

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.10.2019

CORAM

THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

W.P.No.28747 of 2019
and
WMP.Nos.28497 & 28498 of 2019

K.Mohanraj

... Petitioner

Vs

- 1.The Managing Director,
Tamilnadu State Marketing Corporation Ltd.,
(TASMAC)
CMDA Tower-II, IV Floor,
Gandhi Irwin Bridge Road,
Egmore, Chennai-600008.
- 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-600002.
- 3.The District Manager,
Kancheepuram (North),
Tamilnadu State Marketing Corporation Ltd.,
(TASMAC),
Tirumazhisai, Kancheepuram North District.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified or any other appropriate writ or order or direction in the nature of a writ, calling for the records of the first respondent in connecting with the impugned orders passed by him in Rc.R2/6958/2019 dated 20/08/2019 and quash the same in so far as the petitioner is concerned.

For Petitioner : Mr.Venkataraman
Senior Counsel
Assisted by Mr.M.Muthappan

For Respondents 1-3 : Mr.M.John Kennedy
for (TASMAC)

O R D E R

This Writ Petition has been filed by the petitioner, seeking for the issuance of the writ of certiorari to call for the records of the first respondent in connection with the impugned orders passed by him in R.C.R2/6958/2019 dated 20.08.2019 and quash the same in so far as the petitioner is concerned.

2. The petitioner, while working as salesman in TASMAC shop No.4335, Alapakkam, Perungalathur 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 day), seeking for his reinstatement, all of a sudden the vigilance officials conducted surprise raid and seized the amount carried by the petitioner on the allegation that the petitioner brought the said amount to offer the same as illegal gratification to the Officer of the second respondent.

3. The Vigilance Officials registered a case in Cr.No.10/AC/2019 against the officer of the second respondent and the name of the petitioner was also included therein as suspected accused. Thereafter, by proceedings dated 02.03.2019, the petitioner was reinstated and posted as salesman in Shop No.4483, Vengaivasal, Medavakkam, Kancheepuram North District. While so, the first respondent issued proceedings in Rc.No.R2/6958/2019 dated 20.08.2019, 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 innocent and has nothing to do with the crime wherein, the officer of 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

day 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 officer of 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 malafides 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 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 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 malafide 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 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.9,000/- and according to the Vigilance Officials, the said amount was brought by the petitioner to offer as bribe to the officer of the second respondent and thereby DVAC proceedings were initiated vide Cr.No.10/AC/2019 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 malafides, 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 malafides.

10. In this case, absolutely this Court does not find any malafide 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/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

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+1cc to Mr.M.Muthappan, Advocate Sr.84380

W.P.No.28747 of 2019
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srg 09/12/2019

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