

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 04.10.2019
CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.26198 of 2019
and
W.M.P.Nos.25566 & 25567 of 2019

K.Kumar

.. Petitioner

-vs-

1.The Managing Director,
Tamilnadu State Marketing
Corporation Ltd (TASMAC),
CMDA Tower-II, IV Floor,
Gandhi Irwin Bridge Road,
Egmore, Chennai-600 008.

2.The Senior Regional Manager,
Chennai Region,
Tamilnadu State Marketing
Corporation Ltd (TASMAC),
735, IV Floor, L.L.A.Building,
Anna Salai, Chennai,
Tamil Nadu-600 002.

3.The District Manager,
Chennai (North)
T.N.State Marketing Corporation Ltd (TASMAC)
IMFS DEPORT, Bangalore High Road,
Chembarambakkam Village
Thiruvallur district

..Respondents

Petition under Article 226 of the Constitution of India
praying for issuance of Writs of Certiorari to call for the
records of the 1st respondent in connection with the impugned
orders passed by him in R.C.No.R2/6958/2019, dated 20.08.2019
and quash the same.

For Petitioner : Mr.K.Venkatramani, Senior Counsel
assisted by Mr.M.Muthappan

For Respondents : Mr.M.John Kennedy,
Standing Counsel for TASMAC

ORDER

This Writ Petition has been filed by the petitioner seeking for issuance of Writ of Certiorari to call for the records of the 1st respondent in connection with the impugned orders passed by him in R.C.No.R2/6958/2019, dated 20.08.2019 and quash the same.

2. The petitioner while working as Salesman in TASMAC shop No.8781 at Maduravoyal Erikarai Signal, Chennai, came to be placed under suspension based on certain lapses alleged against him. Thereafter, the petitioner appears to have approached the second respondent office on 11.02.2019 (Grievance Monday), seeking for his reinstatement. All of a sudden, the vigilance officials conducted a surprise raid and seized a sum of Rs.18,100/- carried by the petitioner on the allegation that the petitioner brought the said amount to offer the same as illegal gratification to the second respondent.

3. The Vigilance Officials registered a case in Cr.No.10/AC/2019 CCI against the second respondent and the name of the petitioner was also included therein as suspected accused. While so, the first respondent issued proceedings in Rc.No.R2/6958/2019 dated 20.08.2019, and directed the petitioner along with other personnel to be transferred from TASMAC Shop and posted in the insignificant postings in the remote areas and consequently directed the District Managers of Chennai region to post the petitioner and other personnel in the respective postings immediately in the concerned district. Aggrieved by the same, the petitioner has come forward with the present Writ Petition.

4. Learned counsel for the petitioner would submit that the petitioner is an innocent and has nothing to do with the crime wherein, the second respondent was involved and the Vigilance Officials have unnecessarily included the petitioner in the criminal proceedings and the petitioner had only visited office of the second respondent on the grievance Monday only to

ventilate his grievance as regards his reinstatement. However, unfortunately, the petitioner was made scape goat and based on the proceedings initiated against the second respondent, the transfer order was issued against the petitioner proposing to transfer and post him in the insignificant postings in the remote area.

5. The learned counsel would point out that along with the petitioner other personnel were also proposed to be transferred in such areas, who are poor employees of the Corporation serving as supervisors and salesmen and the transfer order is tainted with mala fides and colourable exercise of administrative power and it is clearly punitive in nature and therefore, the same is liable to be interfered with.

6. The learned Standing Counsel appearing for the respondents (TASMAC) would submit that the transfer order has been issued against the petitioner and other personnel based on the DVAC proceedings wherein the petitioner was allegedly involved and a case in Cr.No.10/AC/2019 CCI was registered. In order to enable the DVAC to conduct a free and fair enquiry, it is incumbent upon the department to take effective measures by transferring the personnel to insignificant postings in remote areas. Therefore, the learned counsel would submit that no mala fide can be attributed against the order of transfer inflicted against the petitioner and others and the petitioner can very well seek for re-transfer after conclusion of the DVAC proceedings and the authority will consider the same depending upon the outcome of the DVAC proceedings. Therefore, at this stage, the impugned order of transfer cannot be interfered with.

7. Heard the learned counsel for the petitioner, the learned Standing Counsel for the respondents and perused the entire materials placed on record.

8. Admittedly, during the surprise raid by the Vigilance Officials at the office of the second respondent, the petitioner was found in possession of Rs.18,100/- and according to the Vigilance Officials, the said amount was brought by the petitioner to offer as bribe to the second respondent and thereby DVAC proceedings were initiated vide Cr.No.10/AC/2019 CCI wherein the petitioner was also cited as suspected accused.

9. The learned Standing Counsel for the respondents produced a copy of the letter dated 05.08.2019, addressed by the Additional Secretary, Home, Prohibition and Excise Department, Secretariat, Chennai-600009 to the first respondent, recommending to transfer the suspected officers, including the

petitioner from the office of the second respondent, who were involved during the surprise check conducted on 11.02.2019 at the office of the second respondent and post them in the insignificant posts in remote areas immediately so as to enable the DVAC to conduct a fair and free enquiry. Pursuant to the same, consequently, the first respondent has issued the impugned proceedings, directed the District Managers of Chennai region to post the shop Personnel including the petitioner to the insignificant postings in the remote areas. Therefore, on perusal of the entire proceedings it would reveal that the order of transfer issued against the petitioner is only on the administrative grounds and in order to enable the DVAC to conduct the free and fair enquiry of a case wherein the petitioner was allegedly involved. Therefore, the contention raised by the learned counsel for the petitioner that the order of transfer is tainted with mala fides, cannot be sustained. Therefore, even whether the transfer of the petitioner is punitive or not it cannot be probed into at this stage since admittedly as against the petitioner, DVAC proceedings were pending. In fact, time and again, this Court as well as the Hon'ble Apex Court have categorically held that the transfer of public servant made on administrative grounds or in public interest, could not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules or on the ground of mala fides.

10. In this case, absolutely this Court does not find any mala fide in the present impugned order on transfer in order to interfere with the same. Therefore, this Court does not find any scope to interfere with the transfer order impugned in the writ petition.

11. For the foregoing reasons, the writ petition is dismissed as devoid of merits. However, the petitioner is at liberty to make a representation to the authority either after closure of the enquiry in the DVAC proceedings or after a period of six months. Any such representation being made by the petitioner, the respondents are directed to consider the same in accordance with law and pass appropriate orders therein. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

To

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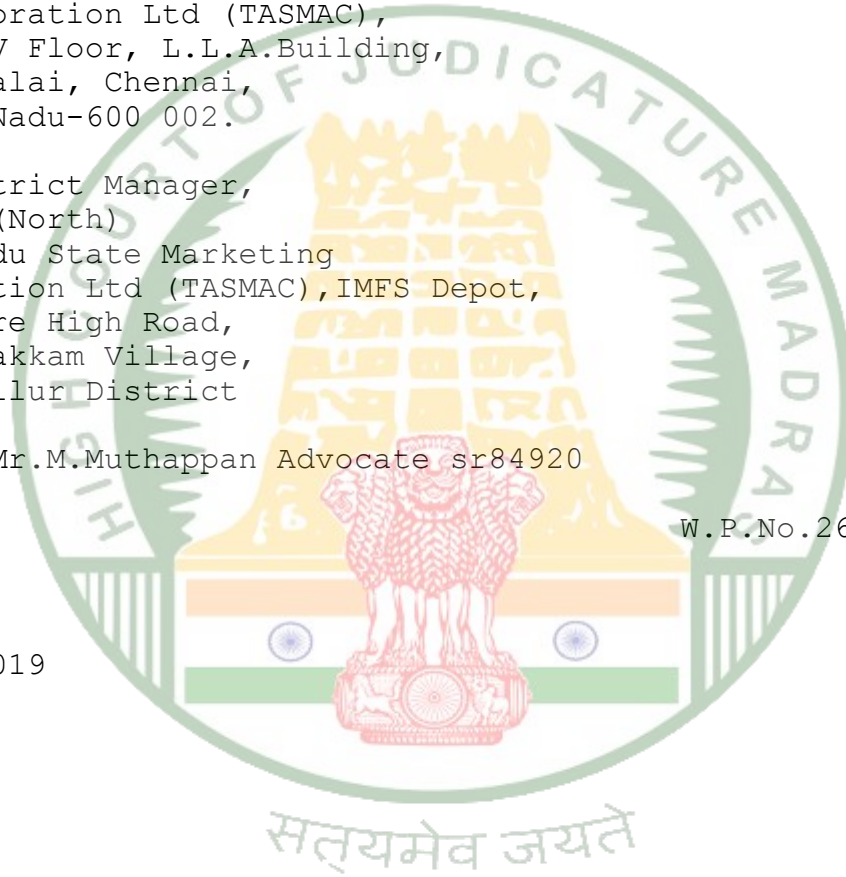
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+1 cc to Mr.M.Muthappan Advocate sr84920

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