



W.P.(MD).Nos.6378 of 2024 etc., batch

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.03.2024

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).Nos.6378 to 6382 of 2024

and

W.M.P.(MD)Nos.5974 to 5981, 5983 and 5984 of 2024

W.P.(MD)No.6378 of 2024

Velmurugan

...Petitioner

Vs.

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

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

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

... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned transfer order issued by the 3rd respondent in his proceedings in Na.Ka.No.1026/2024/A1, dated 08.03.2024 and quash the same as illegal and consequently directing the respondents to allow the petitioner herein to continue to work as Supervisor at TASMACH Shop No.8549, situated at Chinnamanur, Theni District.

W.P.(MD)No.6379 of 2024

Madasamy

...Petitioner

Vs.

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

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

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

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records pertaining to the impugned transfer order issued by the 3rd respondent in his proceedings in Na.Ka.No.1026/2024/A1, dated 08.03.2024 and quash the same as illegal and consequently directing the respondents to allow the petitioner herein to continue to work as Salesman at TASMACH Shop No.8549, situated at Chinnamanur, Theni District.

W.P.(MD)No.6380 of 2024

Saravanan

Vs.

...Petitioner

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

2.The Senior Regional Manager,
Tamilnadu State Marketing
Corporation Ltd., (TASMAC).
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3.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, to call for the records pertaining to the impugned transfer order issued by the 3rd respondent



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in his proceedings in Na.Ka.No.1026/2024/A1, dated 08.03.2024 and quash the same as illegal and consequently directing the respondents to allow the petitioner herein to continue to work as Salesman at TASMACH Shop No.8549, situated at Chinnamanur, Theni District.

W.P.(MD)No.6381 of 2024

E.Sasikumar

...Petitioner

Vs.

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

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

3.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, to call for the records pertaining to the impugned transfer order issued by the 3rd respondent



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in his proceedings in Na.Ka.No.1026/2024/A1, dated 08.03.2024 and quash the same as illegal and consequently directing the respondents to allow the petitioner herein to continue to work as Salesman at TASMACH Shop No.8549, situated at Chinnamanur, Theni District.

W.P.(MD)No.6382 of 2024

Chinna kamuthurai

...Petitioner

Vs.

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

2.The Senior Regional Manager,
Tamilnadu State Marketing
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No.100, Anna Nagar,
Madurai-625 020.

3.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, to call for the records pertaining to the impugned transfer order issued by the 3rd respondent in his proceedings in Na.Ka.No.1026/2024/A1, dated 08.03.2024 and quash the



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same as illegal and consequently directing the respondents to allow the petitioner herein to continue to work as Salesman at TASMACH Shop No.8549, situated at Chinnamanur, Theni District.

In all Writ Petitions:

For Petitioner : Mr.Karthikeya Venkatachalapathy,
For K.Rajesh

For Respondents : Mr.R.Baskaran,
Additional Advocate General,
Assisted by
S.Sivanesan,
Standing Counsel

COMMON ORDER

These writ petitions have been filed seeking to quash the impugned proceedings dated 08.03.2024 and consequently directing the respondents to allow the petitioners to continue to work at TASMACH Shop No.8549, situated at Chinnamanur, Theni District.

2. All the petitioners herein are the Supervisor and Salesmen respectively, working in the TASMACH Shop No.8549, Chinnamanur, Theni district. A representation was made by one Raja Mohammed, District



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Chairman, Consumer Rights Protection Council, Madurai, through email to the Principal Secretary to the Government, Home, Prohibition and Excise Department, alleging that TASMACH retail vending Shop personnel working in Shop No. 8549, Chinnamanur, Theni district, particularly one Gubendran has been selling liquor bottles more than the MRP price. On the basis of the said representation, the District Collector, Theni has sent a letter addressed to the Joint Secretary to Government Prohibition and Excise, stating that the Managing Director TASMACH, Chennai has recommended to the Senior Regional Manager, TASMACH Madurai region for transferring all the 13 employees working in TASMACH Shop No.8549, Chinnamanur, Theni.

3. Following which a surprise check was conducted in the said shop and it is alleged by the authorities that irregularities have been identified in the said shop. In the meanwhile, the Joint Secretary wanted to ensure that necessary action has been taken on the recommendation of the District Manager / TASMACH and to transfer 13 personnel from the said shop. Simply on the basis of a communication sent by the 2nd respondent, addressed to the 3rd respondent, the 3rd respondent in a most mechanical and arbitrary manner issued a transfer



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order, transferring all the petitioners from the present Shop No.8549 situated at Chinnamanur, Theni district to various other shops in the said district. Challenging the same, these writ petitions came to be filed.

4. The learned counsel for the petitioners submitted that the very reading of the impugned transfer order itself would reveal that the same is punitive in nature and on that basis alone the impugned transfer orders need to be interfered with. Hence, he pressed for allowing the writ petitions.

5. Per contra, the learned Additional Advocate General, Mr.R.Baskaran appearing for the Standing counsel for the respondents Mr. Sivanesan submitted that there is nothing punitive in the impugned transfer orders, but the said transfer order is issued on administrative exigencies and all the petitioners have been transferred to another shop which is situated within the same district and hence, the same need not be interfered with.

6. Heard the learned counsel for the petitioner and the learned Additional Advocate General appearing for the respondents and carefully perused the materials available on record.



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7. The impugned transfer orders dated 08.03.2024 would clearly elaborate that the said transfer orders has been issued only as a consequence to the representation made by one Thiru. Raja Mohammed as against the employees of Shop No.8549 to the Secretary of the Department of Home, Tamil Nadu. It is further elaborated in the impugned order that based on the said complaint, the District Collector of Theni had directed the Deputy Commissioner to immediately inspect the TASMACH Shop No.8549 and on inspection certain irregularities were identified, as a result of which for administrative exigencies all the 13 employees working at there has been transferred.

8. The Government of Tamil Nadu has notified a code to facilitate the development of controls that will aid in the prevention and detection of fraud against Tamil Nadu State Marketing Corporation Limited (Tasmach or the company) and to promote consistent organizational behavior by providing guidelines and assigning responsibility for the development of controls for anti-fraud activities, conduct of investigations on fraud or suspected fraud activities



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and to prescribe appropriate disciplinary action and the said code is named Code of Prevention and Detection of Fraudulent Acts in Tamil Nadu State Marketing Corporation Limited-2014 (herein after to be mentioned as the Code). Clause 2 (e) of the Code defines 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.”

9. The Code elaborates investigation procedure under clause 6 of the same and clause 6(b) mandates 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.

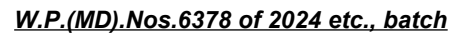


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10. However, contrary to the mandates of the said Code in the instant cases, the petitioners on the allegation of certain undisclosed irregularities has been transferred in the name of administrative exigency without putting them on notice, but after mentioning in the impugned transfer orders that the said orders has been issued as an effect of a complaint which has been lodged by one Thiru. Raja Mohammed to the Principal Secretary to Government, Home of Tamil Nadu. That apart, the impugned order clearly reveals that the irregularities had been identified in a surprise inspection conducted by the Assistant Commissioner, Excise.

11. It is needless to say that the public servants can be transferred to any place across the state and are duty bound to comply with the same with an understanding that transfer is an incident of service. But a transfer effected on the ground of certain undisclosed allegations about which the petitioners are not put on notice would certainly amount to violation of their fundamental rights under article 14, 15(1) and 16(2) of the Constitution of India and the same is obviously stigmatic as it would label and identify them without adjudication or justification.



“19. Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where inter alia mala fide on the part of the authority is proved. Mala fide is of two kinds - one malice in fact and the second malice in law.

20. *The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground i.e. on the allegations made against the appellant in the anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal”*



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13. Adopting the dictum laid by the Hon'ble Apex Court in Somesh Tiwari's case, this Court is of the considered view that in the lis in hand the impugned transfer orders came to be issued only as a consequence to a complaint which has been made by one Raja Mohammed to the Secretary, Department of Home. Though it is claimed by the respondents that a surprise inspection was conducted in the said shop by an Assistant Commissioner of Excise, without informing the petitioners who are concerned with the alleged irregularities, in writing of the alleged irregularities giving necessary details to enable them to understand the irregularities alleged against them and without giving an opportunity the impugned order of transfers came to be issued. The said exercise has been initiated violating the mandates of clause 6(b) of the code. The respondents ought to have given an opportunity to the petitioners before effecting the impugned transfers.

14. In view of the same, all the impugned transfer orders dated 08.03.2024, vide proceedings bearing Na.Ka.No.1026/2024/A1 is hereby quashed. Consequently, the respondents are at liberty to initiate disciplinary proceedings as against all the petitioners as contemplated by the Code after



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giving opportunity to all the petitioners to submit their explanation and take appropriate action against them in accordance with law, if so advised.

15. Accordingly, these Writ Petitions are disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

22.03.2024

NCC : Yes / No

Index : Yes / No

Internet : Yes

Sml

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