corporation Limited,
No.56, Brindhavan Salai,
Azhagaapuram, Salem-16.

3. The District Manager,
Tamilnadu State Marketing
Corporation Limited,
Vellore District.

.. Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records of 3rd

respondent in Che.Mu.Na.Ka.A2/946/C.V./2010 dated 12.04.2011 and consequential orders passed by 2nd respondent in Che.Mu.Na.Ka.786/2011/E, dated 05.09.2011 passed by 1st respondent in Na.Ka.No.9693/R1/2011 dated 12.07.2013 and quash the same and consequently direct the respondents to reinstate the petitioner back into service.

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

For Respondents : Mr.P.Arumugarajan

ORDER

This Writ Petition has been filed, seeking for issuance of a Writ of Certiorarified Mandamus, to call for the records of 3rd respondent in Che.Mu.Na.Ka.A2/946/C.V./2010 dated 12.04.2011 and consequential orders passed by 2nd respondent in Che.Mu.Na.Ka.786/2011/E, dated 05.09.2011 passed by 1st respondent in Na.Ka.No.9693/R1/2011 dated 12.07.2013 and quash the same and consequently direct the respondents to reinstate the petitioner back into service.

2. The petitioner was employed as Salesman in Shop No.1129, Patchoor, Tirupathoor taluk, Vellore District under the 1st respondent Corporation. He was placed under suspension on 04.10.2010 by the 3rd respondent for certain acts of misconduct. According to the petitioner, though he was placed under suspension, he was not paid subsistence allowance during the period of suspension. Thereafter, a charge memo was issued on 20.10.2010. In response to the charge memo, the petitioner has given a reply denying the charges levelled against him. However, the petitioner was directed to appear for enquiry on 18.11.2010 and the petitioner also appeared and the Enquiry Officer asked few questions, but the petitioner reiterated his stand about his innocence in regard to the allegations levelled against him. Later, while he was awaiting further enquiry process to follow, he was shocked to know that the 3rd respondent passed an order on 12.04.2011 dismissing him from service. According to the petitioner, no enquiry has been conducted in terms of

the rules and regulations governing the service conditions of the petitioner as no witnesses were examined nor any documents were marked in support of the charges. In any event, having been dismissed from service, the petitioner preferred an appeal to the 2nd respondent on the ground of violation of principles of natural justice. However, the 2nd respondent, without appreciating the fact that the petitioner was unjustly removed from service, rejected the appeal mechanically on 05.09.2011 by confirming the order passed by the 3rd respondent. As against the order in appeal, a revision was filed before the 1st respondent, but unfortunately, the 1st respondent also rejected the same on 12.07.2013. These orders passed by the respondents are put to challenge in the present Writ Petition.

3. Mr. Balamuralikrishnan, learned counsel appearing for the petitioner would submit that the impugned order of dismissal from service inflicted against the petitioner by the 3rd respondent as confirmed by the 2nd and 1st respondents

respectively, cannot be countenanced in law for the simple reason that the respondents while passing the orders, have not followed the basic principles of natural justice in affording reasonable and proper opportunity to the petitioner. No proper enquiry has been held in order to find out the veracity of the charges levelled against the petitioner. The learned counsel would submit that on the date of enquiry, i.e. on 18.11.2010, the petitioner was called by the Enquiry Officer and was merely asked few questions, for which, the petitioner answered denying about his involvement in the charges. However, without proceeding further in order to prove the charges, it appeared that the Enquiry Officer has submitted a report holding that the charges proved on his own without any worthwhile evidence available against the petitioner. On the basis of flawed enquiry report, the 3rd respondent Disciplinary Authority has passed impugned order dated 12.04.2011 dismissing the petitioner from service. According to the learned counsel for the petitioner, unfortunately both the respondents 2 and 1 herein have proceeded mechanically and

confirmed the order passed by the Disciplinary Authority dated 12.04.2011. Therefore, the learned counsel for the petitioner would submit that under no circumstances, such orders would be sustained in law.

4. In this regard, the learned counsel would rely upon an order, dated 17.08.2017 passed by a learned single Judge of this Court under similar circumstances in W.P.No.30230 of 2013 wherein, while following the decision of the Division Bench in W.A.No.872 of 2009 dated 02.07.2009, the learned Judge has ultimately held that such similar action is not sustainable in law. The learned counsel would draw the attention of this Court to paragraphs 5 to 10, which are extracted hereunder: सत्यमेव जयते

“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 TASMACH 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 TASMACH shops set up a separate machinery for following the proper disciplinary procedure so that any action taken by TASMACH 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 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. 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.”

5. Therefore, the learned counsel would submit that since the present case on hand would squarely fall within the ruling of this Court cited above, the Writ Petition may be allowed.

6. Per contra, the learned counsel appearing for the respondent Corporation would submit that the petitioner has been charged with serious act of misconduct and after obtaining the statement from the petitioner, a report has been filed holding the charges proved. On the basis of the enquiry report, the 3rd respondent has passed the order of dismissal from service which was confirmed by both the 2nd and 1st respondents in appeal and revision respectively. According to the learned counsel for the Corporation, the petitioner was given sufficient opportunity and the punishment of dismissal from service was proportionate to the gravity of the misconduct alleged against the petitioner. The learned counsel would submit that even otherwise, the order of dismissal was

confirmed as early as on 12.07.2013 by the Managing Director of the 1st respondent Corporation and the present challenge has been made after a period of five years and hence on the ground of laches alone, the Writ Petition is liable to be dismissed.

7. In reply to the above submission regarding the laches, the learned counsel for the petitioner would submit that in similar circumstances, the Courts have denied the back wages to the employees therein while allowing the Writ Petitions as such.

8. This Court has considered the rival submissions of the learned counsels appearing for the parties. As contended by the learned counsel for the petitioner, it appears from the pleadings and records that the respondent Corporation has not undertaken proper enquiry in order to prove the charges against the petitioner. When an order dismissal from service was passed against the petitioner, it is imperative that the

respondents have to follow the procedure in tune with the established principles of natural justice thoroughly. Unfortunately, it appears that there was a sham enquiry which cannot be sustained in law under any circumstances, more particularly, the disciplinary enquiry has resulted in extreme punishment of dismissal from service.

9. In any case, this Court both by the learned single Judge and Division Bench has time and again held that such flawed enquiry cannot be countenanced in law and the learned counsel has rightly relied upon a decision of this Court cited supra, which according to this Court, squarely covers case in favour of the petitioner herein.

10. In view of the above, this Court does not find any merit in the counter affidavit filed on behalf of the 3rd respondent nor in the submissions made on behalf of the respondents Corporation. On the other hand, this Court finds merit in the submissions made on behalf of the petitioner.

11. For the foregoing reasons, the Writ Petition is allowed and the impugned orders, viz., Che.Mu.Na.Ka.A2/946/C.V./2010 dated 12.04.2011 passed by the 3rd respondent; Che.Mu.Na.Ka.786/2011/E, dated 05.09.2011 passed by the 2nd respondent and Na.Ka.No.9693/R1/2011 dated 12.07.2013 passed by 1st respondent, are hereby set aside. The respondents are directed to reinstate the petitioner and it is made clear that the petitioner is not entitled to claim any back wages during the period of his non-employment, but entitled to all other attendant benefits. The respondents are directed to implement this order, within a period of four weeks from the date of receipt of a copy of this order. No costs.

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V.PARTHIBAN, J.

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Pre delivery Order in
W.P.No.17767 of 2018

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