

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2017

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.31087 of 2015

and

W.M.P.No.1 of 2015

K.K.Venkatesan

... Petitioner

Vs.

1. The General Manager,
Tamil Nadu State Transport
Corporation Villupuram Limited,
Vellore Region, Vellore - 9.

2. The Branch Manager,
Tamil Nadu State Transport
Corporation Villupuram Limited,
Vellore Region, Vellore - 9.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records on the file of the second respondent in proceedings No.M.No.20016-70654/BM TPR/TNSTC (VPM) VLR. Reg / 2015 dated 26.03.2015 and Memo No.:167255/A6/TNSTC (VPM) Vellore Division 2014, dated 18.09.2015, on the file of the first respondent and quash the same as illegal, incompetent.

For Petitioner : Mr.M.Muruganandham
for Mr.V.Raghavachari
For Respondents : Mr.P.Kannan Kumar

O R D E R

Heard Mr.M.Muruganandham, learned counsel for the petitioner and Mr.P.Kannan Kumar, learned counsel for the respondents.

2.The order of transfer, transferring the writ petitioner from Tirupattur Depot to Arcot Depot issued in proceedings dated 26.03.2015 and the show cause notice issued in proceedings dated 18.09.2015 in relation to the imposition of punishment are under challenge in this writ petition.

3.The writ petitioner is working as a conductor in the respondents Tamil Nadu State Transport Corporation Villupuram Limited. On receipt of certain allegations a charge memo was issued to him and a domestic enquiry was also conducted. The domestic enquiry officer submitted his report on 07.09.2015 holding that the charges against the writ petitioner are proved. On receipt of the enquiry report the disciplinary authorities issued a show cause notice in proceedings dated 18.09.2015 stating that why the punishment of stoppage of increment for five years could not be granted and therefore provided an opportunity to the writ petitioner to submit his explanation within a period of seven days from the date of receipt of a copy of the second show cause notice and the enquiry report. The writ petitioner instead of submitting his explanation before the disciplinary authorities moved this writ petition under Article 226 of the Constitution of India, challenging both the order of transfer as well as the order of show cause notice.

4.The learned counsel appearing for the respondent made a submission that the order impugned in this writ petition is only the second show cause notice issued to the writ petitioner and an enquiry was conducted providing an opportunity to the writ petitioner and the writ petitioner also participated in the enquiry. This being the factum of the case, it is left open to the writ petitioner to submit his explanations/objections to the enquiry report and instead of doing that, he filed this writ petition and therefore, the writ petition is liable to be rejected.

5.On a perusal of the facts on records, this Court is of the opinion that on account of certain allegations the disciplinary proceedings were initiated against the writ petitioner and a charge memo was issued and thereafter a domestic enquiry was conducted. The enquiry officer submitted his report holding that the charges are proved and based on the proved charges and on acceptance of the enquiry report the disciplinary authorities sent the second show cause notice to the writ petitioner requesting him to submit his explanation, within a period of seven days from the date of receipt of the notice. Thus, it is left open to the writ petitioner to submit his explanations/objections to the notice and only after passing the final orders he can move the competent authorities by way of an appeal and thereafter if the grievance exist then he can move the writ petition.

6.A writ against a show cause notice can be entertained only on exceptional circumstances and not in a routine manner. A writ proceedings can be entertained if the show cause notice was issued by an authority having no jurisdiction or incompetency or allegation of mala fides. Even in the case of

rising the allegation of mala fides, the authority, against whom, such an allegation is raised, has to be impleaded as a party in the writ proceedings in his personal capacity. Even a show cause notice was issued in violation of the statutory rules then also a writ can be filed in the absence of any of this ground. No writ can be entertained against the show cause notice and it is for the competent authorities to consider the materials available on record and take a final decision on the disciplinary proceedings. Intermittent and intervention in disciplinary proceedings are to be exercised cautiously and judicial review in this regard are very much limited. Such being the consistent review taken by the constitutional Courts in the matter of disciplinary proceedings, the show cause notice now challenged in this writ petition cannot be entertained. In view of the fact that there is no such legal grounds are available to entertain the case against the show cause notice in respect of the facts and circumstances of the case on hand.

7. Further the order of transfer is also under challenge. Transfer is incidental to service, more so, the condition of service. On account of initiation of the charge memo, the writ petitioner was transferred from Tirupattur Depot to Arcot Depot within the same region, since the transfer order was issued transferring the writ petitioner within the same region. The writ petitioner cannot have any grievance, since the order of transfer is administrative in nature. An administrative transfer is issued in order to maintain a good administration and Courts cannot interfere in the administration of the respondents and the order of transfer also can be entertained only on exceptional circumstances. This being the view of the Court, it is left open to the writ petitioner to submit his explanations/objections to the competent authorities and the competent authorities are to consider the materials on records in respect of the disciplinary proceedings and take a final decision and pass orders and communicate the same to the writ petitioner without any further delay. Accordingly, no further consideration is required on the grounds raised in this writ petition.

8. Thus, the writ petition stands dismissed. However, there is no order as to costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

ah/dna

To

1. The General Manager,
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Corporation Villupuram Limited,
Vellore Region, Vellore - 9.

2. The Branch Manager,
Tamil Nadu State Transport
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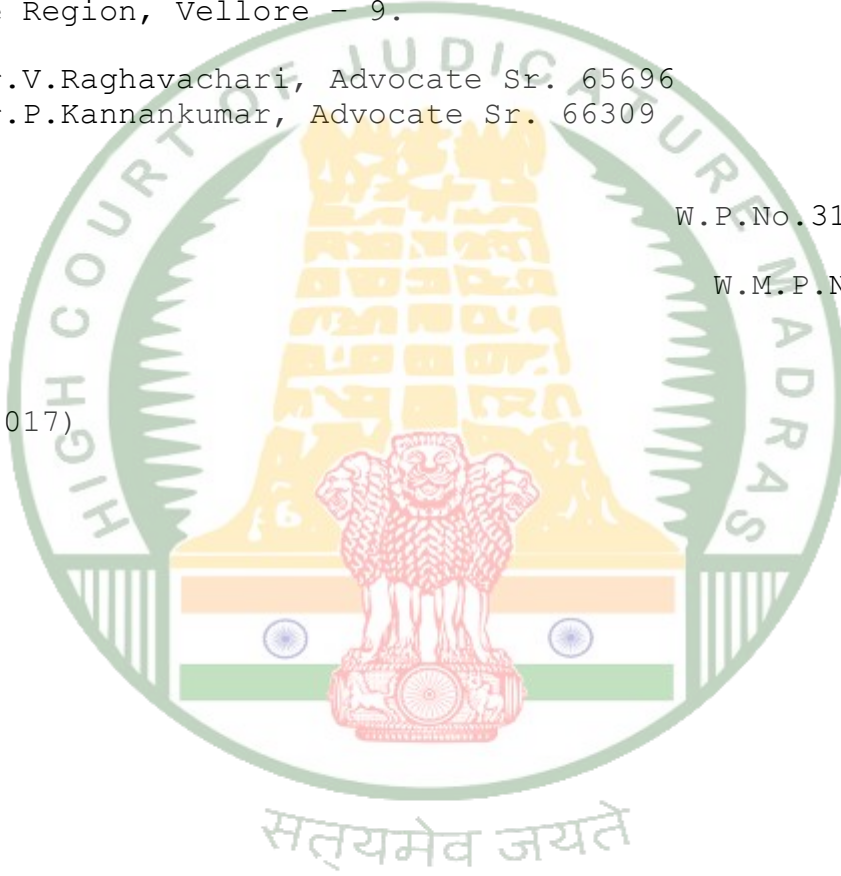
+1cc to Mr.V.Raghavachari, Advocate Sr. 65696

+1cc to Mr.P.Kannankumar, Advocate Sr. 66309

W.P.No.31087 of 2015
and

W.M.P.No.1 of 2015

AR(IV)
VR(13/10/2017)



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