Tasmac Oozhiyar Manila Sammelanam ... vs The Government Of Tamilnadu on 29 April, 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Special Original Jurisdiction)

RESERVED ON : 06.03.2025
PRONOUNCED ON : 29.04.2025

PRESENT:

THE HON'BLE DR. JUSTICE A.D. MARIA CLETE

W.P.No. 150 of 2020
and
W.M.P.Nos. 188 ,190 of 2020 and 33861 of 2023

TASMAC Oozhiyar Manila Sammelanam (CITU)
Reg.No. 3239/CNI,
Rep. by its General Secretary,
No.27, Mosque Street,
Chepauk, Chennai – 600 005. …Petitioner

Vs.

1. The Government of Tamilnadu
   Rep. by its Principal Secretary,
   Labour and Employment Department
   Fort St.George, Chennai – 600 009.

2. Tamilnadu State Marketing Corporation Ltd,
   Rep. by its Chairman
   CMDA Tower – II,
   4th Floor, Gandhi-Irwin Bridge Road
   Egmore, Chennai – 8

3. The Managing Director,
   Tamilnadu State Marketing Corporation Ltd,
   CMDA Tower – II
   4th Floor, Gandhi-Irwin Bridge Road,
   Egmore, Chennai – 8.

4. The Additional Commissioner of Labour,

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O/o. Commissioner of Labour,

Teynampet, Chennai – 600 006.

5. The Joint Commissioner of Labour
O/o. Commissioner of Labour
Teynampet, Chennai – 600 006. …Responden

Prayer in W.P.No. 150 of 2020
To issue a writ in the Certiorarified Mandamus after calling for the rec
pertaining to the order passed by the 5th Respondent in Na.Ka.No.Aa/1024
dated 20.12.2015 and communicated by the 4th Respondent in the letter da
31.01.2018, Quash the same and consequently direct the 1st Respondent to
prosecute the 2nd Respondent and its officials for not submitting any Dr
Standing Orders for certification under Section 3 and for not getting Ce
Standing Orders under Section 5 and for not following the Tamilnadu Mode
Standing Orders as per Section 12A till Certified Standing Orders are br
into force and for implementing the TASMAC Code 2014 and the Circulars a
Orders issued by the 3rd Respondent based on the said Code against the
workmen, in so far as it is contrary to the provisions of the Model Stan
Orders as per Section 13 of the Standing Orders Act and direct the Respo
2 and 3 and the officials of the 2nd Respondent Corporation to submit Dr
Standing Orders for Certification under Section 3 and get it certified u
Section 5 and to follow and implement the Tamilnadu Model Standing Order
strictly, till the certification is over and not to follow and implement
in the Code and the Circulars and Directions issued based on the said Co
so far as they are in conflict with the provisions of the Standing Order
the Tamilnadu Model Standing Orders Award costs.

Prayer in W.M.P.No. 188 of 2020

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W.

To dispense with the original order passed by the 5th Respondent in
Na.Ka.No.Aa/1024/2015 dated 20.12.2015 and communicated by the 4th
Respondent in the letter dt. 31.01.2018.
Prayer in W.M.P.No.190 of 2020
To grant an interim injunction restraining the 2nd and 3rd Respondents a
officials from taking any disciplinary action and from imposing any
punishments to the employees who are employed in their retail TASMAC
Shops under or based on and pursuant to the TASMAC Code 2014 and the
circulars and directions issued by the 2nd respondent and from imposing
punishment which are not prescribed in the Tamilnadu Model Standing Orde
to any of the employee working and employed in their retail TASMAC Shops
without following the procedures prescribed under the Tamilnadu Model
Standing Orders, pending disposal of the Writ Petition.

Prayer in W.M.P.No.33861 of 2023
To delete the name of the Petitioner / 1st Respondent herein, namely the
Government of Tamil Nadu, Rep. by its Principal Secretary Labour and

Employment Department, Fort. St.George, Chennai – 600 009 from the cause title in W.P.No.150 of 2020 on the grounds of mis-joinder of parties.

Appearance of Parties:

For Petitioner : Mr. V.Ajoy Khose,Advocate

For Respondents 1, 4 and 5: Mr.R.Kumaravel, AGP

For Respondents 2 and 3 : Mr.P.S.Raman, Advocate General
assisted by Mr.K.Sathish Kumar

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JUDGMENT

“The slaves are ours:' so do I answer you:

> The pound of flesh, which I demand of him, Is dearly bought; 'tis mine and I will have it.
>
> If you deny me, fie upon your law! There is no force in the decrees of Venice.
>
> I stand for judgment: answer; shall I have it?
>
> 1.Act 4 Scene 1, The Merchant of Venice Williams Shakespeare In The Merchant of Venice, Shakespeare portrays Shylock, standing before the court of Venice, insisting that Antonio’s bond be strictly enforced, despite appeals from the Duke and others for leniency. His steadfast demand for literal enforcement of the bond — ignoring broader notions of fairness and equity — resonates even today.

If that portrayal were to find a parallel in the present case, it would be in the stance adopted by the second respondent, the Tamil Nadu State Marketing Corporation Ltd. (TASMAC), which similarly seeks to insist on rigid positions in disregard of broader legal and equitable obligations.

2.If there is one entity today to which this critique squarely applies, it is the 2nd Respondent – the Tamil Nadu State Marketing Corporation Limited (TASMAC). Established as a Government company in 1983 during the tenure of the then Chief Minister, Thiru M.G. Ramachandran, TASMAC was https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) originally envisioned as a regulatory mechanism to oversee liquor sales and to curb the menace of illicit liquor.

It has grown into a Leviathan and is attempting to ward off any legal control of any laws. Bolstered by the substantial revenue it generates, TASMAC appears to be resisting the applicability of general legal norms, routinely disregarding binding judicial precedents and treating court directives with evident indifference. This judgment would simultaneously examine the manner in which this Court's orders concerning TASMAC employees and the application of labour laws have been repeatedly disregarded by the Corporation—conduct which, if not outright contemptuous, certainly verges on it.

3.Before dealing into the labour legislations applicable to TASMAC, it is apposite to trace the historical context of prohibition in this State. The Prohibition Act, 1937 was enacted during the premiership of Shri C. Rajagopalachari (Rajaji) in the erstwhile Madras Presidency. The legislative intent behind this enactment was the enforcement of total prohibition, notwithstanding the significant fiscal implications arising from the loss of excise revenue. The Act was not merely a symbolic gesture; it was brought into force, notably in the district of Salem, which happened to be Rajaji's native place. At the time of the drafting of the Constitution, there was a concerted https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) attempt to implement prohibition at the national level. Though total prohibition across the country was found to be impracticable then, the intent was nevertheless crystallised in the form of Article 47 of the Constitution, which was placed among the Directive Principles of State Policy. The said Article enjoins the State to endeavour to bring about prohibition, and it reads as follows:– "The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health."

4.Between 1971 and 1991, spanning two decades under the leadership of two different Chief Ministers—Thiru M. Karunanidhi and Thiru M.G. Ramachandran—partial prohibition was implemented on three separate occasions: from 1971 to 1974, 1981 to 1987, and again from 1990 to 1991.

These intermittent policy shifts elicited mixed reactions from the public.

Ultimately, however, the State moved away from the idea of prohibition, and by the year 2001, it was completely lifted. Commencing with the financial year 2001–2002, the State resorted to auctioning licenses for retail vending of Indian Made Foreign Liquor (IMFL), including operation of liquor shops and bars.

https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) However, in light of the emergence of cartel formations that adversely impacted revenue collection, the auction system was replaced with a lottery-based allotment system. Even this alternative proved ineffective in addressing the underlying issues.

5.In consequence, an amendment was made to the Tamil Nadu Prohibition Act in the year 2003, whereby TASMAC was designated as the exclusive retail vendor for alcoholic beverages in the State.

Pursuant to this legislative change, by 2004, all private liquor outlets were either closed down or absorbed into the TASMAC network. In a somewhat ironic turn of events, the very law originally intended to implement prohibition became the vehicle for establishing a State monopoly in the retail liquor trade. Having secured a monopoly over the procurement of Indian Made Foreign Liquor (IMFL) and exercising complete control over its retail distribution, TASMAC has evolved into a formidable State-run enterprise.

6.According to publicly available information, TASMAC operates approximately 4,829 retail liquor outlets across Tamil Nadu as of 31.03.2024, employing around 23,986 persons in various categories. The workforce is distributed as Supervisors (6,581), Salesmen (14,775), and Assistant Salesmen https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) (2,630). In addition, TASMAC maintains 38 District Offices and 43 IMFL Depots, and manages 2,919 bars attached to its retail outlets. Following directions issued by the Hon'ble Supreme Court mandating the relocation of liquor outlets situated near national and state highways, there was a reported reduction of 3,321 outlets. However, it is noted that no specific material has been placed on record in the present proceedings to formally substantiate these figures.

7.In this context, a pertinent question arises: what is the legal status and service condition of nearly 24,000 employees engaged by this State-run enterprise? Has any comprehensive framework under labour legislation been applied to regulate their employment over the past four decades? Notably, apart from the regular employees, the workers engaged in loading and unloading operations at TASMAC godowns have, without exception, been employed through outsourcing arrangements. Similarly, cargo transport services operated for TASMAC have also been outsourced. As for the managerial cadre overseeing TASMAC's administrative functions, personnel have predominantly been drawn from the Revenue, Excise, and Police Departments—an arrangement evidently designed to maintain stringent governmental oversight https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) over the liquor trade.

8.Since the inception of TASMAC's operations, its functioning has been the subject of voluminous litigation before this Court. Whether it pertains to the auctioning of retail outlets, the implementation of the lottery system, objections raised by local residents regarding shop locations, or the law and order concerns arising from the operation of such outlets, each has contributed to a steady stream of avoidable litigations, consuming considerable judicial time and resources. Of particular concern is the spate of cases arising from the arbitrary treatment meted out to TASMAC employees—both those directly recruited and those engaged through contract. The present writ petition is yet another manifestation of such arbitrary action, reflecting the broader pattern of systemic disregard for fair employment practices.

9.Before proceeding to examine the core issue in the present case— namely, the validity of the impugned order dated 31.01.2018 passed by the 5th Respondent, the Certifying Officer under the Industrial Employment (Standing Orders) Act, 1946 (hereinafter, "the IESO Act")—it is necessary to consider whether the said authority was justified in upholding the introduction of the so-

called "Code of Prevention and Detection of Fraudulent Acts in TASMAC – https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) 2014," particularly in light of the existence of Model Standing Orders framed by the Government of Tamil Nadu under the provisions of the IESO Act.

10.Over the past two decades, this Court has witnessed a steady stream of writ petitions instituted by TASMAC employees assailing various disciplinary actions, including termination from service, transfers effected by way of victimisation, and recovery of penalty amounts from their wages. These litigations arose from the unilateral and arbitrary actions initiated by TASMAC management. Several learned Judges of this Court have meticulously adjudicated these matters and laid down clear procedural safeguards to be followed prior to the imposition of such punitive measures. The directions issued in those judgments, having attained finality, bind TASMAC by way of continuing mandamus.

11.In numerous instances where employees challenged their dismissal on the ground that it was effected without due enquiry, and sought redress before this Court, consistent judicial directions have been issued with reference to the applicability of both the Tamil Nadu Shops and Establishments Act, 1947 (hereinafter, "the Shops Act") and the Industrial Employment (Standing Orders) Act, 1946 ("the IESO Act"). The relevance of the Shops Act in such cases lies https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) in the protections afforded under Section 41, which prohibits an employer from terminating the services of an employee who has completed not less than six months of continuous employment, except for a reasonable cause and without providing at least one month's notice or wages in lieu thereof. However, the proviso to this section carves out an exception where the termination is on the ground of misconduct, provided that such misconduct is duly established through a proper domestic enquiry supported by satisfactory evidence.

12.Under the earlier policy regime, retail licenses were issued for operating IMFL shops, which were permitted to function on all seven days of the week. Given that Section 11(1) of the Tamil Nadu Shops and Establishments Act mandates a weekly holiday for employees and requires closure of the establishment on at least one day each week, the State Government—invoking its powers under Section 6 of the said Act—granted an exemption by way of G.O.Ms.No.552, Labour and Employment Department, dated 09.04.1990. However, this exemption was subject to the fulfillment of two specific conditions, which were as follows:— "(i)the persons employed in the Indian-made Foreign Liquor retail vending shops shall be granted one day holiday with wages in a week

(ii) if genuine complaints are received from the persons employed, the exemption granted shall be cancelled." https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm)

13.In terms of the provisions of the Tamil Nadu Industrial Establishments (National and Festival Holidays) Act, 1958, the State Government has declared May 1st of every year—celebrated as Labour Day—as a paid compulsory holiday. In the year 2010, when workers sought observance of this statutory holiday, a writ petition was filed by a workman, N. Ramasundaram, on 30th April 2010, seeking a direction that May 1st be granted as a paid holiday. In response to the petition, the

Respondent TASMAC contended that the 1st Respondent—Principal Secretary to the Labour and Employment Department— had issued a letter dated 23.02.2010 clarifying that, by virtue of Section 10(1)(c) of the 1958 Act, industrial establishments under the control of the State Government were exempt from the operation of the Act. The said letter dated 23.02.2010 is extracted hereunder;

> "I am directed to invite attention to the letter cited wherein it has been stated that on examination of the provisions contained in the Tamil Nadu Industrial Establishments (National and Festival Holidays) Act, 1958, TASMAC is fully exempted from the application of the Tamil Nadu Industrial Establishments (National and Festival Holidays) Act, 1958 solely as it is an establishment under the control of the State Government; and that the Act itself does not apply to their retail vending shops and hence Government may issue necessary notification in this regard.
>
> 2) In this connection, it is informed that it is seen from sub-section (1-A) (a) of Section 17-C of the Tamil Nadu Prohibition Act, 1937 (Tamil Nadu Act X of 1937) that the Tamil Nadu State Marketing https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) Corporation Limited is a Corporation wholly owned and controlled by the State Government. Inasmuch as Tamil Nadu State Marketing Corporation Limited is wholly owned and controlled by the State Government, it is clear that the Tamil Nadu State Marketing Corporation Limited is an establishment under the control of the State Government and consequently the provisions of the Tamil Nadu Industrial Establishments (National and Festival Holidays) Act, 1958 are not applicable in view of the exemption contained in clause (c) of sub-section (1) of section 10 of the said Act. Hence, I am directed to state that, issue of any notification in this regard does not arise."

14.However, the stand taken by the respondents was repelled by this Court in the case of N. Ramasundaram v. The Secretary to Government of Tamil Nadu, reported in 2010 SCC OnLine Mad 3294. The Court, after considering the submissions and the statutory framework, held against the respondents. The following passages from the judgment, which are directly relevant to the present case, are extracted below:— “Before going into the provisions, it must be noted that Act 30 of 1958 was enacted with a view to grant National and Festival holidays to persons employed in industrial establishments in the State of Tamil Nadu. The term "industrial establishment" is defined under Section 2(e) of Act 30 of 1958. Section 2(e)(i) reads as follows:

> "Section 2(e): "industrial establishment" means, --
>
> (i) any establishment as defined in clause (6) of Section 2 of the Tamil Nadu Shops and Establishments Act, 1947 (Tamil Nadu Act XXXIII of 1947)"

13. The second respondent is running shops and is squarely covered by the provisions of the Tamil Nadu Shops and Establishments Act, 1947. The term "shop" is defined under Section 2(16) of the

Tamil Nadu Shops and Establishments Act, 1947. Though Section 4(1)(c) of the Tamil Nadu Shops and Establishments Act, 1947 exempts an establishment under the Central Government, it can be safely said that the second respondent is only a Government owned Company and it cannot be said to be an establishment under the State Government. There is no doubt that the Act 30 of 1958 will apply to the second respondent/ TASMAC.

14. If once Act 30 of 1958 applies, Section 3 provides for grant of National and Festival Holidays. Section 3 of Act 30 of 1958 is as follows:

> "Section 3: Grant of National and Festival Holidays. - Every employee shall be allowed in each calendar year a holiday of one whole day on the 26th January, the first May, the 15th August and the 2nd October and five other holidays each of one whole day for such festivals as the Inspector may, in consultation with the employer and the employees, specify in respect of any industrial establishment."

It must be noted that so far as declaration of 1st May of every year which is celebrated as May Day, it came to be introduced by the Tamil Nadu Act 7 of 1970, with effect from 25.4.1970.

15. The second respondent has not received any specific exemption in terms of Section 10(2) of Act 30 of 1958. Under Section 11 a non obstante clause is introduced by which the rights and privileges of an employee if he is protected by any other law, contract, custom or usage and if such rights and privileges are more favourable to him, those alone are protected. Section 3 of Act 30 of 1958 will override the other terms of contract between the parties." "18. The contention that it is an establishment coming https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) under Section 10(1)(c) of Act 30 of 1958 cannot be accepted because a Government owned Company cannot be said to be an establishment under the control of the State Government and it is a body corporate by itself. The Supreme Court in Steel Authority of India Ltd. v. National Union Waterfront Workers, [2001] 7 SCC 1 framed a question in paragraphs [50] and [51] of the judgment as to the definition of the term "establishment" under Section 2(1)(e) of the Contract Labour (Regulation and Abolition) Act, 1970 as follows:

> "50. The definition of establishment given in Section 2(1)(e) of the CLRA Act is as follows:
>
> 2. (1)(e) establishment means
>
> (i) any office or department of the Government or a local authority, or
>
> (ii) any place where any industry, trade, business, manufacture or occupation is carried on;

51. The definition is in two parts: the first part takes in its fold any office or department of the Government or local authority the government establishment; and the second part encompasses any place where any industry, trade, business, manufacture or occupation is carried on the

non-government establishment. It is thus evident that there can be plurality of establishments in regard to the Government or local authority and also in regard to any place where any industry, trade, business, manufacture or occupation is carried on."

19. In answer to that query, in paragraphs 125(1)(a) and 125(1)(b) the Constitution Bench held as follows:

> "125. The upshot of the above discussion is outlined thus:
>
> (1)(a) Before 28-1-1986, the determination of the question whether the Central Government or the State Government is the appropriate Government in https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) relation to an establishment, will depend, in view of the definition of the expression appropriate Government as stood in the CLRA Act, on the answer to a further question, is the industry under consideration carried on by or under the authority of the Central Government or does it pertain to any specified controlled industry, or the establishment of any railway, cantonment board, major port, mine or oil field or the establishment of banking or insurance company? If the answer is in the affirmative, the Central Government will be the appropriate Government; otherwise in relation to any other establishment the Government of the State in which the establishment was situated, would be the appropriate Government;
>
> (b) After the said date in view of the new definition of that expression, the answer to the question referred to above, has to be found in clause
>
> (a) of Section 2 of the Industrial Disputes Act; if (i) the Central Government company/undertaking concerned or any undertaking concerned is included therein eo nomine, or (ii) any industry is carried on
>
> (a) by or under the authority of the Central Government, or (b) by a railway company; or (c) by a specified controlled industry, then the Central Government will be the appropriate Government;

otherwise in relation to any other establishment, the Government of the State in which that other establishment is situated, will be the appropriate Government."

20. In that case the Steel Authority of India, which is a Central Government owned Company was not brought within the term "establishment" under the control of the Central Government. The appropriate Government in respect of the https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) Steel Authority of India was held to be the State Government. Therefore, the term "under the control of the State Government" has got a different connotation and it will not apply to a Government owned Company which is registered as a Government company under Section 617 of the Companies Act. It has got its own name, seal and succession and is a body corporate different from the Government."

15.Accordingly, having held that the provisions of the Tamil Nadu Industrial Establishments (National and Festival Holidays) Act, 1958 are applicable to TASMAC employees, this Court issued the following direction:— "The Government must think that maximizing its revenue through excise duty alone should not be its sole object. They must consider the plight of the workers health and the obligation cast by Articles 41 and 43 of the Constitution of India.

Accordingly, the writ petition stands allowed. The second respondent is directed to grant the employees of the TASMAC an holiday on the 1st day of May in terms of Section 3 of Act 30 of 1958 forthwith. No costs."

16.However, as the impugned order had directed the grant of a paid holiday on May 1st, TASMAC approached the Division Bench and obtained an interim stay. However, in a subsequent move, a holiday was declared through a notification issued under Section 54 of the Tamil Nadu Prohibition Act by way of G.O.Ms.No.1, Home, Prohibition and Excise Department, dated 03.01.2012, declaring May 1st as a dry day. When the writ appeal filed by https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) TASMAC in W.A. No.919 of 2010 came up for hearing, the Division Bench, by its order dated 22.12.2016, disposed of the matter on the ground that nothing survived for adjudication. Ultimately, therefore, TASMAC employees secured a holiday on May 1st not under the framework of labour law, but through an order issued under the prohibition law and ostensibly on account of the employer's benevolence.

17.During the same month—February 2010—TASMAC approached the 1st Respondent and obtained a clarification from the Government vide Letter No. 9894/K2/2008-11, dated 19.02.2010, to the effect that the provisions of the Tamil Nadu Shops and Establishments Act, 1947 would not apply to TASMAC.

Notably, this letter did not constitute a formal exemption granted under Section 6 of the Act, but was rather an interpretation of Section 4(1)(c) of the said Act.

The contents of the letter read as follows:— "I am directed to invite your attention to the references cited and to inform that the Supreme Court in C.V.Raman Vs. Management of Bank of India and another [(1988) 3 SCC 105] held that State Bank of India and Nationalised Banks will certainly come within the purview of the expression "establishments under the Central Government" for the purpose of the Tamil Nadu Shops and Establishments Act, 1947 in view of the existence of deep and pervasive control of the Central Government over these Banks. It is seen from sub-section (1A) of section 17-C of the Tamil Nadu Prohibition Act, 1937 (Tamil Nadu Act X of 1937) that the Tamil https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) Nadu State Marketing Corporation Limited, is a Corporation wholly owned and controlled by the State Government. Relying on the above Supreme Court decision and in as much as Tamil Nadu State Marketing Corporation, is wholly owned and controlled by the State Government, it is clear that the Tamil Nadu State Marketing Corporation Limited, is an establishment under the State Government and consequently the provision of the Tamil Nadu Shops and Establishments Act, 1947 are not appliable in view of the exemption contained in clause (c) of sub-section (1) of section 4 of the said Act. Hence, issue of any notification in this regard does not arise."

18.It is important to note that the 1st Respondent, in issuing the above communication, did not act in the capacity of an authority empowered to grant exemptions under any labour legislation, but merely expressed an opinion in favour of a government-owned company without engaging with the legal intricacies involved. The said opinion placed significant reliance on the decision in C.V. Raman v. Management of Bank of India, reported in (1988) 3 SCC 105. However, in the concluding portion of that very judgment, the Hon'ble Supreme Court also observed that the State Bank of India did not fall within the ambit of the Shops Act, stating as follows:— "...we have already pointed out that even if the decisions dealing with Article 12 of the Constitution are not made the foundation for deciding the point in issue, the principles enumerated therein referred to above particularly with regard to deep and pervasive control are relevant for deciding the point in issue. As regards the second reason referred to above suffice it to point out https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) that for holding that the State Bank of India and the nationalised banks are establishments under the Central Government which have a corporate structure and have freedom in the matter of day to day administration it is not necessary that these banks should be owned by the Central Government or be under its absolute control in the sense of a department of the Government. With regard to the last reason namely the circumstance that even though Reserve Bank of India is mentioned specifically in the relevant clause containing exemption neither State Bank of India nor the nationalised banks are so mentioned, it may be pointed out that the Reserve Bank of India was established as Shareholders' Bank under Act 2 of 1934. As seen above, the Kerala Shops Act and the Andhra Pradesh Shops Act which are of the years 1960 and 1966 respectively were modelled almost on the pattern of the Tamil Nadu Shops Act which is of the year 1947. When Section 4(1)(c) of this Act referred to the Reserve bank of India in 1947 it obviously referred to it as Shareholders' Bank. The Reserve Bank Transfer to Public Ownership Act (Act 82 of 1948) came into force on 1st January, 1949 and it was thereafter that the shares in the capital of the Reserve Bank came to belong to the Central Government. In this background no undue emphasis can be placed on the circumstance that the State Bank of India or the nationalised banks did not find mention in the provision containing exemption even though Reserve Bank of India was specifically mentioned therein. For the reasons stated above the aforesaid decisions of the Kerala High Court and the Andhra Pradesh High Court deserve to be set aside."

19.Possibly in support of the contention that the Tamil Nadu Shops and Establishments Act would not apply to TASMAC, the learned Advocate General placed reliance on the decision of a learned Single Judge of this Court https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) in The District Manager, Tamil Nadu State Marketing Corporation Ltd.

(TASMAC) v. P. Murugan, rendered in W.P.(MD) No.17607 of 2015, dated 14.12.2018. In paragraph 3 of the said judgment, the learned Judge observed as follows:— "It is not in dispute that the TASMAC is a State Government undertaking. Therefore, it has to be considered as a shop under the State Government. Therefore, Section 4(1)(c) of the Tamil Nadu Shops and Establishments Act will come into play."

20.However, Mr. V. Ajoy Khose, learned counsel for the petitioner, in paragraph 9 of his written submissions, drew attention to the fact that the decision referred to above is the subject matter of an appeal in W.A.(MD) No.1882 of 2023, which is presently pending before the Madurai Bench of this

Court. Even assuming, for the sake of argument, that the Tamil Nadu Shops and Establishments Act is inapplicable to TASMAC, it does not follow that TASMAC employees are left without any legal recourse in cases of wrongful dismissal or service-related grievances. Significantly, TASMAC has not taken a stand excluding the applicability of the Industrial Employment (Standing Orders) Act, 1946 or the Industrial Disputes Act, 1947 to its employees.

21.Ever since TASMAC assumed monopoly control over the retail liquor trade, a consistent pattern has emerged wherein employees have been https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) terminated without adherence to due process, often under the pretext that their engagement was purely contractual. This Court has, from time to time, examined the legality of such actions and addressed the rights of these employees under various labour legislations. It is, therefore, necessary to trace the relevant judicial precedents beginning from the year 2005, highlighting how the issue of termination was adjudicated and identifying the Hon'ble Judges who rendered those decisions.

Year 2005

22.In the case of V.L. Lakshmanakumar v. District Manager, TASMAC Limited & Another, reported in 2006 (II) LLJ 685 (Mad), Hon'ble Mr. Justice D. Murugesan (as he then was) considered the issue and held as follows:— "a perusal of the impugned order shows that the petitioner was not dismissed pursuant to the contract. For the purpose of dismissal, the first respondent has relied upon a surprise inspection carried out in the TASMAC shop, which revealed that some of the bottles were adulterated by mixing water and that such act of the staff of the TASMAC had brought disrepute to the Corporation. Therefore, the petitioner/Supervisor has been removed from service. By the above reasoning the first respondent has found that the petitioner has committed certain misconduct and the impugned order is not an order of termination simpliciter. Whether an order is an order of simple termination or would amount to stigma, thereby resulting in civil consequences, is only to be determined considering https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) the facts and circumstances of each case. A plain reading of the impugned order passed by the first respondent makes it clear that it is not an order of termination simpliciter.

The Apex Court, in more than one case, has held that when an order of termination involves civil consequences and consequently amounts to stigma, the same cannot be passed without there being a charge memo, enquiry and the finding as to those charges. This proposition of law has been recently reiterated by the Apex Court in the judgment State of Haryana and Another Vs. Satyender Singh Rathore, . In that judgment, the Supreme Court has relied upon the earlier judgment Dipti Prakash Banerjee Vs. Satvendra Nath Bose National center for Basic Sciences, Calcutta and Others, , and has held that if findings were arrived at in an enquiry as to misconduct behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as "founded" on the allegations and will be bad.

In view of the above pronouncement of the Apex Court, the impugned order cannot be sustained. Accordingly, the same is set aside and the writ petition is allowed." Year 2006

23.In the case of K.P. Pandi and Four Others v. The District Manager, in W.P. No. 689 of 2006, dated 23.02.2006, Hon'ble Mr. Justice P. Jyothimani rendered the following findings:— "..in this case also in a contract of service for the post of bar Supervisors, the security deposit is called for in public interest and in the present case after terminating the service of the petitioners and especially in the absence of any monitory loss caused to the respondents by the conduct of the petitioners, the clause of forfeiture can only be termed as arbitrary and unreasonable. It can https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) never be said that the forfeiture is not a punishment. In the present circumstance, it is worse than even the termination. That apart, the forfeiture clause can also be termed as opposed to public policy, even as per the terms of Indian Contract Act, 1972 especially Section In this regard, it is relevant to point out the terms of condition 5 of the service of contract. The said condition contemplates on a breach of rules and regulations and instructions of superiors, the appointment is liable to be summarily terminated along with forfeiture of security deposit.

Apart from the fact that when admittedly the duty of the bar supervisors is not relating to the sale of liquor, it is not explained as to which rule or which regulation or which instruction of superiors have been disobeyed. In the absence of such rules and regulations, the clause which contemplates termination may be even accepted since the appointment is temporary in nature or on contract basis. But in addition to that forfeiture of security deposit will be not only wholly unreasonable and are opposed to public policy. In any event, on the facts of the case as revealed by me earlier, it is not even the case of the respondents that these petitioners have caused any loss or damages mandatorily to the respondents so as to enable them to take such loss by way of indemnity from the security deposit. In the absence of such situation, the blank power of forfeiture can only be termed as unruly horsh and totally opposed to public policy.

In fact as repeatedly, laid down by the Apex Court, the government must be a model employer, as pointed out by the Supreme Court in Secretary-Cum- Chief Engineer, Chandigarh Vs.Hari Om Sharma and others reported in 1998 (5) SCC 87. That apart, the impugned termination itself has been passed without giving adequate opportunity to the petitioners and on the basis of a flying squad report admittedly not inspected in the presence of the petitioners and not even giving the copy of such report to the petitioners and https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) therefore looking into any angle, the termination is arbitrary in nature causing a stigma on the life of the petitioners. This, I am embolden to term for the reason that eventhough the post to which the petitioners were appointed is purely temporary and may be even insignificant but still when the persons like petitioners go for other jobs, it certainly creates stigma in their life in future employment. Therefore, the impugned termination should be held as invalid."

24.Let us first consider the line of judicial decisions that have affirmed the applicability of the Industrial Employment (Standing Orders) Act, 1946 and the Payment of Wages Act, 1936 to TASMAC. From 2010 to 2023, several learned Judges of this Court have consistently upheld the application of these statutes to TASMAC employees. The first detailed and authoritative exposition on this issue was rendered in B. Sivakumar v. The Managing Director, TASMAC Ltd., reported in 2010 SCC OnLine Mad 2608, dated 15.03.2010.

25.As a growing number of writ petitions began to be filed by TASMAC employees challenging their termination, this Court was compelled to examine the applicability of various labour legislations that safeguard the service conditions of such employees. In doing so, the Court issued directions requiring TASMAC to comply with the mandates of these statutory provisions.

In one of the earliest and most comprehensive decisions on the subject, B. https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) Sivakumar v. The Managing Director, TASMAC Ltd., reported in 2010 SCC OnLine Mad 2608 (dated 15.03.2010), K. Chandru.J held as follows:— "6. The learned counsel appearing for the respondents submitted that the petitioner was bound by the terms of appointment and the Rules provided therein and there was no obligation to conduct any enquiry under the said Rules.

7. This Court is unable to agree with the said contention. Undoubtedly, the activity of the respondent/Corporation is selling liquor through various retail shops and the said work can be held to be a commercial establishment coming within the definition of Section 2(3) of the Tamil Nadu Shops and Establishments Act, 1947. Under the said Act, the services of an employee, who is employed for more than six months, cannot be dispensed with unless one month's notice or wages in lieu of such notice are provided and he can be terminated only for a reasonable cause. Such notice and assigning of reasonable cause are unnecessary if his services are dispensed with on a charge of misconduct supported by satisfactory evidence recorded at an inquiry held for the purpose. Therefore, the relevant Act makes it obligatory for the respondent/ Corporation to conduct an enquiry, in which there must be satisfactory evidence. Though the Tamil Nadu Shops and Establishments Act, 1947 provides for an appeal under Section 41(2), it is not known as to why the petitioner has not availed the appeal remedy provided which is not only cost effective, but more advantageous to the employees.

8. Apart from this fact, under the Industrial Employment (Standing Orders) Act, 1946, "industrial establishment" has been defined under Section 2(e). As per Section 2(e)(i) of the Industrial Employment (Standing Orders) Act, 1946, "industrial establishment" includes an industrial establishment as defined in clause (ii) of Section 2 of the Payment of Wages Act, 1936. By a State amendment introduced under Section 2(ii)(h) by Tamil Nadu Act 9 of 1959, under Section 2(ii)(h) of the Payment of Wages Act, 1936, it has been provided that it includes an establishment or undertaking which the State Government https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) may, by notification in the Official Gazette, declare to be an industrial establishment for the purposes of the Act.

9. By virtue of the said power conferred under the Payment of Wages Act, 1936 through the State amendment, the State Government by a notification made in G.O.Ms.No.78, Labour and Employment Department, dated 26.6.1996 has extended the provisions of the Payment of Wages Act to all the shops and commercial establishments employing twenty or more persons. Therefore, by virtue of this notification, the provisions of the Industrial Employment (Standing Orders) Act, 1946 are applicable to the respondent/Corporation.

10. By virtue of the application of the Industrial Employment (Standing Orders) Act, 1946 to the respondent/Corporation, the respondent/Corporation is bound to get standing orders certified under Sections 3 and 4 of the Industrial Employment (Standing Orders) Act, 1946. If no certified standing orders are available, by virtue of Section 12A of the Industrial Employment (Standing Orders) Act, 1946, the model standing orders framed by the Government are applicable to the employees of the respondent/Corporation. The Model Standing Orders framed by the Tamil Nadu Government under Model Standing Order No.14 provides for termination of employment of workmen. The Model Standing Order No.14 reads as follows:

> "14. Termination of employment of workmen-
>
> (1) Subject to the provisions contained in standing order 17, no employer shall dispense with the service of any workman with not less than one year of continuous service except for a reasonable cause and without giving such workman atleast one month's notice or wages in lieu of such notice. (2) In cases of retrenchment as defined in Section 2(oo) of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), the provisions of the said Act shall apply:
>
> Provided that no such notice shall be necessary in the case of badli and apprentices.
>
> https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) (3) No order of termination of service of a workman shall be made unless the workman is informed in writing of the reasons for the termination of his services and is given an opportunity to show cause against such termination. A copy of the said order shall be communicated to the workman.
>
> (4) Where the employment of any workman is terminated by or on behalf of the industrial establishment, the wages earned by him shall be paid before the expiry of the second working day from the day on which his employment was terminated or the same shall be made available to him by the drawer of the wages, in case he does not turn up for receiving the wages."

11. In case a workman did not fall under Model Standing Order No.14, the Model Standing Order No.17 provides the punishment for misconducts as well as the procedure for dealing with misconducts. The acts and omissions which constitute misconduct are set out in Model Standing Order No.16. Therefore, it is too late for the respondents to contend that they need not hold any enquiry since the workmen were covered by the terms of the appointment and the contract given to them. When once a matter is covered by the provisions of the Industrial Employment (Standing Orders) Act, 1946, then the question of reading in of a contract into the said Standing Orders will not arise. On the other hand, any agreement signed outside the provisions of the Industrial Employment (Standing Orders) Act, 1946 would be void. The Supreme Court vide its judgment in Western India Match Co. v. Workmen, AIR 1973 SC 2650 in paragraph (8) has held as follows:

"8. In the sunny days of the market economy theory people sincerely believed that the economic law of demand and supply in the labour market would settle a mutually beneficial bargain between the employer and the workman. Such a bargain, they took it for granted, would secure fair terms and conditions of employment to the workman. This law they venerated as natural law. They had an abiding faith in the verity of this law. But the experience of the working of this law over a long period has belied their faith. Later generations discovered that https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) the workman did not possess adequate bargaining strength to secure fair terms and conditions of service. When the workmen also made this discovery, they organised, themselves in trade unions and insisted on collective bargaining with the employer. The advent of trade unions and collective bargaining created new problems of maintaining industrial peace and production for the society. It was therefore considered that the society has also an interest in the settlement of the terms of employment of industrial labour. While formerly there were two parties at the negotiating table the employer and the workman, it is now thought that there should also be present a third party, the State, as representing the interest of the society. The Act gives effect to this new thinking. By Section 4 the Officer certifying the Standing Order is directed to adjudicate upon the fairness or reasonableness of the provisions of the Standing Order. The Certifying Officer is the statutory representative of the society. It seems to us that while adjudging the fairness or reasonableness of any Standing Order, the Certifying Officer should consider and weigh the social interest in the claims of the employer and the social interest in the demands of the workmen. Section 10 provides the mode of modifying the Standing Orders The employer or the workman may apply to the Certifying Officer in the prescribed manner for the modification of the Standing Orders Section 13(2) provides that an employer who does any act in contravention of the Standing Order shall be punishable with fine which may extend to one hundred rupees. It also provides for the imposition of a further fine in the case of a continuing offence. The fine may extend to twenty-five rupees for every day after the first during which the offence continues."

12. Therefore, in the light of the above, when a workman is completely covered by the provisions of Section 41 of the Tamil Nadu Shops and Establishments Act, 1947 as well as the Model Standing Orders framed under Industrial Employment (Standing Orders) Act, https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) 1946, the application of which is guaranteed by virtue of Section 12A Industrial Employment (Standing Orders) Act, 1946, any termination contrary to these enactments would be void."

26.In the meantime, in an apparent attempt to counter the criticism that there were no codified service rules governing its employees—and instead of obtaining certified Standing Orders under the Industrial Employment (Standing Orders) Act—TASMAC unilaterally framed its own set of service rules.

Notably, Rule 11 of the TASMAC Service Rules deals with the provision for termination of service and reads as follows:— "11.TERMINATION OF SERVICES: In the event of the Corporation not having any further need of any employee's services, the appointing authority can dispense with the services of an employee as follows:-

(i) in the case of a temporary employee with immediate notice of termination.

(ii)in the case of probationer and regular employees of Class IV, 30 days notice or salary in lieu thereof.

(iii)in the case of a regular member of staff other than Class IV, 90 days notice or salary in lieu thereof."

27.Challenging the validity of the aforesaid service rules and seeking a declaration that they were unconstitutional, a trade union affiliated to the All India Trade Union Congress (AITUC) filed a writ petition before this Court. In TASMAC Paniyalargal Sangam (AITUC) v. The Tamil Nadu State Marketing Corporation Limited, reported in 2010 SCC OnLine Mad 3107 https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) (dated 12.04.2010), K. Chandru. J after referring to the decision in B. Sivakumar (cited supra), disposed of the writ petition with the following observations:— "Therefore, merely because, the contractual terms are framed as a Rule, it does not mean that the employees are without statutory remedy as held by this Court in the above said case.

3. Therefore, it is unnecessary to strike down the Rule framed by the Corporation. It is suffice to state that in case of termination, the Corporation will also take note of other statutory safeguards which are provided for employees and it is in their own interest, they follow the various labour enactment which are applicable to them. This care taken by the TASMAC will reduce the number of cases which are filed before this Court on technical violation in dispensing with their service.

4. With these observation, the writ petition stands disposed of."

28. In the case of A. Arivu Selvam v. The District Manager, Tamil Nadu State Marketing Corporation Ltd., reported in CDJ 2010 MHC 3226 (dated 19.04.2010), K. Chandru.J considered the matter and held as follows:— "5. The averments made by the respondent only proves the contention raised by the petitioners that there was no enquiry and whatever enquiry that was conducted ended up resulting only the petitioners being cross-examined.

6. It must be noted that this Court in B.Sivakumar v. The Managing Director, TASMAC Ltd. in W.P.No.6304 of 2009 dated 15.03.2010 after analysing the provisions of various enactments applicable to TASMAC has finally held that the provisions of Section 41(1) of Tamil Nadu Shops and Establishments Act, 1947 and the Model Standing Orders framed by the State Government https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) under Industrial Employment Standing Orders Act, 1946 will apply. In the present case, the order of termination given to the petitioners do no measure to the standard prescribed therein. Inasmuch as no

worthwhile enquiry was conducted, the impugned order is liable to be set aside.

7. As to what is the elementary principles of conducting a domestic enquiry came to be considered by the Supreme Court vide its judgment in Meenglas Tea Estate v. Workmen reported in AIR 1983 SC 1719. In that case, the Supreme Court took exception that in the name of enquiry, only the chargesheeted workman alone would be examined and there was no evidence let in by the employer who chargesheeted the workman. In that context, in paragraph 4, the Supreme Court has held as follows:

> "4. The Tribunal held that the enquiry was vitiated because it was not held accordance with the principles of natural justice. It is contended that this conclusion was erroneous. But we have no doubt about its correctness. The enquiry consisted of putting questions to each workman in turn. No witness was examined in support of the charge before the workman was questioned. It is an elementary principle that a person who is required to answer a charge must know not only the accusation but also the testimony by which the accusation is supported. He must be given a fair chance to hear the evidence in support of the charge and to put such relevant questions by way of cross-examination as he desires. Then he must be given a chance to rebut the evidence led against him. This is the barest requirement of an enquiry of this character and this requirement must be substantially fulfilled before the result of the enquiry can be accepted. A departure from this requirement in effect throws the burden upon the person charged to repel the charge without first making it out against him. In the present case neither was any witness examined nor was any statement made by any witness tendered in evidence. The enquiry, such as it was, made by Mr Marshall or Mr Nichols who were not https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) only in the position of judges but also of prosecutors and witnesses. There was no opportunity to the persons charged to cross-examine them and indeed they drew upon their own knowledge of the incident and instead cross-examined the persons charged. This was such a travesty of the principles of natural justice that the Tribunal was justified in rejecting the findings and asking the Company to prove the allegation against each workman de novo before it."

8. In the light of the above and there being no worthwhile enquiry conducted by the employer, the impugned orders will stand set aside”

29.Once again, in the context of the entitlement of TASMAC employees to subsistence allowance during the period of suspension, K. Chandru.J in the case of N. Renganathan & Another v. The District Manager, Tamil Nadu State Marketing Corporation Ltd., reported in 2010 SCC OnLine Mad 3171 (dated 19.04.2010), reaffirmed that the provisions of the Industrial Employment (Standing Orders) Act, 1946 are applicable to TASMAC. In paragraphs 11 and 13 of the judgment, the learned Judge observed as follows:

"11. This Court has already held in respect of TASMAC that the provisions of the Industrial Employment (Standing Orders) Act, 1946 (Act 20 of 1946) will apply to the employees engaged by the TASMAC and by virtue of Section 12A of Act 20 of 1946, the Model Standing Orders will also apply to the said employees. Under the said Act, it is immaterial whether an employee is engaged temporary, casual or permanent. But in all those cases the provisions of the Model Standing Orders will have to be applied. Under Model Standing Order 17(4)(b), an employer is bound to pay https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) subsistence allowance. Here also the Model Standing Order contemplates payment of subsistence allowance both on the ground of disciplinary proceedings pending or criminal proceedings pending against the employee and the rate of payment of subsistence allowance is also mentioned therein." "13.Therefore, every employer who is covered by Act 20 of 1946 is now statutorily bound to pay subsistence allowance whether or not there is any Certified Standing Orders available in the establishment. Though in the respondent/TASMAC there are no Certified Standing Orders, the Industrial Employment (Standing Orders) Act, 1946 will apply to them and by virtue of Section 10A of Act 20 of 1946, they are bound to pay subsistence allowance."

30.The legal position laid down by K. Chandru. J particularly the finding that the provisions of the Industrial Employment (Standing Orders) Act, 1946 are applicable to TASMAC—was consistently affirmed and followed by various other learned Judges of this Court from 2010 through 2022. A reference to those decisions is made hereunder.

1.Jayaganesan Vs. District Manager, TASMAC, W.P.No. 23488 of 2010 dt.26.11.2010 (N.Paul Vasanthakumar J, as he then was)

2.B.Sankar Vs. M.D, TASMAC, W.P.No. 40429 of 2015 dt.29.11.2016 (R.Subbiah J)

3.S.Saravanan Vs. M.D, TASMAC, W.P.No.2673 of 2012 dt.30.11.2016 (M.S.Ramesh J) https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm)

4.S.Krishnamoorthy Vs. The Managing Director, W.P.No.1222 of 2018 dt. 8.12.2022 (M.S.Ramesh J)

5.The District Manager Vs. A.Edwin Charles, W.P.(MD) No.8499 of 2019 dt. 21.12.2022 (S.Srimathy, J)

6.A.Thiyagarajan Vs. M.D, TASMAC, W.P.No. 697 of 2020 dt. 16.8.2023 (J,Sathya Narayana Prasad J)

31.The learned Judges who followed the decision in B. Sivakumar (cited supra), also issued categorical directions to TASMAC to comply with the legal principles therein declared. These directions, issued in the nature of writs of mandamus, attained

finality and continue to bind TASMAC in law. It is necessary, therefore, to extract and refer to the specific directions issued in those judgments.

32.In the Jayaganesan case (cited supra), which concerned the termination of an employee without conducting a proper enquiry, the learned Judge deemed it appropriate to rely on the decision rendered by K. Chandru.J. Notably, the legal position set out therein was also accepted by the standing counsel for TASMAC, Mr. J. Ravindran (currently serving as Additional Advocate General). This was duly recorded in paragraph 3 of the judgment as https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) follows:— "The learned counsel appearing for the petitioner submitted that though an enquiry was said to have been conducted, the same was not in the manner known to law. The learned counsel further submitted that the issue involved in this writ petition is covered by the decision of this Court made in W.P.Nos. 18592 and 18593 of 2009 dt. 19.4.2010 (A.Arivu Selavam case (cited supra)). The learned standing counsel for the respondent has not disputed the said submission." (Emphasis added)

33.After extensively referring to the text of the earlier judgment, the learned Judge proceeded to set aside the order of termination and concluded as follows:— "In view of the above said order the impugned order dt:

19.12.2004 is set aside. The writ petition is allowed, without backwages. It is open to the respondent to conduct proper enquiry, in accordance with law and in the light of the observations made in the decisions referred above, if it is warranted."

34.R.Subbiah J in B.Sankar case (cited supra) directed as follows:-

"In the light of the above and there being no worthwhile enquiry conducted by the employer, the impugned orders will stand set aside. Both the writ petitions will stand allowed. No costs. Consequenlty, connected miscellaneous petitions are closed. However, it is open to the respondent TASMAC if they so desire to conduct a proper enquiry in accordance with law and in the light of the observation made by the https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) judgment referred to above."

35.S.Srimathy J in District Manager, TASMAC case (cited supra) directed as follows:-

"The learned Single Judge has held that though the TASMAC has no Certified Standing Orders, the Industrial Employment (Standing Orders) Act, 1946 will apply and by virtue of Section 10 A of Act 20 of 1946, TASMAC is bound to pay subsistence allowance.

Therefore, this Court is also of the considered opinion that TASMAC is bound to pay the subsistence allowance and the order passed by the Deputy Commissioner of Labour is legally sustainable.

Hence, this Court is not inclined to entertain this writ petition."

36. History of the Code for "prevention and detection of fraudulent acts

-2014" :

> It is significant to note that the aforementioned decision, which declared the legal position and directed the Respondent TASMAC to frame Standing Orders in accordance with law, was never complied with by TASMAC.
>
> Importantly, there exists no contrary judicial pronouncement that dissents from or overrules the views expressed in the said decision. It is a well-settled principle that once a writ of mandamus issued to an executive authority attains finality, even subsequent legislation cannot nullify or override the benefit conferred by such a judicial direction. This proposition was authoritatively laid down by a Constitution Bench of seven Judges of the Hon'ble Supreme Court https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) in Madan Mohan Pathak v. Union of India & Others, reported in (1978) 2 SCC 50, wherein the Court observed as follows:— "Calcutta High Court, which is relied upon by the petitioners, is not a mere declaratory judgment holding an impost or tax to be invalid, so that a validation statute can remove the defect pointed out by the judgment amending the law with retrospective effect and validate such impost or tax. But it is a judgment giving effect to the right of the petitioners to annual cash bonus under the Settlement by issuing a writ of Mandamus directing the Life Insurance Corporation to pay the amount of such bonus. If by reason of retrospective, alteration of the factual or legal situation, the judgment is rendered erroneous, the remedy may be by way of appeal or review, but so long as the judgment stands, it cannot be disregarded or ignored and it must be obeyed by the Life Insurance Corporation. We are, therefore, of the view that, in any event, irrespective of whether the impugned Act is constitutionally valid or not, the Life Insurance Corporation is bound to obey the writ of Mandamus issued by the Calcutta High Court and to pay annual cash bonus for the year 1st April, 1975 to 31st March, 1976 to Class III and Class IV employees.."

37.In light of the foregoing discussion, the continued failure of the Respondent TASMAC to comply with the series of orders passed by various learned Judges of this Court over the past 15 years constitutes a blatant and wilful disobedience of judicial directions. Such conduct amounts to persistent and continuing contempt of this Court's authority and renders the Respondent liable to be proceeded against for contempt. It is also pertinent to note that https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) during the last five years, this present case has been represented by successive learned Advocate Generals—under both the previous and present political regime. No fewer than three learned Advocate Generals have appeared in this matter. It is both surprising and disappointing that, despite their involvement, TASMAC has not been advised to comply with the binding orders of this Court.

38.In defiance of the settled legal position and the binding directions issued by this Court, the 3rd Respondent has filed a counter affidavit seeking to justify the unilateral formulation of a document titled the "Code of Prevention and Detection of Fraudulent Acts in Tamil Nadu State Marketing Corporation Limited – 2014." In paragraphs 8, 9, 17, 18, and 20 of the said counter affidavit, the justification for the impugned Code has been advanced in the following terms:— "8.This respondent submits that the "Code of prevention and detection of the fraudulent acts in Tamil Nadu State Marketing Corporation Limited-2014 (The Code) has been uploaded in the TASMAC website even before the same is implemented.

9.It is submitted that based on the rules found in clause 14 of this code which states that "this code is not in derogatory of any of the law dealing with prevention, detection, and punishment of fraudulent acts and should be deemed to be supplementary to the same", the 5th respondent had rightly dismissed the petition filed https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) by the petitioner to reject the "Rules on disciplinary proceedings" of the 3rd Respondent." "17. This respondent submits that the 2nd respondent has rightly delegated powers to the 3rd respondent to deal with the erring shop personnel in respect of the punishments for the misconducts which takes place in the Retail Vending TASMAC Shops. It is submitted that vested with the above delegated powers, the 3rd respondent is using the same against the erring shop personnel in line with the guide lines given to him by the 2 nd respondent. The 3rd Respondent had also sent circulars to all Senior Regional Managers and District Managers directing them to act as per the Code of Prevention and Detection of Fradulent Acts in Tamil Nadu State Marketing Corporation Limited, 2014. Accordingly they are also taking punitive steps to the erring shop personnel following the circulars issued by the 3rd respondent ....

18. It is submitted that based on the counter statements filed by the corporation and also since there is no violation of model standing orders in the regulations contained in Code of Prevention and Detection of Fradulent Acts in Tamil Nadu State Marketing Corporation Limited, 2014, the 5th Respondent has not taken any action against the 2nd and 3rd respondents on the complaint preferred by the Federation and has dismissed and rejected the complaint rightly by his order dated 20.12.2015." "20. ..... On the other hand, the corporation and its officials are strictly following the guidelines and regulations set out in Code of Prevention and Detection of Fradulent Acts in Tamil Nadu State Marketing Corporation Limited, 2014, and also following the principles of natural justice in the case of detailing with the erring shop personnel."

39.In the typed set of documents filed by the Respondent TASMAC, at https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) Sl. No. 4, a copy of the minutes of the 174 th Board Meeting held on 20.07.2015 has been enclosed. It is recorded therein that the Code of Prevention and Detection of Fraudulent Acts was redrafted in consultation with a labour law expert and subsequently resubmitted for the Board's consideration. Following this, the Board, at the same meeting, adopted the following resolution approving the revised Code:— "Resolved to approve the Code of Prevention and Detection of Fradulent Acts in Tamil Nadu State Marketing Corporation Limited – 2014 (THE "CODE") annexed to the Circular Resolution" "Further Resolved to authorize the Managing Director to forward a copy of the above Code of Prevention and Detection of Fradulent Acts in Tamil Nadu State Marketing Corporation Limited - 2014 (THE

"CODE") to the Government for information and implement the same in respect of TASMAC employees with immediate effect."

40.It now emerges that the TASMAC Board had framed draft service rules for its employees, which were forwarded to the Government for approval on 05.03.2020. However, the Government initially returned the draft rules seeking clarifications. Upon furnishing the required clarifications, the draft rules were resubmitted and are presently pending governmental approval. This factual position was noted by a learned Judge in the order dated 04.09.2023 https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) passed in W.P. No. 20517 of 2012 (Tamizhaga TASMAC Pattali Thozhil Sangam v. The Secretary to Government, Home, Prohibition & Excise Department and Others), and the relevant portion of the order is extracted below:— "A perusal of the counter filed by the second respondent revealed that the second respondent has already framed the draft Service Rules for their employees and the same has been in the final stage of Government approval, vide File No.Rc.No. O-1/11679/2017, the same was sent to the first respondent on 05.03.2020. However, it was returned to the second respondent for some clarification and it is pending with the second respondent. After approval of the Board, again it was sent to the Government and it is pending for approval."

41.At best, the Code framed by TASMAC and approved by its own Board of Directors amounts merely to an internal office circular without the force or backing of any statutory law. The provisions of the Tamil Nadu Prohibition Act, 1937, which TASMAC frequently invokes in various proceedings, have no material bearing on the present controversy. In paragraph 12 of the counter affidavit, TASMAC has referred to Section 17-C(1A)(a) of the Prohibition Act to assert that it is a Corporation wholly owned and controlled by the State Government. Since reliance has been placed on Section 17-C(1A)(a), the said provision is extracted below:— "17-C. Exclusive Privileges for manufacture, etc., may be granted. — https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) (1-A) (a) Notwithstanding anything contained in this Act, the Tamil Nadu State Marketing Corporation Limited, which is Corporation wholly owned and controlled by this State Government, shall have the exclusive privilege of supplying, by wholesale, Indian - made foreign spirits and foreign liquor], for the whole of the State of Nadu and no other person shall be entitled to any privilege of supplying, by wholesale Indian - made foreign spirits and foreign liquor, for the whole or any part of the State"

42.The purpose underlying such inclusion within the framework of the Prohibition Act can be better understood by examining the provisions of Section 17-C(1B)(a) of the said Act, which is extracted as follows:— "[1-B) (a) Notwithstanding anything contained in this Act, the Tamil Nadu State Marketing Corporation Limited, which is a Corporation wholly owned and controlled by the State Government shall have the exclusive privilege of selling, by retail, Indian-made foreign spirits for the whole of the State of Tamil Nadu and no other person shall be entitled to any privilege of selling, by retail, Indian-made foreign spirits for the whole or any part of the State"

43.It is abundantly clear that the inclusion of TASMAC within the ambit of Section 17-C of the Tamil Nadu Prohibition Act was solely intended to confer upon it a monopoly in the retail vending of Indian Made Foreign Liquor (IMFL) through its own retail outlets—and nothing beyond that.

Notably, under the Tamil Nadu Prohibition Act, TASMAC has not been vested with any authority to frame regulations; the power to make rules is exclusively conferred https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) upon the State Government. Section 54 of the Tamil Nadu Prohibition Act, which enumerates the matters in respect of which the State Government is empowered to make rules, reads as follows:— "54. Power to make rules.—(1) The State Government may make rules for the purpose of carrying into effect the provisions of this Act. (2) In particular and without prejudice to the generality of the foregoing provision, the [State] Government may make rules-

(a) for the issue of licences and permits and the enforcement of the conditions thereof;

[(aa) prescribing the penalty for wastage or shortage of spirits in excess of the prescribed limits at such rate not exceeding [sixteen rupees per proof litre].

(b) prescribing the powers to be exercised and the duties to be performed by paid and honorary Prohibition Officers in furtherance of the objects of the Act;

[(bb) prescribing the ways in which the duty under Section 18-A may be levide;]

(c) determining the local jurisdiction of police and Prohibition Officers in regard to inquiries and the exercise of preventive and investigating powers;

(d) authorising any officer or person to exercise any power or perform any duty under this Act;

(e) prescribing the powers and duties of prohibition committees and the members thereof and the intervals at which the member of such committees shall make their reports;

(f) regulating the delegation by the Commissioner or by Collectors or other district officers of any powers conferred on them by or under this Act;

(g) regulating the cultivation of the hemp plant, the collection of those portions of such plant from which intoxicating drugs can be manufactured and the manufacture of such drugs there from;

(h) declaring how denatured spirit shall be manufactured;

(i) declaring in what cases or classes of cases and to what authorities appeals shall lie from orders, whether original or appellate, passed under this Act or under any rule made there under, or by what authorities such orders may be revised, and prescribing the time and manner of presenting appeals, and the procedure for dealing therewith;

(j) for the grant of batta to witnesses, and of compensation for loss of time to persons released under sub-section (3) of section 38 on the grounds that they have been improperly arrested, and to

persons charged before a Magistrate with offences under this Act and acquitted;

(k) regulating the power of Police and Prohibition Officers to summon witness from a distance under section 42; (***)

(l) for the disposal of articles confiscated and of the proceeds thereof;

[(m) for the prevention of the use of the medicinal or toilet preparations for any purposes other than medicinal or toilet purpose and for the regulation of the use of any liquor or drug exempted from all or any of the provisions of this Act;

(n) for the proper collection of duty on all kinds of liquor or drugs;

(nn) for exemption from, or suspension of, the operation of any rule made under this Act;

(o) for all matters expressly required or allowed by this Act to be prescribed."

44.The foregoing rules make it abundantly clear that even the State Government does not possess the power to frame rules or regulations governing the service conditions of staff employed by TASMAC. Despite this, the Respondent TASMAC seeks to exaggerate its position by projecting itself as if https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) it were a statutory authority under the Prohibition Act, claiming entitlement to frame rules pertaining to disciplinary action against its employees. At best, TASMAC may formulate internal guidelines, such as Standing Rules or Standard Operating Procedures (SOPs), to regulate the conduct of its retail liquor vending operations. However, when it concerns the service conditions of employees engaged in its retail outlets, all relevant labour laws are fully applicable, just as they apply to any other State-owned corporation. The fact that TASMAC is engaged in retail liquor vending does not confer upon it any extraordinary legal powers to circumvent or override statutory provisions governing labour and employment relations.

45.The impugned order in the present writ petition was passed by the Joint Commissioner of Labour, the 5th Respondent herein, against which the Petitioner Union is aggrieved, and which has been fully supported by TASMAC. It is pertinent to note that the Certifying Authority itself unequivocally held that the provisions of the Industrial Employment (Standing Orders) Act, 1946 are applicable to TASMAC. In fact, the authority referred to and relied upon the judgment of this Court in TASMAC Paniyalargal Sangam (AITUC) v. Tamil Nadu State Marketing Corporation Limited, reported in 2010 SCC OnLine Mad 3107, as extracted above. After citing the relevant https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) portions of that judgment, the authority arrived at the following conclusion regarding the applicability of the IESO Act:— "" nkw;fz;l jPh;gg; pd; mog;gilapy; ghh;f;Fk; nghJ bjhHpyfg; gzpfs; (epiy Mizfs;) rl;lk;. 1946 (Industrial Employment (standing orders Act,1946)) vjph;kDjhuh; epht ; hfj;jpwF ; bghUe;Jk; vd;W jPh;khdpf;fpnwd/;

nkYk; epiyahizfs; rl;lj;jpd; nehf;fk;

“Act to require employers in industrial establishments formally to define conditions of employment under them.” nkYk; gphpt[2(g) kw;Wk; 3(2)=d; go ml;ltizapy; “Matters to be Provided in Standing Orders under this Act” vdnt nkw;fz;l nehf;fj;jpw;fhf. ml;ltizapy; bjhptpf;fg;gl;l fhuz';fspd; (matters) mog;gilapy; rhd;wspfF ; k; mYtyh; gphpt[11=d; go ghprPyid bra;J rhd;wspf;Fk; mjpfhuk; bgw;wth;/”

46.The 5th Respondent, in the impugned order, also referred to the preamble of the 2014 Code framed by TASMAC and extracted the same for consideration. The relevant portion from the preamble, as recorded in the order, is as follows:— “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 (TASMAC or the “Company”) and to promote consistent organizational behaviour by the providing guidelines and assigning responsibility for the development of controls for anti-fraud activities, conduct of investigations on fraud or suspected fraud activities, and to prescribe appropriate disciplinary action.

Whereas the Board of Directors of TASMAC (hereinafter called “the Board” for brevity) are particular that the administration and https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) the functioning of TASMAC shall be characterized by sincerity and honesty, without scope for any fraudulent activities, Whereas it is found desirable to inculcate a ‘culture’ which would keep TASMAC away from fraudulent acts and facilitate detection of “Fraud” and its prevention, Whereas the Board desires to inculcate value systems in the day-to- day administration and in all dealings with customers, contractors, and others in connection with the affairs of TASMAC, and Whereas the Board has decided to provide a system for prevention and detection of fraud and for reporting and investigating fraud, to its logical conclusion.”

47.Following the extraction of the above preamble, the 5th Respondent also referred to and quoted paragraph 14 of the 2014 Code, which reads as follows:— “14. This Code is supplementary This Code is not in derogatory of any of the existing provisions in any of the law dealing with prevention, detection, and punishment of fraudulent acts, and should be deemed to be supplementary to the same.”

48.Subsequently, the 5th Respondent, in the impugned order, upheld the validity of the 2014 Code on the reasoning that it was merely supplementary to the Standing Orders and did not contravene Section 13 of the Industrial Employment (Standing Orders) Act, 1946. In the operative portion of the order, https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) the 5th Respondent recorded the following findings:— “ vdnt epiyahizfs; rl;lj;jpd; nehf;fKk;. TASMAC eph;thfj;jhy; ,aw;wg;gl;l Code nehf;fKk; ntWgl;L. Code nehf;fk; eph;thf rPh;gLj;Jk; mog;gilap[y; Fraud vd;w fphpkpdy; Fw;wj;jpid jLf;f ntz;Lk; vd;w nehf;fj;jpy; cUthf;fg;gl;Ls;sJ bjspthfpwJ/ nkYk; Clause 14 =d; go Code= MdJ ve;j rl;lj;jpw;Fk; vjpuhdjhf ,Uf;ftpy;iy vd;gij bjspt[gLj;JfpwJ vdnt Code cUthf;fg;gl;lJ kw;Wk; mKy;gLj;JtJ vd;gJ TASMAC eph;thfj;jpd; jdpg;gl;l eph;thf rPh;gLj;Jk; kw;Wk; fphpkpdy; Fw;wj;jpid jLf;Fk; nehf;fk; kl;Lnk bjhHpy; Kiwapy; cs;s gpur;ridfs; my;y/ vdnt epiy Mizfs; rl;lk; 13=d;go jtW vd;w thjKk; epiyahiz rl;lj;ij gpd;gw;wtpy;iy mjdhy; Fw;w eltof;if nkw;bfhs;s ntz;Lk; vd;w bjhHpwr; ';fj;jpd; thjKk; ,jpy; vHtpy;iy/ vdnt bjhHpwr; ';fj;jpd; nfhhpf;if Kw;wpYk; jtW vd;W jPh;khdk; bra;J bjhHpwr; ';fj;jpd; kDtpid js;Sgo bra;J Mizfs; tH';fg;gLfpwJ/”

49.Aggrieved by the aforesaid conclusion, the Petitioner Union has filed the present writ petition challenging the impugned order. On the other hand, the Respondent TASMAC has fully endorsed and supported the reasoning adopted by the 5th Respondent, particularly the passage found in the impugned order, which has been reiterated in paragraph 16 of its counter affidavit, as extracted below:— "...the 5th respondent had himself in his order dated 20.12.2015 held that the Code of Prevention and Detection of Fradulent Acts in Tamil Nadu State Marketing Corporation Limited, 2014 is not in derogatory of any of the existing provisions in any of the law dealing with prevention, detection and punishment of fraudulent acts and should be deemed to be supplementary to the same." https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm)

50.On the one hand, the Respondent TASMAC contends that the 2014 Code is merely a supplementary document, as found by the 5th Respondent— the Statutory Authority. On the other hand, paradoxically, they also assert that the provisions of the Industrial Employment (Standing Orders) Act, 1946 are not applicable to them. This contradictory stand is taken without any reference to the series of judgments rendered by various learned Judges of this Court affirming the applicability of the IESO Act. In paragraph 12 of their counter affidavit, they have made the following averments:— "It is clear that the Tamil Nadu State Marketing Corporation Limited, is an establishment under the State Government and consequently the provisions of the Tamil Nadu Shops and Establishments Act, 1947 are not applicable in view of the exemption contained in clause (c) of sub-section (1) of Section 4 of the said Act. Hence, issue of any notification in this regard does not arise". That means the TASMAC retail vending shops are not covered by Tamil Nadu Shops and Establishments Act and consequently the same shall not be covered by the Payment of Wages Act, 1936 and also the Industrial Employment (Standing Orders) Act, 1946."

51.In furtherance of their untenable position denying the applicability of the Industrial Employment (Standing Orders) Act, 1946 to TASMAC—despite a consistent body of decisions by various learned Judges of this Court—the standing counsel for TASMAC also filed a reply statement dated 20.12.2023. In https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) paragraph 1 of the said statement, the following assertion was made:— "It is respectfully submitted that the Industrial Employment (Standing Orders) Act 1946 and the Tamil Nadu Industrial Employment (standing orders) Rules 1947 are not applicable to the TASMAC shop in view of the Judgments rendered in WP.(MD) No. 17607 of 2015, dated 14.12.2018, by Hon'ble Justice Thiru.G.R.Swaminadhan; W.P.No.20527 of 2012 dated 04.09.2023 and W.P.No.24642 of 2009, dated 13.09.2023, by Hon'ble Justice Thiru.G.K.Ilanthiraiyan. Therefore, the applicability of the Industrial Employment (Standing Orders) Act 1946, for TASMAC is does not arise."

52.Let us now examine the observations made by the two learned Judges in the aforementioned decisions with respect to the applicability of the Industrial Employment (Standing Orders) Act, 1946 to TASMAC:— G.R.Swaminathan J (W.P.(MD) No. 17607 of 2015 dt. 14.12.2018) in District Manager, Tamil Nadu State Marketing Corporation Ltd (TASMAC) Vs. P.Murugan & Ors., "3. It is not in dispute that the TASMAC is a State Government undertaking. Therefore, it has to be considered as a shop under the State Government. Therefore, Section 4(1)(c) of the Tamil Nadu Shops and Establishments Act will come into play.

4. The learned counsel appearing for the employees would point out that this contention was not even taken before the appellate authority. He would also point out that the function being discharged by the TASMAC is a sovereign function or a public function.

5.Even though both these submissions of the learned counsel appearing for the first respondent are correct, I am of the view that in as much as an establishment under the State Government falls within Section 4(1)(c) of the Tamil Nadu Shops and Establishments Act, the provisions of the Tamil Nadu Shops and Establishments Act will not even apply. Even though this jurisdictional ground may not have been taken by the management before the appellate authority, it is a question of law. I do not agree with the submission of the first respondent's counsel that this is a mixed question of law and fact."

53.However, Mr. V. Ajoy Khose, learned counsel for the Petitioner, in the concluding paragraph (para 9) of his written submissions dated 05.03.2025, pointed out that the decision referred to by the Respondent is currently under challenge in Writ Appeal No. W.A.(MD) 1882 of 2023, which is still pending adjudication. A perusal of the case status reveals that the matter was last listed on 27.03.2025 and remains undisposed. Furthermore, in the decision relied upon by the Respondent to contend that the Tamil Nadu Shops and Establishments Act does not apply to TASMAC, the learned Judge did not furnish any detailed reasoning, except for a reference to Section 4(1)(c) of the Act, which exempts establishments under the control of the State Government.

It appears that in that case, the writ petition was directed against an order passed by the authority under Section 41(2) of the Shops Act, and the learned Judge, referring to the general exemption under Section 4(1)(c), held that the Act would not apply. Notably, there was no discussion on the applicability of the Industrial Employment (Standing Orders) Act, 1946 to TASMAC.

Therefore, the reliance placed by the learned counsel for TASMAC on that decision is clearly misplaced, as the issue under consideration in the present case is entirely distinct.

54.In W.P. No. 20527 of 2012, decided on 04.09.2023, in Tamizhaga TASMAC Pattali Thozhisangam v. The Secretary to Government, Home, Prohibition & Excise Department and Others, G.K. Ilanthiraiyan J dealt with a writ petition filed by a trade union seeking a writ of mandamus directing TASMAC to reduce the working hours of its employees from 12 hours to 8 hours per day, with a one-hour lunch break, in addition to extending other monetary and service-related benefits. The claim was founded on the provisions of the Tamil Nadu Shops and Establishments Act, 1947. Rejecting the petitioner's claim, the learned Judge accepted the stand taken by TASMAC and, in paragraph 7 of the order, held as follows:— "In so far as the wages are concerned, the minimum wages for scheduled employment are fixed by the Government for employees working in Shops and Establishments covered under the Shops and Establishment Act, 1947. However, the second respondent is exempted from the provisions of the Shops and Establishment Act,

1947 and hence, the provision of the minimum wages are technical and not applicable to the second respondent."

55.In M.D., TASMAC v. The Presiding Officer, Principal Labour Court, Chennai, in W.P. Nos. 24642 to 24683 of 2009, dated 13.09.2023, G.K. Ilanthiraiyan.J once again held that the provisions of the Tamil Nadu Shops and Establishments Act, 1947 are not applicable to TASMAC. In paragraph 20 of the judgment, the learned Judge made the following observation:— "...the petitioner is the government company registered under the provisions of the Companies Act and it is wholly owned by the government of Tamil Nadu. The petitioner requested the government to make sufficient provisions or suitable notification to exempt the petitioner's retail shops from the applicability of the provisions of the Tamil Nadu Shops and Establishment Act. The government of Tamil Nadu by its communication dated 22.02.2010, informed the Commissioner of Labour, Chennai that as per sub Section 1(A)(a) of Section 17-C of the Tamil Nadu Prohibition Act, 1937 (Tamil Nadu Act X of 1937), the petitioner is a corporation wholly owned and controlled by the State government. It is clear that the petitioner is an establishment under the State government and consequently, the provisions of the Tamil Nadu Shops and Establishment Act are not applicable in view of the exemption contained in Clause (c) of sub Section (1) of Section 4 the said Act. Therefore, the claim of the claimants under the Tamil Nadu Shops and Establishment Act, against the petitioner is not applicable."

56.Not only did TASMAC fail to obtain certification of its Standing https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) Orders in accordance with law, but it also neglected to adhere to the Model Standing Orders framed by the Government of Tamil Nadu under Section 12A of the Industrial Employment (Standing Orders) Act, 1946. Instead, TASMAC continued to implement its own anti-labour measures, dismissing workers without conducting proper domestic enquiries. On this issue, there has been a consistent series of decisions by this Court—both by learned Single Judges and Division Benches—dating back to the year 2009.

57.In The District Manager, TASMAC, Madurai v. S. Kottaisamy, in W.A.(MD) No. 27 of 2009, dated 27.01.2009, a Division Bench of this Court held as follows:— "Be that as it may, we have come across a number of cases where allegations of adulteration and other serious misconduct levelled against the TASMAC salesmen, whose services came to be terminated based on certain letters said to have been given by the concerned TASMAC salesmen admitting their guilt on the spot. Since numerous cases of this nature are being reported, it is high time that the appellant corporation instead of resorting to such shortcut method of terminating the services, even after noting such serious allegations of misconduct by such TASMAC employees, they can well be advised to take proper disciplinary action before resorting to termination of the services of such employees in order to have effective disciplinary control over those employees. Such a procedure can be followed in the matter of taking disciplinary action against these employees, especially, for imposing the extreme punishment of dismissal. It is high time that the https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) appellant corporation who is stated to have employed several thousand salesmen to run the TASMAC shops set up a separate machinery for following the proper disciplinary procedure so that any action taken by TASMAC can be justified when the same is challenged before the Court of Law. It will also have an effective control over such employees in the matter of their day-to-day administrative control over their employees. Irrespective of serious

allegations of adulteration, sale of empty bottles and such other misconduct, the salesmen got away with such punishment for not following the proper disciplinary procedure while imposing the punishment on them. We hope and trust that the appellant corporation will appreciate our observations in the proper perspective and take necessary measures to implement the proper procedure in taking disciplinary action against its employees in future."

58.TASMAC carried the matter on appeal to the Hon'ble Supreme Court.

However, after a lapse of 12 years, the Supreme Court dismissed Civil Appeal No. 6372 of 2011, affirming the decision of the Division Bench. The Court held as follows:— "As the respondent has retracted from the alleged confession statement that he has given, the High Court was right in holding that the termination of his services, without any opportunity for hearing being given to him, was in violation of the principles of natural justice.

Learned single Judge of the High Court referred to earlier judgments passed by the High Court earlier and held that a departmental inquiry should be conducted against the respondent before termination orders are passed. While setting aside the order of termination, liberty was given to the appellants to conduct an inquiry against the respondent and pass orders in accordance with https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) law, after following the established procedure. Though it might be difficult for the appellants to conduct an inquiry against the respondent at this point of time as the incident is of the year 2005, in the facts and circumstances, we uphold the order passed by the High Court and give liberty to the appellants to proceed against the respondent by holding an inquiry on the material that is available."

59.In A. Karthikeyan v. The Managing Director, TASMAC Ltd., reported in 2010 (1) LLJ 595, K. Chandru.J considered the issue and held as follows:— "In the light of the above direction and on finding that the sole basis of the termination was the letter given by the petitioner and there being no enquiry held against the petitioner, the impugned orders are set aside. The Writ Petition stands allowed."

60.In the same year, a Shop Supervisor and two Salesmen employed at Shop No. 9639 operated by TASMAC were dismissed by orders dated 13.02.2009. The charges against them were held to be proved, alleging misappropriation of a sum of Rs. 2,70,707/-. Aggrieved by their dismissal, all three employees filed separate writ petitions, which were heard together and disposed of by a common order in D. Veerasekaran v. The Managing Director, TASMAC, reported in 2010 (4) MLJ 1172 (dated 26.04.2010) by K. Chandru.J. The learned Judge held as follows:— "It is also claimed in the counter affidavit that the criminal case is https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) also pending against the petitioners in respect of the same incident. However, in the present case, this Court is only concerned with the disciplinary action, which has resulted in the removal of petitioners from service.

6.This Court also directed the original file to be produced and accordingly the same was circulated. It was found that no opportunity was given to the petitioners before the Disciplinary Authority disagreeing with the findings of the Enquiry Officer.

7.In this context, it is necessary to refer to the judgment of the Supreme Court in LAV NIGAM VS. CHAIRMAN & MD, ITI LTD., AND ANOTHER reported in 2006 (9) SCC 440 and it is relevant to refer to the following passage found in para Nos.9 to 14.

> "9. Challenging the orders of the respondent authorities the appellant filed a writ petition before the High Court. The appellant specifically raised the issue that the disciplinary authority was obliged to give a separate show-cause notice if the disciplinary authority differed with the inquiry officer. The High Court also held that there was no need to give two separate show-cause notices one before the disciplinary authority found against the employee while differing with the view of the inquiry officer, and another against the proposed punishment. It was further held that the two notices could be combined in one. The writ petition was accordingly dismissed.
>
> 10. The conclusion of the High Court was contrary to the consistent view taken by this Court that in case the disciplinary authority differs with the view taken by the inquiry officer, he is bound to give a notice setting out his tentative conclusions to the appellant. It is only after hearing the appellant that the disciplinary authority would at all arrive at a final finding of guilt. Thereafter, the employee would again have to be served with a notice relating to the https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) punishment proposed.
>
> 11. In Punjab National Bank v. Kunj Behari Misra a Bench of this Court considered Regulation 7(2) of the Punjab National Bank Officer Employees (Discipline and Appeal) Regulations, 1977. The Regulation itself did not provide for the giving of any notice before the disciplinary authority differed with the view of the enquiry officer. This Court held: (SCC p.97, para 19) The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.
>
> 12. This view has been reiterated in Yoginath D. Bagde v. State of Maharashtra. In this case also Rule 9(2) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 did not specifically provide for a disciplinary authority to give an opportunity of hearing to the delinquent officer before differing with the view of the enquiry officer. The Court said: (SCC p.758, para 29) But the requirement of

> https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) hearing in consonance with the principles of natural justice even at that stage has to be read into Rule 9(2) and it has to be held that before the disciplinary authority finally disagrees with the findings of the enquiring authority, it would give an opportunity of hearing to the delinquent officer so that he may have the opportunity to indicate that the findings recorded by the enquiring authority do not suffer from any error and that there was no occasion to take a different view. The disciplinary authority, at the same time, has to communicate to the delinquent officer the tentative reasons for disagreeing with the findings of the enquiring authority so that the delinquent officer may further indicate that the reasons on the basis of which the disciplinary authority proposes to disagree with the findings recorded by the enquiring authority are not germane and the finding of not guilty already recorded by the enquiring authority was not liable to be interfered with.
>
> 13. We have already quoted the extracts from the show- cause notice issued by the disciplinary authority. It is clear that no notice at all was given before the disciplinary authority recorded its final conclusions differing with the finding of fact of the inquiry officer. The notice to show cause was merely a show-cause against the proposed punishment. In view of the long line of authorities, the decision of the High Court cannot be sustained. The appeal is accordingly allowed and the decision of the High Court is set aside.
>
> 14. The proceedings may be recommenced from the stage of issuance of a fresh show-cause notice by the disciplinary authority to the appellant indicating his tentative disagreement with the findings of the inquiry officer."

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8.In the light of the above precedents and the factual matrix involved in this case, all the three writ petitions stand allowed and the impugned orders stand set aside. It is open to the third respondent to proceed against the petitioners, in accordance with law, as directed by the Supreme Court."

61.In a case where a robbery occurred at a TASMAC shop and the employees were held responsible for the loss, an employee was directed to deposit a sum of Rs. 34,500/- towards the alleged shortfall. The matter came before this Court in P. Palani v. The District Manager, in W.P. No. 23433 of 2010 (dated 28.02.2011). K. Chandru.J observed that neither the TASMAC Handbook nor any other governing rule authorised such deductions, and that the action was contrary to the provisions of the Payment of Wages Act as well as the Tamil Nadu Shops and Establishments Act. The learned Judge held as follows:— "5.The Handbook relating to the Vending of Retail liquor and beer does not contain any term by which the petitioner can be held responsible for the loss of cash even for the circumstances beyond his control. The law that provides for the deduction for any damages or loss is found under Section 37 of the Tamil Nadu Shops and Establishments Act. Section 37(1) reads as follows:

> "37.Deductions for damage or loss.--(1)A deduction under clause (c) of sub-section (2) of section 34 shall not exceed the amount of the damage or loss caused to the employer by the neglect or default of the person employed and shall not be made until the person employed has been given an https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) opportunity of showing cause against the deduction, or otherwise than in accordance with such procedure as may be prescribed for the making of such deductions."

6. Since the said provision refers to Section 34(2)(c), it reads as follows:

> 34.Deductions which may be made from wages.--
>
> (1)Wages of a person employed shall be paid to him without deductions of any kind except those authorised by or under this Act.

Explanation.--Every payment made by a person employed to the employer shall, for the purpose of this Act, be deemed to be a deduction from wages.

(2)Deduction from the wages of a person employed shall be made only in accordance with the provisions of this Act, and may be of the following kinds only, namely;-

(a) and (b) omitted

(c)deductions for damage to, or loss of goods expressly entrusted to the employed person for custody, or for loss of money for which he is required to account, where such damage or loss is directly attributable to his neglect or default;"

7.A cumulative reading of these provisions will show that no other deduction other than what has been authorised by the Act can be made. Under Section 34(2), deduction from wages can be made only under the contingencies set out under Section 34(2). Since the present case falls under Section 34(2)(c) as extracted above, deductions can be made for the loss of goods expressly entrusted to the employed person for custody or for loss of money for which he is required to account only if the loss is directly attributable to his neglect or default. Under Section 37(1), an opportunity has to be given to show cause against deduction.

8.The Tamil Nadu Government had framed rules under this Act known as Tamil Nadu Shops and Establishments Rules, 1948. Rule https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) 11(2)(a) reads as follows:

> "11(2)(a)Any person desiring to impose a fine on a person employed or to make a deduction from his wages for damage or loss shall explain personally to the said person the act or omission, or damage or loss, in respect of which the fine or deduction is proposed to be imposed and the amount of the fine or deduction, which it is proposed to impose, and shall hear his explanation. The charge in respect of

> which it is proposed to impose the fine or deduction and the explanation of the person concerned shall be reduced to writing, the signature of such person being obtained to the latter."

9.When there is safeguard provided to workman from any illegal deduction from being made from the wages of an employee, it is unthinkable that the respondent TASMAC can flout the legal provisions. May be they are under an impression that since the provisions of the Act has been exempted, they need not comply with these provisions set out above. The exemption granted by the Government reads as follows:

> Exemption of Indian-made Foreign Liquor retail vending shops from certain provisions of Tamil Nadu Shops and Establishments Act.
>
> (G.O.Ms.No.552, Labour and Employment, 9th April, 1990 Panguni 26, Sukla, Thiruvalluvar Aandu-2021.) No.II(2)/LE/2254/90.-- In exercise of the powers conferred by section 6 of the Tamil Nadu Shops and Establishments Act, 1947 (Tamil Ndu Act XXXVI of 1947), the Governor of Tamil Nadu hereby exempts the licensees of Indian-made Foreign Liquor retail vending shops from the provisions of sub-section (1) of section 11 of the Act subject to the following conditions:-
>
> (i)the persons employed in the Indian-made Foreign Liquor retail vending shops shall be granted one day holiday with wages in a week;

[***] [(ii)]if genuine complaints are received from the persons https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) employed, the exemption granted shall be cancelled."

10.It must be noted that the Payment of Wages Act, 1936 also contains similar provisions regarding deductions under Section 7(2)(c) of the of the said Act. That Act is also applicable to the respondent TASMAC in terms of Section 7(2)(h) read with the notification issued by the State Government in G.O.Ms.No.78, Labour and Employment Department, dated 26.6.1996 wherein and by which the State Government by exercise of its power under Section 2(ii)(h) of the Payment of Wages Act had notified all shops and establishments employing 20 or more persons to be covered by the provisions of the Payment of Wages Act. Under Section 1(6) of the Payment of Wages Act, the Act has been made applicable to persons who are drawing wages not exceeding Rs.10000/- per month which limit can be increased periodically at the interval of every five years. The said notification has been issued on 8.8.2007 by the Central Government's notification in S.O.1380(E).

11.In the present case, there is no allegation that the petitioner was directly responsible for the loss since he had also implemented conditions 17 and 18 of the Handbook and no other allegation is made against him. Hence it cannot be said to be the loss which is directly attributable to him. Merely because the Insurance Company had repudiated the claim, the liability cannot be directly passed on to the petitioner. May be the police might not have done proper investigation and the criminal court would have acquitted an innocent person who was before them. But that does not nonetheless make the story of robbery as unbelievable or the petitioner had any particular role in the said incident.

12.Therefore, the demand for making good the loss on the petitioner is clearly impermissible and not supported by law. Assuming that a shop supervisor drew wages above Rs.10000/- and not covered by the provisions of the Payment of Wages Act, insofar as the deduction was made without notice, the same is also not valid. The Supreme Court has held that recovery from the salary is punitive in nature and https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) no deduction can be made without notice to the affected person. Since in the counter, the respondents have not attributed any direct role of the petitioner, there is no scope for proceeding to recover the said amount. Hence the impugned order stands set aside."

62.Once again, in a case where an employee was accused of adulterating liquor and was dismissed without conducting a proper enquiry, the matter came before this Court in T. Dhandapani v. The Managing Director, Tamil Nadu State Marketing Corporation Limited, in W.P.(MD) No. 127 of 2012, decided on 20.08.2014. S. Nagamuthu.J considered the issue and held as follows:— "7.As I have already pointed out, there were only two charges framed, relating to (i) sale of liquor by adulterating the same with water; and (ii) selling the same on retail basis in the shop itself. The charge memorandum does not speak of any deficit in cash or excess cash in the account of the shop. But, a reading of the Enquiry Officer's Report would go to show that the Enquiry Officer had given a finding that during the inspection of the District Manager, excess amount to the tune of Rs.575/- was found. When there is no charge framed in respect of the same, the finding recorded by the enquiry officer is illegal, because the same has been recorded in vacuum without affording any opportunity to the petitioner. Since the order of dismissal has been influenced by this finding of the enquiry officer also, in my considered opinion, the order of dismissal deserves to be interfered with.

8.Yet another major point raised by the learned counsel for the petitioner is that the finding of the Enquiry Officer is based on the report submitted by the Chemical Analyst of the Government Forensic Lab. In that report, it appears that it had been stated that https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) the alcoholic content in the liquor sent for chemical examination was below the standard. But, unfortunately, the said report has not been made available at the time of enquiry or at-least now. It is not known as to how the enquiry officer could refer to a document which was not made available before him even. If once the reference to the said document goes, absolutely there is no other material to show that the liquor which was kept for sale was mixed with water. Above all, there is no other evidence let-in, either oral or documentary, to clinchingly prove these aspects. In view of the above, I have to necessary hold that none of the charges has been proved. Therefore, the impugned order of dismissal passed by the 3rd respondent and confirmed by respondents 1 and 2 is liable to be interfered with."

63.Similarly, in a series of subsequent decisions, the principles laid down in the Kottaisamy case—decided by a Division Bench and affirmed by the Hon'ble Supreme Court (cited supra)—were consistently followed by various learned Judges, particularly in cases where employees were terminated without adherence to proper procedure or in the absence of any applicable service rules.

In one such instance, a Division Bench S. Manikumar.J (as he then was) and S.S. Sundar.J, in Tamil Nadu State Marketing Corporation Ltd. v.

Manavalan, in W.A.(MD) No. 767 of 2016, dated 22.04.2016, heldin para 10 to 13 as follows:— “10. Service jurisprudence does not state that the enquiry report should be forwarded by the disciplinary authority, to the appellate authority, for passing orders. The disciplinary authority has to pass https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) appropriate orders on the proceedings initiated. Though he had earlier recommended for reinstatement to the appellate authority, subsequently, he himself has removed the respondent/writ petitioner from service, vide proceedings in Na.Ka.No.A2/922/2012-1, dated 10.12.2015.

11. Material on records discloses that the District Collector/District Manager, TASMAC Limited, Thoothukudi, appellant herein, has not issued any notice to the respondent while differing with the finding of the enquiry officer. As observed earlier, at one stage, impliedly, accepting the finding of the enquiry officer report, he has recommended for reinstatement and subsequently, vide order dated 10.12.2015, he has removed the respondent from service. There is a violation of principles of natural justice. Added further, criminal prosecution lodged against the respondent had also ended in acquittal.

12. In the light of the above discussion, this Court is not inclined to accept the contentions of Mr.M.Muniasamy, learned counsel appearing for TASMAC that there is an error apparent on the face of record, in not considering the Forensic Sciences Department report, dated 26.06.2012.

13. In the result, the writ appeal is dismissed.”

64.In K. Gopalakrishnan v. The Managing Director, TASMAC Limited, in W.P. No. 30230 of 2013, dated 17.08.2017, V. Parthiban.J rejected the contention advanced by TASMAC that it had been conducting proper enquiries prior to dismissing employees. In paragraphs 8 and 9 of the judgment, the learned Judge made the following observations:— “8. Upon notice, Mr.P.Arumugham, learned counsel entered appearance on behalf of the respondents and also filed counter https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) affidavit. Learned counsel appearing for the respondents would submit that unlike the other cases, in this case, the enquiry was held and the disciplinary authority, in terms of the Regulations, has a right to take independent decision regardless of the report of the enquiry officer. In the instant case, the disciplinary authority found there was some material against the petitioner and therefore he had taken a decision to impose the impugned penalty of dismissal from service.

9. The contention of the learned counsel for the respondents will have some force only if the disciplinary authority had followed the procedure. In case, the disciplinary authority decides to disagree with the findings of the enquiry officer, he is required to record his disagreement and issue a show cause notice to the petitioner along with the disagreement note to the petitioner calling for his explanation. In the instant case, the said procedure has not been followed and therefore, even assuming that the disciplinary authority has any material whatsoever to disagree with the findings of the enquiry officer, cannot be said to be valid in the eye of law. Even otherwise, it has to be seen that the enquiry report is completely silent on the guilt of the petitioner is concerned and the report does not anywhere even remotely deal with the charges being established in the enquiry. In such scenario, the eventual punishment meted out to the petitioner cannot have no legal backing.”

65.Further, V. Parthiban.J, in two subsequent decisions, set aside the enquiries conducted by the Respondent TASMAC. The details of those decisions are as follows:—

(i) K.Subramanian Vs. The Managing Director, TASMAC in W.P.3674 of 2012 dt. 20.7.2018 https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm)

(ii) M.Vijayakumar Vs. The Managing Director, TASMAC in W.P.No.36749 of 2015 dt. 8.3.2022

66.Despite several directions issued by different learned Judges of this Court in various orders mandating the framing of Standing Orders, their certification, and the conduct of domestic enquiries in accordance with the principles of natural justice, the Respondent nevertheless proceeded to introduce the so-called "Code" of 2014, as previously noted. It was at this stage that the Petitioner Union submitted complaint letters dated 19.01.2015 and 25.02.2015, requesting that no disciplinary action be taken based on the 2014 Code or pursuant to circulars issued thereunder. Subsequently, the Union approached the 5th Respondent with the same grievance. These complaints were registered as Na.Ka.No.B/1024/2015, dated 20.12.2015 (communicated to the Petitioner Union along with a covering letter dated 31.01.2018 by the 5th Respondent). Thereafter, the 5th Respondent passed the impugned order, holding that although the provisions of the Industrial Employment (Standing Orders) Act, 1946, are applicable to TASMAC, the 2014 Code was only supplemental in nature and did not violate Section 13 of the IESO Act so as to warrant penal consequences.

https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm)

67.After service of notice in the writ petition, wherein the 1 st Respondent was shown as the Government of Tamil Nadu, represented by its Principal Secretary, Labour and Employment Department, an application was filed in W.M.P. No. 33861 of 2023 seeking deletion of the 1st Respondent from the array of parties on the ground of misjoinder. An affidavit in support of the said application was filed by Ms. B. Chitra, Joint Secretary to the Government, Labour Welfare and Skill Development Department, dated 06.11.2023.

Although no orders have yet been passed on the said application, in paragraphs 3 and 4 of the affidavit, the Joint Secretary has averred as follows:— It is respectfully submitted that, the issue is in between the Respondent / Petitioner and the 2nd & 3rd Respondents. The above said Respondents have to answer to the request of the Respondent / Petitioner. The Petitioner / 1st Respondent herein is nothing to do with the said issue and no relief has been raised against him.

It is respectfully submitted that already the Respondents 4 and 5 in the above Writ Petition have filed a detailed counter in the month of June 2022 itself. I submit that this Court may read the counter affidavit filed by the 4th and 5th Respondents as part and parcel of this affidavit.

68.Upon finding that no detailed counter affidavit had been filed by the 4th and 5th Respondents, this Court requested the learned Government Pleader to produce copies of the same. In response, the learned Additional Government https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025

08:04:20 pm) Pleader, Mr. R. Kumaravel, filed a memo dated 16.04.2025. In paragraph 4 and the unnumbered concluding paragraph of the memo, the following statements were made:— "It is respectfully submitted that in the affidavit filed in support of deletion petition, signed by the Joint Secretary to Government, Labour Welfare and Skill Development Department, it was inadvertently stated in para-No.4, the 4th and 5th Respondents have already filed a detailed counter in the month of June 2022. This was a typographical error and it ought to have referred to the 2nd and 3rd Respondents as they are the only parties contesting the above case. The 4th and 5th Respondents have not filed any counter affidavit except the deletion petition with the supporting affidavit.

It is therefore humbly prayed that this Hon'ble Court may be pleased to accept this memo filed on behalf of 4th and 5th respondents, that they have not filed any counter affidavit except the deletion petition along with affidavit in the above Writ Proceedings and thus render justice."

69.This Court is unable to accept the memo filed by the learned Additional Government Pleader. If a party to the proceedings has filed a sworn affidavit before this Court and subsequently seeks to disown the averments made therein, it is incumbent upon that very person—or any other competent officer occupying the post after proper verification—to file an affidavit to that effect. No such procedure has been followed in the present case. Moreover, the 5th Respondent, who is the author of the impugned order and a party to these https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) proceedings, was bound to file a counter affidavit supporting his order upon issuance of Rule Nisi. It is entirely possible that affidavits were prepared and submitted for approval by the 4th and 5th Respondents. It is only after personally verifying such an affidavit that the 1st Respondent, who is a Joint Secretary to the Government, would have sworn the affidavit filed in support of the WMP. It is highly unlikely that such an affidavit would have been signed without proper verification. These affidavits, if any, should be traceable in the manuscript file prepared for the affidavit accompanying the WMP.

70.Furthermore, given that the 5th Respondent has taken the stand that the Industrial Employment (Standing Orders) Act applies to TASMAC, he would be bound to maintain that stand in any counter affidavit filed by him.

Since such an affidavit would be inconsistent with the narrative now advanced by TASMAC, it appears that the affidavit is kept away from this Court. In these circumstances, the memo filed by the learned Additional Government Pleader is rejected.

71.In this context, it becomes necessary to refer to the observations made by the Hon'ble Supreme Court regarding the casual manner in which affidavits are sometimes filed without proper verification. In Smt. Savithramma v. Cecil https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) Noronha, reported in 1988 SCC (Supp) 655, the Supreme Court made the following pertinent observations:— "We are constrained to observe that of late affidavit are being filed in this Court in a slipshod manner without having any regard to the Rules. Affidavits are being filed by person who could have no personal knowledge about the facts stated in the affidavit. Deponents of affidavits pay no attention to verification, although this court laid stress on this aspect as early as 1952."

72.Following the issuance of the impugned order by the 5th Respondent, the 2nd Respondent TASMAC began issuing various circulars pursuant to the 2014 Code. These circulars have a direct bearing on the application of the Industrial Employment (Standing Orders) Act, 1946, under which, in the absence of certified Standing Orders, the Model Standing Orders are required to be followed. One such instance is the issuance of a memo bearing Na.Ka.No.2148/A4/2018, dated 26.02.2018, relating to Shop No. 666, Chennai South, wherein penalties were imposed upon employees for alleged shortages, including liability for the corresponding GST on the shortage amount. Since similar memos were reportedly issued to other shops as well, it is necessary to extract the text of the said memo, which reads as follows:— " lh!;khf; ypl;/. brd;id (bjw;F) khtl;lj;jpw;Fl;gl;L ,a';fp[tUk; kJghd rpyy; iw tpw;gidf; fil vz;/ 666I 03/02/2018 md;W Jiz Ml;rpah;. Rpwg;g[gwf;Fk; gil brd;id kz;lyk; mth;fshy; jpOh; jzpf[;if nkw;bfhz;L mwpf;if bgwg;gl;ljpy; fPHf; z;l FiwghLfs;

 fz;Lgpof;fg;gl;ld/ 1/ ,Ug;g[f; Fiwt[(Shortaage) U:/580-= muRf;F tUkhd ,Hg;g[Vw;gLj;jpaJ/ (U:/580-= cld; 1 ½ kl';F U:/290-= + 24% tl;o U:/12-= kw;Wk; ,tw;Wld; mguhjj; bjhif kw;Wk; tl;o (290+12= 302) Mfpatw;wpw;F 18% GST (9% CGST and 9% TNGST) U:/54-= Mf bkhj;jk; U:/ 936-= brYj;j ntz;Lk;/ nkw;fz;l Fw;wr;rhl;ow;fhd jFe;j tpsf;fk; kw;Wk; nkw;Twpa bjhifia lh!;khf; brd;id (bjw;F) khtl;l nkyhshpd; a{dpad; t';fpf; fzf;F vz;/497501010036730=y; brYj;jp mjd; mry; brYj;Jr;rPlo; id ,f;fojk; fpilf;fg;gbgw;w K:d;W jpd';fSf;Fs; brd;id (bjw;F) khtl;l nkyhsh; mYtyfj;jpy; mspf;Fk;go nfl;Lf; bfhs;sg;gLfpwJ/ jtWk;gl;rj;jpy; jdpah; Twpfb; fhs;s tpsf;fk; VJk; ,y;iybad fUjp mYtyf Mtz';fs; K:yk; xG';F eltof;if nkw;bfhs;sg;gLk; vdj; bjhptpff; g;gLfpwJ/"

73.Challenging the arbitrary imposition of fines by TASMAC authorities —and the further demand for GST on such penal amounts—writ petitions were filed before this Court. In K.R. Subramanian v. The Managing Director, TASMAC, in W.P.(MD) No. 10355 of 2020, dated 18.12.2020, Krishnan Ramasamy .J held that GST could not be levied on amounts recovered by way of penalty. In paragraphs 36 to 38 of the judgment, the learned Judge observed as follows:— "As such in the present case the penalty was imposed in a disciplinary proceedings which cannot be construed that the penalty imposed in the course of trade or commerce for the imposition of GST.

This Court finds substance in the arguments made by Mr.R.V.Rajkumar, learned counsel appearing for the petitioners in some of the writ petitions in the batch and this Court recorded its appreciation for his assistance in the present writ petition. Therefore, I am of the opinion that the GST imposed by the respondents is illegal on the face of it and the same is liable to be set aside."

74.TASMAC immediately challenged the order by filing W.A.(MD) No. 679 of 2021 and secured an interim stay on 24.03.2021 before a Division Bench. Subsequently, another Division Bench in The Managing Director, TASMAC v. K. Selvamani, in W.A. No. 1032 of 2022, dated 18.04.2022, after referring to the earlier Division Bench's interim order, granted a stay on the cancellation of GST imposed on penalty amounts and heldin para 8 as follows:

> "8. ...The learned Judge rendered her finding that 'post 01.07.2017, there can be no levy of GST on the amount of penalty', on 05.01.2021, whereas, the appellants

> obtained the order of interim stay with respect of GST on penalty, only on 24.03.2021 i.e., much later than the order of the learned Judge. Therefore, the said interim order subsequently obtained, cannot be applicable to the facts of the present case and the order of the learned Judge holds good as on 05.01.2021, which warrants no interference.

However, it is made clear that there is no bar for the appellants in proceeding with the enquiry as against the respondents, after issuing show cause notices afresh and providing opportunity of hearing. At the same time, the imposition of GST on the penalty amount alone, is subject to the result of WA(MD)No.679 of 2021."

75.However, the summary orders directing recovery of shortage amounts https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) issued by TASMAC officers were challenged in several other writ petitions. In one such case, N. Karthick & Two Others v. TASMAC, in W.P. No. 8316 of 2018 and connected cases, by order dated 17.04.2018, S.M. Subramaniam.J took strong exception to the recovery proceedings and held as follows:— "Thus, this Court is of an opinion that it is a fit case for remittance. The writ petitioners must be given an opportunity to explain their stand in respect of recovery order passed by the respondent for the purpose of providing an opportunity. The respondents are directed to issue show cause notice to the writ petitioners within a period of two weeks from the date of receipt of a copy of this order and after receiving the explanation/objections from the writ petitioners, the authorities competent is at liberty to take a decision and pass orders on merits and in accordance with law based on the materials available on record. Till such time, a final order is passed, the order of recovery need not be given effect to."

76.Despite the various rulings rendered by this Court, TASMAC, disregarding the binding nature of those decisions, continued to issue circulars unabatedly. In Circular No. 17/2018, dated 06.06.2018, TASMAC directed its subordinate officials to initiate action under the 2014 Code in cases involving defamation or acts bringing disrepute to the Corporation. The relevant directive contained in the circular reads as follows:— " filg; gzpahsh;fs; vtnuDk; jkpH;ehL khepy thzpg fHf epWtdj;jpd; bfhs;if gw;wpnah. epWtdj;jpd; nfhl;ghLfisg; gw;wp Clfj; Jiwapnyh. gj;jphpf;ifapnyh my;yJ ifg;ngrpapy; cs;s brayp K:ykhfnth (Whatsapp, Twitter, Face Book etc). FW";bra;jp K:ykhfnth (SMS) https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) mYth;fspd; chpa mDkjpapd;wp ngl;o mspj;J epWtdj;jpw;F mtg;bgah; Vw;gLj;Jk; filg; gzpahsh;fs; kPJ xG';F eltof;if nkw;bfhs;sg;gl ntz;Lk;/ khtl;l nkyhsh;fs; midtUk; nkw;Fwpg;gpl;l midj;J tptu';fSk; cs;slf;fpa Rw;wwpf;ifia khtl;lj;jpy; gzpg[hpa[k; midj;J filg;gzpahsh;fSk; mwpe;jpLk; tifapy; Rw;wwpf;ifapid mDg;gp midj;J gzpahsh;fspd; xg;g[ifia ,uz;L jpd';fSf;Fs; bgw ntz;Lk; vd;W midj;J khtl;l nkyhsh;fSk; mwpt[Wj;jg;gLfpwhh;fs;/ filg; gzpahsh;fs; lh!;khf; epWtdj;jpw;nfh. lh!;khf; epWtdj;jpd; ew;bgaUf;nfh VnjDk; fs';fk; Vw;gLj;jpdhnyh. ew;bgaUf;F Fe;jfk; tpistpjj; hnyh jkpH;ehL thzpg fHfj;jpy; (tiuaWf;fg;gl;lJ) nkhro eltof;iffis jLj;jy; fz;Ltpog;gjw;fhd tpjpj; bjhFg;g[- 2014 (tpjpj; bjhFg;g[)-d; mog;gilapy; chpa eltof;if vLj;jpl mwptW [j;jg;gLfpwhh;fs;/ ,e;j Rw;wwpf;ifapid ,Ug;g[f; nfhg;gpy; guhkhpf;fg;gl ntz;Lk;"/

77.Once again, through Circular No. 29/2018, dated 26.10.2018, TASMAC referred to its earlier Circular No. 1/2018, dated 19.03.2018, wherein directions regarding the collection of GST were issued. The relevant portion is extracted as follows:— " ghh;it 2=y; fhQqk; Rw;wwpf;ifapy; kJghd rpy;yiw tpw;gid filfspy; kJghd';fs; muR eph;zapj;j tpiyiatpl TLjyhf tpw;gid bra;ag;gLtJ fz;lwpag;gLk; gl;rj;jpy; vLf;fg;gLk; eltof;iffs; Fwpj;J fPH;fz;lthW mwpt[iufs; tH';fg;gl;ls;sJ/ 1/ kJghd rpy;yiw tpw;gidf; filapd; nkw;ghh;itahsh; - tpw;gidahsh;

- cjtp tpwg; idahsh; ephz ; apf;fg;gl;l tpiyia tpl (MRP) TLjy; tpiyf;F tpwg; id bra;thuhapd; . U:/1/-=f;F U:/1000-= (+GST) tPjk; mjpfgl;rkhf U:/10000-= (+GST) tiu mguhjk; tpjpf;fg;gLk;/ 2/ eph;zapff; g;gl;l tpiyia tpl (MRP) TLjy; tpiyf;F tpw;gid bra;ak[; nkw;ghh;itahsh; - tpwg; idahsh; - cjtp tpwg; idahsiu khtl;l nkyhsh; tpwg; idf; Fiwthf eilbgWk; kJghdf; filf;F khWjy;

https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) bra;jpl rk;ge;jg;gl;l KJepiy kz;ly nkyhsUf;F Kd;bkhHpt[mDg;gpl ntz;Lk;"/

78.Moreover, employees found collecting Rs. 20/- in excess of the prescribed retail price were directed to be subjected to a penalty. It was further instructed that, upon receipt of a second complaint, such employees should be relieved from service. The relevant observation in this regard is as follows:— " kJghd rpyy; iu tpw;gid filfspy; kJghd';fis muR eph;zapj;j tpiyia tpl (MRP) U:/20-= kw;Wk; mjw;F nky; TLjy; tpiyf;F tpwg; id bra;tJ fz;lwpag;gLk; gl;rj;jpy; me;j TLjy; tpiy tpwg; id bra;j filg; gzpahsh;fis cldoahf kJghd filapypUe;J tpLtpg;g[bra;J chpa mguhj bjhifapid tNy; bra;j gpd;dh; khtl;lj;jpy; cs;s kJghd fpl';fpy; gzpakh;j;JkhW nfl;Lf; bfhs;sg;gLfpwJ/ nkYk; mnj rpy;yiu tpw;gid filfspy; ,uz;lhtJ Kiwahf U:/20-=kw;Wk; mjw;F nky; muR eph;zapjj; mjpfgl;r tpw;gid tpiyia tpl mjpf tpiyf;F tpwg; id bra;tJ fz;lwpag;gLk; gl;rj;jpy; rk;ke;jg;gl;l gzpahsh; kw;Wk; filapy; gzpgh[pa[k; midj;J nkw;ghh;itahsh;fisa[k; gzpapypUe;J tpLtpgg; [bra;J chpa mguhj bjhifapid tNy; bra;j gpd;dh; kJghd fpl';fpy; gzpakh;j;Jk;go midj;J khtl;lnkyhsh;fSk; nfl;Lf; bfhs;sg;gLfpwhh;fs;/ mt;thW gzpakh;jj; g;gLk; gzpahh;fs; Fiwe;jgl;rk; 3 khj';fs; fpl';F gzpapy; ,Uj;jy; ntz;Lk;/ mf;filgzpahsh;fis kJghd filf;F gzpapil khw;wk; bra;ag;gLk; gl;rj;jpy; mg;gzpapl khw;wk; KJepiy thpir mog;gilapy; me;je;j KJepiy kz;ly nkyhsh;fs; K:ykhfnt eilbgw ntz;Lk;"/

79.Further, through Circular No. 2/2019, dated 21.01.2019, TASMAC issued detailed directions regarding the punishment, transfer, and posting of employees in the godowns in cases involving allegations of shortage and https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) related misconduct. For the first time, the status of the 2014 Code came to be considered by this Court, albeit without examining the applicability of the Industrial Employment (Standing Orders) Act, 1946. In T. Selvakumar v. The Managing Director, TASMAC, in W.P.(MD) Nos. 25250 & 24756 of 2022, dated 17.11.2022, G.R. Swaminathan,J held that the 2014 Code would apply to all TASMAC employees and observed in para 6 as follows:— "6. The petitioners as employees in the liquor shop run by TASMAC are bound by the Code of Prevention and Detection of Fraudulent Acts in Tamil Nadu State Marketing Corporation Limited – 2014 (the "Code"). Any fraudulent act committed by the employees would invite disciplinary action. The expression "Fraud" has been defined in Clause 2(e) of the Code. If the employee has done any act so as to make wrongful gain for himself or any other entity or causes injury to TASMAC's interest, then it would amount to "Fraud". In the case on hand, there is no injury to TASMAC"

80.However, the learned Judge also held that, even when action is taken under the 2014 Code, an employee cannot be placed under suspension. The relevant observation is as follows:— "6. .....The impugned action was triggered by telecast of a video taken on the evening of 12.10.2022. From the video, one can see that liquor bottles were sold across the counter and two customers are seen carrying bags containing a number of bottles. The question is whether on this score, the petitioners could have been suspended." https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) "9. The petitioners, by no stretch of imagination, can be said to have committed any kind of misconduct. Only if any misconduct has been detected, they can be suspended. The impugned order of suspension, on the face of it, is without jurisdiction."

81.However, L. Victoria Gowri.J, while upholding the applicability of the 2014 Code, also held that an employee against whom action is initiated under the Code could be suspended pending enquiry, as such power is inherently available to the employer. This view was expressed in her decision in D. Pandiyan v. The Senior Regional Manager, in W.P.(MD) No. 3054 of 2024, dated 06.03.2024. While affirming the validity of actions taken under the 2014 Code, the learned Judge also justified the consequential suspension and observed as follows:— "9. .....Following which, the impugned order of suspension came to be issued by the second respondent as against the petitioners on 01.02.2024. Challenging the same, this Writ Petition came to be filed.

10. The investigation procedure contemplated under Section 6(b) of the Code is extracted herein.

"6.(b)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." xxx

12. ...the second respondent has initiated action against the petitioners only on receipt of a concrete information from the https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) Superintendent of Police, Thanjavur vide communication dated 31.01.2024 elaborating the confession obtained from the prime accused namely Logeswaran @ Logeswaran S/o. Anbucheliyan, in FIR in Crime No.66 of 2024 of Thirukattupalli Police Station on 30.01.2024, wherein he had admitted purchasing liquor bottles in bulk from TASMAC shop No.10380 with an intention to sell the same at higher price. The impugned order of suspension was not issued against the petitioners on surmises or conjunctures but on a concrete information from a responsible Superintendent of Police Thanjavur vide his communication dated 31.01.2024. In terms of Clause 2(e) of the Code, fraud includes the wrongful and willful acts of the employees with intend to cause wrongful gain to self or to any other entity.

13. The power to suspend would also include the power to suspend pending enquiry as an interim measure. The suspension pending departmental enquiry in a disciplinary matter is within the meaning of Article 314. Hence, on general principles, the authority entitled to appoint a public servant would be entitled to suspend him pending departmental enquiry into his conduct which may eventually result in departmental enquiry against him. In this case, it is duly admitted by the petitioners that they were appointed by the second respondent and hence, the impugned suspension order issued pending departmental enquiry as asserted by the respondents in their counter affidavit

cannot be termed illegal. The power to suspend pending enquiry is inherent to employer and the consequences of such pending enquiry is such the employee is entitled to subsistence allowance.

14. The allegations as against the petitioners is based on the information of the Superintendent of Police, Thanjavur vide his official communication dated 31.01.2024. Though the learned Senior Counsel for the petitioner relied upon the order passed by this Court in W.P(MD)No.10355 of 2020 dated 18.12.2020, I have no hesitation to observe that the said case is not applicable to https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) the facts and circumstances of this case. Though the Code under the head Disciplinary action under Clause 7(b)(iv) contemplates the punishments 'suspension from service as punishment'. I can clearly distinguish that the impugned order of punishment is not inflicted as a measure of punishment on the petitioners. On the other hand this is a clear case of suspension pending enquiry against the petitioners. Since an enquiry into grave charges is under contemplation as against the petitioners, placing them under suspension pending enquiry cannot be eschewed."

82.In a subsequent judgment, L. Victoria Gowri.J, while upholding the initiation of action under the 2014 Code, nevertheless set aside the transfer order issued against the employee, notwithstanding the fact that TASMAC had reserved such powers in its earlier circulars. This was held in R. Indiran v.

The Managing Director, TASMAC, in W.P.(MD) No. 1415 of 2024, dated 19.03.2024, wherein the learned Judge observed as follows:— "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.

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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." "9. The investigation procedure in Clause 6 (a) and (b) of the said Code m"andates 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." "11. .....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 respondents even without issuing a show cause notice https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) 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."

83.Subsequently, one of the trade unions operating within TASMAC, namely the Tamil Nadu Tasmac Virpanaiyaalargal Nala Sangam, filed a writ petition challenging a circular dated 29.10.2014. The Trade Union contended that since TASMAC was attempting to introduce new rules of discipline, and given that "new rules of discipline" is a matter specifically listed in the Fourth Schedule of the Industrial Disputes Act, 1947, the issuance of a notice of change under Section 9A of the Act was mandatory. It was argued that in the absence of such notice, TASMAC was not entitled to unilaterally introduce new disciplinary rules. Opposing the writ petition, the learned Additional Advocate General, Mr. J. Ravindran, contended that a Trade Union could not directly maintain a writ petition and that the appropriate course would be to raise an industrial dispute under the provisions of the Industrial Disputes Act.

84.The contentions advanced by the learned Additional Advocate General are recorded in paragraph 7 of the order in State Secretary, Tamil https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) Nadu Tasmac Virpanaiyaalargal Nala Sangam v. The Additional Chief Secretary, Labour Welfare and Skill Development Department, reported in 2025:MHC:163 D. Bharatha Chakravarthy.J, which reads as follows:— "Per contra, the learned Additional Advocate General would submit that the Circular is not framing any rule less a new rule. He would submit that there is already a Circular dated 18.07.2023, which is referred to as Sl. No.7 in the impugned Circular, and therefore, nothing new is being introduced by the present Circular. He would further submit that the impugned Circular will not in any manner amount to the introduction of new rules of discipline and, therefore, will not come under any Entry under the IV Schedule of the Act, and therefore, there is no violation of Section 9A of the Act. Further, he would submit that if at all anybody is aggrieved by the Circular, it would be the employee who claims that he did nothing wrong and yet, by the Circular, he has been punished. No such person has approached this Court, and this Court need not entertain the Writ 1 (1980) 2 SCC 593 Petition on behalf of the petitioner – Sangam. The matter of disciplinary enquiry is an individual matter, and therefore, the trade union should not be permitted to interdict the same. According to him, even assuming that there is a

violation of Section 9A of the Act, then there is an alternative remedy very much available to the petitioner – Sangam, to raise an industrial dispute, and when there is an efficacious alternate remedy, this Court need not entertain the Writ Petition."

85.However, the learned Judge declined to examine the questions as to whether TASMAC constitutes an "industry" under the Industrial Disputes Act, 1947, and whether Standing Orders are required to be certified under the https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) Industrial Employment (Standing Orders) Act, 1946. Paragraph 14 of the judgment, which reads as follows:— "As far as the regular rules of discipline, on a query by this Court, the learned Additional Advocate General would submit that it is in the process of being drafted. Therefore, the larger issue of whether the Tasmac Corporation is an industry and whether it is necessary for them to frame certified standing orders are not gone into in this Writ Petition."

86.Nevertheless, the learned Judge proceeded to entertain the writ petition and examined the merits of the impugned circular, under which the concept of collective guilt was sought to be imposed. The learned Judge held that the principle of community or collective guilt could not be sustained. In this context, it is necessary to refer to paragraphs 11, 12, and 16 of the judgment, which read as follows:— "11. The grievance of the employees seems to be that as a matter of rule, now all the Workmen are sought to be suspended and action being taken. In this regard, it is essential to extract paragraph No.111 of the Judgment of the Hon'ble Supreme Court of India in Gujaraj Steel Tubes Ltd's case (1980 (2) SCC 593), which reads as under:-

> "111. The cardinal distinction in our punitive jurisprudence between a commission of enquiry and a court of adjudication, between the cumulative causes of a calamity and the specific guilt of a particular person, is that speaking generally, we have rejected, as a nation, the theory of community guilt and collective punishment and instead that no man shall be punished except for his own guilt. Its reflection in the https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) disciplinary jurisdiction is that no worker shall be dismissed save on proof of his individual delinquency. Blanket attainder of a bulk of citizens on any vicarious theory for the gross sins of some only, is easy to apply but obnoxious in principle. Here, the arbitrator has found the Sabha leadership perverse, held that the strikers should have reasonably reported for work and concluded that the Management had, for survival, to make do with new recruits. Therefore what?" (emphasis supplied)
>
> 12.....unless there is a prima facie material pointing out the said event, merely based on the Circular fastening community liability action should not be taken. To that extent, the impugned Circular can be read down by this Court." "16. The impugned Circular No. Na.Ka.No.14/2024 R2/14589/2018 dated 29.10.2024 is upheld, in as much as it postulates taking of action against all the employees of the shop, however only upon a prima facie case being made out that all the employees of the shop are involved in the said action of collecting the extra amount from the customer and not by way of community guilt, as a matter of rule and as a matter of routine."

87.A review of the cases concerning disciplinary action against TASMAC employees, as detailed above, reveals that over the past two decades, TASMAC has failed to adopt a consistent and lawful policy for conducting disciplinary proceedings, despite the issuance of several binding writs of mandamus by different learned Judges of this Court. Ironically, TASMAC has sought to justify its actions by claiming that the 2014 revised Code was https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) formulated after consultations with labour law experts. However, the record demonstrates that this exercise was marked more by opportunism, administrative lethargy, and a lack of consistency than by any genuine attempt to comply with the law. TASMAC has repeatedly shifted its stands across different cases, selectively relied on judgments that do not lay down binding legal principles on the core issues, and conveniently ignored binding precedents that directed the adoption of lawful disciplinary procedures. There is no explanation from TASMAC as to why it failed to implement the earlier directions of this Court, apart from the undeniable fact that, as a monopoly in the retail liquor trade and a major revenue generator for the State, it has operated with a sense of impunity.

88.The core issues arising for consideration in this writ petition are twofold. First, whether the provisions of the Industrial Employment (Standing Orders) Act, 1946 apply to TASMAC, and if so, whether TASMAC is required to have its Standing Orders certified by the Certifying Officer, or, in the absence of such certification, whether the Model Standing Orders framed by the Government of Tamil Nadu would automatically apply. Second, whether the impugned circular dated 20.12.2015 can validly regulate the service conditions of employees, and whether the 5th Respondent was justified in holding that the https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) 2014 Code could operate as a supplement to either certified Standing Orders or the Model Standing Orders. Arising incidentally from these primary issues is a further question—whether TASMAC can be permitted to introduce new rules of discipline without adhering to the procedure mandated under Section 9A of the Industrial Disputes Act, 1947, and, if such procedure has not been followed, the legal effect on the validity of the newly introduced rules.

89.With regard to the applicability of the Industrial Employment (Standing Orders) Act, 1946 to TASMAC, there remains very little room for doubt. As already noted, even the 5th Respondent, in the impugned order, has unequivocally held as follows:— " nkw;fz;l jPhg; ;gpd; mog;gilapy; ghh;fF ; k;nghJ bjhHpyfg; gzpfs; (epiy Mizfs;) rl;lk;. 1946 (Insutrial Employment (Standing Orders Act, 1946)) vjph;kDjhuh; eph;thfj;jpwF ; bghUe;Jk; vd;W jPh;khdpf;fpnwd/;

90.The Respondent TASMAC has not challenged this finding at any stage. On the contrary, disregarding this clear conclusion, TASMAC has now sought to contend that the Industrial Employment (Standing Orders) Act, 1946 itself is inapplicable to it. It is pertinent to note that TASMAC is not the only government-owned company operating in Tamil Nadu. For over six decades, several statutory boards and government companies owned by the State of https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) Tamil Nadu have duly obtained certification of their Standing Orders from the competent authorities. A few illustrative examples are as follows:— (1)Tamil Nadu Electricity Board

(a)Raman Nambisan (P.) And Ors. vs Madras State Electricity Board reported in 1967 (I) LLJ 252 Mad wherein it was held as follows:-

> “I accept the contention of the learned Counsel for the petitioner that the petitioner is not employed mainly in a managerial or administrative capacity and therefore not excluded from the definition of " workman." He is entitled to the benefits of workmen under the Industrial Employment (Standing Orders) Act.”

> (b)Tamil Nadu Electricity Board vs Central Organisation Of Tamil Nadu reported in 1997 (II) LLJ 1043 MAD “The Board resisted the writ petition inter alia contending that apart from the Conduct Regulations framed under the provisions of the Electricity (Supply) Act, the Board is also empowered to issue eirculars as and when exigencies warrant. Though the Regulation of the Conduct Regulations stipulated that in respect of matters in the Conduct Regulations for which there is a provision in the Standing Orders for the employees of the Board framed under the Act, the provision under the Standing Orders would prevail in regard to the employees governed b the Standing Orders. Clauses 19(1) and 30(0) of the Certified Standing Orders for clerical and non-clerical workmen contemplate that the respondent Board can take disciplinary action against any of the employees in the event of the employee committing a breach of any reasonable orders of the superiors which include any violation of the Conduct Regulations or circulars issued by the Board.” (2)Tamil Nadu Water Supply and Drainage Board https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) The Tamil Nadu Water Supply And Drainage Board Vs. M.D. Vijayakumar reported in 1991 (I) LLJ 260 MAD (DB) “5. The first question we have to examine in these writ appeals is, whether the respondent-Board is 'an industrial establishment' within the meaning of Section 2(e)(i) of the Act of 1946. Section 2(e)(i) of Act of 1946 defines Industrial Establishment as follows : "Industrial establishment means an industrial establishment as defined in clause (ii) of Section 2 of the Payment of Wages Act, 1936 (Act IV of 1936).

According to Section 2(ii)(g) of the Payment of Wages Act, 1936, "industrial establishment" means any establishment in which any work relating to the construction, development or maintenance of buildings, roads, bridges or canals or relating to operations connected with navigation, irrigation, or the supply of water or relating to the generation, transmission and distribution of electricity or any other form of power is being carried on. The learned Advocate-General on behalf of the respondents would contend that the respondent-Board does not supply water, but only executes water supply and sewerage works on behalf of local bodies and hands them over to the local bodies after such completion and, therefore, the respondent-Board cannot be called an industrial establishment within the meaning of Section 2(ii)(g) of the Payment of Wages Act, 1936. This contention of the learned Advocate- General cannot be countenanced because it runs counter to the plain meaning of Section 2(ii)(g) of the above Act According to Section 2(ii)(g) any establishment in which any work relating to operations connected with - supply of water - is being carried on will be an industrial establishment.

...consequently the respondent-Board is an industrial establishment within meaning of Section 2(ii)(g) of the Payment of Wages Act. Consequently, we agree with the conclusion of the learned Single Judge that Act of 1946 would apply to the respondent-Board. If the Act of 1946 is attracted, in the absence of certified Standing Orders, Model Standing https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) Orders will apply to the respondent-Board." (3)Pallavan Transport Corporation Pallavan Transport Corporation Vs. Appellate Authoirty under the Industrial Employment (Standing Orders) Act, Madras reported in 1979 (2) LLJ 262 (DB)

91.The Respondent TASMAC is merely a government-owned company registered under the Companies Act. Its primary activities involve the procurement, storage, and retail distribution of Indian Made Foreign Liquor (IMFL), stocking these goods in its godowns, supplying them to retail outlets and bars, and collecting empty bottles for return to the manufacturers. These activities do not partake in any sovereign or core governmental function relating to the sovereignty or integrity of the nation. It is, therefore, wholly inconceivable that a liquor vending company should seek exemption from the applicability of various labour laws, especially when multiple judgments of this Court have consistently held to the contrary. Despite clear judicial pronouncements, TASMAC has persistently disregarded binding directions, and almost every termination of its employees challenged before this Court has been set aside for failure to follow due procedure and for violations of the provisions of the Industrial Employment (Standing Orders) Act. These judgments have attained finality, and TASMAC cannot now be permitted to contend otherwise.

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92.In its reply to the proposals for amending, deleting, and adding to the TASMAC Code 2014, the standing counsel for TASMAC relied solely on three judgments, which were previously extracted, wherein the applicability of the Industrial Employment (Standing Orders) Act, 1946 was never considered. It is rather astonishing that TASMAC has conveniently overlooked and failed to refer to several binding judgments of this Court, where the specific issue regarding the application of the Standing Orders Act to TASMAC was directly addressed and it was conclusively held that the Act applies to them, thereby mandating the certification of their Standing Orders in accordance with law.

Since this issue has been re-agitated by TASMAC, despite the 5th Respondent having already held to the contrary, this Court is once again constrained to undertake an examination of the applicability of the Industrial Employment (Standing Orders) Act, 1946 to TASMAC.

93.Before proceeding to examine the question of applicability, it is necessary to first consider the objects and reasons underlying the enactment of the Industrial Employment (Standing Orders) Act, 1946. The Supreme Court, in Management of Shahdara (Delhi) Saharanpur Light Railway Co. Ltd. v.

S.S. Railway Workers' Union, reported in AIR 1969 SC 513, succinctly https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) explained the purpose of the Act as follows:— "The Act is a beneficent piece of legislation and therefore unless compelled by any words in it we would not be justified in importing in s. 10 through inference only a restriction

to the right conferred by. it on account of a supposed danger of multiplicity for the purpose of ensuring that conditions of service, which the employer laid down, became known to the workmen and the liberty of the employer in prescribing the conditions of service was only limited to the extent that the Standing Orders had to be in conformity with the provisions of the Act and, as far as practicable, in conformity with Model Standing Orders. The Certifying Officer or the Appellate Authority were debarred from adjudicating upon the fairness or the reasonableness of the provisions of the Standing Orders. Then, as noticed in the case of Rohtak Hissar District Electricity Supply Co. Ltd.(1), the Legislature made a drastic change in the policy of the Act by amending section 4 and laying upon the Certifying Officer the duty of deciding whether the Standing Orders proposed by the employer were reasonable and fair, and also by amending section 10(2) so as to permit even a workman to apply for modification of the certified Standing Orders, while, in the original Act, the employer alone had the right to make such an application. It is, however, to be noticed that the preamble of the Act was no.t altered, so that the purpose of the Act remained as before. While the Act was in its unamended form, if the workmen had a grievance, they could not apply for modification of certified Standing Orders and, even at the time of initial certification, they could only object to a Standing Order on the ground that it was not in conformity with the provisions of the Act or Model Standing Orders. After amendment, the workmen were given the right to object to the draft Standing Orders at the time of first certification on the ground that the Standing Orders were not fair and reasonable and, even subsequently, to apply for modification of the certified Standing Orders after expiry of the period of six months prescribed under s. 10(1) of the Act. These rights granted to https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) the workmen and the powers conferred on the Certifying Officer and the Appellate Authority, however, still had to be exercised for the purpose of giving effect to the object of the Act as it continued to remain in the preamble, which was not altered. Before the amendment of the Act, if the workmen had any grievance on the ground of unfairness or unreasonableness of the Standing Orders proposed by the employer, their only remedy lay under the Industrial Disputes Act. By amendment in 1956, a limited remedy was provided for them in the Act itself by conferring on the Certifying Officer the function of judging the reasonableness and fairness of the proposed Standing Orders."

94.Once again, the Hon'ble Supreme Court, in Agra Electric Supply Co. Ltd. v. Sri Alladdin & Others, reported in 1969 (2) SCC 598, reiterated the purpose and scope of the Industrial Employment (Standing Orders) Act, 1946, and held as follows:— "The obligation imposed on the employer to have standing orders certified, the duty of the certifying authority to adjudicate upon their fairness and reasonableness, the notice to be given to the union and in its absence to the representatives of the workmen, the right conferred on them to raise objections, the opportunity given to them of being heard before they are certified, the fight of appeal and the right to apply for modifications given to workmen individually, the obligation on the employer to have them published in such a manner that they become easily known to the workmen, all these provisions abundantly show that once the standing orders are certified and come into operation, they become binding on the employer and all the workmen presently employed as also those employed thereafter in the establishment conducted by that employer" https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm)

95.The Hon'ble Supreme Court, once again, in Western India Match Company Ltd. v. Workmen, reported in 1974 (3) SCC 330, emphasized that the Industrial Employment (Standing Orders) Act, 1946 represents a significant development of the law, marking a transition from unregulated market conditions to codified and standardized service conditions for workmen through a tripartite arrangement. In paragraph 10 of the judgment, the Court explained the position as follows:— "In the sunny days of the market economy theory people sincerely believed that the economic law of demand and supply in the labour market would settle a mutually beneficial bargain between the employer and the workman. Such a bargain, they took it for granted, would secure fair terms and conditions of employment to the workman. This law they venerated as natural law. They had an abiding faith in the verity of this law. But the experience of the working of this law over a long period has belied their faith. Later generations discovered that the workman did not possess adequate bargaining strength to secure fair terms and conditions of service. When the workmen also made this discovery, they organised themselves in trade unions and insisted on collective bargaining with the employer. The advent of trade. union and collective bargaining created new problems of maintaining industrial peace and production for the society. It was therefore considered that the society has also an interest in the settlement of the terms of employment of industrial labour. While formerly there were two parties at the negotiating table the employer and the workman, it is now thought that there should also be present a third-party the State as representing, the interest of the society. The Act gives effect to this new thinking. By. s.4 the Officer certifying the Standing Order is directed to adjudicate upon "the fairness or https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) reasonableness" of the provisions of the Standing Order. The Certifying Officer is the statutory representative of the society. It seems to us that while adjudging the fairness or reasonableness of any Standing Order, the Certifying Officer should consider and weigh the social interest in the claims of the employer and the social interest in the demands of the workmen. Section 10 provides the mode of modifying the Standing Orders- The employer or die workman may apply to the Certifying Officer in the prescribed manner for the modification of the Standing Orders. Section 13(2) provides that an employer who does any act in contravention of the Standing Order shall be punishable with fine which may extend to one hundred rupees."

96.It is important to note that under Section 1(3) of the Industrial Employment (Standing Orders) Act, 1946, the Act is made applicable to every industrial establishment employing 100 or more workmen on any day in the preceding twelve months. Section 1(3) of the Act reads as follows:— "It applies to every industrial establishment wherein one hundred or more workmen are employed, or were employed on any day of the preceding twelve months Provided that the appropriate Government may, after giving not less than two months' notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act to any industrial establishment employing such number of persons less than one hundred as may be specified in the notification."

97.Under Section 1(4) of the Industrial Employment (Standing Orders) https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) Act, 1946, the Act is exempted from application only in States such as Maharashtra and Gujarat, where the Bombay Industrial Relations Act, 1946 is in force, and in Madhya Pradesh, where a separate State Standing Orders Act is operative. Even in those States, the Industrial Employment (Standing Orders) Act continues to apply to industrial establishments under the control of the Central Government.

98.Once the provisions of the Industrial Employment (Standing Orders) Act, 1946 are made applicable, Section 3 of the Act mandates that every employer must submit draft Standing Orders for certification. Section 3 reads as follows:— “3. Submission of draft standing orders.— (1)Within six months from the date on which this Act becomes applicable to an industrial establishment, the employer shall submit to the Certifying Officer five copies of the draft standing orders proposed by him for adoption in his industrial establishment. (2)Provision shall be made in such draft for every matter set out in the Schedule which may be applicable to the industrial establishment, and where model standing orders have been prescribed, shall be, so far as is practicable, in conformity with such model.

(3)The draft standing orders submitted under this section shall be accompanied by a statement giving prescribed particulars of the workmen employed in the industrial establishment including the name of the trade union, if any, to which they belong. (4)Subject to such conditions as may be prescribed, a group of https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) employers in similar industrial establishments may submit a joint draft of standing orders under this section.” (emphasis added) The term “industrial establishment” is defined under Section 2(e) which is as follows:-

> “industrial establishment” means—
>
> (i)an industrial establishment as defined in clause (ii) of section 2 of the Payment of Wages Act, 1936 (4 of 1936), or
>
> (ii)a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948), or
>
> (iii)a railway as defined in clause (4) of section 2 of the Indian Railways Act, 1890 (9 of 1890), or
>
> (iv)the establishment of a person who, for the purpose of fulfilling a contract with the owner of any industrial establishment, employs workmen;”

99.The term "employer" is defined under Section 2(d) of the Industrial Employment (Standing Orders) Act, 1946. The definition reads as follows:— “employer” means the owner of an industrial establishment to which this Act for the time being applies, and includes—

(i)in a factory, any person named under clause (f) of sub-section (1) of section 7, of the Factories Act, 1948 (63 of 1948), as manager of the factory;

(ii)in any industrial establishment under the control of any department of any Government in India, the authority appointed by such Government in this behalf, or where no authority is so appointed, the head of the department;

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(iii)in any other industrial establishment, any person responsible to the owner for the supervision and control of the industrial establishment;" From the above definition of the term "employer" it will be clear that the IESO Act will apply even to govt. owned establishments.

100.The matters required to be covered in the Standing Orders under the Industrial Employment (Standing Orders) Act, 1946, are set out in the Schedule to the Act, as prescribed under Section 2(g) read with Section 3(2). They are as follows:— "1. Classification of workmen, e.g., whether permanent, temporary, apprentices, probationers, or badlis.

2. Manner of intimating to workmen periods and hours of work, holidays, pay-days and wage rates.

3. Shift working.

4. Attendance and late coming.

5. Conditions of, procedure in applying for, and the authority which may grant leave and holidays.

6. Requirement to enter premises by certain gates, an liability to search.

7. Closing and reporting of sections of the industrial establishment, temporary stoppages of work and the rights and liabilities of he employer and workmen arising there from.

8. Termination of employment, and the notice thereof to be given by employer and workmen.

9. Suspension or dismissal for misconduct, and acts or omissions which constitute misconduct.

10. Means of redress for workmen against unfair treatment or https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) wrongful exactions by the employer or his agents or servants.

11. Any other matter which may be prescribed." (emphasis added)

101.In the event an employer fails to have Standing Orders certified for their establishment, the Model Standing Orders framed by the appropriate Government shall automatically apply to such establishments until certified Standing Orders are duly obtained, as provided under Section 12A of the Industrial Employment (Standing Orders) Act, 1946. Section 12A reads as follows:— "12A. Temporary application of model standing orders.— (1)Notwithstanding anything contained in sections 3 to 12, for the period commencing on the date on which this Act becomes applicable to an industrial establishment and ending with the date on which the standing orders as finally certified under this Act come into operation under section 7 in that establishment, the prescribed model standing orders shall be deemed to be adopted in that establishment, and the provisions of section 9, sub-section (2) of section 13 and section 13A shall apply to such model standing orders as they apply to the standing orders so certified.

(2)Nothing contained in sub-section (1) shall apply to an industrial establishment in respect of which the appropriate Government is the Government of the State of Gujarat or the Government of the State of Maharashtra."

102.As already noted, the primary question for consideration is whether the Respondent TASMAC qualifies as an "establishment" within the meaning https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) of Section 2(ii) of the Payment of Wages Act, 1936, thereby attracting the applicability of the Industrial Employment (Standing Orders) Act, 1946 under Section 2(e)(i). Although Section 2(ii) of the Payment of Wages Act enumerates various types of establishments, TASMAC may not directly fall within any of the specified categories. However, Section 2(h) of the Payment of Wages Act provides a residuary clause, empowering the appropriate Government to extend the definition of "industrial or other establishments" by notification. Section 2(h) reads as follows:— "2(h) any other establishment or class of establishments which the Central Government or a State Government" may, having regard to the nature thereof, the need for protection of persons employed therein and other relevant circumstances, specify, by notification in the Official Gazette;"

103.In exercise of the powers conferred under the Payment of Wages Act, 1936, the Government of Tamil Nadu, by issuing G.O.Ms.No.78, Labour and Employment Department, dated 26.06.1996, extended the provisions of the Act to cover shops and commercial establishments employing 20 or more persons. By virtue of this notification, establishments falling within the ambit of the Tamil Nadu Shops and Establishments Act, 1947, and employing the specified number of employees, were brought within the framework of the Payment of Wages Act. Consequently, establishments such as TASMAC, https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) which satisfy the employment threshold and nature of activity, would also be governed by the Payment of Wages Act, thereby triggering the applicability of the Industrial Employment (Standing Orders) Act, 1946 to them. The text of the said notification reads as follows:— "Extension of provisions of Payment of Wages Act to shops and commercial establishments employing 20 or more persons (G.O.Ms.No.78, Labour and Employment, 26th June 1996) No.II(2)/LE/1624/96 – In exercise of the powers conferred by sub- clause (h) of clause (ii) of section 2 of the Payment of Wages Act, 1936 (Central Act IV of 1936), the Governor of Tamil Nadu having regard to the nature of the Shops and Establishments defined in clauses (3), (6) and (16) of section 2 of the Tamil Nadu Shops and Establishments Act, 1947 (Tamil Nadu Act XXXVI of 1947), employing 20 or more persons and the need for protection of persons employed therein, hereby specifies the said Sops and Establishments as Industrial Establishments for the purpose of the Payment of Wages Act, 1936 (Central Act IV of 1936) And, in exercise of the powers conferred by sub-section (5) of section 1 of the Payment of Wages Act, 1936 (Central Act IV of 1936), and in supersession of the Labour and Employment Department Notification No.II(2)/LE/5770/90, dated the 30th October, 1990, published at page 647 of Part II – Section of the Tamil Nadu Government Gazette dated the 21st November 1990, the Governor of Tamil Nadu hereby extends the provisions of the said Act to the aforesaid industrial establishments, the preliminary notification of which has already been published as required by sub-section (5) of section 11 of the said Act." https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm)

104.After referring to the relevant statutory provisions and notifications, the 5th Respondent also relied upon a decision of this Court in Tasmac Paniyalargal Sangam (AITUC) v. The Tamil Nadu State Marketing Corporation Limited, reported in 2010 SCC OnLine Mad 3107 (dated 12.04.2010). In that case, K. Chandru .J followed his earlier decision in B. Sivakumar (cited supra), wherein it was held as follows:— "7. This Court is unable to agree with the said contention. Undoubtedly, the activity of the respondent/Corporation is selling liquor through various retail shops and the said work can be held to be a commercial establishment coming within the definition of Section 2(3) of the Tamil Nadu Shops and Establishments Act, 1947. Under the said Act, the services of an employee, who is employed for more than six months, cannot be dispensed with unless one month's notice or wages in lieu of such notice are provided and he can be terminated only for a reasonable cause. Such notice and assigning of reasonable cause are unnecessary if his services are dispensed with on a charge of misconduct supported by satisfactory evidence recorded at an inquiry held for the purpose. Therefore, the relevant Act makes it obligatory for the respondent/ Corporation to conduct an enquiry, in which there must be satisfactory evidence. Though the Tamil Nadu Shops and Establishments Act, 1947 provides for an appeal under Section 41(2), it is not known as to why the petitioner has not availed the appeal remedy provided which is not only cost effective, but more advantageous to the employees.

8. Apart from this fact, under the Industrial Employment (Standing Orders) Act, 1946, "industrial establishment" has been defined https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) under Section 2(e). As per Section 2(e)(i) of the Industrial Employment (Standing Orders) Act, 1946, "industrial establishment" includes an industrial establishment as defined in clause (ii) of Section 2 of the Payment of Wages Act, 1936. By a State amendment introduced under Section 2(ii)(h) by Tamil Nadu Act 9 of 1959, under Section 2(ii)(h) of the Payment of Wages Act, 1936, it has been provided that it includes an establishment or undertaking which the State Government may, by notification in the Official Gazette, declare to be an industrial establishment for the purposes of the Act.

9. By virtue of the said power conferred under the Payment of Wages Act, 1936 through the State amendment, the State Government by a notification made in G.O.Ms.No.78, Labour and Employment Department, dated 26.6.1996 has extended the provisions of the Payment of Wages Act to all the shops and commercial establishments employing twenty or more persons. Therefore, by virtue of this notification, the provisions of the Industrial Employment (Standing Orders) Act, 1946 are applicable to the respondent/Corporation."

105.It was only after considering the relevant materials that the 5th Respondent rightly concluded that the Industrial Employment (Standing Orders) Act, 1946 applies to TASMAC. Notably, this conclusion has not been specifically challenged by TASMAC in the present proceedings. However, in a roundabout manner, TASMAC has attempted to argue that, since it is not covered by the provisions of the Tamil Nadu Shops and Establishments Act, 1947, the question of applying the Payment of Wages Act notification does not arise. In their counter affidavit, TASMAC contended that, by virtue of Section https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) 4(1)(c) of the Tamil Nadu Shops and Establishments Act, which exempts establishments under the control of the Central or State Government, the Act would not apply to them, and therefore, the

Payment of Wages Act notification would also not apply. This argument, however, does not withstand legal scrutiny. Even assuming that an establishment is exempted from the operation of a particular enactment, if another legislation merely adopts or refers to the definition provided in that enactment, it constitutes a borrowing of the definition alone and does not imply the application of the exempted Act to the establishment concerned.

106.In support of their contention, TASMAC relied upon the decisions of G.R. Swaminathan.J (W.P.(MD) No. 17607 of 2015, dated 14.12.2018) and G. Ilanthiraiyan.J (W.P. No. 20527 of 2012, dated 04.09.2023, and W.P. No. 24642 of 2009, dated 13.09.2023). However, as already noted, in both sets of judgments, the learned Judges merely held that the provisions of the Tamil Nadu Shops and Establishments Act, 1947 would not apply to TASMAC. A careful reading of the orders reveals that neither decision examined or adjudicated upon the applicability of the Industrial Employment (Standing Orders) Act, 1946 to TASMAC. Therefore, it was wholly inappropriate and misleading for TASMAC to rely upon these judgments to contend that the https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) IESO Act would also not apply simply because the Shops Act does not apply.

107.The question of whether the definition of the term "establishment"

can be borrowed from an enactment that has otherwise been rendered inapplicable to a particular establishment has been considered in several judgments of this Court, with the principles laid down therein subsequently affirmed by the Hon’ble Supreme Court—except in one isolated case.

108.A Division Bench of this Court, in V. Elayaperumal v. State Bank of India, reported in 2007 (2) LLN 212, considered the question of whether the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 (hereinafter referred to as the "Permanent Status Act") would apply to employees of the State Bank of India. It was undisputed that the Tamil Nadu Shops and Establishments Act, 1947, did not apply to the State Bank of India. However, the Permanent Status Act, while defining the term "establishment" under Section 2(3), provided as follows:— “Sub-section (3) of Section 2 of the Permanent Status Act defines "industrial establishment" which reads as follows:

> "2. Definitions - in this Act, unless the context otherwise requires – xxx https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) (3) "industrial establishment" means -

xxx

(e) an establishment as defined in Cl.6 of Section 2 of the Tamil Nadu Shops and Establishments Act, 1947 (Tamil Nadu Act XXXVI of 1947...."

From a mere perusal of the said clause, it is clear that the word "establishment" though not defined in it, has been defined by borrowing from the Shops Act. Therefore, one must refer to the relevant provisions of the Shops Act to find out the meaning of "establishment" for the purpose of the

Permanent Status Act."

109.Thereafter, the division bench in Paras 12, 13 and 17 held as follows:-

> "12. From a conjoint reading of Section 2(6) with 2(3) of the Shops Act it is seen that the Bank comes within the field of `commercial establishment' included in `the establishment' falling under Clause (e) of Sub- section (3) of Section 2 of the Permanent Status Act. For the purpose of Permanent Status Act, the definition of an `establishment' as defined in the Shops Act had alone been borrowed and not the other provisions of the Shops Act. In such a situation, once an `establishment' falls within the definition of `establishment' under Clause (e) of Sub-section (3) of Section 3 of the Permanent Status Act, the inevitable conclusion is that the provisions of the said Act are applicable in construing the conferment of permanent status to any workman, who fulfills the criteria as laid down under Sub-section (1) of Section 3 thereof, notwithstanding anything contained in any other law for the time being in force, unless and until the Government, invoking its power under Section 9 of the Permanent Status Act exempts conditionally or unconditionally any employer or class of https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) employers or any industrial establishments from the provisions thereof. Therefore, once the establishment is defined in the Permanent Status Act by incorporating the definition of establishment in the Shops Act the definition so incorporated in Permanent Status Act become part and parcel of the later Act.
>
> 13. The law on the subject is well settled. When an earlier Act or certain of its provisions are incorporated become part and parcel of the later Act as if they had been bodily transposed into it. The incorporation of an earlier Act into a later Act is a legislative device adopted for the sake of convenience in order to avoid verbatim reproduction of the provisions of the earlier Act into the later. But this must be distinguished from a referential legislation which merely contains a reference or the citation of the provisions of an earlier statute. In a case where a statute is incorporated, by reference, into a second statute, the repeal of the first statute by a third does not affect the second. The later Act along with the incorporated provisions of the earlier Act constitute an independent legislation which is not modified or repealed by a modification or repeal of the earlier Act. However, where in later Act there is a mere reference to an earlier Act, the modification, repeal or amendment of the statute that is referred, will also have an effect on the statute in which it is referred. It is equally well settled that the question whether a former statute is merely referred to or cited in a later statute, or whether it is wholly or partially incorporated therein, is a question of construction." "17. In the instant case, the definition of establishment is virtually lifted from the Shops Act and has been incorporated in the Permanent Status Act. Therefore, the provisions of Clause (c) of Sub-Section (1) of Section 4 of the Shops Act which exempt the establishments under the Central Government is of no consequence and the Permanent Status Act would continue to apply for such establishments unless and until exemption has been obtained from the

> State Government under Section 9 of the https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) Permanent Status Act. In C.V.Raman's Case which was referred to by the learned single Judge, the Court was concerned with the question as to whether the provisions of Shops Act would be applicable to the Nationalised Bank in view of exemption granted under Section 4(1)(c). Therefore, the above decision has no relevance for the determination of the issue involved in the present case.

Consequently, we hold that the provisions of the Permanent Status Act will apply to the Banks including Nationalised Banks."

110.The learned Advocate General contended that this Court ought not to rely upon the judgment in Elayaperumal's case, as the State Bank of India had preferred an appeal before the Hon'ble Supreme Court and an interim stay had been granted as early as 26.07.2010 in S.L.P. (Civil) Nos. 15948–15951 of 2007 and connected matters. However, notwithstanding the pendency of that appeal for the past 15 years, it is pertinent to note that the Hon'ble Supreme Court has adjudicated and rendered decisions in other appeals arising out of similar issues from this Court.

111.A similar issue arose in relation to the Tamil Nadu Medical Services Corporation Limited, a State-owned company engaged in the supply of essential medicines, rather than Indian Made Foreign Liquor (IMFL). The question before the Court was whether the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) would apply to the Corporation, notwithstanding the exemption of the Tamil Nadu Shops and Establishments Act, 1947 to the said entity. The Supreme Court, in Tamil Nadu Medical Services Corporation Limited v. Tamil Nadu Medical Services Corporation Employees Welfare Union & Another, reported in 2024 SCC OnLine 982, considered this very question — namely, whether the Permanent Status Act would be applicable to a State-owned company like the Medical Services Corporation. The core issue once again revolved around the definition in the Permanent Status Act extending its application to all "shops and establishments." In that context, the Supreme Court held as follows:— "on 10th March, 2016, while allowing the appeal, this Court remanded the matter to the High Court, thus-

> "3. It has been submitted that while deciding the writ petitions and the connected matters, the High Court did not consider the fact whether the aforesaid Act is applicable to the members of the respondent-Union and the said submission appears to be correct.
>
> 4. In the afore-stated circumstances, the impugned judgment is set aside and the matters are remanded to the High Court for considering the same afresh in accordance with law. We are sure that the High Court will hear the matters afresh and decide the same in accordance with law.
>
> 5. Interim order dated 29th March, 2010 granted by this Court shall continue till the High Court modifies the same after hearing the concerned parties"

> https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) “12. Pursuant to the above order of remand, The High Court in its judgment, recorded its agreement with the judgment of the learned Single Judge, reproduced supra. It was observed that the learned Single Judge had extensively examined the constitution of the management of the Corporation, the nature of activities conducted by it, et cetera and then concluded that the Act would apply on the ground that it was an industrial establishment under Section 2(3)(e) of the Act, and that they (the learned Division Bench) concur with the same.
>
> 13. It was further observed that since no appeal stood preferred after the writ appeals against the order of the learned Single Judge, were dismissed, the order of the Inspector of Labour had become final. On independent analysis with respect to the application of the act on the Corporation, it was observed as under:
>
> "50. However on independent analysis of the facts, we categorically hold that the provisions of Tamil Nadu Act, 46 of 1981 are applicable to TNMSC Management, in view of the fact that, TNMSC Management is an industrial establishment as defined under section 2(3)(e) of the Act and that it is an establishment as defined under section 2 (6) of Tamil Nadu Act, 36 of 1947. By the above reasoning be conclusively hold that TNMSC Management is an industrial establishment and is covered under the provisions of Tamil Nadu Act, 46 of 1981."

“17. The core issue here is the application of the Act to the Corporation qua the employees and their Union. In order to examine the same, what is to be considered is as to whether the Corporation can be termed as an industrial establishment as per the provisions reproduced supra and whether the members of the Union would qualify as workmen and therefore would be eligible for permanent status under Section 3 of the Act.

18. The High Court considered this question in line with Section 2(3)(e), as above, i.e., the definition of 'establishment' provided under section 2(6) of the 1947 Act. It reads thus -

> "2. Definitions- In this Act, unless there is anything repugnant https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) in the subject or context (6) 'establishment' means a shop. commercial establishment, restaurant, eating-house, residential hotel, theatre or any place of public amusement or entertainment and includes such establishment as the 1 [State] Government may by notification declare to be an establishment for the purposes of this Act;"

19. For an establishment to be covered under the definition thereof under the 1947 Act, unless it is one of those specifically mentioned, it must satisfy being a commercial establishment which is defined under Section 2(3) which is as under -

> "(3) 'commercial establishment' means an establishment which is not a shop but which carries on the business of advertising, commission, forwarding or commercial

agency, or which is a clerical department of a factory or industrial undertaking or which is an insurance company, joint stock company, bank, broker's office or exchange and includes such other establishments as the State Government may by notification declare to be a commercial establishment for the purposes of this Act."

“21. For any establishment to be commercial, it has to be established that the activities undertaken by it are for making some monetary gain. Commercial in the most rudimentary sense means buying or selling of goods in exchange of money. As the above reproduced, uncontroverted paragraph (also recorded by the High Court) establishes, the commercial element was not absent.” “27. As such, both requirements, of the establishment being covered under the definition of industrial establishment as provided and that of the employee having uninterruptedly continued in service for 480 days or more for 24 months, having been met we have no hesitation in holding that the Act would apply to the parties to the present dispute.

28. The next question to be considered is whether the High Court on remand, could have ignored the order of the Inspector of Labour and suggested that the employees raise an industrial dispute questioning https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) their non-employment. The reason for remand, as is seen from the judgment dated 10th March, 2016, was that the High Court had not considered that the Act would be applicable to the parties, which were the very same as the parties before us. In other words, the scope of remand was limited. The order of the Inspector of Labour was passed under the Act. Since the High Court concluded that the Act would apply, there was no reason for it to disturb the finding of the Inspector of Labour and, therefore, it ought to have simply ordered that the order of Inspector of Labour which concluded that the members of the respondent-Union be given permanent employment, be complied with. When an issue stands already decided and such decision does not suffer from any vice of authority or jurisdiction then, putting those who enjoy an order in their favour through the wringer once more of having to re-establish their claim, this time before the authority under the Industrial Disputes Act, 1947, would be unjustified.”

112.Similarly, an analogous issue arose before a Division Bench of this Court in S. Selvam v. Senior Manager - HRD, Air India Ltd., reported in 2020 (4) LLJ 201. Writing for the Bench, Senthil Kumar Ramamoorthy.J held as follows:— “9. The learned counsel also contended that the TN Permanent Status Act does not apply to Central PSU's such as the first Respondent. In specific, it is his contention that the TN Permanent Status Act is a State legislation and does not apply to Air India Limited. With regard to the judgment of the Division Bench of this Court in Elayaperumal, he pointed out that it is not necessary for the first Respondent to seek exemption under Section 9 of the TN Permanent Status Act because the said enactment is not applicable to the first Respondent. In the said judgment, the Division Bench 12 of 23 of this Court concluded that the expression “industrial establishment” is defined in Section (2)(3) of the TN Permanent https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) Status Act as including an establishment as defined in Clause 6 of Section 2 of the TN Shops and Establishment Act. In that context, the Division Bench concluded that the TN Permanent Status Act would apply to “establishments” as defined in the TN Shops and Establishments Act unless such establishments obtain an exemption under Section 9 of the TN Permanent Status Act. In this case, the first

Respondent is not an establishment as defined in Section 2(6) of the TN Shops and Establishment Act." "13. Nevertheless, the legal basis of the Award remains to be considered and, for such purpose, the judgment of this Court in Elayaperumal should be examined closely. In that case, employees of the State Bank of India applied for the conferment of permanent status under Section 3 of the TN Permanent Status Act. Therefore, the Court examined the definition of "industrial establishment"

> in Section 2(3) of the TN Permanent Status Act. Clause (e) thereof includes an "establishment", as defined in Section 2(6) of the TN Shops and Establishments Act, within the meaning of the expression "industrial establishment". On that basis, it was concluded in Elayaperumal that the definition of "establishment"

in Section 2(6) of the TN Shops and Establishments Act is incorporated by reference in the TN Permanent Status Act. By proceeding further, the Court found that the definition of "establishment" in Section 2(6) of the TN Shops and Establishments Act includes a "commercial establishment" and that the expression "commercial establishment" is defined in Section 2(3) thereof as including a bank and that, therefore, it would apply to the State Bank of India. Section 2(6) is as under:

> "(6) "establishment" means a shop, commercial establishment, restaurant, eating house, residential hotel, theatre or any place of public amusement or entertainment and includes such establishment as the State Government may, by notification, declare to be an establishment for the purpose of this Act." From the above definition, it is clear https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) that, inter alia, all shops, commercial establishments and establishments notified by the State Government are within the scope of the expression "establishment". The expression "shop" is defined as under in Section 2(16) of the TN Shops and Establishments Act:
>
> "(16) "shop" means any premises where any trade or business is carried on or where services are rendered to customers and includes offices, store-rooms, godowns and warehouses, whether in the same premises or otherwise, used in connection with such business but does not include a restaurant, eating-house or commercial establishment".

14. In our view, the premises of the first Respondent would qualify as shops inasmuch as they are, undoubtedly, places where business is carried on and services are rendered to customers. Our conclusion is reinforced by the fact that the above definition includes offices. In Elayaperumal, the question as to whether the TN Permanent Status Act applies to a nationalised bank, such as the State Bank of India, was considered expressly. Section 4(1)(c) of the TN Shops and Establishments Act makes the said enactment inapplicable to establishments under the Central and State Governments. On that basis, the learned single judge therein had concluded that the TN Permanent Status Act did not apply to the State Bank of India, which is a nationalised bank that is majority owned and controlled by the Central Government. The Division Bench, however, reversed by holding as under:

> " 17. In the instant case, the definition of establishment is virtually lifted from Shops Act and has been incorporated in the Permanent Status Act. Therefore, the provisions of Cl.(c) of Sub-sec.(1) of S.4 of the Shops Act which exempt the establishments under the Central Government is of no consequence and the Permanent Status Act would continue to apply for such establishments unless and until exemption has been obtained from the State Government https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) under S.9 of the Permanent Status Act. In C.V. Raman v. Bank of India [1998 (2) L.L.N.156] (vide supra), which was referred to by the learned Single Judge, the Court was concerned with the question as to whether the provisions of the Shops Act would be applicable to the nationalised bank in view of exemption granted under S.4(1)(c).
>
> Therefore, the above decision has no relevance for the determination of the issue involved in the present case. Consequently, we hold that the provisions of the Permanent Status Act will apply to the banks including nationalised banks."

In effect, in Elayaperumal, the Court concluded that the definition of "establishment" in S.2(6) of the TN Shops and Establishments Act is incorporated by reference in the TN Permanent Status Act but not S.4 of the TN Shops and Establishments Act, which contains the exemption in respect of Central and State Government establishments. We respectfully concur. Air India Limited, the first Respondent herein, is also an entity that is majority owned and controlled by the Central Government. Therefore, the TN Permanent Status Act applies unless an exemption is obtained under Section 9 thereof. The admitted position is that no such exemption was granted. Hence, the Industrial Tribunal was justified in directing regularization. Thus, we conclude that the learned Single Judge was not justified in setting aside the Award of the Tribunal by largely relying upon the judgment in Umadevi. Consequently, the impugned order of the Writ Court is set aside and the Award of the Industrial Tribunal is restored."

113.It is significant to note that the earlier Division Bench decision in State Bank of India v. Elayaperumal (cited supra) was expressly quoted and followed by the Division Bench in S. Selvam's case. Aggrieved by the decision, https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) Air India challenged the judgment before the Supreme Court by way of Special Leave Petition, which was granted on 12.01.2021 in S.L.P. No. 11418 of 2020.

While granting leave, the Supreme Court recorded the following observations:

> "It is submitted that the instant matter is covered by the decision of this Court in C.V.Raman v.management of Bank of India & Another, (1988) 3 SCC 105.

114.However, when the matter was listed for hearing on 11.04.2022, the Hon'ble Supreme Court was pleased to dismiss the Special Leave Petition and recorded the following order:— "We find no reason to interfere with the order passed by the High Court in our jurisdiction under Article 136 of the Constitution. The Petition is accordingly, dismissed."

115.It is wholly untenable for the counsel appearing for TASMAC to persist in contending that reliance cannot be placed on the Division Bench judgment in Elayaperumal's case merely because the matter remains pending before the Hon'ble Supreme Court. This argument is rendered unsustainable in light of subsequent developments: in one case concerning the Tamil Nadu Medical Services Corporation, the Supreme Court has rendered a detailed speaking order affirming the very same principle, and in another case, although leave was initially granted in an appeal arising from a Division Bench judgment https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) that followed Elayaperumal, the Special Leave Petition was ultimately dismissed. Thus, reliance on Elayaperumal remains not only appropriate but fully supported by subsequent judicial developments.

116.The concept of incorporating provisions from an earlier statute—or from a statute which may otherwise not directly apply—into a new enactment is well established. The principle of "legislation by incorporation" was clearly explained by the Supreme Court in C.N. Paramasivam & Another v. Sunrise Plaza, reported in 2013 (9) SCC 460. In paragraph 17 of the judgment, the Supreme Court laid down the principle as follows:— "Legislation by incorporation is a device to which legislatures often take resort for the sake of convenience. The phenomenon is widely prevalent and has been the subject matter of judicial pronouncements by Courts in this country as much as Courts abroad. Justice G.P. Singh in his celebrated work on Principles of Statutory Interpretation has explained the concept in the following words:

> "Incorporation of an earlier Act into a later Act is a legislative device adopted for the sake of convenience in order to avoid verbatim reproduction of the provisions of the earlier Act into the later. When an earlier Act or certain of its provisions are incorporated by reference into a later Act, the provisions so incorporated become part and parcel of the later Act as if they had been 'bodily transposed into it. The effect of incorporation is admirably stated by LORD ESHER, M.R.: 'If a subsequent Act brings into itself by reference some of the clauses of a former Act, https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) the legal effect of that, as has often been held, is to write those sections into the new Act as if they had been actually written in it with the pen, or printed in it.
>
> Even though only particular sections of an earlier Act are incorporated into later, in construing the incorporated sections it may be at times necessary and permissible to refer to other parts of the earlier statute which are not incorporated. As was stated by LORD BLACKBURN: "When a single section of an Act of Parliament is introduced into another Act, I think it must be read in the sense it bore in the original Act from which it was taken, and that consequently it is perfectly legitimate to refer to all the rest of that Act in order to ascertain what the section meant, though those other sections are not incorporated in the new Act."

117.In Ram Kirpal Bhagat v. State of Bihar, reported in 1969 (3) SCC 471, the Hon'ble Supreme Court made the following observations:— "The effect of bringing into an Act the provisions of an earlier Act is to introduce the incorporated Sections of the earlier Act into the subsequent Act as if

those provisions have been enacted in it for the first time. The nature of such a piece of legislation was explained by Lord Esher M. R. in Re Wood's Estate [1881] 31 Ch. D.607 that "if some clauses of a former Act were brought into the subsequent Act the legal effect was to write those Sections into the new Act just as if they had been written in it with the pen".

118.Similarly, in Mahindra and Mahindra Ltd. v. Union of India, reported in 1979 (2) SCC 529, the Hon'ble Supreme Court held as follows:— "The effect of incorporation is as if the provisions were written out in https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) the incorporating statute and were a part of it. Legislation by incorporation is a common legislative device employed by the legislature, where the legislature for convenience of drafting incorporates provisions from an existing statue by reference to that statute instead of setting out for itself at length the provisions which it desires to adopt. Once the incorporation is made, the provision incorporated becomes an integral part of the statute in which it is transposed and thereafter there is no need to refer to the statute from which the incorporation is made and any subsequent amendment made in it has no effect on the incorporating statute."

119.The principle laid down in C.N. Paramasivam (cited supra) was subsequently reaffirmed by the Supreme Court in Bangalore Development Authority v. State of Karnataka, reported in 2022 (14) SCC 173. In paragraph 14 of the judgment, the Court reiterated the principle of legislation by incorporation and held as follows:— 1"Incorporation of an earlier Act into the later Act is a legislative device for the sake of convenience in order to avoid verbatim reproduction of the provisions of the earlier Act into the later Act. Once the incorporation is made, the provisions of incorporated statute become an integral part of the statute in which it is transferred and thereafter there is no need to refer to the statute from which incorporation is made and any subsequent amendment made in it has no effect on the incorporating statute. (See: C.N. Paramasivam and Another vs. Sunrise Plaza Through Partner and Others2)"

120.Even without engaging in an elaborate discussion on the subject, this https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) Court, in P. Palani v. The District Manager, in W.P. No. 23433 of 2010 (dated 28.02.2011), per K. Chandru.J , had categorically held that the Payment of Wages notification issued under Section 2(h) would apply to TASMAC. The relevant finding is as follows:— "10.It must be noted that the Payment of Wages Act, 1936 also contains similar provisions regarding deductions under Section 7(2)(c) of the of the said Act. That Act is also applicable to the respondent TASMAC in terms of Section 7(2)(h) read with the notification issued by the State Government in G.O.Ms.No.78, Labour and Employment Department, dated 26.6.1996 wherein and by which the State Government by exercise of its power under Section 2(ii)(h) of the Payment of Wages Act had notified all shops and establishments employing 20 or more persons to be covered by the provisions of the Payment of Wages Act. Under Section 1(6) of the Payment of Wages Act, the Act has been made applicable to persons who are drawing wages not exceeding Rs.10000/- per month which limit can be increased periodically at the interval of every five years. The said notification has been issued on 8.8.2007 by the Central Government's notification in S.O.1380(E)."

121.The Respondent TASMAC has conveniently omitted to mention that it had earlier supported the stand taken by the 1st Respondent–State Government, namely that workmen, instead of raising an industrial dispute for regularization, could seek remedies under the Permanent Status Act. The State Government, while rejecting the demand made by the same Petitioner Union for adjudication of their claim for regularization, issued G.O.(D) No. 432, Labour and Employment Department, dated 19.09.2014. When the said order was challenged by the Union, seeking a reference, T.S. Sivagnanam.J (as he then was), in TASMAC Uzhiyar Manila Sammelanam v. State of Tamil Nadu, in W.P. No. 3789 of 2015, dated 22.12.2015, upheld the Government's stand and held as follows:— "5. .....A perusal of the impugned order shows that so far as the first demand is concerned, as regards the conferment of permanent status to the employees working in the 3rd respondent, the respondent has refused to refer the dispute to the Industrial Tribunal on the ground that the employees have got efficacious remedy under the provisions of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981. Therefore, so far as the reason assigned in respect of Demand No.1 is concerned, this Court is of the view that the stand taken by the Government in the impugned Government Order is justified. Therefore, the employees have to necessarily resort to the provisions of the said enactment which is a Special Enactment and adjudicate their claims." "6.....In so far as the Demand No.1, as already held that the reason for refusal to refer is just and proper and it is open to the petitioner Union to file appropriate application under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 before the appropriate forum."

122.Thus, it is far too late for the Respondent TASMAC to now contend that the provisions of the Industrial Employment (Standing Orders) Act, 1946 do not apply to them. Such a stand has been taken deliberately, and without any legal foundation, solely with the intention of defeating the claims of the Petitioner Union. The binding effect of earlier decisions, which have attained finality, must be respected and complied with, irrespective of any perceived hardship to TASMAC. In this context, it is apposite to refer to the observations of Hon'ble Mr. Justice V.R. Krishna Iyer, speaking for the Supreme Court in Mamleshwar Prasad v. Kanhaiya Lal, reported in 1975 (2) SCC 232, wherein it was held as follows:— "Certainty of the law, consistency of rulings and comity of courts- all flowering from the same principle-coverage to the conclusion that a decision once rendered must later bind like cases. We do not intend to detract from the rule that, in exceptional instances, where by obvious inadvertence or oversight a judgment fails to notice a plain statutory provision or obligatory authority running counter to the reasoning and result reached, it may not have the sway of binding precedents. It should be a glaring case, an obtrusive omission. No such situation presents itself here and we do not embark on the principle of judgment per incuriam."

123.In fact, by advancing such contentions, TASMAC has willfully disobeyed the binding orders of this Court rendered by several learned Judges and has made submissions directly contrary to the settled rulings of the Hon'ble Supreme Court. Such conduct would warrant the imposition of appropriate sanctions by this Court. In light of the foregoing discussion, the finding recorded by the 5th Respondent in the impugned order dated 20.12.2015 (communicated under a covering letter dated 31.01.2018), to the

effect that the Industrial Employment (Standing Orders) Act, 1946 applies to TASMAC, is legally sound and correct.

124.The next issue that arises for consideration is whether the Respondent TASMAC was justified in not obtaining certification of its Standing Orders, despite the clear legal obligation imposed under Section 3 of the Industrial Employment (Standing Orders) Act, 1946, and whether it ought to be prosecuted for violation of the Act in terms of Section 13. However, until such time as TASMAC secures certified Standing Orders, Section 12A mandates that the Model Standing Orders (MSO) framed by the State Government shall apply to it. The Model Standing Orders, prescribed by the Tamil Nadu Government under the Tamil Nadu Industrial Employment (Standing Orders) Rules, 1947, comprehensively address all matters listed in the Schedule to the IESO Act. Specifically, MSO-16 enumerates various acts of misconduct, listing as many as 27 distinct categories.

125.It is a settled principle that once Standing Orders apply to an establishment, the employer is entitled to take disciplinary action only in respect of the acts of misconduct enumerated therein, and cannot introduce new categories of misconduct unless duly incorporated into the certified Standing Orders. This principle was authoritatively laid down by the Supreme Court in Glaxo Laboratories (India) Ltd. v. Labour Court, Meerut, reported in 1984 (1) SCC 1, wherein it was held as follows:— “The Act makes it obligatory to frame standing orders and get them certified. Sec. 3 (2) requires the employers in an industrial establishment while preparing draft standing orders to make provision in such draft for every matter set out in the Schedule which may be applicable to the industrial establishment, and where model standing orders have been prescribed, shall be, so far as is practicable, in conformity with such model. Item 9 of the Schedule provides 'suspension or dismissal for misconduct, and acts or omissions which constitute misconduct'. It is therefore, obligatory upon the employer to draw up with precision those acts of omission and commission which in his industrial establishment would constitute misconduct. Penalty is imposed for misconduct. The workmen must therefore, know in advance which act or omission would constitute misconduct as to be visited with penalty. The statutory obligation is to prescribe with precision in the standing order all those acts of omission or commission which would constitute misconduct. In the fact of the statutory provision it would be difficult to entertain the submission that some other act or omission which may be misconduct though not provided for in the standing order would be punishable under standing order 23. Upon a harmonious construction, the expression 'misconduct' in S.O. 23 must refer to those acts of omission or commission which constitute misconduct as enumerated in standing order 22 and none else.”

126.Therefore, the Respondent TASMAC cannot unilaterally introduce the 2014 Code as a new set of conduct rules empowering its officers to impose spot fines or order transfers upon a second instance of alleged misconduct.

Further compounding the hardship faced by the workmen, TASMAC has also been recovering shortages and levying GST on such recoveries. Fundamentally, TASMAC cannot implement a new

Code without either securing certification of Standing Orders in accordance with law. The justification sought to be advanced for the 2014 Code based on the Tamil Nadu Prohibition Act, 1937 is wholly misplaced, as that enactment has no bearing on the disciplinary action to be taken against workmen for alleged misconduct. The Prohibition Act does not confer any authority upon TASMAC to frame rules or regulations governing service conditions. At best, TASMAC may issue internal procedural instructions; however, even such instructions must conform to the requirements of the Industrial Employment (Standing Orders) Act, 1946.

127.Once the Standing Orders become applicable, the introduction of any new set of regulations by the employer is impermissible, as authoritatively held by the Supreme Court in U.P. State Electricity Board v. Hari Shankar https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) Jain, reported in 1978 (4) SCC 16. In that decision, the Supreme Court drew a clear distinction between statutory corporations, which are expressly empowered to make rules and regulations, and other types of companies. It was further held that the provisions of the Industrial Employment (Standing Orders) Act, 1946 constitute a special law and cannot be subordinated to rules framed by statutory bodies such as Electricity Boards. In paragraphs 12, 16, and 18 of the judgment, the Court observed as follows:— “The proposition that statutory Bodies are 'authorities' within the meaning of Art. 12 of the Constitution, that the employees of these bodies have a statutory status and that regulations made under the statutes creating these bodies have the force of law are not in dispute before us. The question is not whether the employees and the Board have a statutory status; they undoubtedly have. The question is not whether the regulations made under Sec. 79 have the force of law; again, they undoubtedly have. The question is whether Sec. 79(c) of the Electricity Supply Act is a general law and therfore regulations cannot be made under it in respect of matters covered by the Industrial employment (Standing order) Act, a special law.” “In Thiru Venkataswami case Kailasam J., also observed that the industrial employment (Standing order) Act was a special act relating exclusively to the service conditions of persons employed in industrial establishments, and, therefore, its provisions prevailed over The provisions of the District Municipalities Act. We entirely agree. But, the learned judge went on to say "S. 13-B cannot be availed of for purposes of framing rules to govern the relationships in an industrial establishment under private management or in a statutory Corporation. This rule can apply only to industrial establishments in respect of which the Government is authorised to frame rules and regulations relating to https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) the conditions of employment in industrial establishments". There we disagree. Our disagreement is only in regard to industrial establishment in statutory Corporations and not those under private management.” “We, therefore, hold that the Industrial Employment (Standing orders) Act is a special law in regard to the matters enumerated in the schedule and the regulations made by the Electricity Board with respect to any of those matters are of no effect unless such regulations are either notified by the Government under Sec. 13-B or certified by The Certifying officer under Sec. 5 o the Industrial Employment (Standing orders) Act. In regard to matters in respect of which regulations made by the Board have not been notified by the Governor or in respect o which n regulations have been made by the Board, the Industrial Employment (Standing orders) Act shall continue to apply.”

128.Similarly, TASMAC cannot enforce any Code—including the 2014 Code—which, according to the 5th Respondent, is supplemental to the Standing Orders, if it operates dehors the provisions of the

Industrial Employment (Standing Orders) Act, 1946. Such a position is legally untenable. A Division Bench of this Court, in S. Alamelu v. Superintending Engineer, South Arcot Electricity System (South), Villupuram, reported in 1990 (2) LLN 489, held as follows:— “The Act makes it obligatory to frame standing orders and get them certified. S. 3(2) requires the employers in an industrial establishment while preparing draft standing orders to make provision in such draft for every matter set out in the Schedule which may be applicable to the industrial establishment, and where model standing orders have been prescribed, shall be, so far as is practicable, in conformity with such model. Item 9 of the Schedule provides 'suspension or dismissal for misconduct, and acts or omissions which constitute misconduct'.

https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) It is, therefore, obligatory upon the employer to draw up with precision those acts of omission and commission which in his industrial establishment would constitute misconduct. Penalty is imposed for misconduct. The workmen must, therefore, know in advance which act or omission would constitute misconduct as to be visited with penalty. The statutory obligation is to prescribe with precision in the standing order all those acts of omission or commission which would constitute misconduct. In the face of the statutory provision it would be difficult to entertain submission that some other act or omission which may be misconduct though not provided for in the standing order would be punishable under Standing Order 23. Upon a harmonious construction, the expression 'misconduct in S.O. 23 must refer to those acts of omission or commission which constitute misconduct as enumerated in Standing Order 22 and none else.

In the above pronouncement, there was also reference to the ruling in Rohtak Hissar District Electricity Supply Co. Ltd. v. State of Uttar Pradesh and Others (1966-II-LLJ-330) that "everything which is required to be prescribed has to be prescribed with precision and no argument can be entertained that something not prescribed can yet be taken into account as varying what is prescribed. In short it cannot be left to the vagaries of management to say ex post facto that some acts of omission or commission nowhere found to be enumerated in the relevant standing order is none the less a misconduct not strictly falling within the enumerated misconduct in the relevant standing order, but yet misconduct for the purpose of imposing penalty." “.....It is true Regulation 25(2) as such sets forth an embargo on a woman employee contracting a marriage with any person, who has a wife living, without first obtaining the permission of the Board. It is admitted that the Regulations do not by themselves say that a violation of Regulation 25(2) would amount to misconduct, attracting disciplinary action. Even if such a provision has been made, the Standing Orders under the Act having got formulated and certified and they having not provided for such a misconduct, the Regulations https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) would not prevail and could not be invoked to take disciplinary action. That is the result of sanctity annexed to the Act and the rules, and the Standing Orders under them, and their overriding effect on other service Rules and Regulations. The learned single Judge, with due respect to him, in our view, has not appreciated the implications of the Certified Standing Orders under the Act and their overriding effect from a proper perspective. The learned single Judge took note of the observations in Shri Rasiklal Vaghjibhai Patel v. Ahmedabad Municipal Corporation and another (1985-I-LLJ-527) as saying that there could be an action either under the Service Regulations or Standing Orders. With due respect to the learned single Judge, we must point out that the said

pronouncement has not at all dealt with the question of the overriding effect of the Certified Standing Orders under the Act over a Regulation of the present nature. The Supreme Court in that case, was discountenancing the view of the High Court that even if the allegation of misconduct does not constitute misconduct amongst those enumerated in the relevant service regulations, yet the employer can attribute what would otherwise per se be a misconduct through not enumerated and punish him for the same."

129.Accordingly, the impugned order passed by the 5th Respondent, wherein it was held that the 2014 Code is not opposed to any law, that it was introduced to prevent criminal activities unrelated to mere conditions of employment, and that it does not violate Section 13 of the Industrial Employment (Standing Orders) Act, 1946 but is merely supplementary, is wholly erroneous. The 5th Respondent, being a senior officer in the Labour Department, failed to appreciate the very essence of the IESO Act and the legal https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) requirement that TASMAC must obtain certification of its Standing Orders. In the absence of such certification, the only applicable framework would be the Model Standing Orders, and nothing else. Therefore, his endorsement of TASMAC's position, stating that "the Code is not in derogation of any existing provisions in law relating to the prevention, detection, and punishment of fraudulent acts, and should be deemed supplementary," is legally perverse and contrary to established law. To this extent, the prayer of the Petitioner Trade Union seeking to quash the 2014 Code deserves to be allowed. The request for prosecution of TASMAC for violation of the IESO Act will be addressed separately at a later stage.

130.Another Trade Union also raised a similar challenge before this Court in W.P. No. 33765 of 2024, contending that no new rules of discipline could be introduced by TASMAC without issuing a notice of change as mandated under Section 9A of the Industrial Disputes Act, 1947. Although the contention raised by the Union has been referred to elsewhere in this judgment, the learned Judge, while disposing of that writ petition, did not specifically address the issue, despite its clear relevance to the present matter. In addition to implementing the 2014 Code, TASMAC has been continuously issuing circulars prescribing the amounts to be recovered from employees for https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) shortages, and directing that employees accused of adulteration be subjected to punitive transfers—effectively dumping them into godown postings—without recognizing that these matters fall squarely within the scope of the Industrial Employment (Standing Orders) Act, 1946. If TASMAC believes that its operations have peculiar features necessitating special provisions, it is always open to it to propose appropriate modifications or special Standing Orders, to be certified after following the due process, including inviting objections from the workmen and obtaining the satisfaction of the Certifying Officer. In the event of any grievance, the statute also provides for an appeal to the Appellate Authority.

131.It must be noted that for effecting any change in the conditions of service of workmen in respect of any matter specified in the Fourth Schedule of the Industrial Disputes Act, 1947, the employer is mandatorily required to issue a Notice of Change under Section 9A of the Act. Section 9A reads as follows:— "9A. Notice of change.

- No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change,-

(a)without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) proposed to be effected; or

(b)within twenty-one days of giving such notice:

> Provided that no notice shall be required for effecting any such change-
>
> (a)where the change is effected in pursuance of any [settlement or award] or
>
> (b)where the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply."

132.The Fourth Schedule to the Industrial Disputes Act, 1947, sets out eleven categories of matters requiring the issuance of a Notice of Change under Section 9A. Item No. 9 of the Fourth Schedule reads as follows:— "Introduction of new rules of discipline, or alteration of existing rules, except in so far as they are provided in standing orders;"

133.Rule 57 of the Tamil Nadu Industrial Disputes Rules, 1958, further prescribes the procedure to be followed for the issuance of a Notice of Change under Section 9A of the Act. The relevant rule reads as follows:— "Notice of change. -- Any employer intending to effect any change in the conditions of service applicable to any workman https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) in respect of any matter specified in the Fourth Schedule to the Act, shall give notice of such intention in Form "N".

The notice shall be displayed conspicuously by the employer on a notice board at the main entrance to the establishment and in the Manager's Office. The notice which is affixed on the notice board shall be in English, and in any other language understood by the majority of the workmen in the establishment concerned:

> Provided that where any registered trade union of workmen exists, a copy of the notice shall also be served by registered post on the Secretary of such union. A copy of the notice shall simultaneously be forwarded by the employer to the Commissioner of Labour, Chennai, and Conciliation Officer concerned."

134.The issuance of the 2014 Code, along with the various circulars referred to earlier, clearly constitutes a transgression of the prohibition imposed under Section 9A of the Industrial Disputes Act, 1947. The Supreme Court has categorically held that non-compliance with the mandatory requirement of Section 9A would render the employer's action invalid. This principle was laid down in Management of Indian Oil Corporation Ltd. v. Its Workmen, reported in 1976 (1) SCC 63, wherein it was held as follows:— "In these circumstances, therefore, s. 9A of the Act was clearly applicable and the non-compliance with the provisions of this section would undoubtedly raise a serious dispute between the parties so as to give jurisdiction to the Tribunal to give the award." https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) "if s. 9A of the Act applied, the Tribunal should have gone into the question on merits instead of giving the award on the basis of non- compliance with the provisions of s. 9A. This argument also appears to us to be equally untenable. On the facts and circumstances of the present case the only point that fell for determination was whether there was any change in the conditions of service of the workmen and, if so, whether the provisions of s. 9A of the Act were duly complied with. We cannot conceive of any other point that could have fallen for determination on merits, after the Tribunal held that s. 9A of the Act applied and had not been complied with by the appellant."

135.The argument advanced is that whenever TASMAC issues a circular imposing punishment, including recovery from wages, it effectively introduces new rules of discipline falling under Item No. 9 of the Fourth Schedule to the Industrial Disputes Act, 1947, thereby attracting the mandatory requirement of issuing a notice of change under Section 9A. In the absence of such notice, such circulars cannot be given legal effect. Although D. Bharatha Chakravarthy.J , in Tamil Nadu Tasmac Virpanaiyalargal Nala Sangam (cited supra), dealt primarily with the invalidity of imposing collective guilt and emphasized that misconduct must always be determined individually, and directed that appropriate disciplinary action be initiated notwithstanding the circulars, the learned Judge did not address the requirement of notice under https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) Section 9A. Consequently, this court is constrained to independently examine and decide this issue as well.

136.In light of the foregoing discussion, the writ petition in W.P. No. 150 of 2020 stands allowed. Consequently, W.M.P. Nos. 188 and 190 of 2020 are rendered infructuous. As regards W.M.P. No. 33861 of 2023, seeking deletion of the State Government as a party to the proceedings, the application is devoid of merit and is based on a false affidavit. The State Government, having created the Respondent TASMAC as a monopoly entity and having continuously guided its actions in the present matter—including possessing the authority to prosecute TASMAC for violations of Section 13 of the Industrial Employment (Standing Orders) Act, 1946—is a necessary and proper party to the present proceedings. Accordingly, W.M.P. No. 33861 of 2023 stands dismissed.

137.The present writ petition arises out of the Respondent TASMAC's failure to comply with the legal requirement of framing Standing Orders and obtaining certification in accordance with law. Despite several judgments— now attained finality—categorically directing TASMAC to adhere to the Model Standing Orders for initiating disciplinary action against its employees, TASMAC has persistently disregarded its legal obligations. A Trade Union, https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) representing the affected employees, has now approached

this Court seeking appropriate legal redress. A feeble attempt was made by the Respondent TASMAC to contest the maintainability of the writ petition on the ground of delay. However, the Petitioner Union, in paragraph 28(n) of the affidavit filed in support of the writ petition, has satisfactorily explained the delay, asserting that the impugned order dated 2015 was made available to them only in January 2018 upon specific request. In any event, considering the substantial issues raised—touching upon the fundamental rights of the employees—the matter deserves to be adjudicated and decided conclusively.

138.In this context, it is apposite to refer to the judgment of the Supreme Court in Chennai Metropolitan Water Supply & Sewerage Board v. T.T. Murali Babu, reported in 2014 (4) SCC 108, wherein, in paragraph 16, the Court observed as follows:— "Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the Court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not.

https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the Court. Delay reflects inactivity and inaction on the part of a litigant – a litigant who has forgotten the basic norms, namely, "procrastination is the greatest thief of time" and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis."

139.Further, it may be noted that on one occasion, when the Petitioner Union was not prepared to proceed with the matter, this Court, by order dated 15.12.2023, imposed a day cost of Rs. 2,500/- on them. The Petitioner Union duly complied and paid the said amount to the State Legal Services Authority, as directed. Under the Legal Services Authority framework, industrial workmen are ordinarily exempt from payment obligations for availing legal assistance.

Yet, in this instance, they were penalized. Nevertheless, considering the seriousness of the issues involved, the persistent and unrepentant attitude displayed by the 2nd and 3rd Respondents—TASMAC—and the unwarranted volume of litigation they have generated before this Court, despite being a wholly-owned government company expected to act as a model employer, and their audacious stand that no labour law applies to them despite clear judicial pronouncements to the contrary, this Court deems it appropriate to impose a https://www.mhc.tn.gov.in/judis (Uploaded on: 29/04/2025 08:04:20 pm) cost of Rs. 1,00,000/- (Rupees One Lakh only) on the 2 nd Respondent. The said cost shall be paid to the Petitioner Trade Union.

140.Before parting with this decision, I deem it appropriate to conclude with the following quotation, which may well serve as advice to the Respondent TASMAC:— And I will give you pastors according to mine heart, which shall feed you with knowledge and understanding (Jeremiah 3.15)

29.04.2025 ay NCC : Yes / No Index : Yes / No Internet : Yes / No DR. A.D. MARIA CLETE, J ay To

1. The Principal Secretary, The Government of Tamilnadu Labour and Employment Department Fort St.George, Chennai – 600 009.

2. The Additional Commissioner of Labour, O/o. Commissioner of Labour, Teynampet, Chennai – 600 006.

3. The Joint Commissioner of Labour O/o. Commissioner of Labour Teynampet, Chennai – 600 006.

Pre-Delivery Judgment made in and W.M.P.Nos. 188 ,190 of 2020 and 33861 of 2023 29.04.2025