

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.09.2018
Coram

The Hon'ble Mr. Justice Satrugana Pujahari

Writ Petition No. 23066 of 2018
and
W.M.P.No. 26951 of 2018

V. Durai

...Petitioner

Vs.

1. The Managing Director,
Tamil Nadu State Transport
Corporation (Salem) Limited,
12, Ramakrishna Road, Salem - 636 007.

2. The General Manager,
Tamil Nadu State Transport
Corporation (Salem) Limited,
Dharmapuri Division,
Bharathipuram, Salem Main Road,
Dharmapuri, Dharmapuri District.

3. The Branch Manager,
Krishnagiri Mofussal Branch,
Tamil Nadu State Transport
Corporation (Salem) Limited,
Krishnagiri District,
Krishnagiri.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for the records relating to the Transfer Order No. P.A.3/6133/Tha.Na.Aa.Po.Ka/Thapuri/2018 dated 07.08.2018 passed by the second respondent and the relieving order No. Tha.Na.Aa.Po.Ka/Ki.Pu.Ki./No.101 dated 23.08.2018 passed by the third respondent (both the said orders were received under protest on 24.08.2018) and quash the same.

For Petitioner : Mr. D. Prabhu Mukunth

For Respondents : Mr. P. Kannan Kumar,
Standing Counsel

ORDER

Heard, Mr. D.Prabhu Mukunth, the learned counsel appearing for the petitioner and Mr. P.Kannan Kumar, the learned Standing Counsel who accepts notice on behalf of the respondents. With the consent of the learned counsel on either side, the Writ Petition is taken up for disposal.

2. The petitioner, who has been put under suspension for some alleged mis-conduct soon after revocation of his order of suspension having been transferred to another station filed this Writ Petition challenging the same to be punitive one and also in violation of G.O.Ms.No.10. It appears that the order of transfer was on administrative ground. No doubt, he has been transferred pending drawal of unprompted disciplinary proceeding, it cannot be said that the transfer is by way of a punishment. It is a trite law that transfer is an incident of service. However, the petitioner to pursue his case places reliance on the decision of this Court in the case of J.Alex Dorai Vetha Sam Vs. The District Educational Officer, Tirunelveli and others reported in 2010 (6) MLJ 63. Therein, a complaint having been made against a non-teaching staff of the school on some allegations, pursuant to which, he was transferred to some other school which was 60 km away from his place of posting on administrative reasons, considering the fact that the petitioner was physically challenged person suffering from Polio Arthritis, as in the Counter affidavit it was stated after conducting a preliminary enquiry by the authority on the allegation and finding thereof, which was recorded without giving a chance of hearing to the petitioner therein, such order of transfer was issue, it was held to be punitive one. Hence, this Court interferes with the order of transfer. But, in the instant case, there is nothing in the record indicating the aforesaid. Therefore, this Court is of the view that the prayer made by the petitioner to interfere with the order of transfer advancing the submission that when a disciplinary proceeding is contemplated against him, he could not have been transferred and as such his transfer punitive one, appears to this Court to be without any substance.

3. Accordingly this Court dismisses the Writ Petition at the stage of admission.

4. However, as it is submitted that the petitioner's children are studying and in the midst of their education session, he has been transferred to a place, which is 100 km away and the same shall adversely affect the education of his children, this Court while dismissing the Writ Petition gives liberty to the petitioner to make a representation to the respondent Nos. 2 & 3 ventilating his plight and difficulties in

joining a new place of posting and if such a representation is filed within a period of two weeks from today, the respondents 2 and 3 shall consider the same taking into consideration the difficulties of the petitioner in this regard in a sympathetic manner and take a pragmatic decision within a period of three weeks thereof. However, it is made clear that the aforesaid should not be treated as mandate of this Court to pass any order on such representation in any particular manner. It is also made clear that till disposal of such representation no coercive action shall be taken against the petitioner for non-joining in the new place of posting and the petitioner shall be allowed to continue in the present place of posting. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

mrm

To

+1cc to Mr.D.Prabhu Mukunth, Advocate, S.R.No.61335
+1cc to Mr.P.Kannankumar, Advocate, S.R.No.61485

Writ Petition No. 23066 of 2018

rrs 07/09/2018

सत्यमेव जयते

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