

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2018

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.10908 of 2018
and W.M.P.No.12837 of 2018

B.Palani

... Petitioner

Vs.

The General Manager,
Tamil Nadu State Transport
Corporation (Villupuram) Ltd.,
Vellore Zone, Vellore-9.

.... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the petitioner's order of transfer dated 17.04.2018 in Memo No.473 / E3 / TNSTC (VPM), Vellore / 2018 - P and consequential relieve order dated 17.04.2018 in Memo No.145532 / Sa4 / Tha Aa po (Vi) Ve Ma/2018 imposed by the respondent herein, to quash the same and consequently, issue direction to the respondent herein to pass order enabling the petitioner to continue his service at present place of work at TNSTC, Arcot Depot.

For Petitioner : Mr.G.Magesh Kumar

For Respondent : Mr.P.Kannan Kumar

O R D E R

The order passed by the respondent dated 17.04.2018 is under challenge in this writ petition.

2. The learned counsel appearing on behalf of the writ petitioner states that the petitioner is serving as a driver and all of a sudden, a Policeman attached to Kondampalayam Police Station, Vellore District came for an enquiry in the Transport Corporation Depot on 27.10.2018 and named the writ petitioner as an accused in FIR in Crime No.22 of 2018 dated 27.01.2018 and the case was registered under Section 304 (A) IPC for causing death by rash and negligent act by way of road accident. The

alleged accident took place at Jamugulam Junction, when the writ petitioner was driving the Corporation vehicle. Subsequently, disciplinary proceedings were initiated against the writ petitioner and he was placed under suspension for sometime and thereafter, the order of suspension was revoked and he was ordered to join for a training program in three centres for about 34 days. The said order dated 17.04.2018 and the consequential relieving order dated 17.04.2018 issued by the respondent are under challenge in this writ petition.

3. The learned counsel appearing on behalf of the writ petitioner strenuously contended that the writ petitioner is transferred by way of punishment and therefore, the impugned orders are illegal. The learned counsel is of an opinion that the order of suspension has not been revoked and even before revoking the order of suspension, the writ petitioner was transferred from Vellore Station. Thus, the impugned orders are contrary to law.

4. In this regard, the learned counsel placed reliance on the decision of the Division Bench of this Court in the case of P.Karunakaran v. The Union of India and others reported in CDJ 2013 MHC 4361, wherein it was held as follows:

"31. It is to be noted at this juncture that this Court is not substituting its own decision in this matter. On the other hand, it is admitted by the respondents that the transfer order came to be passed on the reason which has been stated in paragraph 10 of the counter affidavit viz., an incident alleged to have been taken place on 14.12.2012 and also to boost the moral of the public servants on duty."

5. He placed reliance on the decision of the Division Bench of this Court in the case of S.Ganesan and others v. The Commissioner of Adi Dravidar Welfare and others reported in CDJ 2017 MHC 1826, wherein it was held as follows:

"15. It is settled legal principle that the transfer is not only an incident of service, but also a condition of service and no employee has indefeasible right to insist that he/she should be posted in a particular place. It is for the appointing/competent authority to decide as to whether an employee has to be retained in a particular station. However, if the transfer order is passed with mala fide intention on the part of the authority concerned and it is in violation of the statutory Rules, then only the same can be interfered with by the Court. In the instant case, it is specifically stated in the transfer order that since

he is unfit to hold the post of Warden, he was transferred to the post of Secondary Grade Teacher at Government Tribal Residential High School, Mangalapuram. By attaching a stigma against the writ petitioner, the transfer order has been passed by the second respondent. Moreover, the said transfer has been made based on the request made by the 5th respondent, which was also not denied by the respondents. This type of transfer is prohibited by the guidelines to be followed while effecting transfers of Government Servants in Groups A, B and C, issued in Govt. Letter No.23847/S/98-1, dated 05.08.1998."

6. He also placed reliance on the decision of another Division Bench of this Court in the case of Somesh Tiwari v. Union of India and others reported in CDJ 2008 SC 2162. The operative portions of the judgment read as follows:

"19. Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where inter alia mala fide on the part of the authority is proved. Mala fide is of two kinds-one malice in fact and the second malice in law.

20. The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on any irrelevant ground i.e. On the allegations made against the appellant in the anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal.

.....
25. No vigilance enquiry was initiated against him. The order of transfer was passed on material which was not existent. The order, therefore, not only suffers from total non application of mind on the part of authorities of respondent No.1, but also suffers from malice in law.

26. The High Court while exercising its jurisdiction under Article 226 of the Constitution of India must consider the fact of each case. Mechanical application of the normal rule 'no work

no pay'' may in a case of this nature, be found to be wholly unjust. No absolute proposition of law in this behalf can be laid down.

27. This Court in Commissioner, Karnataka Housing Board V. C.Muddiah [(2007) 7 SCC 689] laid down the law, thus:-

''32. The matter can be looked at from another angle also. It is true that while granting a relief in favour of a party, the Court must consider the relevant provisions of law and issue appropriate directions keeping in view such provisions. There may, however, be cases where on the facts and in the circumstances, the Court may issue necessary directions in the larger interest of justice keeping in view the principles of justice, equity and good conscience. Take a case, where ex facie injustice has been meted out to an employee. In spite of the fact that he is entitled to certain benefits, they had not been given to him. His representations have been illegally and unjustifiably turned down. He finally approaches a Court of Law. The court is convinced that gross injustice has been done to him and he was wrongfully, unfairly and with oblique motive deprived of those benefits. The Court, in the circumstances, directs the Authority to extend all benefits which he would have obtained had he not been illegally deprived of them. Is it open to the Authorities in such case to urge that as he has not worked (but held to be illegally deprived), he would not be granted the benefits? Upholding of such plea would amount to allowing a party to take undue advantage of his own wrong. It would perpetrate injustice rather than doing justice to the person wronged.

34. We are conscious and mindful that even in absence of statutory provision, normal rule is 'no work no pay'. In appropriate cases, however, a Court of Law may, nay must, take into account all the facts in their entirety and pass an appropriate order in consonance with law. The Court, in a given case, may hold that the person was willing to work but was illegally and unlawfully not allowed to do so. The Court may in the circumstances, direct the Authority to grant him all benefits considering 'as if he had worked'. It therefore, cannot be contended as an absolute proposition of law that no direction of payment of consequential benefits can be granted by a Court of Law and if such directions are issued by a Court, the Authority can ignore

them even if they had been finally confirmed by the Apex Court of the country (as has been done in the present case).

The bald contention of the appellant-Board, therefore, has no substance and must be rejected."

28. We, keeping in view the fact, that on the one hand the appellant did not join his posting at Ahmedabad, although no order of stay was passed and on the other wholly unwarranted and reprehensible conduct on the part of the authorities of the respondents, are of the opinion that interest of justice would be subserved if during the period from 28th September, 2005 till his joining his post at Bhopal, the appellant is treated to be on leave and the respondents are directed to pass an appropriate order invoking the leave rules applicable in this behalf. It is ordered accordingly."

7. By citing the above judgments, the learned counsel for the writ petitioner states that transfer cannot be made by way of punishment. However, in the case of the writ petitioner, the order of suspension has not been revoked and further, there has been transfer from Vellore Station to Villupuram. Such being the factum, the impugned orders are liable to be scrapped.

8. This Court has cautiously gone through the nature of orders passed by the respondent in proceedings dated 17.04.2018. Reference one, cited in the impugned order, states in relation to the details of the accident report. Reference two denotes the order of suspension dated 21.03.2018. Reference 3 states about the transfer order dated 17.04.2018. The General Manager stated that the detailed enquiry reports in relation to the accident were examined and subsequently, the disciplinary proceedings were initiated against the writ petitioner by placing him under suspension in proceedings dated 21.03.2018. Subsequently, on 17.04.2018, the writ petitioner requested for revocation of suspension and as per the order dated 17.04.2018, he was transferred. The Branch Manager, Arcot was directed to relieve the writ petitioner enabling him to join at Konavattam 2. However, the General Manager has further stated that after relieving the writ petitioner from Vellore and after his joining to Konavattam 2, he need not be allotted any work in the depot and the petitioner should be sent for training for the improvement of his driving skills. At the outset, the order states that the order of suspension is revoked. The petitioner has been transferred from Vellore to Konavattam 2 and further directed to go for training for the improvement of driving skills for about 34 days.

9. This Court is of an opinion that the revocation of suspension during the pendency of the criminal case registered against the petitioner itself is a concession one. On revocation of suspension, the writ petitioner has been transferred from Vellore to Konavattam 2. Further, concession was provided to the writ petitioner by sending him to attend the training program for the improvement of his driving skills. In spite of attending the training program, the writ petitioner has chosen to file the present writ petition by stating that the transfer was issued by way of punitive order. The fact remains that the writ petitioner has been arrayed as an accused in a criminal case registered in Crime No.22 of 2018 and he is facing the criminal proceedings and on initiation of departmental proceedings, he was placed under suspension. The authorities thought fit to revoke the order of suspension so as to give further training to him by the Training Centre. Thus, the writ petitioner has to join duty and undergo the training program for the purpose of improvement of training skills in view of the fact that the writ petitioner is performing the public duties and the driving of a heavy vehicle in a public road is certainly sensitive and the driving skill is a paramount skill.

10. This being the factum, this Court is of an opinion that the writ petitioner has not made out any ground for considering the relief as such sought for in this writ petition. This apart, it is not only an order of transfer, the impugned order is revocation of suspension, transferring the writ petitioner from Vellore to Konavattam 2 and further sending him for training program to develop the driving skills.

11. This being the factum of the case, no further adjudication is required in respect of the grounds raised in this writ petition. Accordingly, this writ petition is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

सत्यमेव जयते
Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar

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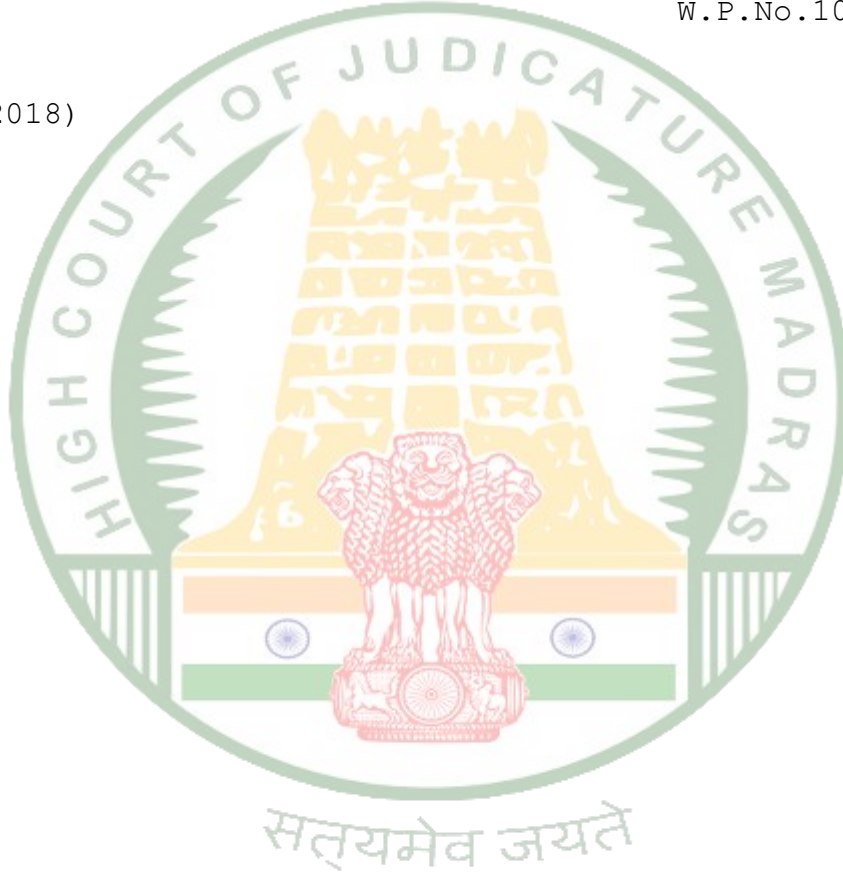
To

The General Manager,
Tamil Nadu State Transport
Corporation (Villupuram) Ltd.,
Vellore Zone, Vellore-9.

+1cc to Mr.G.MAGESHKUMAR, Advocate, S.R.No.31655
+1cc to Mr.P.KANNANKUMAR, Advocate, S.R.No.32334

W.P.No.10908 of 2018

SSV(CO)
TR(14/05/2018)



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