
(2009) 10 MAD CK 0339

In the Madras High Court

Case No : Writ Petition No. 2038 of 2009

E. Chinnappan

APPELLANT

Vs

The District Manager Tamilnadu State Marketing Corpn. Ltd.

RESPONDENT

Date of Decision : 22-10-2009

Acts Referred:

Citation : (2009) 10 MAD CK 0339

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : P. Athi Veera Rama Pandian, for the Appellant; J. Ravindran, for the Respondent

Judgement

P. Jyothimani, J.—The writ petitioners were appointed as Salesman and Bar Assistant respectively, in TASMAR retail Shop No. 694 at Chennai South. A perusal of the impugned orders would show that when there was a raid conducted on 30.3.2007, it was found that there was adulteration in the liquor bottles with water and the said staff members were placed under suspension.

2. It is stated that in the enquiry conducted by the respondents, the petitioner in W.P. No. 2038 of 2009, viz., E. Chinnappan had given an explanation that he was not involved in the adulteration process and that the adulteration was committed because of his negligence. In the explanation submitted by the petitioner in W.P. No. 2475 of 2009, viz., M. Ramasamy, he is stated to have disowned his responsibility in the adulteration process, further stating that due to medical reasons, he was not available in the shop and came to the shop only when the inspection was conducted. The impugned orders of termination came to be passed against the petitioners on the basis that the petitioners have admitted their involvement in the adulteration process and relying upon the report submitted by the experts, wherein it was found that an adulteration had been effected in the liquor bottles.

3. Even though in the impugned orders, it has been stated that within 30 days,

the petitioners could file an appeal before the appellate authority, the petitioners have raised certain vital points regarding the nature of enquiry conducted, which shows that principles of natural justice have not been followed in its proper sense.

4. As far as the alleged confession stated to have been made by the petitioner in W.P. No. 2038 of 2009, a reading of the letter given by the petitioner shows that he has stated that he has nothing to do with the adulteration, but at the same time, he has admitted his negligence, which cannot be a ground to decide that it is a confession given by the petitioner. In the explanation given by the petitioner in W.P. No. 2475 of 2009, he is stated to have disowned his responsibility in the adulteration process. In any event, there is absolutely no evidence to show that the petitioners were involved in the adulteration charge.

5. It is relevant to point out that a Division Bench of this Court, sitting in the Madurai Bench, had an occasion to deal with the writ appeal preferred by the TASMAL, in W.A.(MD.) No. 27 of 2009 dated 27.1.2009, wherein similar contentions were raised by the TASMAL, viz., such confessions should be taken as the proof against the shop staff by relying upon the judgment of the Apex Court in 1997 (7) SCC 332 (Dharmarathmakra Raibahadur Arcot Ramaswamy Mudaliar Educational Institution v. Educational Appellate Tribunal). This case of the Apex Court was referring to a Professor working in an educational institution, who is stated to have made certain confession, based on which the termination order came to be passed. But, the Division Bench has held that the confession statement made by a highly educated person holding a responsible post of a Professor cannot be equated to that of these sort of Salesmen working in TASMAL and held the same yardstick cannot be followed. The Division Bench, while confirming the order of the learned single Judge directing reinstatement, has observed in paragraph No. 4, which reads as follows:

4. When the respondent herein came forward with the writ petition contending that the said statement dated 19.4.2005 was not voluntary and when we peruse the said statement dated 19.4.2005, we are convinced that it would have been practicably not possible for the respondent to have written such a detailed statement running into 1 1/2 pages in typing while admitting his guilt. Therefore, when suspicion looms large in accepting the so-called statement dated 19.4.2005 said to have been given by the respondent herein, the learned Judge was perfectly justified in permitting the appellants to initiate proper disciplinary action in accordance with law. In those circumstances, we are not in a position to apply the decision relied upon by the learned Counsel appearing for the appellants reported in 1997 (7) SCC 332 (Dharmarathmakra Raibahadur Arcot Ramaswamy Mudaliar Educational Institution v. Educational Appellate Tribunal), inasmuch as that was a case where an educational institution proceeded against one of its professors, who is stated to have made a confession statement based on which the termination came to be issued. As between a professor and a TASMAL salesman, it is very difficult to apply the very same yardstick which was applied to the professor to a TASMAL employee. We are therefore not in a position to

apply the ratio of the said decision to the facts of the present case where there is every likelihood of the TASMACH employee, who is not very well educated, to succumb to such pressure while making statements when he is apprehended with certain charges. Moreover, in the case dealt with by the Honourable Supreme Court, the concerned professor did not resile from the statement made by her in response to the show cause notice issued to her.

6. It has to be noted that these petitioners are the persons who joined the services of the respondents not for leading a sophisticated life, but for their livelihood. In fact, in these cases, it is seen that at the time of joining the job, the petitioners were made to deposit a sum of Rs. 50,000/- each and so on and mostly people from the downtrodden state of the Society had opted to join such jobs by depositing such huge amounts. In such circumstances, such confession statements, stated to have been made at the time of inspection, cannot be a ground for the purpose of terminating their services, unless the charge against the petitioners are proved by concrete evidence.

7. The principles of natural justice in the process of administrative law is the same where a person is holding a high post or a person is holding a lower post in their jobs. Inasmuch as a decision has been taken under the impugned orders to terminate the services of the petitioners on the basis of the enquiry stated to have been conducted, by not even furnishing the enquiry report, but based on the alleged confession statements, it is difficult to accept the contention of the respondents that an enquiry had been conducted in this case and therefore, they should be directed to file an appeal.

8. In such view of the matter, the impugned orders are set aside, with a direction to the respondents to reinstate the petitioners expeditiously, making it clear that the petitioners shall not be entitled for salary for the period from the date of their termination till the date of such reinstatement. The writ petitions are disposed of accordingly. No costs.