

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19-03-2019

CORAM

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

W.P.No.26894 of 2018

And

W.M.P.Nos.31233 and 31237 of 2018

S.Duraisamy

..

Petitioner

- Vs. -

The General Manager,
Tamil Nadu State Transport Corporation
(Coimbatore) Ltd.,
Erode Zone,
Chennimalai Road,
Erode District-638 001.

..

Respondent

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order in Pa.No.1498/S3/ES1/TNSTC/CBE/EZ/ 18, dated 27.9.2018 issued by the respondent, quash the same and forbear the respondent from denying or refusing to provide the same work in Erode-LMV and in the same manner which the petitioner have been doing prior to 27.9.2018 in the respondent's Corporation.

For Petitioner : Mr.G.Mutharasu
For Respondent : Mr.R.S.Selvam

सत्यमेव जयते

O R D E R

The order of transfer dated 27.9.2018, transferring the writ petitioner from Erode Regional Office to Erode-2 Branch, is under challenge in the present writ petition.

2. The learned counsel, appearing on behalf of the writ petitioner, strenuously contended that the writ petitioner was appointed as Electrician during the year 1987. All along right from the year 1995 onwards, he is performing the Light Motor Vehicle Duty. Thereafter, he was working as Electrician (Erode-LMV) in the respondent-Corporation till the year 2018.

3. The writ petitioner states that he is the Branch Secretary of Labour Progressive Federation for the past 10 years. In view of the fact that the writ petitioner is continuing as Office Bearer of an Employees Union, the respondent has taken up personal vengeance and transferred the writ petitioner from Light Motor Vehicle Duty to Heavy Motor Vehicle Duty.

4. The learned counsel for the writ petitioner states that it is a mala fide transfer. Thus, the order of transfer is liable to be scrapped. The writ petitioner was on medical leave and without even considering the medical leave, the respondent issued an order of transfer, transferring the writ petitioner from Light Motor Vehicle Duty, Erode to Heavy Motor Vehicle Duty, Erode-2 Branch. Thus, the transfer order issued to the writ petitioner by the respondent is untenable.

5. Transfer is an incidental to service, more so, a condition of service. A public servant, on acceptance of the order of appointment, is bound by the Service Regulations. The writ petitioner was appointed as Electrician. Thus, the writ petitioner cannot claim any immunity from performing the duties and responsibilities either in the Light Motor Vehicle Branch or in the Heavy Motor Vehicle Branch. Thus, wherever posted, the writ petitioner is liable to work as per the terms and conditions of his service.

6. In the present case on hand, the writ petitioner has not been transferred to a far off place. The writ petitioner is transferred within Erode and more specifically, from one Branch to another Branch. Under these circumstances, this Court is of an opinion that the present writ petition is filed as the writ petitioner claims that he is an Office Bearer of Employees Union.

7. In respect of the allegation of mala fides, there is no specific averment in the affidavit filed in support of the writ petition. In the absence of any such substantiated specific allegations, this Court cannot entertain the ground of mala fide. Even otherwise, the authority against whom such an allegation of mala fide is raised must be impleaded as a party respondent in his personal capacity. However, no such person is impleaded in the present writ petition.

8. Transfer orders are issued on administrative grounds as well as on administrative exigencies. Even sometimes, transfer orders are issued for smooth functioning of the administration, several circumstances are considered warranting an order of administrative transfer.

9. This Court is of an opinion that transfers can be issued on various grounds. On a perusal of the impugned transfer order, it is stated that the writ petitioner is transferred on administrative ground and in the interest of administration. This apart, the writ petitioner is transferred from Light Motor Vehicle Duty, Erode to Heavy Motor Vehicle Duty, Erode-2, which is not far away and within the same District, namely, Erode District. Transfers are imminent in respect of public servants, whenever there is a wide complaint against the employee is made known to the competent authorities. In certain circumstances, there may not be an evidence to prosecute the employee or to initiate departmental disciplinary proceedings. However, the competent authorities may of the opinion that further continuance of a public servant in a particular place would cause inconvenience as well as cause some difficult situation for the peaceful functioning of the public administration. Thus, in those circumstances, transfers alone are the remedies in the interest of public administration. Therefore, it is not necessary that there must be a transfer only after conducting an enquiry or initiation of disciplinary proceedings.

10. Administrative transfers are issued on various circumstances and on various grounds. For instance, continuance of certain public servants in a particular post, may not be conducive for the peaceful administration or their further continuance may cause certain troubles to the people, who all are the beneficiaries in the Department. There are various such administrative aspects, which all are the reasons for the administrative transfers. Courts would not be in a position to scrutinize or conduct an enquiry in respect of those reasons for such issuance of the administrative transfers.

11. Administrative transfers are the prerogative of the Department concerned and the competent authorities are the best persons to assess and act accordingly. However, those competent authorities should act in the interest of public and in the event of any illegality or some personal motive, then alone, the employee can approach the Court of law for appropriate remedy. In other words, if an order of transfer is issued with a mala fide intention or in violation of the statutory rules, then a writ petition can be entertained. Even in such cases, the allegation of mala fide intention must be substantiated in the writ proceedings and the official concerned must be impleaded as party respondents in the writ proceedings. In the absence of any such legal ground, routine administrative transfers can never be interfered with by the Constitutional Courts.

12. Transfer is an incidental to service, more so, a condition of service. Public servant is liable to work wherever he is posted in the interest of public administration. On accepting the offer of appointment, a person is agreeing for the conditions of service and transfer being incidental, he must be in a position to work, wherever he is posted.

13. Place or post can never be claimed as a matter of choice by the public servants. All public servants are duty bound to perform their duties diligently and with utmost care and devotion. This being the basic principles to be followed and erosion in this regard can never be tolerated either by the officials or by the Courts. High Court cannot interfere with the routine administration of the State or its organization. In the event of such routine interference in administration, more specifically, in transfer cases, the very discipline and the functioning of the administration would be paralyzed. Thus, the judicial review of administrative transfers must be exercised with restraint and only on exceptional circumstances, such orders of transfers can be interfered with by the High Courts and not otherwise. This being the scope of the judicial review of administrative transfers issued by the competent authorities, this Court is of an undoubted opinion that the writ petitioner has not established any such strong acceptable ground for the purpose of interference in the order of transfer.

14. The mere fact that the writ petitioner is an Office Bearer of an Association, in a particular Branch, will not provide any immunity or exemption from administrative transfers. The transfer, being a condition of service, this Court is of an opinion that the writ petitioner is liable to work wherever he is posted.

15. The order of transfer can be challenged undoubtedly on certain limited grounds and therefore, the writ petition cannot be entertained in a routine manner against an order of administrative transfer.

16. The writ petitioner has not established any acceptable grounds for the purpose of considering the relief, as such, sought for in the present writ petition and further, the writ petitioner is transferred within Erode from one Branch to another Branch. Under these circumstances, there is no reason to interfere with the order of transfer issued by the respondent.

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

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

Svn

To

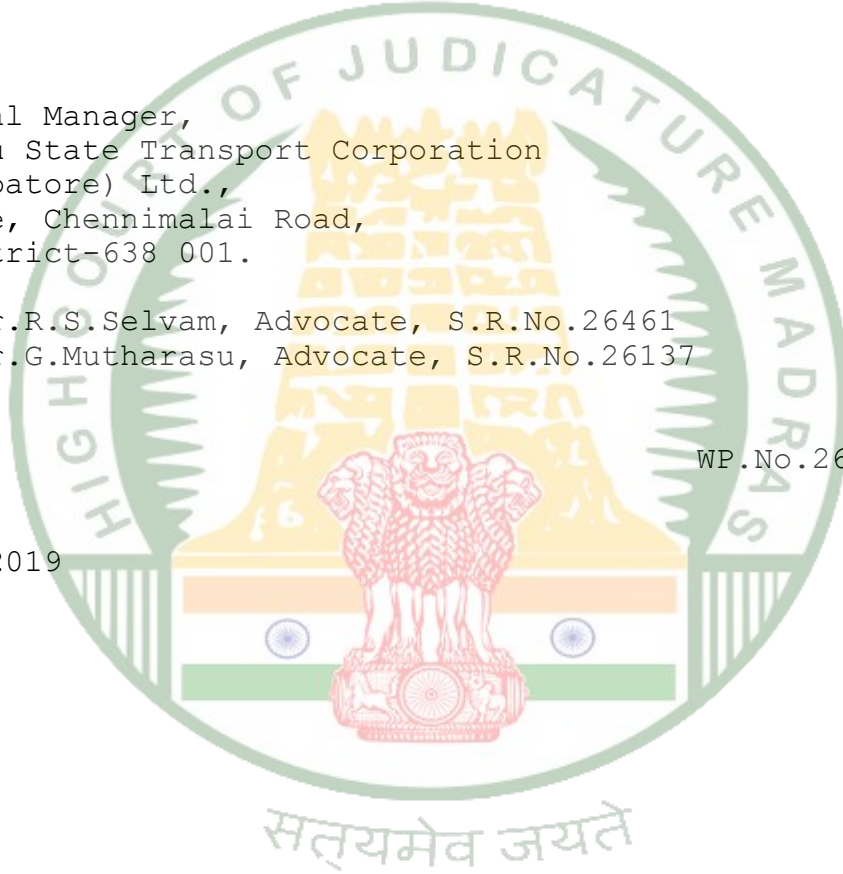
The General Manager,
Tamil Nadu State Transport Corporation
(Coimbatore) Ltd.,
Erode Zone, Chennimalai Road,
Erode District-638 001.

+1cc to Mr.R.S.Selvam, Advocate, S.R.No.26461

+1cc to Mr.G.Mutharasu, Advocate, S.R.No.26137

WP.No.26894 of 2018

SSV(CO)
CS/29/04/2019



WEB COPY