
(2007) 02 MAD CK 0141

In the Madras High Court

Case No : Writ Petition No's. 2966 of 2005 and 44346 to 44355, 46337 to 46340, 47737 and 47738 of 2006

M.K. Vasu

APPELLANT

Vs

Tamil Nadu State Marketing Corporation Ltd.

RESPONDENT

Date of Decision : 27-02-2007

Acts Referred:

Citation : (2007) 02 MAD CK 0141

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : M. Ravi, in W.P. No. 2966/05, N.G.R. Prasad, for K. Thilageswaran, in W.P. Nos. 44346 to 44355/06, P. Muthukrishnan, in W.P. No. 46337 to 46340/06 and P. Muthukrishnan, in W.P. No. 47737 and 47738/06, for the Appellant; J. Ravichandran, for the Respondent

Final Decision : Allowed

Judgement

P. Jyothimani, J.—In W.P. No. 2966 of 2005, the petitioner challenges the order of the respondent dated 19.12.2004 under which the petitioner, who worked as Supervisor in retail vending shop of the respondent at Chithode, Erode Taluk and District, having been appointed on 16.02.2004 on contract basis, was placed under suspension on 08.06.2004 and subsequently, a charge memo was issued on 12.07.2004 to the effect that he has mixed water with liquor, disobeyed the direction of the Superior Officers, caused irregularities in opening the bottles and selling on retail basis and acted against the condition No. 4 of the appointment order. The petitioner has submitted his explanation on 27.02.2004 denying the charges. Under the impugned order dated 19.12.2004 however, stating that the shop's staff P.Vadivel, has committed the mistake and he has admitted the same by a letter dated 22.02.2004, by the impugned order dated 19.12.2004, by considering the said explanation and on the basis of taking account of the stock there was deficit and finding that the shop Supervisor and other staffs are jointly liable, removed the petitioner from service along with other shop staffs and making recovery of Rs. 40,321/- stated to be the loss caused to the respondent

and directing the balance payment to be paid by the petitioner and other shop staffs.

2. In this case, the respondent has not filed counter affidavit. The learned Counsel for the petitioner would submit that the petitioner was appointed on contract basis and as per the conditions of appointment he was liable to be removed or terminated at any time in case of breach of rules and regulations, apart from forfeiture of security deposit. However, it remains a fact that no enquiry was conducted and no opportunity was given to the petitioner and no enquiry report has been furnished to him.

3. In W.P. No. 46337 of 2006, the petitioner was appointed as Supervisor in the second respondent retail vending shop at Tirupur on a monthly rate of Rs. 2000/- per month and he deposited Rs. 50000/- towards caution deposit and the appointment was on 12.07.2004. A show-cause notice was given to the petitioner on 12.04.2005 as to why disciplinary action should not be taken against him for adulteration in the liquor bottles. The petitioner has already submitted his detailed explanation on 19.03.2005 and without framing any charge, the impugned order dated 26.04.2005 came to be passed, removing the petitioner from service, on the basis that an account was taken on 10.04.2005 when a flying squad inspected, finding irregularities. After the termination, the petitioner has made his representation on 26.07.2005.

4. In this case, even though the respondent has not filed any counter affidavit, the learned Counsel for the respondent would submit that the explanation was considered and final order passed as per the appointment order.

5. In W.P. No. 46338 of 2006, the petitioner was appointed as Supervisor on contract basis under the respondent on 28.11.2003 on the salary of Rs. 2000/- per month and he has paid a caution deposit of Rs. 50000/-. A show-cause notice was issued to him on 20.09.2005, as to why disciplinary action for adulteration should not be taken and the petitioner has submitted his explanation on 23.09.2005 denying the charge. Without conducting enquiry and without framing charges the termination order has been passed on 27.09.2005.

6. In W.P. No. 46339 of 2006, the petitioner was appointed as Supervisor on contract basis on 17.02.2004 on payment of Rs. 2000/- and security deposit of Rs. 50000/-. A show-cause notice was issued on 24.06.2005 regarding the adulteration for which the explanation was given on 27.07.2005 denying the charge and the ultimate termination order came to be passed on 15.05.2005 without framing charges and without conducting any enquiry.

7. In this case it is seen that when the petitioner has submitted his explanation on 27.07.2005 the termination order was passed even before that, namely, on 15.05.2005. It is also relevant to point out that the show-cause itself was given only on 24.06.2005 while termination order was passed on 15.05.2005.

8. In W.P. No. 47737 of 2006, the petitioner was appointed on 30.05.2005 in the

respondent retail vending shop as a Supervisor on a fixed salary of Rs. 3000/- per month and he has also paid the deposit of Rs. 50000/-. A show-cause notice was issued to him on 20.06.2005 based on some complaints to appear before the respondent on 21.06.2005. The petitioner has submitted his explanation on 21.06.2005. By the impugned order dated 22.06.2005 the petitioner was terminated from service without enquiry and without framing any charge.

9. In W.P. No. 47738 of 2006 the petitioner was appointed as a Supervisor in the respondent shop on 30.05.2005 on payment of Rs. 3000/- per month as salary and deposit of Rs. 50000/-. He was served with a show-cause notice on 14.06.2005 stating that the list regarding the required quantity, which was entrusted to him, has not been appropriately furnished to the office. Subsequently, on 22.06.2005 the petitioner was terminated from service without enquiry and without framing any charge.

10. In W.P. No. 44346 of 2006, the petitioner was appointed as a Supervisor under the respondent on 31.12.2003 on payment of Rs. 3000/- per month as salary and Rs. 50000/- as caution deposit. Without framing any charge and without affording any opportunity the impugned order dated 01.01.2005 came to be passed, terminating the petitioner from service on the basis of a surprise inspection stated to have taken place on 18.12.2004 and without affording any opportunity.

11. The respondent has filed counter affidavit. The main contention is that the special squad has found on 12.12.2004 certain irregularities. It is the case of the respondent that the charge memo was served to the petitioner through Area Supervisor and the petitioner has not chosen to give reply. However, it is stated that enquiry report has been received. Since the petitioner has not submitted his explanation, the impugned order is passed.

12. In W.P. No. 44347 of 2006, the petitioner was appointed as a Supervisor on 07.02.2004 on the salary of Rs. 3000/- per month and Rs. 50000/- was deposited. The impugned order of termination was passed on 07.05.2005 based on an alleged checking effected on 07.04.2005 by flying squad without conducting any enquiry, without giving any show-cause notice, without framing any charge and without giving opportunity to give explanation.

13. In this case also the respondent has filed the counter affidavit in the same line as it is in W.P. No. 44346 of 2006.

14. In W.P. No. 44348 of 2006, the petitioner was appointed as a Salesman in the respondent retail vending shop on 30.12.2003 on the salary of Rs. 2000/- per month and he has also deposited Rs. 15000/- under the order of termination dated 11.05.2005, the respondent has terminated the petitioner from service on the basis of a flying squad report dated 10.04.2005 without framing charge, without conducting enquiry and without giving opportunity to the petitioner to submit his explanation.

15. The respondent has filed counter affidavit in the same line as stated above in W.P. No. 44346 of 2006.

16. In W.P. No. 44349 of 2006, the petitioner was appointed as a Salesman on 09.12.2003 on the salary of Rs. 2000/- per month and he has deposited Rs. 15000/- and ultimately the termination order came to be passed on 01.01.2005 on the basis of a surprise checking by the District Manager dated 18.12.2006 without framing charge and without giving any opportunity to the petitioner.

17. The respondent has filed counter affidavit in the same line as stated in W.P. No. 44346 of 2006.

18. In W.P. No. 44350 of 2006, the petitioner was appointed as a Supervisor on contract basis on 02.01.2004 on the salary of Rs. 3000/- per month and he has deposited Rs. 50000/-. He was terminated from service on 01.01.2005 based on the surprised inspection on 18.12.2004 without framing charges without giving opportunity to the petitioner to explain and without conducting enquiry.

19. Here also the respondent has filed counter affidavit in the same line as stated in W.P. No. 44346 of 2006.

20. In W.P. No. 44351 of 2006 the petitioner was appointed as a Supervisor temporarily on 02.12.2003 on the salary of Rs. 3000/- and deposited Rs. 50000/-. He was terminated from service on 08.04.2005 without framing any charges, without conducting any enquiry, without giving any opportunity to the petitioner and without furnishing the enquiry report.

21. The respondent has filed counter affidavit in the same line as stated in W.P. No. 44346 of 2006.

22. In W.P. No. 44352 of 2006, the petitioner was appointed as Salesman on 30.12.2003 on payment of salary of Rs. 3000/- per month and he has deposited Rs. 50000/-. The petitioner was served with an order of termination on 14.05.2005 based on an alleged check effected on 10.04.2005 without framing any charge, without conducting enquiry, without furnishing enquiry report and without giving opportunity to the petitioner.

23. In this case also, the respondent has filed counter affidavit in the same line as stated in W.P. No. 44346 of 2006.

24. In W.P. No. 44353 of 2006, the petitioner was appointed as a Salesman on 31.12.2003 on the salary of Rs. 2000/- per month and he has paid a deposit of Rs. 15000/-. The petitioner was issued with a show-cause notice on 03.03.2005 based on an alleged inspection on 22.02.2005 finding that there is a shortage of Rs. 94,973/- and the petitioner has submitted his explanation on 08.04.2005. Without conducting enquiry, without framing any charge, the petitioner was terminated from service by the impugned order dated 28.04.2005.

25. The respondent has filed counter affidavit stating that opportunity was given and the petitioner has given his explanation and based on that the impugned

order came to be passed.

26. In W.P. No. 44354 of 2006, the petitioner was appointed as a Salesman on 07.01.2004 on the payment of Rs. 3000/- and he has deposited Rs. 50000/-, under the impugned order he was issued with a show-cause notice on 31.03.2005 stating that on an inspection on 31.03.2005 an adulteration was found in the liquor bottles. The petitioner has submitted his explanation on 04.04.2005 however, in the order dated 08.04.2005, the petitioner was terminated from service without framing charges, without conducting enquiry and without furnishing enquiry report.

27. In W.P. No. 44355 of 2006, the petitioner was appointed as a Salesman on 09.12.2004 on the salary of Rs. 2000/- and he has paid a deposit of Rs. 15000/-. He was terminated from service on 14.05.2005 on the alleged inspection on 10.04.2005 by the flying squad stating that there has been an adulteration in the liquor bottles and the said order was passed without framing charges, without enquiry and without furnishing the enquiry report.

28. In all these above cases, the learned respective counsels for the petitioners would submit that there has been no enquiry conducted at all and no charge has been framed and Enquiry Officer's report has not been furnished. In all these cases, the respondent rely upon the surprise inspection and stating the petitioners either as Supervisor or Salesman are liable to be removed summarily as per the orders of appointment and even then principle of natural justice requires a minimum opportunity, which has not been given in these cases and therefore, the entire proceedings are vitiated.

29. On the other hand, the learned Counsel appearing for the respondent would submit that as per the appointment order issued to the respective petitioners, the appointments are given on temporary basis and on contract basis and the clauses specifically state that they are liable to be terminated without assigning any reason and in these cases on inspection it was found that adulteration has been committed and therefore, in the interest of public the termination orders came to be passed and the petitioners have no substantial right to hold the post.

30. I have heard the learned Counsels for the petitioners as also the learned Counsel appearing for the respondent and perused the entire records.

31. It is seen that on perusal of the entire records that except in W.P. No. 2966 of 2005 in no one of the other cases any charges have been framed specifically against the petitioners. Even though it has been the case of the respondent in some cases issuing show-cause notice based on the surprise inspection and calling upon the petitioners concerned to give explanation for which the explanations have been submitted, it is not in dispute that without framing any specific charges and without conducting any enquiry and without furnishing enquiry report the order of termination have been passed.

32. In W.P. No. 2966 of 2005 there was a charge memo issued to the petitioner

on 12.07.2004, however, the charge memo itself contains a clause stating as if the show-cause notice why he should not be removed from service after eliciting various charges. The petitioner has submitted his explanation on 27.02.2004 and after explanation was received, on 19.12.2004 the order of termination came to be passed, on the basis of the explanation and not accepting the same. In this case also it is admitted that there was no enquiry conducted and no enquiry report has been submitted. Therefore, on the basis of records it is clear that in all these cases except in writ petition in W.P. No. 2966 of 2006, no specific charge has been framed against the petitioners by furnishing necessary materials, so as to enable the petitioners to submit their explanation.

33. It is also clear on records that no enquiry has been conducted in any of these cases, even though the respondent rely upon the report of the flying squad, etc. When the respondent wants to take any action based on the report of the flying squad, the basic principles of natural justice required at least the copy of such report to be furnished to the petitioners, so as to enable them to submit their explanation.

34. In all these cases even though the appointment given on contract basis or on temporary basis and even though the clauses of the appointment orders contemplate that the petitioners can be terminated at any time, I am of the considered view and it is also established principle of law that the principles of natural justice, which is inherent, contemplates a basic requirement of hearing the other side by giving adequate opportunity by conducting enquiry before removed, since by virtue of the appointment a civil right has certainly accrued to the petitioners.

35. In all these cases, I have absolutely no hesitation to come to the conclusion that no enquiry has been conducted and no enquiry report has been submitted and the basic requirement of informing to the petitioners about the report, which contains allegations against the petitioner has not been served. Therefore, the principles of natural justice is violated. It is unfortunate to note that in all these cases the petitioners have been appointed on a paltry amount of salary that too for the service to be rendered from morning 9 a.m. upto 12 p.m. in the night either on the salary of Rs. 2000/- as a Salesman or Rs. 3000/- as a Supervisor on furnishing the deposit of Rs. 15000/- and Rs. 50000/- respectively. It only reflects the magnitude of unemployment as to how it has deeply reached the society, which has made these unfortunate people with good qualifications to accept these posts for basic livelihood.

36. In such circumstances, the conduct of the respondent in not even heading to the basic principles of natural justice, is not only opposed to the principles of law but also against the basic human nature. The respondent being the Government agency exploiting the unemployment to the maximum possible extent cannot be permitted to follow such procedure, which is totally opposed to the basic principles of law. There is no doubt that in all these cases the findings have been arrived at against concerned petitioners behind their back, which is totally

against the principles laid down by the Hon''ble Supreme Court in State of Haryana and Another Vs. Satyender Singh Rathore, , wherein the Hon''ble Supreme Court by relying on the earlier judgment rendered in Dipti Prakash Banerjee Vs. Satvendra Nath Bose National center for Basic Sciences, Calcutta and Others, , has held that any finding arrived behind the back of the individual on the basis of allegation of misconduct without departmental enquiry, such order of termination should be held as void. Following the said judgement of the Hon''ble Apex Court this Court has had an occasion in V.L. Lakshmanakumar v. The District Manager, TASMAL Ltd., Madurai and Anr. reported in 2006 (1) CTC 660 in all most in similar circumstances and considering the contention of the respondent that the summary termination is possible as per the appointment order as held that such termination is not valid in law and on that basis set aside the said termination.

37. It is also brought to my notice that in yet another order of this Court rendered in N. Venkatachalam v. District Manager, Hosur, TASMAL Tirupur in W.P. No. 33507 of 2006 dated 09.10.2006 placing reliance on the above judgment reported in 2006 (1) CTC 660 has set aside the order of termination.

38. In view of the above said facts and circumstances of these cases, I have no hesitation to come to the conclusion that the impugned orders of termination passed in all these cases are void and violative of the principles of natural justice, since the same have been passed behind the back of the petitioners without affording opportunity to the petitioners. In view of the same, the impugned orders are set aside, however, this order will not stand in the way of the respondent in initiating appropriate action against the petitioners strictly in accordance with the law and in compliance with the principles of natural justice. The writ petitions stand allowed with cost of Rs. 1500/- to be paid by the respondent to each of the petitioners. Consequently, the connected M.Ps. are closed.