

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.11.2020

Pronounced on : 24.11.2020

CORAM :

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.17350 of 2019

A.Paramasivam

... Petitioner

-Vs-

1.The Managing Director,
Tamil Nadu State Marketing Corporation Limited,
CMDA, Tower II, IV Floor,
Gandhi Irwin Bridge Road,
Egmore, Chennai 600 008.

2.The General Manager,
Tamil Nadu State Marketing Corporation Limited,
No.305A, Vilamkurichi Road,
Chintamani Co-operative Society Depot,
Peelamedu, Coimbatore 641 004.

3.The District Manager,
Tamil Nadu State Marketing Corporation Limited,
No.24, TASC0 Building,
Bhavani Main Road,
Suriyampalayam,
Erode 638 316.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for all the records on the file of the 3rd respondent initiating disciplinary proceedings against the petitioner in his proceedings in na.ka.741/2016/R1 as confirmed before the 1st respondent in his proceedings Se.Mu.Na.Ka.No.R1/10793/2019 dated 07.03.2019 and quash the same.

For Petitioner : Mr.S.Vijayakumar

For Respondents : Mr.K.Sathish Kumar

O R D E R

This writ petition has been filed to call for the records on the file of the 3rd respondent initiating

disciplinary proceedings against the petitioner in his proceedings in na.ka.741/2016/R1 as confirmed before the 1st respondent in his proceedings Se.Mu.Na.Ka.No.R1/10793/2019 dated 07.03.2019 and quash the same.

2. The petitioner was working as a Shop Manager in one of the outlets run by the respondent Corporation. On 23.10.2016, when a surprise inspection was conducted, it was found that a sum of Rs.1,684/- was in shortage and the records were also not properly maintained for the sale of liquor bottles.

3. As a consequence of the report of the Inspection, the petitioner was issued with the Charge Memorandum, containing five articles of charges on 29.11.2016. Thereafter, an enquiry was conducted and a report of the enquiry was submitted on 21.03.2017. According to the petitioner, in the enquiry, no semblance of opportunity was given to him to explain his defence and without giving any opportunity at all, the report was submitted holding the charges proved. Thereafter, an explanation was called for from the petitioner to the enquiry report and finally, an order was passed on 31.03.2018, dismissing the petitioner from service.

4. The petitioner filed a statutory appeal against the order of dismissal by the disciplinary authority, to the appellate authority, the second respondent herein and the same was rejected by the appellate authority on 12.11.2018. As against which, a review application was filed and the first respondent ultimately rejected the review application vide impugned proceedings dated 07.03.2019. As against the rejection of the petitioner's review application and confirmation of the punishment of dismissal from service, the petitioner is before this Court by way of this writ petition.

5. After notice, Mr.K.Sathish Kumar, learned standing counsel has entered appearance and counter affidavit has been filed. In the counter affidavit filed on behalf of the 3rd respondent, the details of the charges were explained and also the details of the disciplinary action initiated against the petitioner for his fraudulent acts. However, during the pendency of this writ petition, it appears that a Hon'ble Judge of this Court vide his order dated 17.12.2019 in W.P.No.32814 of 2018, has set aside the order of termination passed by the respondent corporation, on identical set of facts, after relying on the earlier legal precedents laid down by this Court in paragraph 6 of the order. According to the learned counsel for the petitioner, unfortunately, this case has been left out as being not listed before the Hon'ble Judge, when the writ petition was allowed.

6. The learned standing counsel appearing for the respondents would submit that the legal principle as laid down by the Hon'ble Judge of this Court and also the other legal

precedents, are not in dispute. However, he would only submit that the petitioner being involved in fraudulent act, is rightly punished by the Corporation.

7. This Court though appreciative of the arguments advanced by the learned standing counsel for the Corporation, but as a matter of judicial propriety, it cannot take a different view, contrary to the legal precedents rendered in the identical set of circumstances. In similar circumstances, when this Court has intervened and set aside such orders in the past and very recently by the Hon'ble Judge in the above said writ petition on 17.12.2019, this Court has to necessarily follow the same. When the petitioner has complained of complete denial of opportunity to put forth his defence, resulting in negation of the established principles of natural justice, the petitioner is entitled to be given the benefit of relief as given to the similarly placed employees of the respondent Corporation. The Hon'ble Judge in the above referred matter, has referred to the earlier legal precedents in paragraph No.6 and also it is useful to refer to the other paragraphs of the decision to cover the claim of the petitioner herein as well. Therefore, paragraph Nos.6 to 15 of the order in W.P.No.32814 of 2018, are extracted hereunder:

"6. 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."

7.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 a shortage of money, certain liquor bottles were sold at a higher price, records not properly maintained and certain liquor bottles were found to be tampered. These were noticed during the audit inspection and the petitioner was not able to give any clear explanation for the charges. Therefore, the second 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.

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

9.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.

10.In the present case, five charges were framed against the petitioner on the grounds that there was a shortage of money, certain liquor bottles were sold at a higher price, records not properly maintained and that certain liquor bottles were found to be tampered. 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 second respondent, who is the Disciplinary Authority after calling for an explanation for the enquiry report, proceeded to pass the impugned order punishing the petitioner by terminating his services. The second 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.

11.The Appellate Authority, who is the first respondent herein has mechanically confirmed the order passed by the second respondent. He has not even dealt with the charges that were framed against the petitioner and the order is bereft of particulars.

12.At this juncture, it will be relevant to place reliance on the judgments 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 TASMAC 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".

13. 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 a 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.

14. The above said orders will squarely 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 second respondent.

15. For all the above said reasons, the impugned order passed by the second respondent and as confirmed by the first respondent 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."

8. The above decision which in the opinion of this Court is to be applied squarely to the factual matrix of the present case as well.

9. The writ petition is therefore allowed and the proceedings of the third respondent in na.ka.741/2016/R1, as confirmed before the 1st respondent in his proceedings Se.Mu.Na.Ka.No.R1/10793/2019 dated 07.03.2019, are hereby set aside. The respondents are directed to pass appropriate consequential order, reinstating the petitioner within a period of four weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

sai/gsk

To

1.The Managing Director,
Tamil Nadu State Marketing Corporation Limited,
CMDA, Tower II, IV Floor,
Gandhi Irwin Bridge Road,
Egmore, Chennai 600 008.

2.The General Manager,
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+1cc to Mr.S.Vijayakumar Advocate SR.NO.37663

Pre-Delivery order in
W.P.No.17350 of 2019

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