BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.03.2024

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.1415 of 2024
and WMP(MD) Nos.1449, 1451 & 3362 of 2024

1. R.Indiran
2. P.Sureshkumar
3. T.Nagarajan
4. S.Sengishkhan
5. N.Suthakar
6. M.Murugan
7. Karthikeyan
8. S.Selvakumar
9. M.Baskaran

... Petitioners

Vs

1. The Managing Director,
   Tamilnadu State Marketing Corporation Ltd (TASMAC),
   CMDA Towers -II, 4th Floor ,
   Egmore, Chennai - 600-018.

2. The General Manager (W and A),
   Tamilnadu State Marketing Corporation Ltd (TASMAC),
   CMDA Towers -II, 4th Floor ,
   Egmore, Chennai - 600-018.

3. The Senior Regional Manager,
   Tamilnadu State Marketing Corporation Ltd (TASMAC),
   No.100, Anna Nagar,
   Madurai -625 020.

4. The District Manager,
   Tamilnadu State Marketing Corporation Ltd (TASMAC),
   Theni District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned transfer order issued by the 2nd respondent vide Proc.in.M1/318/2023, dated 12.01.2024 and quash the same and consequently directing the 4th respondent to allow the petitioners herein to continue to work as Junior Assistants in the Office of the 4th respondent office as usual.

For Petitioners	:	Mr.S.Ramakrishnan
For Respondents	:	Mr.P.Veera Kathiravan Additional Advocate General Assisted by Mr.S.Sivanesan Standing Counsel

ORDER

The present writ petition has been filed challenging the impugned transfer order issued by the 2nd respondent vide Proc.in.M1/318/2023, dated 12.01.2024 and consequently directing the 4th respondent to allow the petitioners herein to continue to work as Junior Assistants in the Office of the 4th respondent office as usual.

2(i).All the petitioners have been discharging their duties as Junior Assistants under the 4th Respondent Office. On 10.11.2023, at about 13.45 hours, the Deputy Superintendent of Police, Vigilance and Anti-Corruption Department, Theni, accompanied by one Singaravelan and other department officials have conducted an inspection at the official premises of the 4th Respondent, including the godown situated thereon. During such period of inspection, 22 employees of TASMAC were present. Out of such 22 employees, 9 persons holding the post of Junior Assistants, i.e., the petitioners herein, were also present. During the search, the inspection team particularly searched all the Almirahs, Shelves, etc., situated in the office of the 4th Respondent and the godown premises. In the course of inspection, the inspecting parties found a sum of Rs.12,410/- lying adjacent to the Computer

Room in the backside situated on the western side of the Administrative Office. Further, another sum of Rs. 5,500/- was found lying in the backside of UPS. Yet another sum of Rs. 9,000/- was found lying in same room near the southern side table attached to the wall and another sum of Rs.500/- was found lying in the western side of the godown premises. Thus, a total sum of Rs.27,410/- unaccounted amount was found in those places.

(ii).Following which, an inspection report was sent by the Deputy Superintendent of Police, Vigilance and Anti-Corruption, Theni to the Directorate of Vigilance and Anti-Corruption Department, Chennai. A copy of the report sent by the Directorate of Vigilance and Anti-Corruption, Chennai was served on the 2nd Respondent. Following which, the 2nd Respondent has issued the impugned order of transfers, dated 12.01.2024 by which all the 9 petitioners are ordered to be transferred and posted to the Head Office at Chennai. Challenging the same, this writ petition came to be filed.

3.The learned Senior Counsel appearing for the petitioners submitted that the very nature of the impugned order of transfer itself would suffice to prove that the transfer is not effected on administrative exigency, but the same is a punitive measure. On that sole ground, he insisted for interfering with the impugned transfer order and pressed for allowing the writ petition.

4.(i).Per Contra, the 2nd Respondent has filed a counter affidavit and the learned Additional Advocate General submitted that, the report of the Vigilance and Anti-Corruption Wing has exposed an unaccounted amount to a tune of Rs.27,410/-, which was found in the premises under the control of various persons, including the petitioners in this writ petition. The Vigilance and Anti-Corruption Wing has further recommended appropriate disciplinary action against all the 15 persons, who were present at the premises during the time when the said unaccounted money were recovered under its file number SC.85/2023/TASMAC/TN. That apart, he said that in the daily ledger maintained at the said premises, which accounts for the cash in hand of each persons, the cash which was already accounted for and found in the person of each respective individual as per the ledger had no explanation as to the recovered amount of Rs. 27,410/-.

(ii).Accordingly, only based on the report of the Directorate of Vigilance and Anti-Corruption, the impugned order of transfer, dated 12.01.2024 has been issued directing the 9 individuals including the petitioners to be transferred to different sections in the Corporate Office at Chennai. He insisted that the interest of the organization that is TASMAC has to be protected. The transfer orders were in the interest of justice and proper administration and are not certainly punitive in nature. He submitted that the involvement of the individuals and the unaccounted money amassed would be a serious consideration for issuance of such a transfer order and the same need not be interfered.

(iii).He further submitted that the transfer orders had been taken on all the individuals concerned and not on specific individuals. That apart, the TASMAC administration is in the process of taking steps to ensure detailed inquiry on all the individuals concerned in the said issue. Only based on the prima facie consideration of the facts, circumstances, the extent of evidence and inquiry, the petitioners has been transferred as per law.

(iv).The petitioners had been transferred pending the completion of the domestic inquiry and the ascertainment of each person's role in unaccounted amount recovered during the surprise check necessitates the transfer order. The transfer direction is not punitive in nature and do not warrant any consideration for the petitioners. In view of the same, he pressed for dismissal of the writ petition.

5.Heard, the learned counsel appearing for the petitioner and the learned Additional Advocate General appearing for the respondents. Carefully perused the materials available on record.

6.A careful perusal of the impugned transfer order, dated 12.01.2024 would reveal that the same has been issued by the second respondent only as per the instruction of the Directorate of Vigilance and Anti-Corruption Chennai. In the same order, the proceedings of Directorate of Vigilance and Anti-Corruption, dated 22.11.2023 has been cited as reference. The second respondent by his counter affidavit has reiterated that only based on the report of the Directorate of Vigilance and Anti-Corruption, the impugned order of transfer, dated 12.01.2024 directing the nine individuals including the petitioners to be transferred to different sections in the Corporate Office at Chennai came to be issued.

7.It is further submitted by the learned Additional Advocate General that only based on the prima facie consideration of facts, circumstances, the extent of evidence and enquiry, the petitioners have been transferred as per law. It was further contended by the learned Additional Advocate General that the TASMAC administration is also in the process of taking steps to ensure detailed enquiry on all the individuals, including the petitioners in the issue. It is fully admitted by the respondents that only on the basis of the report submitted by the Vigilance and Anti-Corruption Department based on the surprise inspection/checks conducted on 10.11.2023 at the official premises of the fourth respondent including the godown, the impugned order of transfer has been issued.

8.The respondents have issued a Code namely Code of Prevention and Detection of Fraudulent Acts in Tamil Nadu State Marketing Corporation Limited, 2014 (herein referred to as 'the Code'), to facilitate the development of control that would aid in the prevention and detection of fraud against TASMAC and to promote consistent organizational behaviour by providing guidelines and assigning responsibility for the development of control for anti-fraud activities, conduct of investigations on fraud or suspected fraud activities and to prescribe appropriate disciplinary action. Clause 2(e) of the Code defines the word fraud as follows:

“(e) Fraud" includes wrongful or criminal deception, willful acts, omissions, concealments of fact, abuse of power or any other

acts fitted to deceive committed by a Person (either acting individually or in combination with other Persons) with intent to cause wrongful gain to self or to any other entity and/or loss to TASMAC or injury to TASMAC's interests (including TASMAC's reputation). Abetment of any act mentioned above is also "Fraud". The above acts constitute Fraud irrespective of whether they actually result in any wrongful gain or loss.
The following acts are illustrative and are not exhaustive of "Fraud":
i. Misappropriation or embezzlement of funds/cash, securities, products or stock/materials of TASMAC, supplies or other assets by any means etc."

9.The investigation procedure in Clause 6 (a) and (b) of the said Code mandates that, the TASMAC reserves the right to deploy, decoy and other methods to unearth the fraudulent act of any person based on complaint and the cost of decoy may be recovered from the fraudster and that the person concerned shall be informed in writing of the alleged fraud giving necessary details to enable him to understand the fraud alleged against him and he should be given an opportunity to explain the charges levelled against him. Obviously, in the instant case a surprise inspection was conducted by the Department of Vigilance and Anti-Corruption in the premises of the fourth respondent, as a result of which an amount of Rs.27,410/- was recovered along with various incriminating documents.

10.That apart, the said recovered amount has been declared by the inspection parties as unaccounted money in terms of the ledger maintained in the fourth respondent premises. Following which, a report has been received by the second respondent from the Vigilance and Anti-Corruption Wing under its file number SC.85/2023/TASMAC/P&D. It is admitted by the second respondent that only on the basis of the said report the impugned order of transfer came to be passed.

11.Under the facts and circumstances of this case, though the TASMAC has a right to deploy and adopt other methods to unearth the fraudulent act of the suspected persons in case of evidence and prima facie consideration of facts and enquiry, then the person concerned is entitled to be informed in writing of the alleged fraud giving necessary details to enable him to understand the allegations against him and he should be given with an opportunity to explain the charges leveled against him. The impugned order of transfer clearly goes to show that the same is an outcome of the inspection conducted by the Vigilance and Anti-Corruption Department and the same is punitive in nature.

12.The order in question would attract the principle of malice in law, as far as considering the fact that despite receipt of a report adverse to the petitioners and despite a prima facie case being made, the petitioners are not put on notice on the adverse report as against them and were not provided with an opportunity of hearing before effecting the impugned transfer order. Though the TASMAC reserves the right to deploy and reserves the right to adopt other methods to unearth the fraudulent act as against any person based on a complaint even assuming that transfer would be covered under the word other methods, if an order of transfer is passed in lay of a disciplinary proceeding, which is likely to be initiated then the same is liable to be set aside for having been passed without giving an opportunity of hearing to the petitioners. The respondents even without issuing a show cause notice have deliberately transferred the petitioners and the same would amount to colourable exercise of powers.

13.In view of the same, as per the settled proposition of law, the impugned transfer order, dated 12.01.2024 is hereby quashed. However, the respondent shall be at liberty to initate appropriate departmental action against the petitioners in accordance with law from the stage of issuance of show cause notice, if so advised. Accordingly the writ petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

19.03.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
PNM

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L.VICTORIA GOWRI, J.

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