WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

W.P.No.28349 of 2011
and
M.P.No.1 of 2011

B.Senthilkumar ...Petitioner

Vs

The District Manager,
Tamil Nadu State Marketing
Corporation Ltd, (TASMAC),
Coimbatore Division, Coimbatore,
Tamil Nadu. ...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 in relating to the impugned order Na.Ka.369/04/A5 dated 04.12.2004, and quash the same, consequently direct the respondent to reinstate the petitioner in his service as a "Salesman" in the TASMAC Bar" at Coimbatore Division, with continuity of service, back wages and all other attendant benefits.

For Petitioner : Mr.R.Anjugam
for Mr.P.R.Thiruneelakandan
For Respondents : Mr.K.Satish Kumar,
Standing counsel (TASMAC)

https://www.mhc.tn.gov.in/judis

WEB COPY

ORDER

The Writ Petition is filed calling for the records of the respondent relating to the impugned order Na.Ka.369/04/A5 dated 04.12.2004, and quash the same, consequently direct the respondent to reinstate the petitioner in his service as a "Salesman" in the TASMAC Bar" at Coimbatore Division, with continuity of service, back wages and all other attendant benefits.

2.Learned counsel for the petitioner submitted that petitioner was appointed as Salesman in the TASMAC Shop No.1644, at Thudiyalur, Coimbatore. Respondent conducted surprise inspection on 04.12.2004 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. However, shop Supervisor was later reinstated into service. Petitioner was served with termination order in Na.Ka.369/04/A5 dated 04.12.2004.

2.1.It is the submission of the learned counsel for the petitioner that without following the principles of natural justice i.e., giving opportunity to the petitioner to explain his case and without holding a proper enquiry, petitioner

https://www.mhc.tn.gov.in/judis

WEB COPY

was terminated from service. Therefore, this Writ Petition is filed.

2.2.In support of her submission, she produced orders passed by this Court in **CDJ 2010 MHC 3226** in the case of ***A.Arivu Selvam and another Vs. The District Manager, The Tamil Nadu State Marketing Corporation Ltd, Perambalur District.***

3.In response, learned counsel for the respondent submitted that there was a huge delay in filing this Writ Petition. Though petitioner was terminated from service on 04.12.2004 by impugned proceedings in in Na.Ka.369/04/A5, he approached this Court only in the year 2011, i.e., nearly after 7 years. Petitioner is not a permanent employee. Coming to know his role in mixing water in liquor bottle, he was terminated from service.

4.Considered the rival submissions and perused the records.

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.1,000/- per month. The allegation against the petitioner is that, he along with other employees mixed

https://www.mhc.tn.gov.in/judis

WEB COPY

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 **CDJ 2010 MHC 3226** 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, 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*

WEB COPY

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 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*

WEB COPY

enquiry conducted by the employer, the impugned orders will stand set aside. Both the writ petitions will stand allowed. No costs. Consequenlty, connected miscellaneous petitions are closed. However, it is open to the respondent TASMAC 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.

This position was reiterated in **CDJ 2011 MHC 4407** in the case of ***M.Prakash Vs. The District Manager, Tamil Nadu and ors.*** It is pertinent to extract the relevant portion of the order,

5.It is the allegation of petitioner that the respondent authorities are resorting to termination of contract labourers for extraneous reasons citing the adding of water as adulteration, which appears to be an easy method to remove such workers without enquiry.

6. In V.L.. Lakshmanakumar v. The District Manager, "TASMAC" Limited, Madurai District, Madurai (2006) 1 MLJ 187: (2006, 1,C.T.C. 660) this Court had an occasion to consider identical issue of dismissal of an employee on the ground of adulteration by adding water and held that the order passed without following the due process of law was bad.

7. The relevant portion of the decision cited supra reads as

WEB COPY

follows at p. 188 of (2006) 1 MLJ 187:

"(5) However, a perusal of the impugned order shows that the petitioner was not dismissed pursuant to the contract. For the purpose of dismissal, the first respondent has relied upon a surprise inspection carried out in the TASMAC shop, which revealed that some of the bottles were adulterated by mixing water and that such, act of the staff of the TASMAC had brought disrepute to the Corporation. Therefore, the petitioner/Supervisor has been removed from service.

(6) By the above reasoning, the first respondent has found that the petitioner has committed certain misconduct and the impugned order is not an order of termination simpliciter. Whether an order is an order of simple termination or would amount to stigma, thereby resulting in civil consequences, is only to be determined considering the facts and circumstances of each case. A plain reading of the impugned order passed by the first respondent makes it clear that it is not an order of termination simpliciter.

(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 finding as to those charges. This proposition of law has been recently

WEB COPY

reiterated by the Apex Court in the judgment in State of Harxyana v. Satyender Singh Rathore (2005) 7 SCC 518: 2005-III-LLJ-7025. In that judgment, the Supreme Court has relied upon the earlier judgment in Dipti Prakash Banerjee v. Satyendra Nath Boase National Centre fox Basic Sciences, AIR 1999 SC 983: (1999) 3 SCC 60: 1999-1-LLJ-1054, 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.

(8) In view of the above pronouncement of Accordingly, the same e is set aside and the writ petition is allowed. However, the order of the Apex Court, the impugned order cannot be sustained. of this Court will not stand in the way of the respondents to initiate action against the petitioner strictly in terms of the appointment order. "

8. The above cited case squarely covers the fact of the present case. The impugned order of dismissal therefore is liable to be set aside with liberty to the respondents to initiate action as per law. The statement of the counsel for the petitioner that the petitioner will not claim backwages is recorded. The petitioner is entitled to be re-instated into service. The writ petition is allowed with the above terms. No Costs.

https://www.mhc.tn.gov.in/judis

WEB COPY

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 judgments aforesaid. Therefore, this Court sets aside the impugned order in Na.Ka.369/04/A5 dated 04.12.2004 and directs the respondent to reinstate the petitioner without backwages. However, it is open to the respondents to conduct proper enquiry on the misconduct alleged against the petitioner and pass suitable orders.

8.With the above directions, this Writ Petition is disposed of. Consequently, the connected Miscellaneous Petition is closed. No costs.

27.02.2024

Index:Yes/No
Speaking order/Non-speaking order
gd

WEB COPY

G.CHANDRASEKHARAN, J.

gd

To
The District Manager,
Tamil Nadu State Marketing
Corporation Ltd, (TASMAC),
Coimbatore Division, Coimbatore,
Tamil Nadu.

W.P.No.28349 of 2011

27.02.2024