

(2014) 08 MAD CK 0085

In the Madras High Court

Case No : Writ Petition (MD) No. 127 of 2012 and M.P. (MD) No. 1 of 2012

T. Dhandapani

APPELLANT

Vs

The Managing Director

RESPONDENT

Date of Decision : 20-08-2014

Acts Referred:

Citation : (2014) 08 MAD CK 0085

Hon'ble Judges : S. Nagamuthu, J

Bench : Single Bench

Judgement

S. Nagamuthu, J.—The petitioner was formerly working as the Supervisor of TASMACH Shop No. 5019 in Karur District. On 19.12.2009, the District Manager of TASMACH made a surprise inspection of the said shop. During such inspection, it is alleged that the petitioner was found selling liquors by mixing water. It is also alleged that though there was no bar attached to the said shop, there were water packets and tumblers indicating that the petitioner was making retail sale of liquors in the shop. Based on the said inspection, the District Manager by his proceedings in Na. Ka. C.V. 2/6026/2009, dated 29.01.2010, issued a charge memorandum to the petitioner containing as many as two charges, as indicated above. The petitioner denied the said charges. Not having been satisfied with the same, an enquiry was ordered. Enquiry was held, in which the petitioner participated. The Enquiry Officer finally submitted his report holding the petitioner guilty of the charges. Based on the same, the 3rd respondent by his proceedings in Na. Ka. C.V. 2/6026/2009/02, dated 12.03.2010, dismissed the petitioner from service. As against the same, the petitioner filed an appeal to the 2nd respondent on 21.04.2010. The 2nd respondent, in turn, by his proceedings in Se. Mu. Na. Ka. No. 1842/2010/E, dated 01.12.2010, dismissed the said appeal. As against the same, the petitioner preferred a Revision to the 1st respondent. The 1st respondent, in turn, by his proceedings in Na. Ka. No. 289/R1/2011, dated 02.07.2011, dismissed the same. The petitioner is aggrieved by the same and that is how he is before this Court with this writ petition.

2. I have heard the learned counsel for the petitioner and the learned counsel appearing for the respondent and I have also perused the records, carefully.

3. Though several grounds have been raised in the writ petition, the learned counsel for the petitioner would focus his arguments mainly on two grounds. The first ground is that the enquiry officer's report had gone beyond the scope of the charges framed, inasmuch as the enquiry officer held that there was excess amount found in the shop, though, according to the learned counsel, there was no charge relating to the same. The learned counsel would further point out that the impugned order of dismissal is based on the said finding of the excess amount in the shop, as well. This, according to the learned counsel, is illegal. Secondly, the learned counsel would submit that the enquiry officer found that the liquors which were kept for sale in the shop was adulterated. This conclusion was based on the report submitted by the Forensic Lab. But, according to the learned counsel, the said report was neither exhibited in the enquiry nor a copy of the same was furnished to the petitioner. Thus, the finding based on a document which is not before the enquiry officer is illegal and therefore the enquiry officer's report ought not to have been relied on by the disciplinary authority as well as other authorities, the learned counsel contended.

4. The learned counsel would further submit that absolutely there is no evidence let-in before the enquiry officer to show that water packets and tumblers were kept in the shop indicating retail sales. The learned counsel would further submit that here is a case where there is no evidence to hold the charges proved. He would further point out that these grounds have not been considered by any of the respondents. In such view of the matter, according to the learned counsel, the impugned order dismissing the petitioner from service is liable to be set aside.

5. But, the learned counsel appearing for the respondents would vehemently oppose this writ petition. He would submit that the petitioner had committed a grave misconduct by adulterating the liquor kept for sale, by mixing water. The learned counsel would further submit that this fact has been duly proved by the Analyst Report. He would point out that the Analyst Report indicates that the liquor kept in the shop was substandard because of mixing of water. The learned counsel would further submit that there was no bar attached to the shop but, however, the petitioner indulged in illegal activity to sell water packets for mixing the same with liquors and he had also kept tumblers for the use of the consumers. The learned counsel would submit that this has caused more loss to the exchequer of the respondent Corporation. The learned counsel would further submit that appropriate charge memorandum was issued, enquiry was held, enquiry officer found the charges proved and based on the same, the order of dismissal has been passed which does not require any interference at the hands of this Court.

6. I have considered the above submissions carefully.

7. As I have already pointed out, there were only two charges framed, relating to

(i) sale of liquor by adulterating the same with water; and (ii) selling the same on retail basis in the shop itself. The charge memorandum does not speak of any deficit in cash or excess cash in the account of the shop. But, a reading of the Enquiry Officer's Report would go to show that the Enquiry Officer had given a finding that during the inspection of the District Manager, excess amount to the tune of Rs. 575/- was found. When there is no charge framed in respect of the same, the finding recorded by the enquiry officer is illegal, because the same has been recorded in vacuum without affording any opportunity to the petitioner. Since the order of dismissal has been influenced by this finding of the enquiry officer also, in my considered opinion, the order of dismissal deserves to be interfered with.

8. Yet another major point raised by the learned counsel for the petitioner is that the finding of the Enquiry Officer is based on the report submitted by the Chemical Analyst of the Government Forensic Lab. In that report, it appears that it had been stated that the alcoholic content in the liquor sent for chemical examination was below the standard. But, unfortunately, the said report has not been made available at the time of enquiry or at-least now. It is not known as to how the enquiry officer could refer to a document which was not made available before him even. If once the reference to the said document goes, absolutely there is no other material to show that the liquor which was kept for sale was mixed with water. Above all, there is no other evidence let-in, either oral or documentary, to clinchingly prove these aspects. In view of the above, I have to necessarily hold that none of the charges has been proved. Therefore, the impugned order of dismissal passed by the 3rd respondent and confirmed by respondents 1 and 2 is liable to be interfered with.

9. Now turning to the backwages, in my considered opinion, the petitioner is not entitled for backwages, the reason being that there was no evidence that the petitioner had not been employed elsewhere gainfully. Applying the principle of ? No Work, No Pay?, I hold that the petitioner is not entitled for arrears of backwages but, his past salary is to be calculated for the purpose fixing his future salary.

10. In the result, the writ petition is allowed and the impugned order is set aside with a direction to the respondents to reinstate the petitioner in service within a period of four weeks from the date of receipt of a copy of this order. It is further directed that the petitioner shall not be entitled for arrears of backwages but, his backwages will be calculated for the purpose of fixing his future salary. No costs. Connected M.P. (MD) No. 1 of 2012 is closed.