

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.08.2019

CORAM

THE HON'BLE Mr. JUSTICE V.PARTHIBAN

W.P.No.21261 of 2019

U.Chandrasekaran

... Petitioner

Vs.

1.The Managing Director,
Tamilnadu Marketing Corporation Ltd,
(TASMAC Ltd),
Thalamuthu Natarajan Maligai,
Egmore, Chennai - 600 008.

2.The Senior Regional Manager,
Tamilnadu Marketing Corporation Ltd,
(TASMAC Ltd),
56, Brindavan Road,
Fairlands, Salem - 16.

3.The District Manager,
Tamilnadu Marketing Corporation Ltd,
(TASMAC Ltd),
Namakkal District,
Namakkal.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned orders passed by the second respondent in Se.Mu.No.3705/2015/Aa dated 12.09.2015 in confirming the order passed in Se.Mu.Na.Ka.No.2227/P1/CV/2014 dated 01.04.2015 by the third respondent, quash the same and consequently, direct the respondents to reinstate the petitioner as Assistant Salesman with continuity of service with all other attendant benefits.

For Petitioner : Mr.M.R.Jothimanian

For Respondents: Mr.K.Sathishkumar,
Standing Counsel

O R D E R

This Writ Petition has been filed seeking for issuance of a Writ of Certiorarified Mandamus, to call for the records of the

impugned orders passed by the second respondent in Se.Mu.No.3705/2015/Aa dated 12.09.2015 in confirming the order passed in Se.Mu.Na.Ka.No.2227/P1/CV/2014 dated 01.04.2015 by the third respondent, quash the same and consequently, direct the respondents to reinstate the petitioner as Assistant Salesman with continuity of service with all other attendant benefits.

2. The petitioner was working as Assistant Salesman in the TASMALC Ltd in the respondent Corporation at Namakkal District on 03.02.2004 and posted at Shop No.5986. Subsequently, he was transferred to take charge at TASMALC Shop No.6104 at Pilikkalpalayam Village, Namakkal District. On 13.09.2014, the second respondent conducted a surprise inspection in the shop wherein, it was found certain Liquor bottles tested which contained only 39% Alcohol instead of 42.8%, which according to the second respondent was less than the prescribed level. Thereafter, an order was passed on 15.09.2014, placing the petitioner under suspension. Subsequently, on 24.10.2014, the third respondent issued a charge memorandum wherein, charges were framed against the petitioner and one Chellamuthu, Salesman and Murugesan shop Supervisor charging them with adulteration of liquor and selling the same to the public.

3. The petitioner submitted his explanation denying the charges levelled against him stating that he was not the Salesman and it was actually sold by the said chellamuthu, the other Salesman. Thereafter, without conducting any enquiry, the first respondent passed final order on 01.04.2015, terminating the petitioner from service. Thereafter, an appeal was preferred to the second respondent on 18.05.2015 and the same was rejected by confirming the order of the first respondent dated 12.09.2015. The order of termination dated 01.04.2015, is under challenge in the present Writ Petition.

4. Mr.M.R.Jothimanian, the learned counsel for the petitioner would submit that the termination of the petitioner on the basis of the charge memo without following the due process of law is unjust, illegal, arbitrary and the same is liable to be set aside. According to the learned counsel, the respondents while taking an extreme step of terminating the petitioner, has not followed the basic principles of natural justice and therefore, the impugned orders passed by the respondents are unsustainable. The learned counsel would further submit that under similar circumstances, in a batch of Writ Petitions in W.P.No.23353 of 2015 etc batch, this Court vide common order dated 27.02.2018 (in the case of K.Sivakumar and Others Vs. The Senior Regional Manager Tamil Nadu State Marketing Corporation Ltd(TASMALC), Salem-16 and Others), allowed all the Writ Petitions on the premise that the principles of natural justice were not followed by the respondents and

intervened with the termination orders issued against the petitioners therein.

5. The learned counsel for the petitioner would further submit that the said Chellamuthu, who is the other Salesman worked in the shop is covered under the batch of Writ Petitions in W.P.No.38214 of 2015 dated 27.02.2018 afore stated. The learned counsel would draw the attention of this Court to the common order dated 27.02.2018 passed by the learned judge of this Court, which is extracted herein.

''Tvl.K.Mohamed Hussen,
Mr.P.R.Thiruneelakandan, Mr.K.Sasindran,
Mr.M.R.Jothimanian, Mr.A.Nagarathinam,
Mr.I.Abraham, Mr.A.Rajesh Kanna and Mr.P.Suresh
Babu, learned counsel appearing on behalf of
the petitioners, submitted that principles of
natural justice have been violated in all the
cases and no proper enquiry was held and that
the petitioners were dismissed from service.
The learned counsel for the petitioners has now
submitted that the petitioners are prepared to
give up their back wages, if the respondents
come forward to reinstate them with continuity
of service.

2. Tvl.P.Arumugarajan, B.Nedunchezhan and
K.Sathishkumar learned counsel, appearing on
behalf of the respondents, submitted that
recently, the Government have issued a
Circular, stating clearly that even in the case
of misappropriation of the money from the shop
of TASMACH, showing some leniency depending upon
the gravity of the nature of misappropriation,
a fine amount along with the original
misappropriated amount found in the enquiry can
be imposed as a measure of punishment. Since
the respondent-Board has taken a decision to
impose fine, namely, the fine amount plus the
misappropriated amount, this Court accepts the
request of the learned counsel appearing for
the petitioners that the petitioners would not
claim any back wages.

3. This Court finds that the order of
termination passed against the petitioners are
in violation of principles of audi alteram
partem for, no enquiry was held properly and
hence, they are set aside. The respondents are
directed to reinstate the petitioners into
service without back wages but with continuity
of service. The said exercise shall be done
within a period of two weeks from the date of

receipt of a copy of this order.

4. The writ petitions stand allowed on the above terms. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed''.

6. The learned counsel for the petitioner would also submit that the order was also implemented and the said chellamuthu was reinstated in service on 21.08.2018.

7. Upon notice Mr.K.Sathishmumar, learned Standing Counsel entered appearance for the respondents and objected to the grant of any relief to the petitioner stating that the Chellamuthu's case was covered by the earlier decision passed by this Court and the same would not be made applicable to the present case.

8. Considered the submissions of the learned counsel for the petitioner as well as the learned Standing Counsel appearing for the respondent Corporation. The issue of termination of an employee of the respondent corporation without following the due process of law has been settled by this Court in a number of decisions in respect of the respondent Corporation, stating that the termination without following the principles of natural justice cannot be justified under these circumstances. In this case, it appears that the petitioner's services came to be terminated without any semblance of enquiry in compliance of the established principles of natural justice. In an identical circumstances, the learned Judge of this Court, in a batch of writ petitions allowed the claim of the petitioners therein as afore mentioned order and in fact, the other Salesman, who employed in the shop, whose services were also terminated has been reinstated vide proceedings of the Corporation dated 21.08.2018. When that being the case, the petitioner herein cannot be denied the benefit as it would be otherwise violative of Article 14 of the Constitution of India. Even otherwise, the petitioner herein is entitled to the protection of fair compliance of principles of natural justice before his service came to be terminated which is an extreme nature of punishment that could befall on employee of the corporation.

9. In view of the above, the impugned orders passed by the second respondent in Se.Mu.No.3705/2015/Aa dated 12.09.2015 in confirming the order passed in Se.Mu.Na.Ka.No.2227/P1/CV/2014 dated 01.04.2015 by the third respondent, are liable to be interfered with, as arbitrary and illegal.

10. Therefore, the writ petition is allowed and the impugned orders passed by the second respondent in Se.Mu.No.3705/2015/Aa dated 12.09.2015 in confirming the order

passed in Se.Mu.Na.Ka.No.2227/P1/CV/2014 dated 01.04.2015 by the third respondent, are hereby set aside. The respondents are directed to reinstate the petitioner in service with all attendant benefits. It is made clear that the petitioner is not entitled to any back wages during the period of his non-employment from the date of termination and till the date of his reinstatement. The respondents are directed to pass appropriate orders in this regard, within period of four weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Managing Director,
Tamilnadu Marketing Corporation Ltd,
(TASMAC Ltd),
Thalamuthu Natarajan Maligai,
Egmore, Chennai - 600 008.
- 2.The Senior Regional Manager,
Tamilnadu Marketing Corporation Ltd,
(TASMAC Ltd),
56, Brindavan Road,
Fairlands, Salem - 16.
- 3.The District Manager,
Tamilnadu Marketing Corporation Ltd,
(TASMAC Ltd),
Namakkal District,
Namakkal.

+1cc to Mr.K.Sathish Kumar, Advocate, S.R.No. 70766
+1cc to Mr.R.Jothimanian, Advocate, S.R.No. 70629

W.P.No.21261 of 2019

KK(CO)
GN(18/10/2019)