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W.P.No.13729 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 08.03.2023**

CORAM

**THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM**

**W.P.No.13729 of 2013**

**and**

**M.P.No.1 of 2013**

Mrs.Jessi Florence

... Petitioner

Vs.

1.Himachal Pradesh Horticulture,  
Produce Marketing and Processing,  
Corporation Ltd., rep. by its  
Regional Manager,  
34/1, A-3, Ennore Express High Road,  
Thiruvottriyur,  
Chennai – 600 019

2.The Commissioner,  
Office of the Municipality,  
Thanjavur.

... Respondents

**Prayer:** Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of certiorari, quashing the order passed by the first respondent terminating the salesmanship F.No.hpmc-M-TJR BUS STAND/2012-13 and dated 08.03.2013.



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For Petitioner : Mr.A.Kalaivanan  
For R1 : Mr.C.S.K.Sathish  
For R2 : Mr.N.Dilip Kumar

## **ORDER**

The order passed by the 1<sup>st</sup> respondent terminating the salesmanship dated 08.03.2013 is under challenge in the present writ petition.

2. The 1<sup>st</sup> respondent Himachal Pradesh Horticulture Produce Marketing and Processing Corporation Limited is the tenant under the 2<sup>nd</sup> respondent Thanjavur Municipality. The 1<sup>st</sup> respondent / Corporation was doing business under the name and style of Himachal Pradesh Horticulture Produce Marketing and Processing Corporation Limited, a Government undertaking. The object of the 1<sup>st</sup> respondent is to promote the business of Horticulture Produce such as Apple Juice and other Fruit Juices, marketing all over India.

3. The petitioner was appointed as Sales Woman and she was in-charge of the entire business activities of the 1<sup>st</sup> respondent at Thanjavur. The petitioner was in-charge of the business at Thanjavur for several years and



she had been paying the rent to the 2<sup>nd</sup> respondent and also paying the electricity charges and other necessary charges to the Government Department.

4. The grievance of the writ petitioner is that her salesmanship was terminated by the 1<sup>st</sup> respondent on 08.03.2013 without affording an opportunity to her and thus, she was constrained to move the present writ petition.

5. The learned counsel for the 1<sup>st</sup> respondent and the learned counsel for the 2<sup>nd</sup> respondent jointly brought to the notice of this Court that the sales activities had been totally stopped even before passing of the order of termination in the year 2013 and the writ petitioner instead of settling the accounts filed the writ petition and is taking undue advantage of the pendency of the writ petition.

6. The learned counsel for the 1<sup>st</sup> respondent and the learned counsel for the 2<sup>nd</sup> respondent jointly brought to the notice of this Court that the writ petitioner herein earlier filed W.P.(MD).No.5718 of 2013 challenging the



very same termination order dated 08.03.2013 and the Madurai Bench of the Madras High Court dismissed the writ petition on 10.04.2013 with the following observations:

*“4. The contract, which is the subject matter of the writ petition is nothing but a commercial transaction. The petitioner was appointed as a franchisee by the first respondent on the basis of agreement. The said agreement contains certain terms and conditions. According to the second respondent, the petitioner violated the terms and conditions of the agreement and she purchased products of other companies and committed defaults in making payment. Those two reasons were shown as grounds for cancelling the franchise of the petitioner.*

*5. The contract in question is not a statutory contract. The writ petition is not the remedy in a matter of this nature. It is open to the petitioner to work out her remedy in accordance with the terms of contract and in accordance in law.*

*6. The writ petition is dismissed with the above observation. Consequently, connected M.P.(md).Nos.1 & 2 of 2013 are also dismissed. No costs.”*



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7. The said writ petition was dismissed on 10.04.2013 and the present writ petition was instituted on 30.04.2013, 20 days after the dismissal of the earlier writ petition by the Madurai Bench of Madras High Court.

8. The Madurai bench has already held that the writ petition is not maintainable, since it is contractual obligation between the parties and adjudication must be done before the proper Forum to resolve the issues. Instead of resolving the issues in the manner known to law, the writ petitioner has again filed a fresh writ petition before the Principal bench by impleading the very same respondents and by challenging the very same termination order issued by the 1<sup>st</sup> respondent on 08.03.2013.

9. Thus, the writ petitioner suppressed the fact regarding the order passed by the Madurai Bench of Madras High Court in W.P.(MD).No.5718 of 2013 and filed the present writ petition. The present writ petition was listed on several occasions and when it was heard by this Court 06.11.2019 there was no representation for the petitioner. With a view to afford an opportunity to the petitioner, the matter was ordered to be listed under the caption “For



Dismissal". During the next hearing the writ petition was dismissed for non-prosecution by this Court on 07.11.2019. Subsequently, a miscellaneous petition was filed in W.M.P.No.5939 of 2020 in W.P.No.13729 of 2013 and this Court restored the writ petition by passing an order on 28.02.2020.

10. Since it is brought to the notice of this Court that the petitioner has abused the judicial process and suppressed the fact regarding the earlier writ petition filed by her before the Madurai Bench of Madras High Court in W.P.(MD).No.5718 of 2013, which was dismissed, there is no reason to give any further opportunity to the writ petitioner.

11. Considering the fact that the petitioner has suppressed the fact regarding the filing of earlier writ petition, which was dismissed by the Madurai Bench of Madras High Court and further, the business activities of the 1<sup>st</sup> respondent at Thanjavur had been closed even before passing of the termination order in the year 2013, the grounds raised in the present writ petition are unacceptable. More so, the petitioner is liable for abuse of judicial process and accordingly, the writ petition stands dismissed with the cost of Rs.50,000/- (Rupees Fifty Thousand), which is to be paid to the High Court



Legal Services Authority, Chennai by the petitioner within a period of two weeks from the date of this order. Consequently, connected Miscellaneous Petition is closed.

12. List the case “For Reporting Compliance” before this Court on 23.03.2023.

**08.03.2023**

Jeni  
Index : Yes  
Speaking order  
Neutral Citation : Yes

**Note:** Registry is directed to list the matter “For Reporting Compliance” on payment of cost by the petitioner.

To

1. The Regional Manager,  
Himachal Pradesh Horticulture,  
Produce Marketing and Processing,  
Corporation Ltd.,  
34/1, A-3, Ennore Express High Road,  
Thiruvottriyur,  
Chennai – 600 019

2. The Commissioner,  
Office of the Municipality,  
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**S.M.SUBRAMANIAM, J.**

Jeni

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