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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2022

CORAM

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.36749 of 2015 and

M.P.No.1 of 2015

M.Vijayakumar

...Petitioner

Vs.

The District Manager,
Tamil Nadu State Marketing Corporation Limited
(TASMAC), Thiruvannamalai.

...Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying Writ of Certiorarified Mandamus by calling for the records of the respondent in its Na.Ka.R.V.2/1920/2014 dated 17.03.2015 and quash the same and consequently direct the respondent to reinstate the petitioner back into service with all attendant and monetary benefits.

For Petitioner : Mr.V.Rajinikanth,

For Respondents: Mr.Arumuga Rajan,
Government Advocate

ORDER

The case of the petitioner is that he was appointed as salesman at TASMAC Retail Outlet Shop No.9316 on January 2004. He was posted at Puluthiyur Village initially. He was granted consolidated wages every month as Rs.2,000/-. While he was working in the said outlet, a surprise inspection was conducted on 07.08.2014. As an after effect of the inspection, the petitioner was placed under suspension and a charge sheet was also issued containing several articles of charges. The substance of the charges against the petitioner was during the surprise inspection conducted on 07.08.2014, it was found that certain liquor bottles appeared to have been adulterated and also there was shortage of amounts. An enquiry was initiated into the charges and ultimately the petitioner came to be dismissed from service vide proceedings dated 17.03.2015. Challenging the proceedings of the respondent herein, the petitioner was before this Court.



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2. Mr.N.Bala Murali Krishnan, learned counsel for the petitioner would submit that while imposing the extreme penalty of dismissal from service, the Corporation had not followed the procedure contemplated in the regulations and in complete violation of principles of natural justice.

3. According to the learned counsel, the petitioner was called for an enquiry and few questions were put to him by the Enquiry Officer and thereafter the report was submitted. No witnesses were examined nor the petitioner was given any opportunity of letting any evidence or cross examine any witness. Merely on the basis of unilateral inspection report prepared behind the back of the petitioner, coupled with fact of eliciting some statement from the petitioner, the Enquiry Officer held the charges proved.

4. The disciplinary authority over-looking the grave infirmities in the conduct of the enquiry has imposed extreme penalty of dismissal from service. The order therefore suffered from ex-facie illegality and liable to be interfered with. The learned counsel would also submit that under similar circumstances, an employee who was dismissed from service by the respondent / Corporation approached this Court in W.P.No.17409 of 2012 and this Court passed a detailed order allowing the Writ Petition vide order dated 21.08.2017. A copy of the order passed in the above Writ petition has been produced before this Court for consideration.

5. Mr.Arumuga Rajan, learned Government Advocate appeared on behalf of the Corporation and a counter affidavit has been filed. In the counter affidavit, though it is stated that the enquiry was conducted following the procedure and the petitioner was provided with an opportunity, but specifically, it has not been spelt out in the counter refuting the allegations that no witnesses were examined nor any materials were marked in terms of the procedure contemplated for such conduct of enquiry. Nothing has been stated in clear terms that principles of natural justice have been complied with scrupulously.

6. On the other hand, this Court finds from the report that no proper procedure has been adopted at all while imposing the extreme punishment of dismissal from service on the petitioner.

7. In regard to this Court's order allowing the similar challenge, this Court would like to refer to paragraph 4 to 12 of the order which are extracted hereunder;

"4. Mr. V.Rajinikanth, learned counsel appearing for the petitioner vehemently contended that except recording the statements from the petitioner, no



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enquiry was conducted by examining any witnesses and marking documents. Further, the first respondent, while dismissing the appeal filed by the petitioner and confirming the order of dismissal, has stated that the petitioner was not in a position to disprove the charge against him. Needless to mention that in terms of the legal position, it was incumbent upon the prosecution to prove the charge against the petitioner and not otherwise. Moreover, every administrative action, which results in civil consequences has to satisfy established principles of natural justice and in the instant case, no such procedure has been followed by the respondents. Not following the established principles of natural justice, it has to be held that the order of dismissal passed against the petitioner is per se illegal and void.

5. 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 paragraphs 6 and 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 TASMAC 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



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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 TASMAL shops set up a separate machinery for following the proper disciplinary procedure so that any action taken by TASMAL 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 TASMAL 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



and circumstances finds the present case exactly fit into the above legal framework as laid down by Division Bench followed by Single Judge.

9. For the above said reasons, the Writ Petition is allowed and the impugned order in Na.Ka.R.V.2/1920/2014 dated 17.03.2015 is hereby set aside.

10. The respondents are directed to reinstate the petitioner into service with all consequential and attendant benefits on a notional basis including continuity of service.

11. It is clarified that the petitioner is not entitled to backwages during the period of his non-employment.

12. The respondent is directed to pass appropriate orders in this regard within a period of four weeks from the date of receipt of copy of this order.

13. No costs. Consequently, connected miscellaneous petition stands closed.

Sd/-
Assistant Registrar (CS-II)

//True copy//

Sub Assistant Registrar

mrm

To

The District Manager,
Tamil Nadu State Marketing Corporation Limited
(TASMAC), Thiruvannamalai.

+1cc to Mr.V.Rajinikanth, Advocate SR.No.15735

W.P.No.36749 of 2015

SKM(CO)
GMY(28/03/2022)