



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.10.2016

CORAM

THE HON'BLE DR.JUSTICE S.VIMALA

W.P(MD) No.19081of 2016

WEB COPY

S.David Raja

... Petitioner

-vs-

1. The Management of State
Express Transport Corporation,
(Tamil Nadu) Ltd.,
Rep. by its Managing Director,
Pallavan Salai, Chennai-600 002.
2. The General Manager,
The State Express Transport Corporation,
(Tamil Nadu) Ltd.,
Pallavan Salai, Chennai-600 002.
3. The Branch Manager
The State Express Transport Corporation,
(Tamil Nadu) Ltd.,
Thoothukudi Branch, Thoothukudi.
4. Singaravelan

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records pertaining to the impugned order passed by the 2nd respondent in the order No. 015631/HR4/SETCTN/2015/3832 dated 19.09.2016 and consequential relieving order passed by the 3rd respondent in Memo No.001/A2/AaviPoka/Thoodi/2016 dated 23.09.2016.

For Petitioner : Mr.A.Rahul
For R1 to R3 : Mr.K.Sathiya Singh
Standing Counsel

O R D E R

The 2nd respondent herein has passed the impugned order in Order No.015631/HR4/SETCTN/2015/3832 dated 19.09.2016, by which the 3rd respondent was requested to relieve the petitioner immediately so as to enable him to join in the newly transferred place, namely, Pondy. On the basis of the said order, the 3rd respondent relieved the petitioner from duty vide Memo No.001/A2/AaviPoka/Thoodi/2016 dated 23.09.2016, asking the petitioner to report before the Branch Manager, Pondy. Both the orders are under challenge in this writ petition.



2. Heard the learned counsel for the petitioner and the learned Standing Counsel appearing for the respondents.

3. The case of the petitioner is that on 17.09.2016, he was directed to undertake a trip from Thoothukkudi to Chennai, Chennai to Trichy, Trichy to Chennai and then from Chennai to Thoothukkudi; on seeing the trip sheet, while moving the bus from the Depot, the petitioner has made an endorsement in the Gate Pass, stating that it is not possible for him to drive the vehicle for such a long distance, which would eventually lead to an accident and handed over the same to the Security Guard. Annoyed by the act of the petitioner, he was transferred from Tuticorin to Pondicherry by the Branch Manager.

4. Learned counsel for the petitioner would challenge the order on the ground that there cannot be any transfer by way of punishment and the act of the respondents is punitive in nature, which does not show any administrative reason; the transfer order has been passed without any notice.

5. Learned Standing Counsel appearing for the respondents would justify the transfer order, contending that the transfer of the petitioner has been effected due to administrative exigency. In addition, the respondents have raised several objections, which are as under:

i) While on duty, he involved in a irregularity on 09.06.2016 and not completed duty as Driver.

ii) He left the bus at enroute without intimation, leaving the bus passengers into discomfort.

iii) He Suomotto filed FIR against the Bus Conductor.

iv) He made irreparable loss and reputation of Corporation."

5.1. Therefore, it is pleaded by the respondents that the writ petition does not merit acceptance and is liable to be dismissed in limine.

5.2. The contention raised on the side of the respondents, cannot be accepted, as the allegations are not supported by materials.

6. The refusal on the part of the petitioner to undertake the trip for such a long distance, i.e., covering 40 hours of duty, cannot be said to be an act of disobedience, as the provisions of Section 13 of Motor Transport Workers Act mandates that "no adult motor transport worker shall be required or allowed to work for more than 8 hours in any day and 48 hours in any week".



Therefore, there is force in the contention raised by the learned counsel for the petitioner that the refusal on the part of the Driver cannot be construed as disobedience and that in fact the boldness in a way would help the administration to avoid the accident.

7. At this juncture, learned counsel for the petitioner has submitted that the petitioner is willing to work at Tirunelveli. It is brought to the notice of this Court that no job has been assigned to the petitioner and the petitioner suffers on account of leave on loss of pay.

8. Under such circumstances, this writ petition is partly allowed and the impugned orders are set aside. The respondents 2 and 3 are directed to consider the request of the petitioner with regard to his transfer to Tirunelveli and the petitioner is directed to report before the 3rd respondent for duty on 07.10.2016. No costs. Consequently, connected miscellaneous petition is closed.

Sd/
Assistant Registrar(T&P)

/TRUE COPY/

Sub Assistant Registrar

To:

+1cc to M/S.A.Rahul, Advocate in SR.No.60045
+1cc to M/S.K.Sathiya Singh, Advocate in SR.No.59936

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