



W.A.(MD)No.1038 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 01.07.2024

CORAM:

THE HONOURABLE **MR.JUSTICE R.SURESH KUMAR**

AND

THE HONOURABLE **MR.JUSTICE G.ARUL MURUGAN**

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and

C.M.P.(MD)No.7589 of 2024

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

2.The General Manager (W & A),
Tamil Nadu State Marketing Corporation
Limited (TASMAC),
CMDA Towers II, 4th Floor,
Egmore, Chennai-600 018.

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

4.The District Manager,
Tamil Nadu State Marketing Corporation
Limited (TASMAC),
Theni District.

... Appellants

-Vs-



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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

... Respondents

PRAYER: Appeal filed under Clause 15 of Letters Patent, praying this Court to set aside the order dated 19.03.2024 made in W.P.(MD)No.1415 of 2024 on the file of this Court.

For Appellants : Mr.K.Sathish Kumar
for Mr.S.Sivanesan, Standing Counsel
For Respondents : Mr.K.P.S.Palanivelrajan,
Senior Counsel
for Mr.S.Ramakrishnan

JUDGMENT

[Judgment of the Court was delivered by *R.SURESH KUMAR, J.*]

The respondents are the employees of the appellants ie., Tamil Nadu State Marketing Corporation Limited (in short TASMAL). Against all these respondents, it seems that Vigilance and Anti-Corruption Department has given an adverse report. Pursuant to the said adverse report, the appellant Department decided to transfer all these employees. When such a transfer order had been



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made in respect of these respondents, by order dated 12.01.2024, it was put under challenge in the Writ Petition jointly filed by all these respondents in W.P.(MD)No.1415 of 2024.

2.The Writ Court, which heard the Writ Petition, ultimately, allowed the same by order dated 19.03.2024, which is impugned herein.

3.Assailing the said order passed by the Writ Court, the learned Standing Counsel for the appellant TASMAC would submit that based on the adverse report, it become necessitated on the administrative grounds to transfer all these employees. Therefore, when such a transfer order had been issued, normally, it would not be interfered with by the Court of law.

4.Transfer order would be interfered with only at three circumstances, namely, for want of jurisdiction, for *mala fide* action and violation of statute. None of these three grounds were available in the case of the writ petitioners. The transfer order ought not to have been challenged before the Writ Court. Therefore, these aspects had not been considered by the learned Single Judge, he contended.



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5.The learned Standing Counsel for the appellants would further submit that the learned Single Judge has also stated that before issuing transfer order, the employees have been put on notice about what was the adverse report that the employer has received against them and without putting them on notice or without giving any opportunity for them, since the order of transfer dated 12.01.2024 was passed, it is violation of Article 14 of the Constitution of India and therefore, on that ground also, the order impugned before the Writ Court is to be set aside and accordingly, by stating the said reasons, the learned Single Judge has set aside the order of transfer passed by the appellant TASMAL. That approach of the learned Single Judge may be erroneous, he contended.

6.Heard the learned Senior Counsel appearing for the respondents / employees, who would submit that there has been no adverse report against the employees and the report, which has been made against the employees, also does not suggest any drastic action against the employees by making punitive transfer. Since the transfer is punitive in nature and such kind of transfer cannot be a solution for disciplinary action, as employees if at all have to face Departmental disciplinary action for that reason transfer ie., punitive transfer cannot be made by the employer, which position has been settled in a number of cases. Therefore, on



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that ground, the transfer order has to go and the approach made by the learned Single Judge in allowing the said Writ Petition through the order impugned cannot be found fault with. Hence, the learned Senior Counsel seeks indulgence of this Court for dismissal of this Writ Appeal.

7.We have considered the rival submissions made by the learned counsel for the parties and have perused the materials placed before this Court.

8.The order impugned before the Writ Court, no doubt, is the transfer order. However, the very reason stated in the transfer order makes it very clear that as per the instructions of the Directorate of Vigilance and Anti-Corruption, Chennai, the transfer order and posting order are issued, that is the reasoning stated in the order of transfer dated 12.01.2024.

9.Therefore, the transfer order cannot be said to be the transfer order for maintaining the administration of the employer, but only pursuant to the instructions given by the DVAC.

10.If that being so, the DVAC if at all had given any adverse report against the employees, pursuant to which, if any action the employer wants to



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take, it is open to the employer to take such action, including the disciplinary action. However, for that reason, mere transfer cannot be made by the employer, as such kind of transfer cannot be treated as administrative transfer in normal course, but only can be treated as transfer with punitive nature. If punitive transfer is issued, certainly, the reason for such transfer should be made.

11. Here, no such reason since has been made by the employer, the learned Single Judge has taken the said view that since it is punitive transfer for the reason of instructions given by the DVAC, the reason should have been made known to the employees without which since the transfer is issued, that can be treated as punitive transfer without any notice to the employer. Therefore, it is violation of the principles of natural justice.

12. The conclusion reached by the learned Single Judge in allowing the said Writ Petition, in our considered view, is to be approved. Therefore, the appeal has to fail.

13. But at the same time, if at all the appellant employer has received any adverse report against the employees, for which, the employer wants to take disciplinary action against these employees, it is open to the employer to take such



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disciplinary action and in this regard, dismissal of this Writ Appeal and allowing the said Writ Petition would not stand in the way of proposed action, if it is initiated by the employer against the employees.

14.With these observations, this Writ Appeal is dismissed. No costs.
Consequently, connected miscellaneous petition is closed.

[R.S.K., J.] & [G.A.M., J.]
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