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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 20.12.2016

CORAM

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.(MD) No.24397 of 2016 and

W.M.P.(MD) No.17619 of 2016

A.Mohammed Kaja Maideen

... Petitioner

-vs-

1.Tamil Nadu State Transport
Corporation (Coimbatore) Ltd.,
Rep. by its Managing Director,
Coimbatore-43.

2.The General Manager,
Tamil Nadu State Transport
Corporation (Coimbatore) Ltd.,
Coimbatore-43.

3.The Branch Manager,
Tamil Nadu State Transport
Corporation (Coimbatore) Ltd.,
Palani-I Branch, Palani,
Dindigul District.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records pertaining to the impugned transfer order passed by the 2nd respondent in Ref.No.3574/E3B/52B/Pa.Thu.1/Tha.Aa.Po.Ka (Ko)/2016 dated 23.11.2016 and consequential relieving order of the 3rd respondent bearing No.16019 dated Nil, sent to the petitioner by registered post on 09.12.2016 and quash the same.

For Petitioner : Mr.A.Rahul

For Respondents : Mr.K.Sathiya Singh

O R D E R

This petition has been filed, seeking to quash both the order of transfer dated 23.11.2016 passed by the the 2nd respondent and the consequential relieving order of the 3rd respondent.

2. The case of the petitioner is that he is a Trade Union Activist and the respondents issued six charge memos against him between the years 2011 and 2016 and imposed punishment of increment cut for various periods with cumulative effect; that he has raised Industrial Dispute under the Industrial Disputes Act; that in order to victimize him, he has been transferred from Palani to Udumalpet; that pursuant to the order dated 23.11.2016,, he has been relieved on the same day.

2.1. According to the petitioner, his widowed mother and sister are with him and he has two children, aged 4 years and 3



months old baby respectively; that his 4 year old son is suffering from Mesenteric Adenitis and that his junior has been retained in the same place and the petitioner has been transferred to Udumalpet. Aggrieved by the same, the petitioner is before this Court, seeking to quash the same.

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3. Heard the learned counsel on either side.

4. An order of transfer is an incident of Government Service. Fundamental Rule 11 says that "the whole time of a Government servant is at the disposal of the Government which pays him and he may be employed in any manner required by proper authority". The Court can interfere with the order of transfer only when the transfer is vitiated by malafides or is made in violation of any statutory provisions.

5. The Hon'ble Supreme Court in the case of *Rajendra Roy vs Union of India and another*, reported in (1993) 1 SCC 148, while dealing the matter of transfer *in extenso*, has been pleased to hold as under:

"7. After considering the respective contentions of the parties, it appears to us that the appellant has not been able to substantiate that the impugned order of transfer was passed mala fide against him for an oblique purpose and/or for wrecking vengeance against him because the respondent No. 2 was anxious to get rid of him and he seized the opportunity of transferring him from Delhi to Calcutta by transferring Shri Patra back to Orissa from Calcutta. It is true that the order of transfer often causes a lot of difficulties and dislocation in the family set up of the concerned employees but on that score the order of transfer is not liable to be struck down. Unless such order is passed mala fide or in violation of the rules of service and guidelines for transfer without any proper justification, the Court and the Tribunal should not interfere with the order of transfer. In a transferable post an order of transfer is a normal consequence and personal difficulties are matters for consideration of the department. We are in agreement with the Central Administrative Tribunal that the appellant has not been able to lay any firm foundation to substantiate the case of malice or mala fide against the respondents is passing the impugned order of transfer. It does not appear to us that the appellant has been moved out just to get rid of him and the impugned order of transfer was passed mala fide by seizing an opportunity to transfer Shri Patra to Orissa from Calcutta. It may not be always possible to establish malice in fact in a straight cut manner. In an appropriate case, it is possible to draw reasonable



inference of mala fide action from the pleadings and antecedent facts and circumstances. But for such inference there must be firm foundation of facts pleaded and established. Such inference cannot be drawn on the basis of insinuation and vague suggestions. In this case, we are unable to draw any inference of mala fide action in transferring the appellant from the facts pleaded before the Tribunal. It appears that Shri Patra was transferred to Calcutta and after joining the post he had made representation on account of personal hardship. Such representation was considered and a decision was taken to transfer him back to Orissa region. As a result, a necessity arose to transfer an employee to Calcutta to replace Shri Patra. It cannot be reasonably contended by the appellant that he should have been spared and some one else would have been transferred. The appellant has not made any representation about the personal hardship to the department. As such there was no occasion for the department to consider such representation. This appeal, therefore, fails and is dismissed but we make no order as to costs. It is, however, made clear that the appellant will be free to make representation to the concerned department about personal hardship, if any, being suffered by the appellant in view of the impugned order. It is reasonably expected that if such representation is made, the same should be considered by the department as expeditiously as practicable."

6. In the case on hand, the petitioner has not adduced any evidence to show that the transfer is effected on account of mala fide intention or the authority has no jurisdiction to pass such an order of transfer. It is submitted on the side of the respondents that the petitioner has already been relieved and the transferee has also joined in the place. Therefore, I find no reason whatsoever to interfere with the order of transfer.

7. In view of what is stated hereinabove, this Writ Petition is disposed of. This order will not preclude the respondents herein in considering the request of the petitioner to re-post him in the place opted by him. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (AS)

/TRUE COPY/

Sub Assistant Registrar



To:

1. Tamil Nadu State Transport Corporation (Coimbatore) Ltd.,
Rep. by its Managing Director,
Coimbatore-43.

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2. The General Manager,
Tamil Nadu State Transport Corporation (Coimbatore) Ltd.,
Coimbatore-43.

3. The Branch Manager,
Tamil Nadu State Transport Corporation (Coimbatore) Ltd.,
Palani-I Branch, Palani,
Dindigul District.

+1 cc to MR.A.Rahul , ADVOCATE, SR NO: 82282

+1 cc to M/s.K.Sathiya Singh , ADVOCATE, SR NO: 82390

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UM/GSV-SV/4p/6c/20.01.2017

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