



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.10.2016

CORAM:

THE HONOURABLE DR. JUSTICE S.VIMALA

W.P (MD) No.20136 of 2016

and

W.M.P (MD) No.14428 of 2016

T.Saravanan

:Petitioner

Vs.

1.The Managing Director,
TASMAC Ltd.,
CMDA Tower,
Egmore, Chennai.

2.The Second Regional Manager,
TASMAC Ltd., Trichy Region,
Trichy.

3.The District Manager,
TASMAC Ltd., Karur District.

:Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records relating to the impugned order passed by the 3rd respondent in Na.Ka.C.V2/620/2015 dated 06.10.2016 and the consequential order passed by the 3rd respondent in Na.Ka.C.V2/0395/2016 dated 08.10.2016 and quash the same.

For Petitioner : Mr.S.Gokul Raj

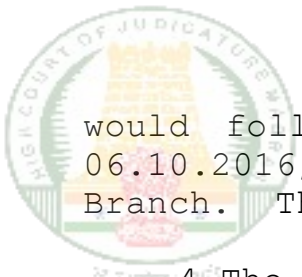
For Respondents : Mr.M.Muniasamy,
Standing Counsel for TASMAC.

O R D E R

This writ petition has been filed for issuance of a Writ of Certiorari praying to quash the impugned order passed by the 3rd respondent in Na.Ka.C.V2/620/2015 dated 06.10.2016 and the consequential order passed by the 3rd respondent in Na.Ka.C.V2/0395/2016 dated 08.10.2016.

2.Heard the learned counsel appearing for the petitioner and the learned Standing Counsel for TASMAC, who took notice for the respondents. By consent, the writ petition itself is taken up for final disposal.

3.The case of the petitioner is that the petitioner is working as a Supervisor in TASMAC Shop No.4934 at Karur. He opened the shop at 1 O' Clock on 06.10.2016, whereas the scheduled time to open the shop is 12.00 p.m. Alleging that the same is the serious cause notice has also been issued to him, calling upon the petitioner to submit the explanation within a period of seven days, failing which, warning that disciplinary proceedings



would follow. In the meantime, by the impugned order, dated 06.10.2016, the petitioner has been transferred to Administrative Branch. This order is under challenge in this writ petition.

4. The learned Standing Counsel for the respondents would submit that after considering the attitude of the petitioner, the third respondent has rightly passed the impugned transfer order and the same do not require any interference.

5. Towards repudiating the contention of the respondent, the learned counsel for the petitioner relied upon the Judgment of the Hon'ble Supreme Court in *Somesh Tiwari v. Union of India* and others reported in (2009)3 MLJ 272 (SC), wherein in paragraph No.20, it has been held as follows:

"20. The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground i.e., on the allegations made against the appellant in the anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal".

6. It would also be appropriate to report the decision reported in 1979 (1) LLJ 139, (*P. PUSHPAKARAN v. COIR BOARD AND ANOTHER*), wherein it has been held that the Court is entitled to find out what exactly motivated the transfer and if there is indirect intention to punish the employee, then the transfer is illegal. The relevant observation reads as under:-

The right to transfer an employee is a powerful weapon in the hands of the employer. Sometimes it is more dangerous than other punishments. Recent history bears testimony to this. It may, at times, bear the mask of innocuousness. What is extensible in a transfer order may not be the real object. Behind the mask of innocence may hide sweet revenge, a desire to get rid of an inconvenient employee or to keep at bay an activist or a stormy petrel. When the Court is alerted, the Court has necessarily to tear the veil of deceptive innocuousness and see what exactly motivated the transfer. This Court can and should, in cases where it is satisfied that the real object of transfer is not what is apparent, examine what exactly was behind the transfer.

It is clear from the dictum laid down in cases relating to transfers, that when an order of transfer is made otherwise than in public interest or for no administrative reasons and in the circumstances amounting



to punishment or with mala fide intentions, that the transfer order gets exposed to challenge."

7.A perusal of the transfer order would go to show that transfer has been ordered only by way of punishment. The above said decision is squarely applicable to the facts and circumstances of the present case and therefore, the impugned transfer order dated 06.10.2016 made in Na.Ka.V2/620/2015 by the third respondent, is set aside and the writ petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar(CS)

To

- 1.The Managing Director,
TASMAC Ltd.,
CMDA Tower,
Egmore, Chennai.
- 2.The Second Regional Manager,
TASMAC Ltd., Trichy Region,
Trichy.
- 3.The District Manager,
TASMAC Ltd., Karur District.

+One cc to Mr.S.GokulRaj, Advocate, SR.No.61522

smn
RL/5C/2P/SK/SKN/SARI/21.10.2016

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