

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 13.12.2019	Delivered on 17.12.2019
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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P.No.22720 of 2019
and
WMP Nos.22236 & 22238 of 2019

K.M.Kumar

.. Petitioner

.Vs.

- 1.The Managing Director,
Tamil Nadu State Marketing Corporation Ltd,
Thalamuthu Natarajan Building,
4th Floor, Egmore,
Chennai-8.
- 2.The Senior Regional Manager,
Tamil Nadu State Marketing Corporation Ltd,
Coimbatore.
- 3.The District Manager,
Tamil Nadu State Marketing Corporation Ltd.,
Udhagamandalam,
Nilgiris District.

.. Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the third respondent vide Na.Ka.No.00179/2014 dated 31.10.2014 and consequently the orders of the first and second respondents vide Na.Ka.No.1017/2017/A1 dated 27.10.2017 and Se.Mu.Na.Ka.No.R.1/14604/2017 dated 14.02.2018, and to quash the same and direct the respondents to reinstate the petitioner in service with all attendant benefits.

For Petitioner : Mr.S.Vijayakumar
For Respondents: Mr.Sathish Kumar
Standing Counsel

O R D E R

This Writ Petition has been filed challenging the impugned order passed by the third respondent dismissing the petitioner from service and which was confirmed in appeal by the 2nd respondent and further confirmed in revision by the 1st

respondent and consequently to direct the respondents to reinstate the petitioner in service with all attendant benefits.

2.The case of the petitioner is that he was serving as a Salesman in a TASMAC Shop, belonging to the respondent Corporation. An audit inspection was held on 19.04.2014 and certain irregularities were found and a report was also submitted to the 3rd respondent. The 3rd respondent issued a charge memo on 12.05.2014, seeking for explanation from the petitioner for two charges framed against him. The petitioner submitted his explanation denying the charges and gave his explanation for each of the charge. An Enquiry Officer was appointed and the explanation given by the petitioner was recorded and not even a single independent witness was examined on the side of the respondent Corporation. The Enquiry Officer recorded the statement and submitted a report to the 3rd respondent. The 3rd respondent asked for a further explanation even without furnishing the copy of the enquiry report. The petitioner gave a further explanation and the 3rd respondent by his impugned order dated 31.10.2014, dismissed the petitioner from service. The petitioner filed an appeal before the 2nd respondent and the appeal was also dismissed confirming the order of the 3rd respondent. The further revision that was filed by the petitioner was also dismissed by the 1st respondent. Aggrieved by the same, the present writ petition has been filed before this Court.

3.Mr.S.Vijayakumar, learned counsel appearing on behalf of the petitioner submitted that both the enquiry report as well as the order passed by the 3rd respondent was based on the reply given by the petitioner for the charges and that there was not even a single independent witness who was examined on the side of the respondent Corporation. The learned counsel for the petitioner submitted that the Appellate Authority as well as the Revisional Authority have not applied their mind and they have mechanically confirmed the order passed by the 3rd respondent. The learned counsel for the petitioner further submitted that for each and every charge, the petitioner had given his explanation and there is not even a discussion as to how the Disciplinary Authority came to a conclusion that the charges have been proved, without any independent witness or independent material.

4.The learned counsel for the petitioner in order to substantiate his submissions, relied upon the following orders of this Court;

1.V.Ganapathi and Others .Vs. The Managing Director and Others made in W.P.Nos.17364,17365,19002,19003 & 20888 of 2013, dated 25.03.2015.

2. D.Suresh Kumar .Vs. The Senior Regional Manager and Another made in W.P.No.38937 of 2015, dated 20.02.2017.

3.P.G.Mayakesavan .Vs. The Managing Director and Others, made in W.P.No.24036 of 2017 dated 09.04.2019.

5.Per contra, Mr.Sathish Kumar, learned Standing Counsel appearing on behalf of the respondents submitted that the petitioner had indulged in serious misconduct, wherein, it was found that there was tampering with the liquor bottles, sale of adulterated liquor and the petitioner had sold the liquor bottles for an additional cost. These were noticed during the audit inspection and the petitioner was not able to give any clear explanation for the charges. Therefore, the 3rd respondent after considering the enquiry report and the explanation given by the petitioner came to a clear conclusion that all the charges were proved and imposed a punishment of termination from service. The learned counsel submitted that opportunity was given to the petitioner and the principles of natural justice has been strictly complied with. The respondents has also filed a counter affidavit in this case.

6.This Court has carefully considered the submissions made on either side and the materials available on record.

7.The disciplinary proceedings must be conducted by the respondents in accordance with the Code of Prevention and Detection of Fraudulent Acts in TASMAL, 2014. The terms "fraud", "illegality" and "willful causing of loss of revenue" are defined by the said Rules. The rules also contemplate the types of punishments that can be imposed against a delinquent employee.

8.In the present case, two charges were framed against the petitioner on the grounds that there was tampering with the liquor bottles and sale of adulterated liquor and the petitioner had sold the liquor bottles for an additional cost. The petitioner has given an explanation for each and every charge. Even during the enquiry, the petitioner has explained his position. No independent witness or independent material was brought in at the time of enquiry and findings have been given by the Enquiry Officer merely based on the reply given by the petitioner for each charge. The 3rd respondent, who is the Disciplinary Authority after calling for an explanation for the enquiry report has proceeded to pass the impugned order by punishing the petitioner terminating his services. The 3rd respondent has merely recorded whatever is found in the enquiry report and has straightaway come to the conclusion that the charges are proved, and therefore, the petitioner deserves the maximum penalty of dismissal from service.

9.The Appellate Authority, who is the 2nd respondent herein has mechanically confirmed the order passed by the 3rd respondent. He has not even dealt with the charges that were framed against the petitioner and the order is bereft of particulars.

10.At this juncture, it will be relevant to place reliance on the judgments of this Court, cited by the learned counsel for the petitioner.

I.This Court in V.Ganapathi and Others, referred supra, has considered the scope of enquiry under the above said rules. The relevant portions of the order is extracted hereunder:

"9.The core question is whether the Disciplinary Authority was correct in dismissing the petitioners without conducting proper enquiry.

10.The common counter affidavit filed by the District Manager, TASMAC clearly shows that enquiry was not conducted and witnesses were not examined. Even the Forensic Report was not marked in the enquiry proceedings. The experts were not examined to prove the collection of sample and analysis report. The report submitted by the Forensic Expert was not marked with opportunity to the petitioners. The petitioners are therefore perfectly correct in their contention that fair enquiry was not conducted before dismissing them from service.

11.The orders dismissing the petitioners from service would involve serious civil consequences to them. Since TASMAC alleged commission of serious acts of misconduct against the petitioners, it is their bounden duty to prove those allegations. The Disciplinary Authority simply followed the procedure of examining the delinquents and passing final orders dismissing them from service. The counter affidavit filed by the District Manager, TASMAC and more particularly, Paragraph 9 supports the case pleaded by the petitioners. I am therefore of the view that proper enquiry was not conducted by TASMAC and as such, the petitioner must succeed".

II.The next order that was relied upon in D.Suresh Kumar, referred supra, the relevant portions of the order is extracted hereunder:

"11 The petitioner was issued with a second show cause notice, for which also, he has

given his explanation and the 2nd respondent / Disciplinary Authority without recording any findings on the contents of the report of the Enquiry Officer, merely observed as to the general conduct expected from the employees and imposed him with the order of punishment of dismissal from service. The petitioner filed an appeal to the 1st respondent / Appellate Authority and when the petitioner specifically prayed for summoning Mr.Sivakumar, the District Manager, who was part of the raiding party, to be examined as a witness, the Appellate Authority gave a finding to the effect that despite summons sent thrice, Mr.Sivakumar, the District Manager, did not appear and went on to hold that the order of punishment passed by the Disciplinary Authority does not warrant interference. The sequence of events pointed out by this Court in the above cited paragraphs would clearly indicate that the Code of Prevention and Detection of Fraudulent Acts in Tamil Nadu State Marketing Corporation Limited-2014, has not been followed in letter and spirit and the 2nd respondent / Disciplinary Authority has pre-determined the mind and in all fairness, as a member of the raiding party, he should not have proceeded further and he would have asked the higher officers to appoint somebody to deal with the matter but all along he has fully participated. Even for the sake of arguments, the 2nd respondent being the Disciplinary Authority, is entitled to proceed further, the fact remains that the mandate cast upon the Disciplinary Authority as well the Enquiry Officer as per the said Code, has been given a complete go-by and not only the charge memo is vague, even during the course of enquiry, except the petitioner, no other witnesses were examined and no documents were marked and the Enquiry Officer have given a cryptic finding and held that the charge framed against the petitioner has been proved. The 2nd respondent being the Disciplinary Authority is expected to apply his mind and however, by making a general observation about the conduct of the TASMAR employees, had chosen to accept the findings of the Enquiry Officer and imposed the punishment of dismissal from service against the petitioner. Before the Appellate Authority, the petitioner has made a specific request, praying

for summoning and examining Mr.Sivakumar, the District Manager, who was part of the Inspection/Raiding Party and though the Appellate Authority records a finding that despite summons issued thrice, he did not appear, proceeded to hold that as per the materials placed, the charge framed against the petitioner has been proved and thought fit to confirm the order of dismissal from service.

12 Thus, in all stages, the respondents 1 and 2 had failed to follow Code of Prevention and Detection of Fraudulent Acts in Tamil Nadu State Marketing Corporation Limited-2014, and the proceedings conducted is in per se violation of the principles of natural justice and therefore, the order of punishment of dismissal from service passed by the 2nd respondent as confirmed by the 1st respondent, warrants interference.

III.The last order that can be relied upon in P.G.Mayakesavan, referred supra, the relevant portions of the order is extracted hereunder:

"9.Considering the materials, pleadings and other circumstances of the case, this Court is in agreement with the submission made on behalf of the petitioner that the enquiry has not been conducted in terms of the service regulations or in terms of the established principles of natural justice. It appears that the enquiry has been concluded only with the statement made by the petitioner and held guilty of the charges as no witnesses were examined and no documents were marked. Unfortunately, the disciplinary authority without appreciating that the findings of the Enquiry Officer was not duly supported by evidence, has gone about imposing severe penalty of removal from service. The imposition of penalty on the basis of the flawed findings of the Enquiry Officer, cannot be countenanced either in law or on facts.

10.Moreover, both the appellate and revisional authorities did not exhibit due application of mind in regard to the conduct of the departmental enquiry against the petitioner and also in regard to the proportionality of punishment imposed on the petitioner by the disciplinary authority. In any case, when

there was a fatal infraction of procedure followed by the Enquiry Officer, the respondents ought to have interfered in such matter on the ground of upholding the principles of natural justice. But, unfortunately all the authorities have uniformly overlooked the crucial fact that the petitioner has not been provided with the adequate opportunity in defending his position in the departmental enquiry".

11. It is clear from the above orders that even in those cases, except the delinquent, no other witnesses were examined and no documents were marked and the Enquiry officer had given cryptic finding. In the above cases also, the Disciplinary Authority had merely chosen to accept the findings of the Enquiry Officer and imposed the punishment of dismissal from service and the Appellate Authority had mechanically confirmed the order. This Court specifically held that in all stages, the respondents failed to comply with the procedure contemplated under the above said rules and acted in violation of principles of natural justice.

12. The above said orders will square apply to the facts of the present case also. Even in the present case, no independent witnesses or no independent materials were marked during the enquiry and the extreme punishment of dismissal was imposed merely based on the reply given by the petitioner. Nowhere, the petitioner had accepted any charge and he had infact given explanation for each charge and it is not known as to how the Enquiry Officer and the Disciplinary Authority came to a conclusion that the charges are proved. The Appellate Authority who was supposed to go into the facts of the case and apply his mind, has mechanically confirmed the order passed by the 3rd respondent.

13. In the present case, the petitioner has specifically pleaded in his affidavit that no enquiry report was given to him by the 3rd respondent when he was called upon to give further explanation. This allegation has not been denied in the counter affidavit and the petitioner had the additional disadvantage of not having the enquiry report when he gave the further explanation.

14. For all the above said reasons, the impugned order passed by the 3rd respondent and as confirmed by the 1st and 2nd respondents is hereby set aside, and the petitioner is directed to be reinstated into service forthwith. The petitioner will not be entitled for payment of any back wages during the period of his non-employment.

This Writ Petition stands allowed on the above terms.
No costs. Consequently, the connected miscellaneous petitions
are closed.

-s/d-
Assistant Registrar(CS-I)

True Copy

Sub-Assistant Registrar

KP
To

- 1.The Managing Director,
Tamil Nadu State Marketing Corporation Ltd,
Thalamuthu Natarajan Building,
4th Floor, Egmore,
Chennai-8.
- 2.The Senior Regional Manager,
Tamil Nadu State Marketing Corporation Ltd,
Coimbatore.
- 3.The District Manager,
Tamil Nadu State Marketing Corporation Ltd.,
Udhagamandalam,
Nilgiris District.

+1 CC to Mr.K. Sathish Kumar, Advocate sr 104708
+1 CC to Mr.S.Vijayakumar, Advocate sr 104656.

W.P.No.22720 of 2019

SR(CO)
SP(24/01/2020)