

(2013) 01 MAD CK 0076

In the Madras High Court

Case No : Writ Petition No. 6518 of 2012

P. Marimuthu

APPELLANT

Vs

The Managing Director Tamil Nadu State Marketing Corporation Ltd. CMDA Tower II, IV Floor, Gandhi Irwin Road, Egmore, Chennai - 600008, The Senior Regional Manager Tamil Nadu State Marketing Corporation Ltd. (Coimbatore Region) Near Kavundampalayam, Coimbatore - 30 and The District Manager Tamil Nadu State Marketing Corporation Ltd. (Coimbatore Region) Sooriyampalayam, Erode

RESPONDENT

Date of Decision : 09-01-2013

Acts Referred:

Citation : (2013) 01 MAD CK 0076

Hon'ble Judges : D. Hariparanthaman, J

Bench : Single Bench

Advocate : P. Athi Veera Rama Pandian, for the Appellant; S. Muthuraj, Government Advocate for TASMAC, for the Respondent

Judgement

D. Hariparanthaman, J.—The petitioner was appointed as a Shop Salesman in the TASMAC Retail Outlet, Shop No. 3613, in Erode

District, on 26.11.2003. He was paid consolidated pay of Rs. 1500/- per month. He was on leave from 19.01.2005 to 24.01.2005. While so, the

Shop was inspected by the third respondent on 21.01.2005. During the inspection, the third respondent found that in 7 liquor bottles, adulteration

was made by mixing water. Based on the same, a charge memo dated 07.03.2005 was issued to the petitioner and other co-employees

2. The petitioner gave his explanation refuting the allegations. He stated in his explanation that he was on leave on the day of inspection viz.

21.01.2005 and therefore, he was not responsible for the irregularities that was found at the time of inspection.

3. The petitioner was asked to appear for an enquiry before the third respondent on 14.03.2005. Accordingly, he appeared before the third

respondent. In the enquiry, he reiterated that he was not responsible for the irregularities that was found on 21.01.2005, since he was on leave on

that day. However, no witness was examined on the side of the Department. After recording the statement made by the petitioner, he was asked

to leave the venue of the enquiry.

4. Thereafter, the third respondent passed an order dated 27.04.2005 dismissing the petitioner from service.

5. Against the order of dismissal, the petitioner preferred an appeal to the second respondent and the same was rejected by the second respondent

vide order dated 01.10.2007, holding that though the petitioner was on leave on 21.01.2005, he was jointly responsible along with others for the

irregularities that was found on 21.01.2005.

6. The petitioner, thereafter, filed a review petition before the first respondent and the same was dismissed by the first respondent vide order dated

26.11.2010.

7. Challenging the aforesaid orders of the respondents, the petitioner has filed the present writ petition.

8. No counter affidavit is filed by the respondents. The learned Government Advocate for the respondents made submissions based on

instructions.

9. Heard the submissions made on either side.

10. The third respondent, in para 10 of his order dated 27.04.2005, has stated as follows:

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The third respondent found that the petitioner was also responsible for the irregularities that was found on 21.01.2005, though he was on leave on

that day.

11. The second respondent as well as the first respondent have reiterated the aforesaid position. The respondents have admitted that the petitioner

was on leave between 19.01.2005 and 24.01.2005 and he was not available when the inspection of the Shop was made on 21.01.2005. But still

the respondents chose to fix responsibility on the petitioner.

12. In my view, the respondents are not correct in fastening liability on the petitioner for the irregularities that was found on 21.01.2005, when he was on leave. In fact, there was also no fair enquiry conducted before passing the dismissal order. The dismissal order nowhere refers to examination of witnesses in the departmental enquiry, on behalf of the department and there is also no reference relating to production of any documents in support of the charges. On 14.03.2005, the petitioner was asked to appear for an enquiry and a statement was recorded from him. In my view, such an enquiry is not a fair enquiry and the ingredients of a valid enquiry are not present.

13. The Honourable Supreme Court in *Meenglas Tea Estate Vs. Its Workmen*, has laid down law about the minimum requirement of a valid

enquiry. The Supreme Court, in paragraph 4 of its judgment, observed 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 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.

14. In the normal course, I could have remanded the matter back to the third respondent to hold fresh enquiry. However, I am not inclined to do

the same, since I came to the conclusion that the petitioner cannot be held liable for the irregularities that was found on the day of inspection, when he was on leave.

15. In these circumstances, the impugned orders are set aside and a direction is issued to the respondents to reinstate the petitioner in service,

without backwages, but with continuity of service, within a period of four weeks from the date of receipt of a copy of this order. The writ petition

is disposed of with the above observation and direction. No costs.