

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :13.04.2018
CORAM
THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
W.P.No.33930 of 2017
and
W.M.P.Nos.37638 and 37639 of 2017

P.Venkatasubramanian

.. Petitioner

.Vs.

1.The General Manager,
Tamilnadu State Transport Corporation
(Villupuram) Limited
Tiruvannamalai Region,
Tiruvannamalai.

2.The Branch Manager,
Tamilnadu State Transport Corporation
(Villupuram) Limited,
Depot-II,
Tiruvannamalai.

3.The Branch Manager,
Tamilnadu State Transport Corporation
(Villupuram) Limited,
Cheyyar Depot,
Cheyyar,
Tiruvannamalai District.

.....Respondents.

Prayer:Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari fied Mandamus calling for the records of the 1st respondent in his proceedings in Memorandum No.1078/31278/Sa5/TNSTC(Vi)/T.Malai/2017 dated 18.11.2017 and his consequential order Ka.Ku.NO:1078/31278/T5/TNSTC(Vi)/T.Malai/2017 dated 11.12.2017 and quash the same and further direct the respondents to permit the petitioner to continue his work as a driver Dr-45552 at the 2nd respondent's depot.

For Petitioner : Mr.B.Jawahar

For Respondents: Mr.K.J.Sivakumar
Standing counsel for R1 to R3

O R D E R

The relief sought for in this writ petition to call for the records in respect of the order of transfer passed by the first respondent in proceedings dated 18.11.2017 and the consequential order passed by the first respondent in

proceedings dated 11.12.2017 and quash the same and direct the respondent to permit the petitioner to continue his work as driver at the Thiruvannamalai Branch Depot-II.

2. The writ petitioner joined as a driver in the first respondent corporation and he was placed in depot-II at Thiruvannamalai. However, on account of the accident met with by the writ petitioner, he was placed under suspension by citing the accident in proceedings dated 17.08.2017. The order of suspension was revoked and the writ petitioner was permitted to join duty on 17.11.2017 at Thiruvannamalai Depot-II.

3. The learned counsel for the petitioner states that even the order of suspension was served belatedly to the writ petitioner and he was permitted to join duty at Thiruvannamalai Depot-II on 17.11.2017. Therefore the order of transfer cannot be implemented. The learned counsel for the petitioner further states that the order of transfer was issued on 22.08.2017 which was not served. However, the impugned order dated 18.11.2017 was served on the writ petitioner on 13.12.2017 through Registered Post.

4. The petitioner states that the order of transfer was not properly communicated to the writ petitioner and therefore he must be permitted to continue in Thiruvannamalai Depot. The petitioner made an allegation against the respondent by stating that the order of suspension itself was not proper. In view of the fact that he was not responsible for the accident and there was no negligence on his part. Secondly on revocation of the order of suspension he was joined duty at Thiruvannamalai Depot-II on 17.11.2017 and therefore, there cannot be any order of further transfer directing him to join at Cheyyar Depot. For all those reasons the order impugned are liable to be set aside. It is contented that the writ petitioner joined on 18.11.2017 and served for two days in Thiruvannamalai Depot. सत्यमेव जयते

5. In view of the factual discrepancies raised in this writ petition, this court directed the General Manager to submit a status report. The learned counsel appearing on behalf of the respondents filed the Status Report. The status report reads as follows.

I. Writ petitioner was appointed as Driver on Daily wages on 27.04.2010 posted to Thiruvannamalai - 2 branch.

II. Absorbed to Monthly cadre on 03.01.2011

III. The Writ Petitioner performed duty at Thiruvannamalai - 2 branch from 27.04.2010 to 22.08.2017 more than 7 years in one and same branch.

IV. The Writ Petitioner transferred to Cheyyar branch on administrative ground on 22.08.2017 as

first instance by the Personnel Section.

V. Relieved from duty on 04.09.2017 from Tiruvannamalai-2 branch with instructions to report before the Branch Manager, Cheyyar.

Vi. The writ petitioner not joined at Cheyyar branch as per the transfer and relieving orders which is located nearly about 90 K.M. distance.

vii. The writ petitioner was absented from 28.08.2017 to 17.11.2017 nearly 80 days without reporting at Cheyyar branch.

viii. The writ petitioner produced a Medical Fitness Certificate stating that he is attached at Tiruvannamalai -2 branch requesting for duty on 17.11.2017.

ix. For the period of absent days a Charge Memo has issued to the writ petitioner vide memo no. 1078/31278/D5/TNSTC(V)/TVMReg/2017 dated 17.11.2017 and same has been also served to him on 17.11.2017 itself and same has been acknowledged by him mentioning date of receipt as 16.11.2017 intentionally for the reason only known to him.

x. Based on the Medical Fitness Certificate an order vide no.1078/31278/D5/TNSTC(V)/TVMReg/2017 dated 17.11.2017 has been issued to him permitted to duty at Tiruvannamalai-2 branch instructed to report before the Branch Manager, Tiruvannamalai-2 branch by the Disciplinary Section on the approval of the 1st respondent.

xi. But he approach the controller of Tiruvannamalai-2 branch and unauthorizedly performed duty without the knowledge to the Branch Manager on 17.11.2017 itself.

xii. After knowing the cheating of the writ petitioner mentioning his actual branch as Tiruvannamalai-2 instead of Cheyyar an errata order has been issued to him on 18.11.2017.

xiii. The Controller of the Tiruvannamalai-2 branch also facing disciplinary proceedings for admitting the writ petitioner for duty at Tiruvannamalai-2 branch even his name is not in the roll of the branch and also without the knowledge of the Branch Manager concern vide memo No.29470/D3/ TNSTC(V)/TVMReg/2017 dated 29.11.2017.

xiv. Disciplinary Action initiated against the concerned assistant for issuing duty permission order to the writ petitioner without verifying the actual roll of the writ petitioner of the branch vide memo no.29468/D3/ TNSTC(V)/TVMReg/2017 dated 29.11.2017.

xv. The writ petitioner got interim stay for the transfer order and errata order on 28.12.2017 before the vacation sitting of the Hon'ble High Court.

xvi. The 1st respondent filed affidavit and petition for vacating the interim stay on 06.01.2018.

xvii. The writ petitioner merely cheating by producing a fitness certificate mentioning in it as he is in the role of Tiruvannamalai-2 branch and got an order of duty permission and also performed one duty by influenced the controller even his name he is not in the role of the drivers in the Tiruvannamalai -2 branch.

xviii. The writ petitioner is absented from 26.08.2017 to till date except 17,18.11.2017 unauthorizedly performed double duty at Thiruvannamalai-2 branch.

xix. This respondent submitted that the writ petitioner was relieved from duty on 04.09.2017 itself vide Lr.No.101/BM/TVM2/ TNSTC(V)/ TVMReg/2017 date 04.09.2017. But interim stay has been granted only on 28.12.2017. Therefore the respondent has no possible chance to adhere the interim order of Hon'ble Court in an infectious circumstance.'

6. The writ petitioner is presented before this court today. This Court requested the learned counsel to get instructions whether the petitioner is ready and willing to join at Cheyyar Depot atleast at this point of time. However, the learned counsel for the writ petitioner expressed his inability to get the consent of the writ petitioner to join at Cheyyar branch. Under these circumstances, this Court is unable to settle the request of the writ petitioner to join at Thiruvannamalai Depot-II.

7. The writ petitioner caused an accident of the corporation bus. He was placed under suspension and thereafter the order of suspension was revoked. At this point of time, the authorities competent issued direction to joint at Cheyyar Branch on administrative grounds. The writ petitioner remained unauthorizedly absent for about four (4) months. Under these circumstances, when the writ petitioner is not willing to join at Cheyyar Branch, this Court is unable to consider the request of the writ petitioner granting permission to join at Thiruvannamalai Depot-II. Transfer is an incidental to service. Transfer is moreso a condition of service. Transfer cannot be construed as a punishment issued on administrative grounds. Such being the principles are to be followed and when the writ petitioner is adamant in not accepting the proposal of this Court for joining at Cheyyar Branch, the claim of the writ petitioner to revoke the order of transfer cannot be considered at all. The public servants wherever posted has to joint and work in the interest of the public. An order of transfer can be challenged only on limited grounds and the writ proceedings can be entertained only on exceptional circumstances. The writ petitioner has not

established any ground of jurisdiction, mala fides or the order of transfer is in violation of statutory rules in force.

8. Under these circumstances, the impugned order of transfer of the writ petitioner from Thiruvannamalai branch to Cheyyar branch was on administrative reasons. On a perusal of the report submitted by the General Manager, it is unambiguous that the writ petitioner has committed several misconducts and actions are initiated against the writ petitioner and disciplinary proceedings are also pending. Hence, the order of transfer issued on administrative grounds cannot be faulted with and the writ petition is devoid of merits.

9. Accordingly, the writ petition stands dismissed. Consequently, connected miscellaneous petitions are closed. However, there is no order as to costs.

msv/ah

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1.The General Manager,
Tamilnadu State Transport Corporation
(Villupuram) Limited
Tiruvannamalai Region,
Tiruvannamalai.

2.The Branch Manager,
Tamilnadu State Transport Corporation
(Villupuram) Limited,
Depot-II,
Tiruvannamalai.

3.The Branch Manager,
Tamilnadu State Transport Corporation
(Villupuram) Limited,
Cheyyar Depot,
Cheyyar, Tiruvannamalai District.

+1cc to Mr.K.J.Sivakumar, Advocate SR.No.27862
+1cc to Mr.B.Jawahar, Advocate Sr.No.27866

NA(CO)
sm:15.5.2018

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