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W.P.No.27555 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

W.P.No.27555 of 2011

B.Askar

...Petitioner

Vs.

The District Manager,
TASMAC Ltd.,
Industrial Estate,
Kakkalur, Thiruvallur.

...Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent bearing proceedings in Se.Mu.Ka.No.A2-3179-2011, dated 21.07.2011 and quash the same and consequently direct the respondent herein to reinstate the petitioner as Shop Salesman.

For Petitioner : Mr.K.Mohamed Hussen
For Respondent : Mr.K.Balakrishnan
Counsel for TASMAC

ORDER

The Writ Petition is filed to call for the records of the respondent bearing proceedings in Se.Mu.Ka.No.A2-3179-2011, dated 21.07.2011, quash the same and consequently, direct the respondent to reinstate the petitioner as Shop Salesman.



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2.Learned counsel for the petitioner submitted that petitioner was appointed as Salesman in the TASMACH Shop No.8779, at Tiruvallur. Respondent conducted surprise inspection on 09.10.2010 and found that employees of the shop mixed water in the liquor bottles. All the employees of the shop were orally denied employment on the same day, without even conducting enquiry. Therefore, petitioner filed W.P.No.7993 of 2011. On 30.03.2011, in W.P.No.7993 of 2011, this Court directed the respondents to complete the enquiry against the petitioner and pass final orders on merits and in accordance with law within a period of eight weeks from the date of receipt of a copy of the order and till such time, the respondents are directed to pay the subsistence allowance to the petitioner. But, the respondent did not pay the subsistence allowance. However, to conclude the enquiry and pass final order, a show cause notice was issued to the petitioner on 03.06.2011. Pursuant to the show cause notice, petitioner submitted his explanation on 15.06.2011. Then the enquiry notice dated 23.06.2011 was issued to him to appear before the Enquiry Officer on 29.06.2011. It is submitted that no proper enquiry was conducted and only the statement of the petitioner was recorded. No documents were marked and no witnesses were examined and no cross examination was done.



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2.1.It is the further submission of the learned counsel for the petitioner that without following the principles of natural justice i.e., giving an opportunity to the petitioner to explain his case and without holding a proper enquiry, petitioner was terminated from service. Therefore, this Writ Petition is filed.

2.2.In support of his submission, he produced the orders passed by this Court in ***(i) A.Arivu Selvam and another Vs. The District Manager, The Tamil Nadu State Marketing Corporation Ltd, Perambalur District in W.P.Nos.18592 & 18593 of 2009 dated 19.04.2010.***

(ii) M.Govindan Vs. The District Manager & two others in W.P.No.15613 of 2009.

(iii) R.Anbazhagan Vs. The Managing Director, TASMAC & two others in W.P.No.1878 of 2011.

3.In response, learned counsel for the respondent submitted that the petitioner is not a permanent employee. Coming to know his role in mixing water in liquor bottle, he was terminated from service.



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4.Considered the rival submissions and perused the records.

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5.From the records produced and from the submissions of the parties, there is no dispute with regard to the fact that petitioner was a contract worker under the respondent on consolidated pay of Rs.2,000/- per month. The allegation against the petitioner is that, he along with other employees mixed water with the contents of the liquor bottle. However, it appears that, not even a show cause notice was issued to the petitioner before terminating him from service.

6.In the judgment relied in the case of ***A.Arivu Selvam and another Vs. The District Manager, The Tamil Nadu State Marketing Corporation Ltd, Perambalur District***, it was held as follows,

*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 chargesheeted workman alone would be examined and there was no evidence let in by the employer who chargesheeted the workman. In that context, in paragraph 4,*



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the Supreme Court has held as follows:

"4. The 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 was 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 nor was any statement made by any witness tendered in evidence. The enquiry, such as it was, made by Mr Marshall or



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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."

8. In the light of the above and there being no worthwhile enquiry conducted by the employer, the impugned orders will stand set aside. Both the writ petitions will stand allowed. No costs. Consequently, connected miscellaneous petitions are closed. However, it is open to the respondent TASMACH if they so desire to conduct a proper enquiry in accordance with law and in the light of the observation made by the judgment [referred to above](#).

7. In the case before hand, the principles of natural justice before terminating the petitioner from service was not followed as laid down in the judgment aforesaid. Therefore, this Court sets aside the impugned order in Se.Mu.Ka.No.A2-3179-2011, dated 21.07.2011 and directs the respondent to reinstate the petitioner without backwages. However, it is open to the respondent to conduct proper enquiry on the misconduct alleged against the



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petitioner and pass suitable orders.

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8. With the above directions, this Writ Petition is disposed of.

Consequently, the connected Miscellaneous Petition is closed. No costs.

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Index: Yes/No

Speaking order/Non-speaking order

sli

To

The District Manager,

TASMAC Ltd.,

Kakkalur, Thiruvallur.



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G.CHANDRASEKHARAN, J.

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