

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :02.07.2018

CORAM

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

W.P.No.19476 of 2013
and
W.M.P.Nos.1& 2 of 2013

P.Ramachandran

.. Petitioner

vs

1.The Managing Director,
Pondicherry road Transport Corporation,
Behind Pondicherry New Bus Stand,
Kuyavarapalayam Post,
Pondicherry-13.

2.Dr.Devaraj, I.F.S,
The Managing Director,
Pondicherry road Transport Corporation,
Behind Pondicherry New Bus Stand,
Kuyavarapalayam Post,
Pondicherry-13.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the entire records pursuant to the transfer order of the 1st respondent dated 18.06.2013 in No.230/PRTC/Admn/2010/827 and the consequential relieving order dated 20.06.2013 in PRTC/TRANSPORT/2008 on the file of the 1st respondent, quash the same and direct the respondents to employ the petitioner at Pondicherry, consequently direct the respondent to post in the earlier place i.e. Before the Transfer Order.

For Petitioner : Mr..G.B.Saravanabhavan
For Respondents : Mr.A.R.Nixon

O R D E R

The order of transfer issued by the first respondent in public interest vide proceedings dated 18.06.2013, transferring the writ petitioner from Puducherry to Yanam is under challenge in this writ petition.

2.The learned counsel appearing on behalf of the writ petitioner contented that the order of transfer is nothing but a harassment to the writ petitioner. Further, the transfer order has been issued in violation of the principles of natural justice. The daughter and son of the writ petitioner are studying in a school at Puducherry and the transferred place is far away from Puducherry and therefore, the impugned transfer will affect his normal family life.

3.The learned counsel further contented that the writ petitioner is very much active in Union activities and taking certain personal Vengeance, the respondents have transferred the writ petitioner. This apart, the respondents themselves, in their Counter affidavit, stated that, one Thiru.P.Ramachandiran was transferred to Yanam Branch instead of taking severe action towards his behavior taking into consideration his family welfare and on humanitarian grounds. He was transferred and thus there was no mala fide intention on the part of the Managing Director or Management to punish him. Relying on the above statement, the learned counsel for the petitioner contented that the very statement will establish that the order of transfer was issued in order to harass the petitioner. This apart the respondents, themselves, have admitted the fact that instead of taking disciplinary action, the petitioner has been transferred to Yanam. Therefore, the impugned order of transfer is liable to be scrapped.

4.The learned counsel appearing on behalf of the respondents opposed the contention by stating that the order of transfer dated 18th June 2013 has been issued on administrative grounds and on public interest. However, by virtue of an interim order the petitioner had continued for more than five years in Puducherry. This apart the writ petitioner has committed serious misconduct and instead of initiating disciplinary proceedings, a lenient view has been taken by the authorities and he was transferred from Puducherry to Yanam in the interest of Public and for an efficient administration. The presence of the writ petitioner in the present station at Puducherry is detrimental to the interest of the public administration. The learned counsel for the respondents further contented that the impugned order of transfer is on administrative grounds and there is no infirmity as such to interfere with the same by this Court. Thus, the writ petition is liable to be rejected.

5.Considering the arguments as advanced both by the learned counsel for the petitioner and the respondents, this Court is of an opinion that, on perusal of the order impugned, it is stated that the writ petitioner has been transferred from puducherry to

Yanam on administrative grounds and in the interest of Public. Transfer is incidental to service more so, a condition of service. The writ petition challenging the order of transfer shall be entertained only in the event of establishing that the order of transfer is issued by an incompetent authority having no jurisdiction or issued with mala fide intention or in violation of the statutory rules in force. However, in the present writ petition the learned counsel for the petitioner states that there is an allegation of mala fides against the respondents in respect of the order impugned in this writ petition. On a perusal of the entire affidavit except by stating that the writ petitioner is active in unions activities, there is mala fide intention on the part of one Mr. Devaraj, Managing Director. The allegation of mala fides are neither substantiated nor established in such a manner, so as to arrive a conclusion that the order of transfer has been issued with some motive. The averments stated in the affidavit are not sufficient to arrive at a conclusion that there is a mala fide intention on the part of the officials who issued the impugned order. In the absence of any convincing allegations, which is to be established there is no reason to interfere with the order of administrative transfer, which has been issued in the interest of public.

6. Transfer is an incident of service and the public servants wherever, they are posted, are liable to serve in the interest of public. In the present case, the writ petitioner has already continued in the post for more than five years by virtue of the interim order granted by this Court. Further, continuance of the writ petitioner in the same place for unspecified period is certainly not preferable. In every public service, the transfer is common for efficient public administration as per the transfer policy issued by the Government. However, the personal grievances if any can be pleaded by the employees before the competent authorities and the competent authorities are at liberty to consider the same without violating the principles and without discriminating the employees. Uniform consideration of the personal grievances are also required so as to maintain the morale amongst the employees. Discrimination will cause frustration in the minds of the employees. Thus, the authorities competent are bound to follow the guidelines in the matter of transfer uniformly and consistently without discriminating the employees.

7. As far as the present writ petition is concerned, the writ petitioner has made certain general statements and such statements cannot be construed as mala fide intention on the part of the respondents. Contrarily, it is pleaded by the respondents that the writ petitioner has committed certain serious misconduct and instead of initiating disciplinary proceedings against the writ petitioner, he was transferred in

the interest of public and on administrative grounds. It is an acceptable principle that instead of initiating penal action, a lenient view shall be taken by the authorities and transfer the employees from one place to another place to avoid further inconvenience to the public administration. Such a decision taken by the authorities can never be construed as motive or mala fide intention. In certain circumstances, there may not be sufficient materials available against the employees to initiate appropriate disciplinary proceedings. However, the behavior of the employee may be prejudicial and detrimental to the interest of the administration in the particular locality and in such circumstances, the only course can be adopted by the competent authority, is to transfer the said employee from one place to another place in the interest of public and such a decision ought to be construed as the decision taken in public interest and on administrative grounds.

8. Constitutional Courts cannot interfere with the day to day administration of the State or the Corporation. Intervention in administrative transfers are not preferable. Judicial review against an order of transfer is very limited. Courts can interfere in respect of the administrative transfers only on exceptional circumstances. In all other cases, the public servants, wherever they are posted/transferred, are liable to work in the interest of public and for the efficient public administration. Transfer is a condition of service and the employees are bound to work in the place or post and they cannot claim that they should be allotted to the places of their choice. This being the legal principle to be followed, the grounds set out in the present writ petition, are not sufficient for the purpose of interfering with the impugned order of transfer. This apart, by virtue of interim order, the writ petitioner has already served more than 5 years in the present station at Puducherry and therefore it is not preferable to grant further extension of time. It is left open to the authorities to take appropriate decision in respect of transfer of the writ petitioner on merits and as per the guidelines or instructions issued in this regard by the Management.

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

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

stm

To

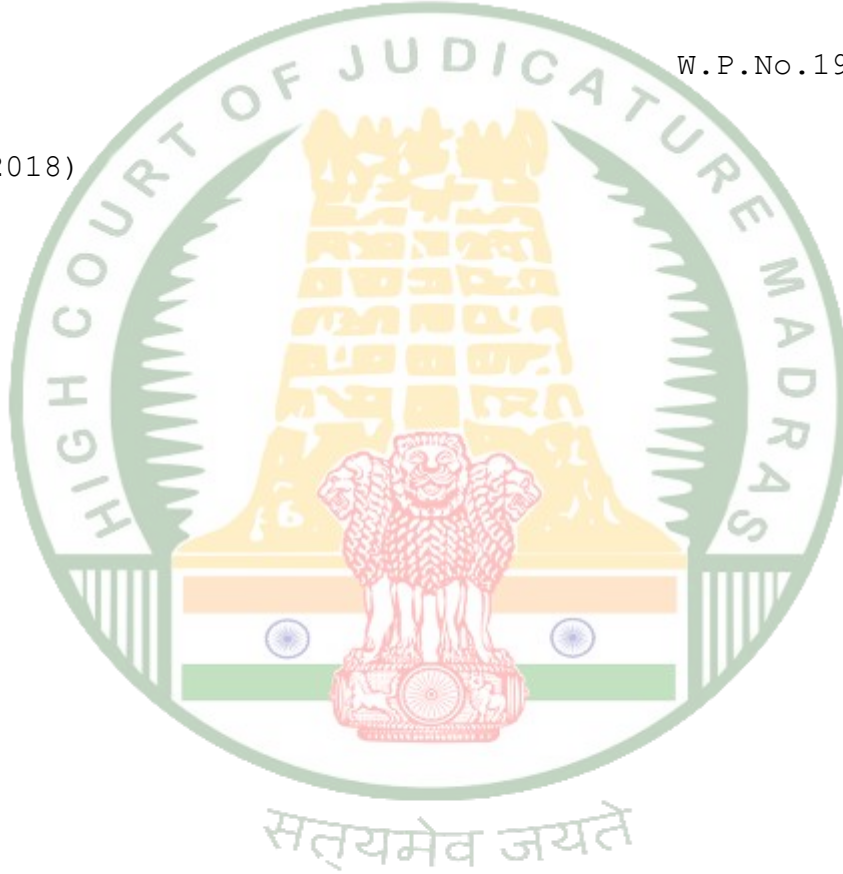
The Managing Director,
Puducherry road Transport Corporation,
Behind Pududcherry New Bus Stand,
Kuyavarapalayam Post, Puducherry-13.

+ 1 cc to Mr.G. B. Saravana Bhavan, Advocate Sr.42497

+ 1 cc to Mr.A.R.Nixon, Advocate Sr.42629

W.P.No.19476 of 2013

PA(CO)
EU(27/07/2018)



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