



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 27.02.2017
CORAM :

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

WEB COPY

**W.P(MD)No.3244 of 2017
and
W.M.P(MD)No.2584 of 2017**

S.Arumugaperumal

... Petitioner

vs.

1)The General Manager,
Tamil Nadu State Transport Corporation,
Tirunelveli Division.

2)The Branch Manager,
Tamil Nadu State Transport Corporation,
Thoothukudi Town Branch,
Thoothukudi District.

3)The General Manager,
Tamil Nadu State Transport Corporation,
Thoothukudi District.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records from the 1st respondent impugned order in A.Aa.No.9935/Nee.Ya.7/Tha.A.Po.Ka/Thi.Lee/2016 dated on 31.01.2017 and the 2nd respondent impugned order in Ka.No.1501/Thudi.1/Tha.A.Po.Ka.Thi.Lee/13 dated 04.02.2017 to quash the same as illegal and permit the petitioner to continue a regular service from the Thoothukudi TNSTC Town Branch.

For Petitioner : Mr.S.Gopalamanikandan

For Respondents : Mr.K.Sathiya Singh

ORDER

The prayer in this writ petition is for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent's impugned order in A.Aa.No.9935/Nee.Ya.7/Tha.A.Po.Ka/Thi.Lee/2016 dated on 31.01.2017 and the 2nd respondent impugned order in Ka.No.1501/Thudi.1/Tha.A.Po.Ka.Thi.Lee/13 dated 04.02.2017, to quash the same as illegal and permit the petitioner to continue a regular service from the Thoothukudi TNSTC Town Branch.

2. According to the petitioner, he has been transferred without any material and he has not committed any misconduct. According



to him, he has been transferred on account of some political intervention.

3.The respondents would submit that it is only an administrative transfer and the petitioner has been transferred within 30 kms radius.

4.Though the petitioner has alleged mala fide, he has not established the same. The desirability, suitability of a person to be posted in a particular place vests with the exclusive discretion of the appointing authority or the competent authority who has to decide the place of posting. Once an employee has taken up a transferable post under the recruitment rules, he cannot claim any indefeasible right to squat in a particular place. Transfer is not only an incident of service, but also a condition of service. Therefore, when a Government servant/employee is transferred on administrative grounds, it is not for the Court to conduct a roving enquiry into the same. In the absence of any strong evidence or materials to infer that there was mala fides in the action of the authority, transferring an employee, an order of transfer cannot be interfered in a routine manner.

5.It is relevant to consider the decision in Rajendra Roy vs. Union of India, reported in 1993 (1) SCC 148, wherein, the Hon'ble Supreme Court has held as follows:-

''6.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 wreaking vengeance against him because respondent 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 in 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 should have been transferred. The appellant has not made any representation about 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.''

With the above observation, this Writ Petition is dismissed. No costs. Consequently, W.M.P(MD)No.2584 of 2017 is closed.

Sd/-

Assistant Registrar (AD-II)

/True copy/

Sub Assistant Registrar

To

1)The General Manager,
Tamil Nadu State Transport Corporation,
Tirunelveli Division.

2)The Branch Manager,
Tamil Nadu State Transport Corporation,
Thoothukudi Town Branch,
Thoothukudi District.



3) The General Manager,
Tamil Nadu State Transport Corporation,
Thoothukudi District.

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+1 CC to M/s.K.SATHIYA SINGH, Advocate, SR No. 11205
+1 CC to M/s.GOPALA MANIKANDAN, Advocate, SR No. 11739

NBI

PSM/MSA/09.03.2017/4P/6C

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