

(2009) 12 MAD CK 0146

In the Madras High Court

Case No : Writ Petition No. 13221 of 2009 and M.P. No's. 1 and 2 of 2009

A. Karthikeyan

APPELLANT

Vs

The Managing Director Tasmac Ltd., The Senior Regional Manager Tasmac Ltd. and The District Manager II (Retail Vending) Tasmac Ltd.

RESPONDENT

Date of Decision : 11-12-2009

Acts Referred:

Evidence Act, 1872 — Section 58

Citation : (2010) 125 FLR 485 : (2010) 1 LLJ 623

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : N. Indumathi, for the Appellant; J. Ravindran, for the Respondent

Final Decision : Allowed

Judgement

K. Chandru, J.—Heard Ms. N. Indumathi, learned Counsel for the petitioner and Mr. J. Ravindran, learned Counsel for the respondents and perused the records.

2. The petitioner is a Salesman in the TASMACHOP shop. He has come forward to challenge the order dated 27.9.2005 passed by the third respondent, which was confirmed by the 2nd respondent by an order dated 14.7.2008 and further confirmed by the 1st respondent vide order dated 26.2.2009.

3. By the order dated 27.9.2005, the petitioner's service was terminated. There was a Special Squad visited the shop on 19.8.2005. On inspection, they found that the petitioner has adulterated water in the liquor and he was breaking the seal of the bottles and was selling in retail. Therefore, on the basis of the report given by the Special Squad, the petitioner's service was terminated. The petitioner filed a Writ Petition before this Court being W.P. No. 22809 of 2007. This Court directed the petitioner to send further representation on the termination. The petitioner sent a representation dated 2.5.2007. The said representation was rejected by the 2nd respondent by an order dated 14.7.2008.

In the said order, he had stated that the petitioner has given voluntary statement dated 19.8.2005, accepting his guilt, which is found in page 11 of the original file. Therefore, the charges were proved.

4. The petitioner sent a further representation to the 1st respondent dated 23.8.2008. In the representation he had stated that he was not guilty of the charges levelled based upon the inspection report of the Special Squad and notwithstanding the same, without an enquiry, he was terminated from service.

5. The 1st respondent by an order dated 26.2.2009 rejected the representation and in paragraph No. 6, he had stated that the petitioner, based upon the Inspection Report, had accepted the charges and signed in English. He has also further sent a letter dated 12.9.2005 to the District Manager that he has spent the amount towards medical expenses for having injured.

6. The petitioner also sent further representation to the District Manager stating that he has not involved in any irregularity. He was terminated along with all the shop personnel and therefore his case should be reconsidered. When there was no response, he has come forward to challenge the order, terminating the service.

7. Notice was ordered to the respondents. No counter affidavit has been filed. However, the learned Counsel for the respondents produced the file, in which at page 11, the alleged confession letter given by the petitioner finds a place. He also placed reliance upon the judgment of the Division Bench in Writ Appeal No. 1507 of 2007 relating to R. Venkateswaran v. the Managing Director, TASMAC Ltd., Egmore, Chennai dated 11.3.2008. He contended that since the petitioner has accepted the charges, there was no necessity to conduct any enquiry.

8. In paragraphs 5, 8 and 9, the Division Bench observed as follows:

5. The learned single Judge non suited the appellant on the ground that at the time of passing of the order, the entire file relating to the case had been placed before him and from the file it could be seen that the appellant has given a statement before the authorities accepting the guilt. When the guilt has been admitted, there is no necessity for the detailed enquiry, as contended by the learned Counsel for the appellant.

...

8. It is well settled that the appellant cannot change or improve his stand in each and every stage of litigation. It is a well recognised legal principle that admitted fact need not be proved as per Section 58 of the Indian Evidence Act. Reliance placed on the judgment of the Supreme Court referred to above is also not applicable, because in the case before the Supreme Court, there was no unconditional admission and on that basis the Supreme Court held that when the statement made by the appellant does not amount to clearly or unambiguous admission of his guilt, failure to hold a formal enquiry would certainly constitute a serious infirmity.

9. Here in this case, the learned single Judge has come to the conclusion on seeing the file that the statement made by the appellant is a clear unambiguous admission of the guilt. Further, a formal enquiry has also been conducted. Hence, we are of the view that the appellant has not made out any case for entertaining the appeal. The appeal is dismissed. No costs. The connected miscellaneous petition is consequently dismissed.

In the light of the same, the learned Counsel for the respondents wanted dismissal of the Writ Petition.

9. However, the learned Counsel for the petitioner Ms. Indumathi brought to the notice of this Court another judgment of the Division Bench of this Court in W.A. (MD) No. 27 of 2009 in the District Manager, Tamil Nadu State Marketing Corporation Limited (TASMAC), Madurai and Anr. v. S. Kottaisamy in support of her contention. In that case, the Division Bench held that when there is an allegation of involuntary nature of statement of mere acceptance of letter at the time of inspection by the squad, it is incumbent upon the respondents to conduct an enquiry. They have also distinguished the judgment of the Supreme Court in Dharmarathmakara Raibahadur Arcot Ramaswamy Mudaliar Educational Institution v. Educational Appellate Tribunal reported in 1997 (7) SCC 332 by stating that the case of Professor cannot be compared with the TASMAC Salesman. Therefore, the TASMAC employee, who is not well educated may possibly succumb to pressures in making such statements. Therefore, such a statement alone cannot be the basis for termination. Notwithstanding this observation, in paragraph 8, the Division Bench gave the following direction to the Corporation:

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 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 TASMAC shops set up a separate machinery for following the proper disciplinary procedure so that any action taken by TASMAC 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. We hope and trust that the appellant corporation will appreciate our observations in the proper perspective and take necessary measures to implement the proper procedure in taking disciplinary action against its employees in future.

10. In the light of the above direction and on finding that the sole basis of the termination was the letter given by the petitioner and there being no enquiry held against the petitioner, the impugned orders are set aside. The Writ Petition stands allowed. However, there will be no order as to costs. The petitioner is directed to be restored to service. If there is any other material in the hands of the respondents, they are at liberty to conduct enquiry in accordance with law and as per the directions by this Court referred to above. The connected Miscellaneous Petitions stand closed.