

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on : 24.11.2016

Orders pronounced on : 02-12-2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.32963 of 2014

and

M.P.Nos.1 and 2 of 2014

P.Ranganathan

... Petitioner

Vs.

1. Chief Regional Manager,
The Oriental Insurance Co. Ltd.,
Regional Office: "Mayflower Building",
2nd Floor, No.72, Dr.Balasundaram Road,
ATT Colony, Coimbatore-641 018.

2. The Divisional Manager,
The Oriental Insurance Co. Ltd.,
Divisional Office, Shevapet Main Road,
Salem-636 001.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the first respondent in its impugned order No.CBRO/TRF/2014-15/26, dated 13.10.2014 and quash the same and direct the respondents to post the petitioner in the same place, i.e., with the second respondent's office at Salem.

For Petitioner : Mr.R.Jagadeesan for M/s.K.V.Subramanian
Associates

For Respondents : Mr.Anand Gupta for M/s.T.S.Gopalan and Co

ORDER

The prayer in the Writ Petition is for issuance of a Writ of Certiorarified Mandamus to call for the records of the first respondent in its impugned order No.CBRO/TRF/2014-15/26, dated 13.10.2014 and quash the same and direct the respondents to post the petitioner in the same place, i.e., with the second respondent's office at Salem.

2. It is the case of the petitioner that he belongs to SC Community. Through Employment Exchange, he was appointed as sub-staff in the Divisional Office of the respondents at Salem on 01.11.1990 and joined duty on 21.01.1990 with the second respondent. He completed his probation on 21.07.1991. The petitioner had unblemished record. As he could not submit his L.T.S. Bill immediately, without taking into account the evidence produced, the disciplinary authority punished the petitioner by imposing the punishment of reduction of one stage in the time scale of pay permanently on 25.03.2013. In that regard, the petitioner requested the concerned authorities to furnish him the details of such punishments imposed on other staff/sub-staff, which was sought by the petitioner under the Right to Information Act and it was taken by the second respondent otherwise and the petitioner was warned of serious consequences of asking such information. It is the grievance of the petitioner that the second respondent sidelined him and with a motive to punish the petitioner, transfer was recommended by the second respondent to the first respondent, from the Divisional Office, Salem.

3. It is the case of the petitioner that as per the Rules and Regulations of the Insurance Company, the employees working as sub-staff are not to be transferred from the particular place, where they are posted and particularly, they are not to be transferred to other Divisions, unless the request-transfer or promotion is given. The employees who have joined as sub-staff earlier than the petitioner and much senior to him, are still working with the second respondent, even after completing 25-30 years. However, with a view to punish the petitioner as per the recommendations of the second respondent, the first respondent issued an Office Order dated 13.10.2014, transferring the petitioner to the Branch Office at Tiruchengode with immediate effect. It is stated by the petitioner that the impugned transfer order is issued with mala-fide intention and against the statutory Rules and Regulations and also against the transfer policy of the Company, without even mentioning any reason in the impugned order. Hence, the petitioner has filed the above Writ Petition for the relief stated supra.

4. When the Writ Petition is taken up for consideration, learned counsel for the petitioner submitted that the petitioner is working as sub-staff in the office of the second respondent. The practice that is prevalent in the Insurance Company is that the sub-staff are not to be transferred from one station to another, without following the procedures prescribed. The employees in the cadre of sub-staff work in the same place from the date of appointment till the date of retirement, unless or otherwise request is made in that regard by the concerned employees. It is mainly contended by the learned counsel that as per the Job Rotation, Transfer and Mobility Policy, particularly relating to Clause 5.3 (transfer from one station to another), the sub-staff can be transferred from one Division to another only in the situation involving re-location of the office and not otherwise.

5. In support of his submissions, learned counsel for the petitioner relied upon number of judgments. He relied on the Division Bench judgment of this Court reported in CDJ 2013 MHC 4361 = 2014 Lab.I.C. 146 (P.Karunakaran Vs. The Union of India, Southern Railway) and submitted that if an order of transfer is found to be an outcome of the mala-fide exercise of power or if the transfer was made in connection with departmental proceedings, or even for extraneous considerations or for collateral purposes, the Courts can interfere as against such transfer order, if the same was made in violation of the principles of natural justice. He also relied on the judgment of the Supreme Court reported in CDJ 2008 SC 2162 = 2009 (2) SCC 592 (Somesh Tiwari Vs. Union of India and others) and submitted that if the order of transfer is in lieu of punishment, the same is liable to be set aside. In the instant case, learned counsel submitted that the impugned transfer order is in violation of the transfer policy of the respondent-Oriental Insurance Company Ltd., and therefore, the same is liable to be quashed and hence, he prayed for allowing the Writ Petition.

6. Countering the above submissions, learned counsel for the respondents, by filing detailed counter affidavit, submitted that it is incorrect to state that the petitioner cannot be transferred from one Division to another. In the year 2014, the petitioner was reported to have made a false medical claim and in that connection, the Vigilance Officer, namely Mr.Vetrivelan from Regional Office, Coimbatore, was deputed to the Salem Divisional Office of the respondent-Company for investigation, which was done on 05.08.2014 and the report was submitted on 08.08.2014. Learned counsel for the respondents further submitted that in the said report of the Vigilance Officer, several instances of misbehaviour and irregularities on the part of the petitioner, were pointed out and since they were of administrative nature of irregularities, action be taken under CDA Rules and it was recommended that as a preventive measure, he should be shifted out of Salem Divisional Office.

7. It is further contended by the learned counsel for the respondents that the Salem Divisional Office has three sub-staff including the petitioner and two Record Clerks. One Mr.Kumaraswamy, Record Clerk was also transferred simultaneously along with the petitioner, as he had been awarded three punishments. He was transferred from Salem Divisional Office to its Branch Office in Attur. It is further contended that in order to forestall any disciplinary action against the petitioner, he made many complaints to Central and State Federation of SC/ST Employees, alleging that he was being subjected to oppressive measures by his superiors in the Salem Divisional Office of the respondent-Company and the SC/ST Federation, in turn, preferred the complaint to the first respondent. As per the terms of the petitioner's appointment order, dated 09.08.1991, the petitioner is liable to be transferred elsewhere, from one station to another, but the decision of transfer was based on the Vigilance Officer's report, which suggested that, pending

initiation of disciplinary action under CDA Rules, he should be shifted out of Salem Divisional Office. Hence, learned counsel for the respondents submitted that there is no mala-fide intention in transfer as alleged by the petitioner and the impugned transfer order is valid in law and the same is justified.

8. In the above context, learned counsel for the respondents invited the attention of this Court to Clause 5.7 of the Job Rotation, Transfer and Mobility Policy of the respondent-organisation and submitted that it is incorrect to state that the sub-staff cannot be transferred and as per the said Clause, an employee can be transferred from one station to another within a radius of 150 Kms., but in this case, the petitioner was transferred only 46.3 Kms. away from the present station of posting. Therefore, there is no illegality in the impugned order and hence, the learned counsel for the respondents prayed for dismissal of the Writ Petition.

9. Keeping in mind the above submissions made on either side, I have carefully considered the same and perused the materials available on record.

10. It is the main submission of the learned counsel for the petitioner that since the petitioner is a sub-staff, as per the Transfer Policy of the respondent-Insurance Company, he cannot be transferred from one Division to another. But, learned counsel for the respondents submitted that Clause 5.7 of the Transfer Policy is very clear that the transfer of an employee from one station to another, should be within the radius of 150 kms., and the distance of transfer is only 46.3 Kms. away from the petitioner's present place of work at Salem. Therefore, from a reading of the said Clause 5.7, it could be seen that an employee/sub-staff could be transferred within the radius of 150 Kms. and not beyond that.

11. Furthermore, in the instant case, the transfer was made only on the basis of the report of the Vigilance Officer, who recommended for shifting him only as a preventive measure based on the vigilance report.

12. The judgments relied on by the learned counsel for the petitioner are distinguishable on facts and they cannot be made applicable to the facts of the present case.

13. For the foregoing reasonings, I do not find any infirmity or irregularity or illegality in the impugned order. Hence, the Writ

Petition is dismissed as devoid of merits. No costs. The Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

CS

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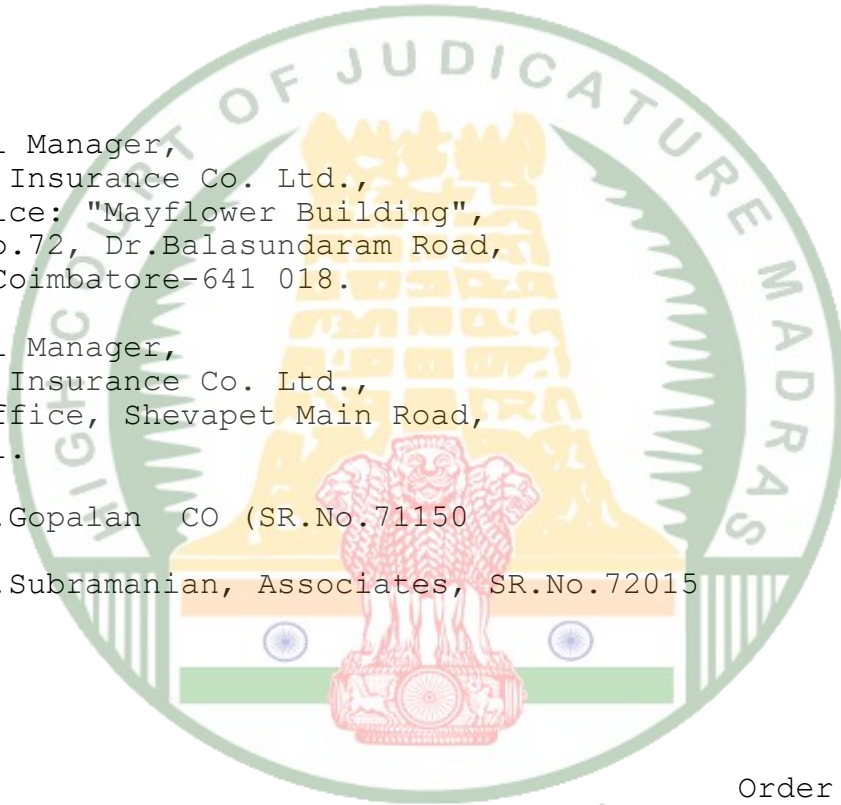
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+1 CC to M/S.T.S.Gopalan CO (SR.No.71150)

+1 CC to M/S.K.V.Subramanian, Associates, SR.No.72015

CO-RV

ths : 30.12.2016



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Order
in
W.P.No.32963 of 2014

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