



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.01.2022

CORAM :

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THE HON`BLE MR.JUSTICE B.PUGALENDHI

W.P(MD) No.4718 of 2020 & 3349 of 2021
and
WMP(MD) Nos.4090 of 2020 & 2704 & 2705 of 2021

M.SubramanianPetitioner in
W.P(MD) No.4718 of 2020

A.RameshPetitioner in
W.P(MD) No.3349 of 2021

Vs.

1.The Senior Regional Manager,
Tamilnadu State Marketing Corporation Ltd,
No.100, Annanagar,
Madurai - 625 020.

2.The District Manager,
Tamilnadu State Marketing Corporation Ltd,
Nagercoil,
Kanyakumari District.

.....Respondents in both WPs

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for the records pertaining to the impugned order issued by the second respondent in his proceedings in Na.Ka.No.Aa1/3617/2020, dated 21.02.2020 AND Na.Ka.No.A1/4774/2021, dated 10.02.2021 and quash the same.

For Petitioner	:Mr.G.Raghunathan (In W.P(MD) No.4718 of 2020)
For Petitioner	:Mr.Jerin Mathew (In W.P(MD) No.3349 of 2021)
For Respondents	:Mr.B.Jameel Arasu Standing Counsel(In both WPs)

C O M M O N O R D E R

These writ petitions are filed as against the order of transfer.

<https://hcservices.ecourts.gov.in/hcservices/> 2.Both the writ petitions are pertaining to the order of



transfer passed by the Tamilnadu State Marketing Corporation Ltd and therefore, this Court is taking up both the writ petitions together and dispose of the same by way of a common order.

3.The petitioner in W.P(MD)No.4718 of 2020 was working as Supervisor in TASMAC Shop No.4722, Nagercoil, Kanyakumari and the petitioner in W.P(MD) No.3349 of 2021 was working as Salesman in TASMAC Shop No.4837, Kanyakumari District. During the surprise inspection conducted by the flying squad in the above said shops, the Corporation found that these petitioners were involved in commission of selling the liquor bottles for more than MRP rate and therefore, they were transferred, by the orders impugned in these writ petitions. Challenging the same, the present writ petitions have been filed.

4.Learned Counsel appearing for the petitioners submits that the impugned orders have been passed without conducting an enquiry and therefore, the orders are liable to be set aside. The learned counsel has also relied on the orders of this Court in W.P (MD) No.20512 & 20552 of 2019, dated 31.10.2019, in support of his contention, where, similar order of transfer was set aside by this Court.

5.Mr.Jammel Arasu, learned Standing counsel appearing for the TASMAC made his submissions by relying upon the circular issued by the Department, Tamilnadu State Marketing Corporation Ltd, in Na.Ka.No.R-2/14589/2019, dated 21.01.2019 submits that in order to maintain certain discipline and to ensure that the salesmen and supervisors are selling the liquor bottles in the TASMAC shops, as per the MRP rates, the Department has issued the circular. If any person is found to be committed violation of MRP, he would be imposed with penalty of Rs.10,000/- and he would also be liable to be transferred from the existing shop to another Shop/Godown. He further submits that the aforesaid circular was also under challenge before this Court in W.P(MD) No.2242 of 2020 and the same was dismissed by this Court on 17.12.2020. The learned Standing Counsel has also relied upon the judgment of this Court in a batch of writ petition in W.P(MD) No.905 of 2020 etc.,wherein, similar transfer orders were challenged that it would amount to double jeopardy and this Court has dismissed the writ petitions by referring the Circular dated 21.01.2019. Therefore, these writ petitions are liable to be dismissed, in the light of the orders passed by this Court as above.

6.This Court paid its anxious consideration to the rival submissions made and also perused the materials placed on record.

7.The petitioners were transferred on certain MRP violations committed by them in the capacity of Supervisor and Salesman. Their grievance is that even without conducting enquiry, they were transferred. The Department has issued a



Circular in Na.Ka.No.R-2/14589/2019, dated 21.01.2019, in order to maintain discipline among the staff of TASMAC. As contended by the learned standing counsel appearing for the respondent Corporation, the aforesaid Circular was challenged in W.P(MD) No.2242 of 2020 and the same was dismissed by this Court on 17.12.2020 in the following terms.

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"5. On perusal of the Circular dated 21.01.2019, it appears that in case, if anybody's selling the liquor bottles for more than the M.R.P., the respondents can impose a fine along with G.S.T., and in addition to that, they can also transfer. This Court is of the view that when a person is involved in a malpractices, it is the duty of the respondents to take adequate measures to prevent this type of malpractices. So, with that intention only, the Circular has been issued and in order to prevent frequency of malpractices, it is mandatory to make transfer and the same cannot be considered as a double punishment as stated by the learned counsel for the petitioner. In the present case, the fine amount has not been paid. In the TASMAC Shops, when the malpractices are found or if there is any wrong movement or certain illegalities, it is the discretion of the respondents to pass transfer orders and the same cannot be challenged and unless and until some stringent measures are taken by the respondents against the wrong doers, there is no chance for the respondents to curtail these type of illegalities. Hence, this Court do not find any merit in the present writ petition. Accordingly, this Writ Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed."

8.It is seen that some of the TASMAC employees have challenged the transfer orders in batch of writ petitions in W.P(MD) No.905 of 2020 etc., and the same was dismissed by this Court on 08.10.2020, in the following terms:-

"7. This Court is unable to comprehend as to how these transfer orders can be successfully questioned by these petitioners. All that the Corporation has done is to relocate the petitioners to a different shop/outlet or a Depot in the interest of overall administration of the Corporation in order to minimise the effect of frequent malpractices indulged in by the vast majority of the employees. Such initiative in nature, calling for interference with the orders. In fact, this Court is of the view that the Corporation has been treating these violations with needless leniency and relocating them only to a nearby Shop or Depot within the same region. Therefore, the petitioners cannot have any cause for complaint at all against the impugned action of the



Corporation. Further, the petitioners, who were found to have violated the M.R.P., norms and made illegal revenue out of it cannot have any legitimate cause for approaching this Court questioning the transfer orders. It is always open to the respondent TASMAL to take effective initiative in order to infuse discipline among its employees and prevent them from the recurring acts of malpractices. Confronted with large scale acts of misconduct by the employees across the State, the minimum deterrent action the Corporation could take is that transfer of the employees concerned as a warning preceding a impending serious action. If such deterrent action is to be interfered by this Court, it could only lead to proliferation of malpractices undermining public interest at large. Such mass transfers in public interest with a view to arrest the repeated subversion of discipline by the vast majority of the employees ought not to be interfered with as being punitive. On the other hand, such transfers are impelled by administrative necessity to bring about a semblance of orderliness in the affairs of the Corporation vis-a-vis its employees"

9. In the light of the above orders, this Court is not inclined to entertain these writ petitions and accordingly, these writ petitions are dismissed. Considering the submission made by the learned counsel for the petitioners that the impugned orders have been passed without conducting any enquiry, and it is seen that the respondent arrived at a conclusion by way of surprise inspection alone that these petitioners were involved in MRP violation, it is open to the respondent Corporation to conduct an enquiry with regard to the allegations, after providing an opportunity of hearing to the petitioners and to take further course of action. No costs. Consequently, connected Miscellaneous petitions are closed.

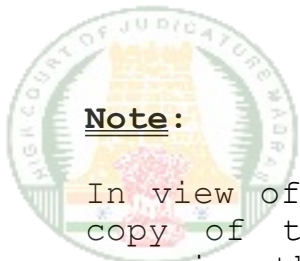
Sd/-

Assistant Registrar (CS-II)

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/ /2022

Sub Assistant Registrar (CS)



Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Senior Regional Manager,
Tamilnadu State Marketing Corporation Ltd,
No.100, Annanagar,
Madurai - 625 020.
- 2.The District Manager,
Tamilnadu State Marketing Corporation Ltd,
Nagercoil,
Kanyakumari District.

Common Order made in
W.P(MD) No.4718 of 2020 &
3349 of 2021
and
WMP(MD) Nos.4090, 2704 &
2705 of 2020
25.01.2022

PKP/22.03.2022/5P/3C