



W.P.No.1222 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.1222 of 2018

S.Krishnamoorthy

...Petitioner

-Vs-

- 1.The Managing Director,
Tamil Nadu State Marketing
Corporation Ltd., (TASMAC),
4th Floor, CMDA Tower-2,
Gandhi Irwin Bridge Road,
Egmore, Chennai - 600 008.
- 2.The Senior Regional Manager,
Tamil Nadu State Marketing
Corporation Ltd., (TASMAC),
Salem Region, No.56, Brindhavan Road,
Fairlands, Salem - 16.
- 3.The District Manager,
Tamil Nadu State Marketing
Corporation Ltd., (TASMAC),
TANCOF Complex, No.52, Anna Salai,
Thiruvannamalai.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India,
praying to issue a Writ of Certiorarified Mandamus, calling for the records of



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the 3rd respondent bearing proceedings in Na.Ka.R.V.2/1078/2015 dated 07.10.2015, which is confirmed by 2nd respondent in proceedings of Se.Mu.No.595/2016/A dated 05.04.2016, which is further confirmed by 1st respondent in Se.Mu.Na.Ka.No.R1/9642/2016 dated 05.07.2017 and quash the same and consequently direct the respondents herein to reinstate the petitioner into service.

For Petitioner : Mr.M.Manimaran

For Respondents : Mr.C.Ramesh

ORDER

Heard Mr.M.Manimaran, learned counsel appearing for the petitioner and Mr.C.Ramesh, learned counsel for the respondents.

2. The petitioner herein was employed as a Salesman in the Tamil Nadu State Marketing Corporation Ltd., (TASMAC), Thiruvannamalai District. Through a charge memo dated 10.04.2015, charges were framed against the petitioner and an enquiry came to be conducted against him for the charge of shortage of Liquor in the TASMAC Shop. The charge was held to be proved and the petitioner was terminated from service on 07.10.2015. The termination order was affirmed by the second and first respondents



through orders dated 05.04.2016 and 05.07.2017 respectively. Challenging these orders of termination, the present writ petition has been filed by the petitioner.

3. One of the main grounds raised by the learned counsel for the petitioner is that, during the course of enquiry, no opportunity was extended to the petitioner to let in any evidences and the enquiry came to be concluded on the same day by observing that the petitioner has not tendered his written explanation.

4. One of the basic principles in the conduct of a domestic enquiry is that, adequate opportunity is to be extended to the delinquent employee to substantiate his case. Likewise, the department is also required to let in evidences to substantiate the charges levelled against the delinquent. In the present case, no opportunity has been extended to the petitioner to examine the witnesses or produce documents to establish his case. The respondents also have not let in any oral or documentary evidences during the enquiry to substantiate that the petitioner was guilty of the charges.



5. This Court in an order dated 26.11.2010, made in W.P.No.23488 of 2010 had discussed the procedures for conducting a domestic enquiry. The relevant portion of the order is extracted hereunder:-

"6. It must be noted that this Court in B.Sivakumar Vs. The Managing Director, TASMAC Ltd., in W.P.No.6304 of 2009 dated 15.03.2010 after analyzing the provisions of various enactments applicable to TASMAC has finally held that the provisions of Section 41(1) of Tamil Nadu Shops and Establishments Act, 1947 and the Model Standing Orders framed by the State Government under Industrial Employment Standing Orders Act 1946 will apply. In the present case, the order of termination given to the petitioners do no measure to the standard prescribed therein. Inasmuch so no worthwhile enquiry was conducted, the impugned order is liable to be set aside.

7. As to what is the elementary principles of conducting a domestic enquiry came to be considered by the Supreme Court vide its judgment in Meenglas Tea Estate V.Workmen reported in AIR 1983 SC 1719. In that case, the Supreme Court took exception that in the name of enquiry, only the charge sheeted workman alone would be examined and there was no evidence let in by the employer who charge sheeted the workman. In



that context, in paragraph 4, the Supreme Court has held as follows:

“4The Tribunal held that the enquiry was vitiated because it was not held accordance with the principles of natural justice. It is contended that this conclusion as erroneous. But we have no doubt about its correctness. The enquiry consisted of putting questions to each workman in turn. No witness was examined in support of the charge before the workman was questioned. It is an elementary principle that a person who is required to answer a charge must know not only the accusation but also the testimony by which the accusation is supported. He must be given a fair chance to hear the evidence in support of the charge and to put such relevant questions by way of cross examination as he desires. Then he must be given a chance to rebut the evidence led against him. This is the barest requirement of an enquiry of this character and this requirement must be substantially fulfilled before the result of the enquiry can be accepted. A departure from this requirement in effect throws the burden upon the person charged to repel the charge without first making it out against him. In the present case neither was any witness examined not was any statement made by any witness tendered in evidence. The enquiry, such as it was, made by Mr.Marshall or Mr.Nichols who were not only in the position of judges but also of prosecutors and witnesses. There was no opportunity to the persons charged to cross-examine them and indeed they drew upon their own knowledge of the incident and instead cross-examined the persons charged. This was such a travesty of the principles of natural justice that the Tribunal was justified in rejecting



the findings and asking the Company to prove the allegation against each workman de novo before it."

6. Thus, the procedure adopted by the respondents in conducting the enquiry would stand vitiated and therefore, the consequential punishment imposed cannot be sustained. So also the orders passed in appeal by the second and first respondents requires to be set aside.

7. Furthermore, since this Court is setting aside the punishment only on the ground of procedural irregularity, it would be appropriate to give the respondents the liberty to proceed against the petitioner in accordance with the procedures contemplated for conducting a departmental enquiry.

8. In the light of the above findings, the impugned order of punishment passed by the third respondent dated 07.10.2015, which is confirmed by the second and first respondents in the impugned orders-in-appeal dated 05.04.2016 and 05.07.2017 respectively, are quashed. Consequently, there shall be a direction to the respondents to forthwith reinstate the petitioner back into service. However, it is open to the respondents to proceed against



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the petitioner, if they choose to do so, by following the proper procedures while conducting an enquiry and by giving adequate opportunity to the petitioner to let in oral and documentary evidences.

9. Accordingly, the writ petition stands allowed. No costs.

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Index:Yes/No

Speaking order/Non-speaking order

hvk

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M.S.RAMESH,J.

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