



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.10.2019

CORAM

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THE HONOURABLE MR.JUSTICE **S . S . SUNDAR**

W.P. (MD)No.15986 of 2013

S.Sukumaran

:Petitioner

vs.

1.The Managing Director,
Tamil Nadu State Marketing Corporation
(TASMAC),
4th Floor, CMDA Buildings Tower-II,
Egmore, Chennai - 600 008.

2.The Senior Regional Manager,
Tamil Nadu State Marketing Corporation (TASMAC),
No.19, Gandhi Nagar, Ponnagar,
Trichirappalli.

3.The District Manager,
Tamil Nadu State Marketing Corporation,
Tiruchirappalli Zone (TASMAC),
Karur District.

:Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, praying to issue Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the first respondent in Na.Ka.No.5316/C.V.2(3)/2008, dated 26.03.2009 confirming the order of the second respondent in Na.Ka.No.1839/08/Aa, dated 05.05.2008 confirming the original termination order passed by the third respondent, Ref.Na.Ka.Rv.No.2/11/2005, dated 10.11.2005 and quash the same and consequently, to direct the third respondent to reinstate the petitioner as Supervisor.

For Petitioner

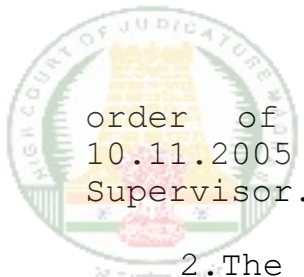
:Mr.S.Gokulraj

For Respondents

:Mr.H.Arumugam

ORDER

This Writ Petition is filed to quash the order passed by the first respondent, dated 26.03.2009, confirming the order of second respondent, dated 05.05.2008, who in turn, confirmed the original



order of termination passed by the third respondent, dated 10.11.2005 and for direction to reinstate the petitioner as Supervisor.

2.The petitioner was appointed as Supervisor in TASMACH Shop No.4926 in the year 2003 by the third respondent. Subsequently, he was transferred to another shop in Karur District. Pursuant to an inspection and stock verification on 09.11.2005 in the shop, in which the petitioner was working, shortage was found in the sale amount to the tune of Rs.10,254/-. A show cause notice was issued to the petitioner and after getting explanation from the petitioner, the third respondent has passed an order, dated 10.11.2005, dismissing the petitioner from service. Thereafter, the petitioner filed an appeal before the second respondent, who also dismissed the appeal by order, dated 05.05.2008. After that the petitioner preferred a revision petition before the first respondent and the first respondent also dismissed the revision petition by impugned order, dated 26.03.2009. Challenging the same, the above Writ Petition is filed mainly on the ground that the order of punishment imposed by the third respondent was without any notice or enquiry following the principles of natural justice.

3.Though, it is alleged that the petitioner has temporarily misappropriated a sum of Rs.10,254/-, it is contended by the petitioner that he had not misappropriated any fund, as he has given sufficient explanation for the short fall in the sales amount. In the affidavit filed in support of this petition, the petitioner has given an explanation that there were many 100 rupee notes received from the customers and therefore, the petitioner was constrained to convert the same into 500 rupee notes. It is only for changing the note, he has taken the money. It is further stated that the amount was deposited in the bank on the same day.

4.The learned Counsel for the petitioner submitted that the respondents in the order of punishment has given other reasons for dismissal, for which the petitioner was not given any opportunity. It is true that the order of third respondent refers to statement of two other Salesmen with reference to some other incidents, for which no charge was framed. However, the findings as regards temporary misappropriation, cannot be ignored, especially, in the light of petitioner's own admission in his explanation. The fact that the petitioner had failed to account for a sum of Rs.10,254/- at the time of inspection is admitted. His explanation cannot be accepted.

5.The learned Counsel for the petitioner also relied upon an order of learned Single Judge of this Court in the case of ***V.L.Lakshmanakumar vs The District Manager and others***, reported in ***2006 II MLJ 685 (Mad)***, wherein, it has been held as follows:

"7.The Apex Court, in more than one case, has held that when an order of termination involves civil



consequences and consequently amounts to stigma, the same cannot be passed without there being a charge memo, enquiry and the findings as to those charges. This proposition of law has been recently reiterated by the Apex Court in the judgment of State of Hariyana v. Satyender Singh Rathore. In that judgment, the Supreme Court has relied upon the earlier judgment of Dipti Prakash Banerjee v. Satyendra Nath Base National Centre for Basic Sciences and has held that if findings were arrived at in an enquiry as to misconduct behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as "founded" on the allegations and will be bad."

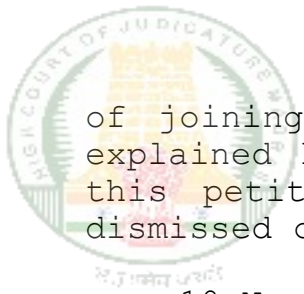
6.The learned Counsel for the respondents relied upon the explanation of the petitioner himself in response to the show cause notice. The explanation of the petitioner to the show cause notice reads as follows:

"100 ரூபாய் நோட்டுகளை பெற்றுக் கொண்டு 500 ரூபாய் நோட்டுகள் வேண்டும் என்று கேட்டார். நான் அதை கொடுப்பதற்காக கடை விற்பனையாளரிடம் இருந்து வாங்கி சென்றேன். இந்த தொகையை அடுத்த நாள் வங்கியில் செலுத்தலாம் என்று நானே வைத்திருந்தேன். ஏனது தவறை உணர்ந்து இதுபோன்ற தவறுகள் வரும் காலங்களில் தவறுகள் நடைபெறாமல் பார்த்து கொள்வேன் என மிகவும் தாழ்மையுடன் கேட்டுக் கொள்கிறேன்."

7.The explanation offered by the petitioner in response to the show cause notice would reveal that the petitioner has admitted temporary misappropriation. Having regard to the volume of business and the collection per day, the contention of the petitioner in the explanation cannot be accepted. The contention of the third respondent that there was a temporary misappropriation of a sum of Rs.10,254/- is admitted by the petitioner himself in his explanation.

8.It is true that the order of termination involves serious civil consequences will be invalid, if there is violation of principles of natural justice. Having regard to the explanation offered by the petitioner and the stand stand by him in the affidavit, this Court has no hesitation to hold that the findings recorded by the third respondent cannot be faulted.

9.The learned Counsel for the respondents would further submit that deposit amount, which was paid by petitioner towards security deposit, had been returned to him by way of cheque and that the petitioner has acknowledged the receipt of the same. The learned Counsel would further submit that the Writ Petition itself is liable to be dismissed on the ground of laches, as the impugned order challenged in the Writ petition was passed nearly 4 ½ years back. This Court is unable to ignore the statement of the learned Counsel for the respondents, having regard to the conduct of the petitioner that he had already received the amount deposited by him at the time



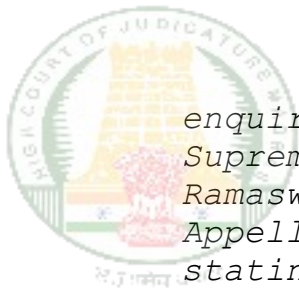
of joining duty. The delay in filing the Writ Petition is not explained by the petitioner in the affidavit filed in support of this petition. Hence, the Writ Petition is also liable to be dismissed on the ground of laches.

10.No other reason or material is produced before this Court to dislodge the findings of the respondents. Having regard to the limited scope of judicial review, this Court is of the view that the order of third respondent cannot be interfered with, merely because, different view is possible. The petitioner's explanation to the show cause notice and in the affidavit in the writ petition are different. Failure to account for the money, which was found deficit, can be treated as an act of temporary misappropriation for which no lesser punishment can be given having regard to the nature of job.

11.The learned Counsel for the petitioner also relied upon another order of learned Single Judge of this Court in the case of ***A.Karthikeyan vs The Managing Director and others***, in ***W.P.No.13221 of 2009***. The case dealt with by the learned Single Judge of this Court would reveal that the order of termination was based on letter given by the petitioner therein, wherein, the petitioner therein has accepted the charges. Pointing out that there was no further enquiry and following the direction of Honourable Division Bench of this Court earlier, the petition was allowed by recording the fact that the sole basis of termination was the letter given by the petitioner admitting the charges. Hence, the learned Single Judge directed reinstatement of petitioner in service. However, liberty was given to the respondents to conduct enquiry in accordance with law, if there is any other material in the hands of respondents. The order of learned Single Judge does not appears to be on the basis of any sound principles. Unless, the person, who gave a letter, comes forward with a case that such admission was by compulsion or due to pressure, such explanation can be accepted. It cannot be said that in every case, where, the delinquent admit the charges in his representation in response to show cause notice, there should be other materials to prove the charge.

12.The learned Single Judge relying upon the judgment of a Honourable Division Bench has held as follows:

"9.However, the learned Counsel for the petitioner Ms.Indumathi brought to the notice of this Court another judgment of the Division Bench of this Court in W.A.(MD) No.27 of 2009 in the District Manager, Tamil Nadu State Marketing Corporation Limited (TASMAC), Madurai and another vs. S.Kottaisamy in support of her contention. In that case, the Division Bench held that when there is an allegation of involuntary nature of statement of mere acceptance of letter at the time of inspection by the squad, it is incumbent upon the respondents to conduct and



enquiry. They have also distinguished the judgment of the Supreme Court in Dharmarathmakara Raibahadur Arcot Ramaswamy Mudaliar Educational Institution v. Educational Appellate Tribunal, reported in 1997 (7) SCC 332, by stating that the case of Professor cannot be compared with the TASMAC Salesman. Therefore, the TASMAC employee, who is not well educated may possibly succumb to pressures in making such statements. Therefore, such a statement alone cannot be the basis for termination."

13.The learned Counsel for the petitioner submitted that the judgment of Honourable Division Bench relied upon by the learned Single Judge has made the position clear that mere letter accepting the charge at the time of inspection by squad, cannot be the sole basis for imposing penalty. In this case, the petitioner has given a representation in response to the show cause notice, admitting temporary misappropriation with an explanation that the money was taken for getting 100 rupees notes in exchange of 500 rupees notes. In this case, it is not the stand of petitioner that he was compelled to give the statement. Having regard to the volume of business, the explanation that the money was taken for exchange of currency cannot be believed. The admission of petitioner in his representation in response to the show cause notice gives a clear picture about the delinquency and the punishment imposed in this case cannot be faulted. The Writ Petition has been filed nearly 4 ½ years after the impugned order was passed. Hence, this Writ Petition is also liable to be dismissed on the ground of laches, especially, when the petitioner has not come forward with any explanation for the inordinate delay in approaching the Court.

14.The learned Counsel for the petitioner submitted that the respondents have issued a circular stating that even in case of misappropriation of money from TASMAC shop, some lenience can be shown, depending upon the gravity and quantum of misappropriation and that a fine amount along with the original misappropriation amount can be imposed as a measure of punishment. However, the petitioner has not produced before this Court the said circular. Assuming that such circular has been issued, it is not mandatory in every cases, some lenience should be given. It is the discretion of the Disciplinary Authority to consider and impose fine instead of terminating the delinquent from service. Hence, the submission of learned Counsel relying upon the said circular, though relevant, cannot be accepted. The Government has ventured the business in liquor to augment revenue. Unless, strict disciplinary control is maintained, there will be recurrence of misappropriation in a casual manner. Hence, this Court is not inclined to interfere with the order of punishment.

15.In view of the discussion made above, this Writ Petition is dismissed and the impugned order passed by the first respondent,

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dated 26.03.2009, confirming the order of second respondent, dated 05.05.2008, who in turn, confirmed the original termination order of third respondent, dated 10.11.2005 is confirmed. No costs.

Sd/-

Assistant Registrar (AS)

// True Copy //

Sub Assistant Registrar(CS)

cmr

+1 CC to M/s.H.ARUMUGAM, Advocate (SR-95509[F] dated 01/11/2019)

+1 CC to M/s.S.GOKULRAJ, Advocate (SR-95341[F] dated 31/10/2019)

W.P. (MD) No.15986 of 2013
31.10.2019

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