

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :10.07.2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.13156 of 2018
and W.M.P.Nos.15468 & 18742 of 2018

M.Muniaraj

..Petitioner

vs

1. The Additional Chief Secretary/
Secretary to Government,
Transport Department & Chairman of SETC,
Secretariat, Fort St. George,
Chennai 600 009

2. The Managing Director,
State Express Transport
Corporation(Tamil Nadu)Ltd.,
Pallavan Salai,
Chennai 600 002

3. C.Ganesan

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order issued by the 2nd respondent in No.001168/HR 6/SETC TN / 2018 dated 26.05.2018 and to quash the same and consequently allow the petitioner to continue to work as Branch Manager of Tirupathi Branch.

For Petitioner

: Mr.G.Sankaran

For R1

: M/s.A.Sri Jayanthi,

Special Government Pleader

For R2

: M/s.S.Rajeni Ramadass

O R D E R

The order of transfer issued by the second respondent in proceedings dated 26.05.2018 transferring the writ petitioner from Tirupathi to Hosur Depot is under challenge in this writ petition.

2. The writ petitioner was initially appointed as Junior Engineer on 01.05.1987 in Trivallur Transport Corporation now designated as State Express Transport Corporation (Tamil Nadu) Ltd., (SETC). The petitioner was further promoted to the post of Assistant Engineer, Senior Assistant Engineer and Assistant Manager (Technical). The petitioner is presently working as Assistant Manager and Branch Manager of Tirupathi Branch with additional charge on Vellore Branch from 30.12.2016.

3. The grievance of the writ petitioner is that he was subjected to frequent transfer by the second respondent without any valid reasons. Thus, the punishment imposed on the petitioner is nothing but punishment. When the petitioner was working in Headquarters, Chennai, he was transferred to CMBT and again he was transferred to Kanyakumari in 2011. Challenging the said transfer order, the petitioner filed W.P.No.14503 of 2011 and this Court had granted interim stay. The writ petitioner was again retained and posted at CMBT, Chennai. The fact remains that the petitioner had not joined in the transferred place in Kanyakumari District and rejoined in Chennai at CMBT. Subsequently, the writ petition filed by the writ petitioner in W.P.No.14503 of 2011 was allowed on 08.02.2012 and the writ petitioner was allowed to continue in the same place. The writ appeal filed by the General Manager in W.A.No.1124 of 2012 was also dismissed. The petitioner states that he was transferred to Kanyakumari. However, he had not joined there. As per the details furnished in the affidavit, the writ petitioner was initially transferred from Chennai, CMBT (Koyambedu Bus Terminus) to CAN Depot, Anna Nagar. Thirdly, he was transferred to Kanyakumari, but he had not joined there and filed a writ petition and continued in Chennai at CMBT. The transfer order dated 29.12.2016 alone has been complied with by the writ petitioner and he joined in Tirupathi. Therefore, the writ petitioner was all along working in and around Chennai for number of years and his transfer to Kanyakumari District had not been implemented. Therefore, the writ petitioner cannot rely on the transfer order issued transferring him to Kanyakumari District. During the relevant point of time, he continued in CMBT, Chennai.

4. In paragraph 8 of the affidavit, the petitioner states that he is rendering meritorious service and his services had been appreciated and certificate of appreciation was also issued by the Managing Director / second respondent on 06.03.2017. In paragraphs 9 and 10, the petitioner contended that his promotion to the higher post is denied and in this regard he filed W.P.No.21675 of 2012 and the same is pending. In view of the fact that the writ petition claiming further promotion is pending before this Court, the second respondent has issued the impugned order of transfer with malafide intention.

5. In paragraph 8, the writ petitioner states that the second respondent appreciated his service and issued certificate of appreciation and in later paragraphs, he states in view of the fact that the writ petition was filed seeking promotion, the second respondent issued the order of transfer with a malafide intention. Both the contentions are contradictory and the writ petition filed claiming promotion cannot be considered in view of the fact that the administrative transfer issue have no implications in respect of the promotion case. Except by stating that there is an ulterior motive on the part of the second respondent at the time of issuing the order of transfer, such allegations are not substantiated nor the Managing Director has been impleaded as a respondent in his personal capacity to elaborate the malafide intention. In the absence of any allegation against the officer in person, the contentions raised in this regard cannot be considered by this Court. If at all, allegations of malafides are raised, then the authorities against whom such allegation is raised to be impleaded as party respondent in writ proceedings in his personal capacity and the allegations are to be substantiated. Mere statement that the writ petitioner has filed writ petition seeking promotion and on account of the pendency of the writ petition, he has been transferred from Tirupathi to Hosur cannot be accepted at all.

6. Judicial review against an order of transfer is limited. The writ proceedings cannot be entertained in a routine manner in respect of administrative transfer. The writ petitioner is working in a responsible post of Assistant Manager. Therefore, the transfer order issued to such higher officials cannot be considered as malafide in the absence of any incriminating evidence. The petitioner being a responsible official working in the cadre of Assistant Manager is bound to work wherever he is posted in the interest of public and for the welfare of the public administration.

7. Transfer is an incidental to service. More so, a condition of service. The order of transfer can be challenged only on limited grounds and in the event of establishing that the order of transfer has been issued by an incompetent authority having no jurisdiction or if the same is in violation of the statutory rules in force. Even in case of raising an allegation of malafides, the authority against whom such an allegation is raised is to be impleaded as party respondent in writ proceedings in his personal capacity. In the absence of any one of these legal grounds, no writ can be entertained against the order of administrative transfer. Constitutional courts cannot interfere with the day-to-day administration of Corporation or State. Posting an employee or transfer of an employee is the policy of the Government and it is an administrative prerogative. Courts cannot interfere in such

administrative decisions in a routine manner. It is for the authorities to decide which officer to be posted in which place. Only in the event of establishing the legal grounds, the writ petition cannot be entertained at all.

8. In the present writ petition, the writ petitioner has not established any legal grounds in respect of the allegation of malafides set out in the affidavit filed in support of the writ petition. Thus, this Court is not inclined to consider the case of the writ petitioner. The learned counsel for the petitioner made a submission that the writ petitioner has submitted a representation to the higher authority.

9. This Court is of an opinion that the personnel grievances of the writ petitioner are to be considered only by competent authorities and this Court cannot show any leniency or misplaced sympathy in respect of the administrative transfer issued more specifically to the higher officials like the petitioner, who is working in the cadre of the Assistant Manager. If an Assistant Manager is unable to join at Hosur, then this Court is of an apprehension that it is very difficult for the authorities to run the public administration in an efficient manner. If an administrative decision is taken in this regard by the authorities, the same is to be implemented in all respects and only in the event of any extraordinary circumstances, the order passed is to be reviewed and otherwise, the same is to be implemented scrupulously. Under these circumstances, the writ petitioner has not established any acceptable ground for the purpose of interference in respect of the transfer order issued.

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

Sd/-

Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional Chief Secretary
/ Secretary to Government,
Transport Department & Chairman of SETC,
Secretariat, Fort St. George,
Chennai 600 009

2. The Managing Director,
State Express Transport
Corporation (Tamil Nadu) Ltd.,
Pallavan Salai,
Chennai 600 002.

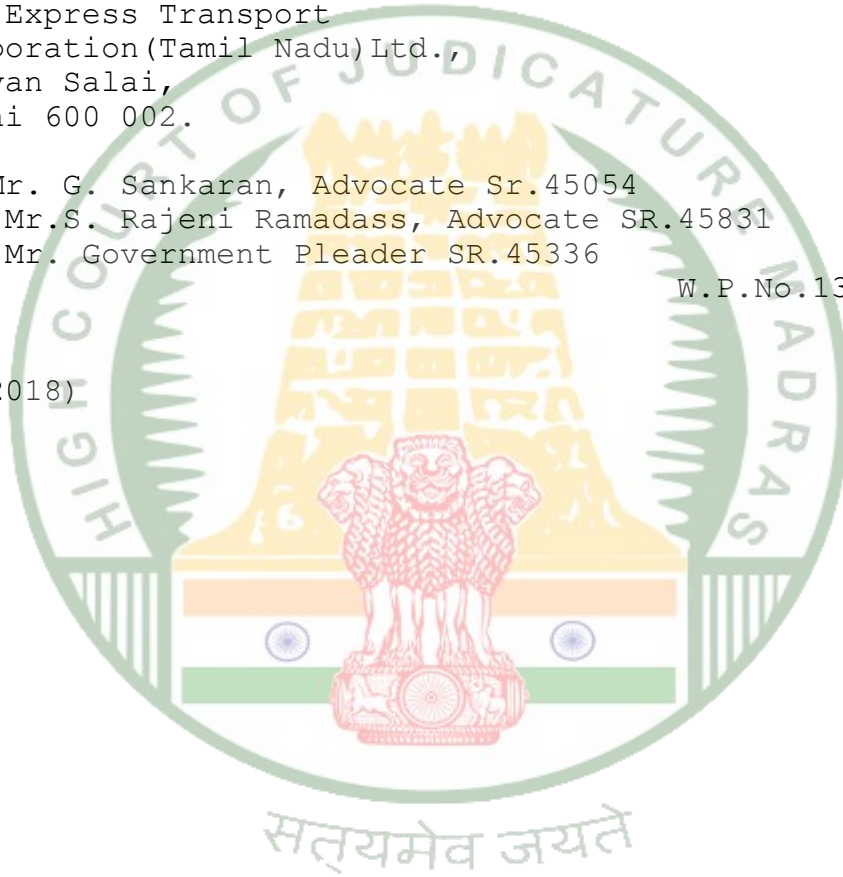
+1 cc to Mr. G. Sankaran, Advocate Sr.45054

+ 1 cc to Mr.S. Rajeni Ramadass, Advocate SR.45831

+ 1 cc to Mr. Government Pleader SR.45336

W.P.No.13156 of 2018

(CS-DR)
EU(19/07/2018)



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