

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Special Original Jurisdiction)

Monday, the Eighteenth day of March Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice S.M. SUBRAMANIAM

W.M.P.Nos.39602, 39603, 37918 and 38023 of 2018

in

W.P.Nos.32721 and 32809 of 2018

METROPOLITAN TRANSPORT [1 & 2 PETITIONERS IN WMP.39602 & 32603/18
CORPORATION (CHENNAI) LTD., IN WP.32721/18 AND 1 & 2 RESPONDENTS
REP.BY THE MANAGING DIRECTOR, IN WMP.38023/18
PALLAVAN HOUSE, IN WP.32809/18]
CHENNAI - 600 002

2 THE SENIOR DEPUTY MANAGER (HRD),
METROPOLITAN TRANSPORT CORPORATION
CHENNAI) LTD., PALLAVAN HOUSE,
CHENNAI - 600002

Vs

1 E.CHANDRAN [1 & 2 RESPONDENTS IN WMP.39602 & 32603/18
IN WP.32721 & 39603/18 AND 1& 2 PETITIONERS IN
WMP.37918/18 IN WP.32721 & 38023/18]

2 V.SANKAR

1 H.AZHAGAR RAJ [1 TO 4 RESPONDENTS IN WMP.39603/18 AND
2 V.VIJAYALAKSHMI 1 TO 4 PETITIONERS IN WMP.38023/18 IN
3 K.SHANTHI PRIYA IN WP.32809/18]
4 U.DEVANANDH

Petition praying that in the circumstances stated therein
and in the affidavit filed therewith the High Court will be pleased
to vacate the interim injunction granted by this Honourable Court by
an order dated 10.12.2018 in WMP No.37918 of 2018 in WP No.32721 of
2018 on the file of this Honourable Court (in WMP.No.39602/18) in
WP.No.32721/18

(ii) to vacate the interim injunction granted by this Honourable Court by an order dated 10.12.2018 in WMP No.38023 of 2018 in WP No.32809 of 2018 on the file of this Honourable Court (in WMP.No.39603/19) in WP.No.32809/18

(iii) to issue an interim order of injunction restraining the respondents from transferring the petitioners from the EDP Section, Head Quarters Office to Bus Depots to work as Conductors, pursuant to issuance of the Memo No. 26044/ PS(T)3/ MTC/ 2018 dated 04.12.2018 issued by the 2nd respondent, (in WMP.No.37918/18) pending final disposal of the writ petition 32721/18 and;

(iv) To issue an interim order of injunction restraining the respondents from transferring the petitioners to work as Conductors, pursuant to issuance of the Memo No.26044/PS(T)3/MTC/2018 dated 04.12.2018 issued by the 2nd respondent, (in WMP.No.38023/18) pending final disposal of the writ petition 32809/19 respectively.

Order : These petitions coming on for orders upon perusing the petitions and the respective affidavits filed in support thereof and upon hearing the arguments of M/S.S.RAJENI RAMADASS, Advocate for the petitioner in 1 & 2 PETITIONERS IN WMP.39602 & 39603/18 IN WP.32721/18 AND 1 & 2 RESPONDENTS IN WMP.37918 & 38023/18 IN WP.32721 & 32809/18 and M/S.VAIGAI Senior Counsel for M/S.S.MEENAKSHI Advocate in 1 & 2 RESPONDENTS IN WMP.39602 & 39603/18 IN WP.32721 & 39603/18 AND 1 & 2 RESPONDENTS IN WMP.37918/18 IN WP.32721 & 38023/18 and 1 TO 4 RESPONDENTS IN WMP.39603/18 AND 1 TO 4 PETITIONERS IN WMP.38023/18 IN WP.32809/18 the court made the following order:-

The order of transfer and posting of certain Conductors issued in proceedings dated 4.12.2018, is under challenge in the main writ petitions.

2. The learned Senior Counsel, appearing on behalf of the writ petitioners, made a submission that the impugned order dated 4.12.2018 is not an order of administrative transfer and posting, but an order of reversion, reverting the writ petitioners from the post of Computer Operators in the Electronic Data Processing Section (EDP) to the post of Conductors.

3. The said order has been passed without following the process of law. The writ petitioners are serving in Computer Section for more than 10 years and their initial posting to the Computer Section was based on the selection and the writ petitioners are fully qualified to continue in the post of Computer Operators.

4. All the writ petitioners were admittedly appointed as Conductors in the respondent-Transport Corporation. The writ petitioners were selected and posted as Computer Operators in view of the fact that the writ petitioners are possessing the requisite

qualification to hold the post of Computer Operators. The process of selection was conducted by the Competent Authorities and even in the order dated 27.9.2007, the writ petitioners were directed to attend the interview at the Headquarters for selection and posting at GPS Centre at Headquarters. Therefore, the transfer and posting order now issued would affect the service conditions of the writ petitioners as they were selected and transferred to the post of Computer Operators.

5. The learned Senior Counsel, appearing on behalf of the writ petitioners, solicited the attention of this Court by stating that the report of the Joint Commissioner of Labour (Conciliation), Chennai and it was agreed in Clause 11, which reads as under:-

"11. Conductors on other duty:

The regularisation of employment of such of those who have been recruited as Conductors but have been performing other duties continuously for long periods of 5 years or more may be done in the same manner as was done in Cheran and Jeeva Transport Corporations subject to the same terms and conditions, in other Corporations, or as may be settled by direct discussions with the concerned Unions in such Corporation."

6. This apart, the salary bill also shows that the writ petitioners were not granted the benefits granted to the Conductors and therefore, their service conditions had already been changed and they are regularly working as Computer Operators as per the order of posting. It is relevant to state that the said 12(3) Settlement containing the provisions for Conductor on other duty was entered into between the Management and the Employees' Union on 28.9.1989.

7. This apart, the Hon'ble Division Bench of this Court in the case of Arasu Viraivu Pokkuvarathu Oozhiyar Sangam (Represented by its General Secretary) vs. State Express Transport Corporation Ltd (Represented by its Managing Director) and two others [2006 (3) LLN 916], held as follows:-

"In order to handle/operate the computers, the respondent-Corporation decided to appoint persons through internal section from amongst the workmen in their employment, except the drivers. Accordingly, 48 and odd persons were selected as data entry operators, who were paid the salary payable to Conductors or tradesman/technical staff, apart from a special allowance. In or around 2002, the respondent-Corporation decided to outsource the computer work to outside contractors by calling for tenders in

newspapers. The action of the respondent-Corporation was challenged by the appellant/union in Writ Petition No. 6491 of 2002. The said writ petition was heard along with a batch of cases where the action of the other Transport Corporations in sending back the data entry operators to their original posts was challenged. The learned Single Judge, vide his order, dated 24 February, 2004, allowed all the writ petitions and held that asking the D.E.Os/E.D.P. operators to Join in their original posts was illegal and contrary to Cl. (11) of the 12(3) settlement, dated 28 September, 1989 and violative of Art. 14 and Art. 19(1)(g) of the Constitution of India and that any change in the conditions of service of data entry operators should be done only after following the procedure contemplated under S. 9-A of the Act. Pursuant to the order passed by the learned Single Judge, the second respondent issued a notice, dated 5 July, 2005, under S. 9-A of the Act, proposing to revert 54 data entry operators working in the E.D.P. Wing to their original posts of conductor/technical staff after the expiry of 21 days from the date of the notice, i.e., with effect from 27 July, 2005. Immediately on receipt of the notice, dated 5 July, 2005, the appellant/Union issued a strike notice, dated 13 July, 2005, to respondents 1 and 2 objecting to the changes proposed to be made in the notice, dated 5 July, 2005, and also demanding respondents 1 and 2 to continue the workmen as data entry operators and for fixation of proper scale of pay from the date of their appointment as data entry operators with arrears and consequential benefits. Since the first respondent is a public utility service, conciliation is deemed to have commenced immediately on the issuance of the strike notice. In fact, the conciliation officer issued a notice of conciliation on 15 July, 2005 on the strike notice issued by the union and fixed the conciliation on 21 July, 2005. Thereafter, conciliation meetings were held on various dates and finally, in the conciliation meeting which was held on 4 October, 2005, the Conciliation Officer signed the failure report. Immediately on the

close of the proceedings held on 4 October, 2005, the second respondent issued the impugned order, dated 5 October, 2005, and sought to implement the change proposed in their notice, dated 5 July, 2005, issued under S. 9-A of the Act. This action of the respondent/Corporation is challenged by the appellant/Union in the present writ petition on the ground that effecting the change proposed in the notice under S. 9-A of the Act during the pendency of conciliation without seeking the express prior permission was non est and inoperative and also violative of S. 33(1)(a) of the Act and further seeking a direction to respondents 1 and 2 to continue the workmen as data entry operators. The writ petition is dismissed by the learned Single Judge by directing the appellant/union to work out their remedy under the Industrial Disputes Act.

.. ..
In view of the clear pronouncement of law by the Supreme Court, there is no escape from the conclusion that when the order of reversion was passed against the workmen, the respondent/management had committed breach of S. 33(1) of the Act by not passing the said order after obtaining the express previous permission in writing of the Conciliation Officer before whom the conciliation proceedings must be held to be pending till his report was forwarded to the State Government on 14 October, 2005. The impugned retrenchment order must, therefore, be held to be illegal, being contrary to the provisions of the Industrial Disputes Act.

.. ..
Is a clear case of contravention of the proviso to S. 33(2)(b). An employer who does not make an application under S. 33(2)(b) or withdraws the one made, cannot be rewarded by relieving him of the statutory obligation created on him to make such an application. If it is so done, he will be happier or more comfortable than an employer who obeys the command of law and makes an application inviting scrutiny of the authority in the matter of granting approval of the action taken by him. Adherence to and obedience of law should be obvious and necessary in a

system governed by rule of law. An employer by design can avoid to make an application after dismissing or discharging an employee or file it and withdraw before any order is passed on it, on its merits, to take a position that such order is not inoperative or void till it is set aside under S. 33-A notwithstanding the contravention of S. 33(2) (b) proviso, driving the employee to have recourse to one or more proceedings by making a complaint under S. 33-A or to raise another industrial dispute or to make a complaint under S. 31(1). Such an approach destroys the protection specifically and expressly given to an employee under the said proviso as against possible victimization, unfair labour practice or harassment because of pendency of industrial dispute so that an employee can be saved from hardship of unemployment."

It is, thus, clear that the order, which has been passed in violation of the mandatory provisions of S. 33 of the Act, is void and inoperative and it is not necessary for the workmen to approach the Labour Court, and especially when there is no factual dispute, such an order can be interfered with under Art. 226 of the Constitution of India."

The Special Leave Petition filed against the said Division Bench judgment was also dismissed.

8. At the outset, the learned Senior Counsel, appearing on behalf of the writ petitioners is of an opinion that the writ petitioners, though initially appointed to the post of Conductors, were subsequently selected and posted to the post of Computer Operators and serving in the said post for more than five years and therefore, now they cannot be reposted to the post of Conductor and the said reposting amounts to reversion and violation of the service conditions. Under these circumstances, the respondents are bound to follow the procedures contemplated under the Industrial Disputes Act and admittedly, they had not followed the procedures contemplated and accordingly, the impugned orders already stayed and the same shall be continued.

9. The learned counsel appearing on behalf of the respondents disputed the contentions raised on behalf of the writ petitioners in entirety. In respect of the clause agreed in 12(3) Settlement on 28.9.1989, the learned counsel for the respondents states that the said Settlement had already been lapsed and the subsequent 12(3) Settlement was entered into between the Management and the Employees' Union on 28.9.1995 and thereafter on 13.2.1999.

10. The 12(3) Settlement on 28.9.1995 categorically states as follows:-

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9. ve;j Nfl;lfupapy; (nlf;dpf;fy;. .
buhg;gpf;. ml;kpdp];bNurd;; xU gzpahsu;
Nghf;Ftuj;Jf; fofj;jpy; epakdk;
nra;ag;gLfpwhNwh me;j Nfl;lfupapy; kl;Lk;
mtu; gzp nra;a Ntz;Lk;. NtW Nfl;lfupf;F
khw;wf;\$lhJ."

11. The 12(3) Settlement on 28.9.1989, relied on by the learned Senior Counsel for the writ petitioners, is not in force and therefore, the writ petitions cannot be considered based on the lapsed Settlement. In respect of the 12(3) Settlement dated 28.9.1995, it is categorically stated that the employees are entitled to work in the post in which they are appointed and change of cadre is impermissible. Even as per the Service Rules, Rule 22 enumerates postings and Transfers, which reads as under:-

"22. Postings and Transfers:

a) An employee may be required to serve in any post borne on the cadre of the Corporation and in any place of duty as the exigencies of the administration require.

b) All transfers and postings shall be made by the appointing authority of such other authority to whom powers have been delegated in this regard by the appointing authority."

12. This apart, the impugned transfer and posting order has been passed based on the Government Order issued in G.O.Ms.No.322, Transport (C.1) Department, dated 31.10.2018. The said Government Order was issued to streamline the existing staff strength in the Offices of Depots, Region and Corporate Head Office of the Metropolitan Transport Corporation (Chennai) Limited, Chennai based on the number of statement and other particulars. The number of statement of Metropolitan Transport Corporation (Chennai) Limited, Chennai was detailed in the said Government Order and it was found that 270 Drivers and 619 Conductors are in excess and should be adjusted as mentioned in Paragraph 5(h) of the said Government Order. Paragraph 5(h) of the said Government Order reads as under:-

"(h) In the statement tabled at the Board held on 26.10.2018, it is seen that there are excess of 270 Drivers, 619 Conductors, 44 Traffic Supervisory Staff and 79 Technical Staff. No further recruitment of induction is permitted until these excess staff are adjusted against retirement vacancies."

13. Paragraph 5(1) of the said Government Order reads as under:-

"(1) It is seen that 575 bus drivers are now involved in non-essential services such as Day Washing, Store Lorry, Jeep, Night Parking, Air Inflation, Night Washing, Lift, Squad, Water Lorry etc. Also, that nearly 300 Scheduled Services have been reduced due to this. It is directed that regular bus drivers should not be utilised for non-essential services. Instead, such non-essential services may be carried out by drivers from outsourced firms."

14. Paragraph 5(m) of the said Government Order reads as under:-

"(m) It is seen that 572 Conductors are currently doing various Supervisory and Administration work. They should be utilised to reintroduce the bus services that were reduced. Due promotions may be given at the Supervisory levels without delay and the scheduled services dropped may be revived."

15. In Paragraph 5(m) of the said Government Order, it is categorically stated that 572 Conductors are currently doing various Supervisory and Administration work. They should be utilised to reintroduce the bus services that were reduced. Due promotions may be given at the Supervisory levels without delay and the scheduled services dropped may be revived.

16. It is contended by the learned counsel for the respondents that the above Government Order has not been challenged. Thus, the contention of the writ petitioners that they have been appointed to the post of Computer Operator is incorrect and they are continuing in the cadre of Conductor and they are governing as per the rules applicable to the post of Conductor and they are receiving the scale of pay attached to the post of Conductor.

17. This being the fact the posting of petitioners as Computer Operator was on administrative exigency and therefore, the interim injunction cannot be continued. This apart, the continuance of interim injunction in these writ petitions, are causing prejudice to the streamlining of the Transport Corporation as per the Government Orders and under these circumstances, the injunction petition filed by the writ petitioners are to be dismissed.

18. Let us now look into the order issued to the writ petitioners, posting them as Computer Operators. Undoubtedly, interview was conducted before posting the writ petitioners at GPS

Centre at Headquarters. The interview call letter shows that the writ petitioners were directed to attend the interview for selection and posting at GPS Centre at Headquarters.

19. Thus, it is clear that amongst the Conductors, the respondents intended to select the qualified persons for the purpose of performing the duties and responsibilities attached to the post of Computer Operator. However, the order of posting of the writ petitioner to EDP Section categorically states that "the following employees are transferred and posted to EDP Section Headquarters without any change in their present cadre/designation".

20. When the order of transfer and posting issued to the writ petitioners, posting them to EDP Section at Headquarters, unambiguously enumerates that the writ petitioners are transferred and posted to EDP Section Headquarters without any change in their present cadre/designation. The present cadre, during the relevant point of time, means the post of Conductor.

21. This being the factum, neither the order of posting to EDP Section Headquarters or thereafter any assurance has been provided by the respondent-Management to the writ petitioners that their cadre as Conductor has changed nor there is a change of designation. Under these circumstances, all along the writ petitioners are serving in the cadre of Conductor and posted to work at EDP Section at Headquarters.

22. The writ petitioners are working in Public Sector Undertaking. Thus, the Public Services to be provided to the public at large is of paramount importance. Certain works can be extracted by the administration from amongst the eligible persons working in various other cadres to meet out the administrative exigencies. Under those circumstances, if an employee is serving in a particular Section or performing particular duties and responsibilities, which are unconnected with the duties and responsibilities of his appointed cadre, the said employee cannot claim the different cadre as a right on the ground that he was allowed to serve in the other cadre, which carries different job responsibilities and the scale of pay.

23. In the present case on hand, at no point of time, the writ petitioners were appointed or promoted to the post of Computer Operators. Contrarily, the writ petitioners were transferred and posted to EDP Section at Headquarters and operate the computers. However, there is no change of cadre and the same had been very well stated in the order of transfer and posting of the writ petitioners to EDP Section at Headquarters. Under these circumstances, the writ petitioners cannot claim that the procedures are not followed. When there is no change of cadre nor there is any reversion, this Court is of the considered opinion that the question of violating the procedures contemplated under the Industrial Disputes Act, does not

arise at all.

24. In respect of 12(3) Settlement, the learned Senior Counsel, appearing on behalf of the writ petitioners referred to the 12(3) Settlement of the year 1989. The 12(3) Settlement of the year 1995 states that there cannot be any change of cadre at all. This apart, the administrative exigencies were considered and in order to streamline the existing staff strength in the Offices of Depots, Region and Corporate Head Offices, the Government issued a comprehensive order in G.O.Ms.No.322, Transport (C.1) Department, dated 31.10.2018. Based on the said Government Order, the writ petitioners were now re-transferred and reposted to their original cadre, namely, Conductor.

25. This being the factum, the writ petitioners have not established any prima facie case for the purpose of continuance of the interim order already granted. It is pertinent to note that the service conditions are not affected even if the writ petitioners are allowed to work in the post of Conductors. The writ petitioners, as per the transfer order, shall join in the post of Conductor and their salary or the service conditions are not at all affected nor any prejudice caused in respect of the cadre in which they are now transferred.

26. Under these circumstances, the learned Senior Counsel for the writ petitioners states that certain larger issues are also to be considered in these writ petitions. Thus, the writ petitions shall be posted for final hearing after six weeks. However, the interim order granted in WMP Nos.37918 and 38023 of 2018 in WP Nos.32721 and 32809 of 2018 on 10.12.2018 shall stand vacated and accordingly, the stay petitions are dismissed. Consequently, the vacate stay petitions filed in WMP Nos.39602 and 39603 of 2018 in WP Nos.32721 and 32809 of 2018 shall stand allowed.

27. Post WP Nos.32721 and 32809 of 2018 under the caption 'For Final Hearing' after six weeks.

-sd/-
18/03/2019
/ TRUE COPY /

Sub Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

1 THE MANAGING DIRECTOR,
METROPOLITAN TRANSPORT CORPORATION,
CHENNAI LTD., PALLAVAN HOUSE,
CHENNAI 600 002.

2 THE SENIOR DEPUTY
MANAGER(HRD), METROPOLITAN TRANSPORT
CORPORATION, CHENNAI LTD.,
PALALVAN HOUSE, CHENNAI 600 002.

C.C. to M/S.S.RAJENI RAMADASS Advocate on payment of necessary charges

The Government Advocate, High Court, Madras - 104.

Order

in
W.M.P.Nos.39602, 39603, 37918 and 38023 of 2018

in

W.P.Nos.32721 and 32809 of 2018

Date :18/03/2019

From 26.2.2001 the Registry is issuing certified
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SDR 25.03.2019