

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2015

CORAM:

THE HON'BLE MR.JUSTICE V.DHANAPALAN
and
THE HON'BLE MR.JUSTICE G.CHOCKALINGAM

W.A.No.1548 of 2011

and

M.P.No.1 of 2011

V.Ramalingam

...Appellant/Petitioner

.. Vs ..

1. The Managing Director,
Tamil Nadu Government State
Transport Corporation (Salem) Ltd.,
No.12, Ramakrishnan Road,
Salem - 636 007.
 2. The General Manager,
Tamil Nadu Government State
Transport Corporation (Salem) Ltd.,
No.12, Ramakrishnan Road,
Salem - 636 007.
- ...Respondents/Respondents

Writ Appeal filed under Clause 15 of the Letters Patent,
against the order dated 26.07.2011 made in W.P.No.17424 of 2011.

This writ petition is preferred under Article 226 of the
Constitution of India praying for the issue of a writ of
certiorarified mandamus to call for the records of the second
respondent by proceedings dated 13.7.2011 in No.E2/1236/TNSTC
(Salem)/2011 in and by which the petitioner was transferred from
Vazhapadi to Erumapalayam-1 depot and quash the same and to direct
the respondents to permit the petitioner to continue in the same
place.

For Appellant : Mr.R.Vidhuthalai,
Senior Counsel
for Mr.B.Ullasavelan

For Respondents : Mr.P.Paramasivadoss

J U D G M E N T

(Judgment of the Court was delivered by V.Dhanapalan,J.)

Heard Mr.R.Vidhuthalai, learned Senior Counsel appearing for the appellant and Mr.P.Paramasivadosh, learned counsel appearing for the respondents/Transport Corporation.

2. This Writ Appeal is directed against the order of dismissal dated 26.07.2011 made in W.P.No.17424 of 2011, wherein the relief sought was to quash the proceedings of the second respondent vide No.E2/1236/TNSTC (Salem)/2011, dated 13.07.2011, in and by which, the petitioner was transferred from Vazhapadi to Erumapalayam-1 depot with a consequential direction to the respondents to permit the petitioner to continue in the same place.

3. According to the appellant/writ petitioner, he joined as a Casual Labourer in the respondent Corporation in Salem, Johnsonpettai J-1 Depot in the year 2006 and confirmed as a Driver (Staff No.3797) in the year 2007 and joined Vazhapadi Depot in 2007 under Salem Division. He is a member of Tamil Nadu Government Transport Corporation General Employees Munnatra Sangam affiliated to Labour Progressive Federation (LPF) floated by Dravida Munnatra Kazhagam (DMK) and is working without any blemish in his service record. To his shock and surprise, he found that from his salary, a sum of Rs.240/- was deducted towards subscription for the Anna Transport Sangam affiliated to the ruling party. When he raised an objection about deduction, he was threatened by the office bearers of the Anna Transport Sangam of Vazhapadi Depot. Therefore, at the instigation of the said Union, the appellant was transferred from Vazhapadi depot to Erumapalayam-I depot and was also relieved on the same day. It is the allegation of the appellant/Writ Petitioner that it is a clear case of malafide. Pleading that he has got school-going children, his aged parents are living with him and that the present depot where he is transferred is situated 70 kms away from his residence, the appellant/writ petitioner filed the above Writ Petition seeking transfer to the original depot.

4. The learned Single Judge dismissed the Writ Petition in W.P.No.17424 of 2011 vide order dated 26.07.2011 with the following observation:

"5. Further, it is necessary to refer to the decision of the Supreme Court reported in State of U.P. vs. Siya Ram and another (2004) (7) SCC 405. In paragraph 5, the Supreme Court had observed as follows:

"5. The High Court while exercising jurisdiction under Articles 226 and 227 of the Constitution of India had gone into the

question as to whether the transfer was in the interest of public service. That would essentially require factual adjudication and invariably depend upon peculiar facts and circumstances of the case concerned. No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals normally cannot interfere with such orders as a matter of routine, as though they were appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this Court in National Hydroelectric Power Corporation Limited vs. Shri Bhagwan. "

6. Further, the Supreme Court in yet another decision reported in 2004 (11) SCC 402 (State of U.P. vs. Gobardhan Lal), in paragraph 7 had observed as follows:

"7. It is too late in the day for any government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of

transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision."

7. In the light of the above, the writ petition will stand dismissed. "

5. The main plea of the learned counsel for the appellant/writ petitioner is that the transfer of the appellant has been made purely on mala fide reasons and that the learned Single Judge is not right in coming to the conclusion that the transfer was effected only on administrative grounds.

6. Per contra, learned counsel appearing for the respondents/Transport Corporation would contend that the transfer of the appellant is purely on administrative reasons and it is not due to his joining of the Union. It is his contention that the transfer order cannot be interfered with by this Court in exercise of its power under Article 226 of the Constitution of India.

7. Having heard the learned counsel for the parties and on a perusal of the records, it is seen that the appellant/writ petitioner joined the service of the respondent/Transport Corporation as a Driver in the year 2007 and his transfer along with one Murugesan from Vazhapadi depot to Erumapalayam-1 depot of the same District was effected on 13.07.2011. However, the reason

for the appellant's transfer has been attributed on administrative grounds. Though the appellant/writ petitioner claimed that the transfer was on mala fide reasons and alleged that the transfer order was effected in the middle of the academic year affecting his children's education and that his aged parents are deprived of his assistance as also the transferred place viz. Erumapalyam-1 depot is situated 70 Kms away from his residence, the learned Single Judge came to a conclusion that as the transfer is made due to administrative reasons, mere allegation of mala fide cannot be a ground to interfere with and accordingly, rejected his claim and dismissed the writ petition.

8. On 29.08.2011, this Writ Appeal was taken up for hearing and the Hon'ble First Bench of this Court observed as follows:

"Heard the learned counsel for the appellant. The learned Government Pleader appearing for the respondents will seek instructions in the matter. Put up the case on 14.09.2011.

In the meantime, since the appellant has already been relieved, he is directed to join in the transferred post without prejudice to his right to pursue this appeal."

Thereafter, on 09.11.2011, this Appeal was admitted by a Division Bench of this Court. Pursuant thereto, the appellant/writ petitioner joined the service in Erumapalayam-1 depot and was working there for the last three years.

9. Mala fide is one of the grounds to interfere with in matters of transfer and it has to be proved. Clear material information and specific averments are to be established by the person affected. If mala fide is proved, this Court has got the power under Article 226 of the Constitution of India to interfere with the same. In the present case, in order to substantiate the allegations of mala fide, the appellant/writ petitioner has not pinpointed any material. Moreover, it is not clear as to how the branch representative of the said union can influence the first and second respondents to transfer the appellant to some other depot. The impugned order states that it is for administrative reasons such transfer was made. It is not the case of the appellant/writ petitioner that the General Manager, who is the second respondent herein, has no power to transfer him. The allegation of mala fide cannot be made lightly. When transfer is effected on administrative ground, it can always be held that such a transfer cannot be interfered with by the Writ Court exercising its power under Article 226 of the Constitution of India.

10. Though the appellant/writ petitioner has made a plea that

the transfer order made in the middle of the academic year has affected his children's education and that it has also deprived of his assistance to his age-old parents, this Court cannot interfere with the decision of the learned Single Judge, as no case of malafide is proved and now he had served in the transferred place for three years.

11. In view of the above, the order of the learned Single Judge is confirmed. However, taking into account the circumstances under which the transfer was effected and that the appellant/writ petitioner was relieved on the same day with a direction to join in the transferred place, without prejudice to his right to pursue this appeal, we consider it appropriate that the appellant/writ petitioner goes before the first respondent with a detailed representation informing all the background circumstances, i.e. his children's education as also the need for assisting his age-old parents, within a period of two (2) weeks from the date of receipt of a copy of this order and on such representation being made, the first respondent is at liberty to consider the same sympathetically and pass appropriate orders.

This Writ Appeal is dismissed with the above observation. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

jrl/abe

To

1. The Managing Director,
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W.A.No.1548 of 2011

RSI (CO)
PSI (03.03.2015)