

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 27.08.2020

Delivered on : 01.09.2020

CORAM

THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.No.10374 of 2020

and

W.M.P.Nos.12615, 12616 and 12617 of 2020

M.Selvaraj

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
rep.by its Principal Secretary to
Government,
Transport Department,
Secretariat, Fort.St.George,
Chennai-600 009
- 2.The Tamil Nadu State Transport
Corporation(Coimbatore) Ltd.,
rep.by its Managing director,
No.37, Mettupalayam Road,
Coimbatore-641 043
- 3.The General Manager,
Tamil Nadu State Transport
Corporation (Coimbatore) Ltd.,
Coimbatore Region,
No.37, Mettupalayam Road,
Coimbatore-641 043
- 4.The Branch Manager,
Maruthamalai Branch,
Tamil Nadu State Transport Corporation
(Coimbatore) Ltd.,
Maruthamalai,
Coimbatore-641 046

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of certiorarified Mandamus, calling for the records of the third respondent comprised in its order No.2446/E3P/PaThu1/ThaAPoKa(Ko)/2020, dated 28.05.2020 and the consequential order of the 4th respondent comprised in its order No.13228 dated 12.06.2020 and

quash the same as contrary to law, mala fide, arbitrary, colorable exercise of power, unconstitutional, illegal and violative of the principles of natural justice and consequently direct the respondents to reinstate the petitioner in the office of the 4th respondent without any loss of pay.

For Petitioner : Mr.K.M.D.Muhilan

For Respondents : Mr.A.Sundaravadhanam
Standing Counsel

ORDER

The matter is taken up through web hearing.

2.The case of the petitioner is that he joined the second respondent Corporation as Conductor, on 23.05.1995 and is due for retirement, on attaining the age of superannuation on 31.05.2022. According to the petitioner, he has been enjoying blemishless record of service throughout and was also appreciated for his meritorious service and was awarded with a wristwatch on the Independence day function.

3.The petitioner was working in the office of the fourth respondent. The Government, vide G.O.Ms.No.152, dated 23.03.2020, had issued guidelines, restricting the movement of the public, including suspension of public transport, due to Covid-19 situation. Vide another G.O.Ms.No.262, dated 31.05.2020, taking stock of the situation prevailing then, the Government permitted the public transport with 50% fleet strength.

4.According to the petitioner, in view of G.O.Ms.No.262, dated 31.05.2020, he approached the 4th respondent for assigning duty to him from 01.06.2020. At this, the petitioner was informed that he was transferred to Valparai Branch for administrative reason and a formal order to that effect was served on him, dated 28.05.2020. According to the petitioner, the order of transfer was not immediately served on him, but he was aware that the transfer was not for administrative reason, but for extraneous consideration.

5.According to the petitioner, he is an elected Branch Secretary of Labour Progressive Federation (LPF), a Trade Union Federation, affiliated to a political party in the State. During the distribution of essential items to the needy people, during May 2020, there was a kind of clash of interest between the members of the ruling party and the petitioner belonging to the opposition. According to the petitioner, some of the influential ruling party persons have threatened him that he would be dismissed from service.

6.While matters stood thus, when the 4th respondent informed about the petitioner's transfer, he was also advised to contact one Mr.Yuvaraj, a member of the ruling party and an other person, who was a former Chairman of Madukkari Panchayat Union, belonging to the ruling party. The petitioner was also advised to apologize for his conduct during the distribution of essential items to the needy people during May 2020.

7.In the above circumstances, the present writ petition has been filed by the petitioner challenging the transfer order, dated 28.05.2020, which was served on him subsequently and also the consequential relieving order, dated 12.6.2020, by the 3rd and 4th respondents, respectively, on the ground that these orders have been passed on a mala fide consideration and not for advancing the cause of administrative requirement and therefore, liable to be interfered with by this Court.

8.When the matter came up on 12.08.2020 notice was issued to the respondent Corporation, and the same was posted for hearing on 19.08.2020.

9.Mr.A.Sundaravadhanam, the learned standing counsel, who took notice on behalf of the respondents, appeared on 19.08.2020 and pleaded for some time for filing counter. The learned counsel for the petitioner, who appeared on 19.08.2020 would submit that the petitioner was issued with a charge memorandum on 27.06.2020 for remaining absent for more than 10 days and was directed to give his explanation. The counsel submitted that this charge memorandum was a sequel to the transfer order, which is impugned in the writ petition. On consideration of his submission, this Court passed an order on 19.08.2020, restraining the respondent Corporation from taking any punitive action, as this Court was looking into the issue of mala fides alleged against the Corporation. Thereafter, the matter was posted on 27.08.2020.

10.On 27.08.2020, when the matter was taken up for hearing, on behalf of the 3rd respondent, a detailed counter affidavit was filed.

11.The learned counsel for the petitioner would submit that nothing is disclosed in the counter affidavit as to the specific nature of administrative requirement in transferring a Conductor of Transport Corporation to a far away place at Valparai. In fact, in the counter affidavit, it is averred that the petitioner was misguiding other employees not to join duty, on 01.06.2020 and therefore, the Corporation had to transfer him for his alleged misbehaviour. Once the 3rd respondent admitted that the transfer order was on the basis of the so called misbehaviour of the petitioner, the transfer order cannot be termed as one issued for administrative reasons. Therefore, the reason assigned in the transfer order is contrary to the position now taken by the third respondent in the counter

affidavit.

12.The learned counsel for the petitioner would submit that except making a bald allegation regarding the behaviour of the petitioner, nothing has been spelt out as to the exact nature of the conduct of the petitioner, which necessitated the transfer order.

13.The learned counsel also would draw the attention of this Court to G.O.No.249, Finance (Budget General-I), dated 21.05.2020, prohibiting general transfer and permitting transfers only on administrative grounds, that too, by an authority higher than the authority normally empowered to transfer. The learned counsel would submit that when the administrative requirement was not the basis of transfer, the said G.O. would have to be applicable to the said situation and in any event, the transfer order was not passed by the authority higher than the authority empowered to make transfers and therefore, on this ground alone, the transfer order is liable to be interfered with. The learned counsel further submitted that the petitioner is due for retirement in May 2022 and he is left with less than two years of service. Normally no Government servant would be subjected for transfer on the verge of his retirement, unless there is compelling reasons necessitating such transfer. Moreover the transfer is also not permissible in terms of G.O.Ms.No.431, P & AR (Personal Department), dated 25.04.1981, which prohibits transfer of employees above the age of 40 years to Hills areas. Valparai is admittedly an hill station and the hostile weather condition in such a place would affect the health of the petitioner as well. The learned counsel would also submit that the petitioner is also suffering from certain ailments like diabetics and Blood Pressure and serving in an hill station will put his life to grave risk. Therefore, the learned counsel would sum up that the transfer order is liable to be interfered with as unsustainable on more than one ground.

14.Mr.Sundaravadhanam, learned Standing counsel, who appeared on behalf of the respondents in response to the notice, would submit that when the Government had taken a decision to operate the public transport with 50% fleet, the Corporation had to make that workable by transferring some employees, whose services were required in other depots. Although the allegation of misbehaviour is stated in the counter affidavit, it is always open to the Corporation to rearrange its affairs in order to serve public interest smoothly, without hindrance. Therefore, the transfer to serve larger public interest cannot be termed as a mala fide action. Therefore, he would request this Court to dismiss the writ petition, as being without substance.

15.This Court has considered the submissions of the counsels for the rival parties.

16. At the outset, this Court is of the view that the so called administrative reason mentioned in the transfer order dated 28.05.2020 is not supported by any materials. In fact, as rightly contended by the learned counsel for the petitioner, the third respondent had taken the decision to transfer the petitioner because of some instances involving the petitioner, not to the liking of the management. Although the petitioner has averred that there were unpleasant exchanges between two groups representing opposition political parties in the distribution of essential items to the needy people during Covid-19 situation, which incident triggered the transfer order, yet such averments are not supported by any concrete evidence. Nevertheless, from the circumstances of the case, this Court could draw inference as to whether the impugned transfer order was passed for administrative reasons or for achieving any other collateral purpose.

17. On behalf of the 3rd respondent an affidavit is filed, but nothing has been spelt out in the affidavit as to the nature of administrative requirement at Valparai, transferring a Conductor to that Depot. The petitioner is not holding any administrative post of higher cadre, requiring his services in order to operate public transport. When the Government had decided to operate the public transport with 50% fleet in the first week of June 2020, this Court is unable to appreciate as to how the petitioner can be subjected to transfer to a far away hill station as if the local conductors were not available at all for fulfilling the 50% fleet norms. Therefore, obviously, the transfer of the petitioner was intended to achieve an oblique purpose other than the specified administrative requirement.

18. Even otherwise, the Government had issued G.O.Ms.No.249, dated 21.05.2020, prohibiting general transfer and in case of transfers on administrative grounds, permitting only an authority higher than the authority normally empowered to transfer and in this regard, a specific ground has been taken on behalf of the petitioner that the 3rd respondent, who passed the transfer order was not competent in terms of the said G.O. This legal contention raised on behalf of the petitioner has not been addressed at all in the counter affidavit.

19. Moreover, when another G.O. was cited prohibiting transfer of employees over 40 years of age to hill stations, the said issue also has not been answered in the counter affidavit. In any case, this Court does not find any earth shaking urgency to shunt the petitioner to an hill station in the midst of a pandemic crisis. There clearly appears to be something more than what meets the eye in the impugned transfer order.

20.Further, when the Corporation was not happy with the behaviour of the petitioner, it is open to the Corporation to call for explanation from him and take appropriate action. However, it is certainly not open to the Corporation to substitute the normal course of action in such matters and transfer the petitioner, which transfer clearly in such circumstances amounted to punitive transfer and the same cannot be sustained in law. On the whole, in the considered view of this Court, the transfer order is unsustainable in all fours and it has to go lock, stock and barrel.

21.In the above circumstances, this Court has no hesitation in allowing the writ petition and accordingly, the writ petition is allowed. The impugned order passed by the third respondent bearing No.2446/E3P/PaThul/ThaAPoKa(Ko)/2020, dated 28.05.2020 and the consequential relieving order of the 4th respondent bearing No.13228, dated 12.06.2020, are hereby set aside. The 3rd and 4th respondents are directed to restore the petitioner in service forthwith.

22.It is also clarified that any punitive action taken pursuant to the impugned orders of transfer in respect of non-compliance of the same, the respondent Corporation shall take appropriate steps to drop such action, as the impugned orders are ultimately found to be unsustainable as being illegal. No costs. Connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-IX)

//True copy//

Sub Assistant Registrar

msk

To

1.The State of Tamil Nadu,

rep.by its Principal Secretary to
Government,
Transport Department,
Secretariat, Fort.St.George,
Chennai-600 009

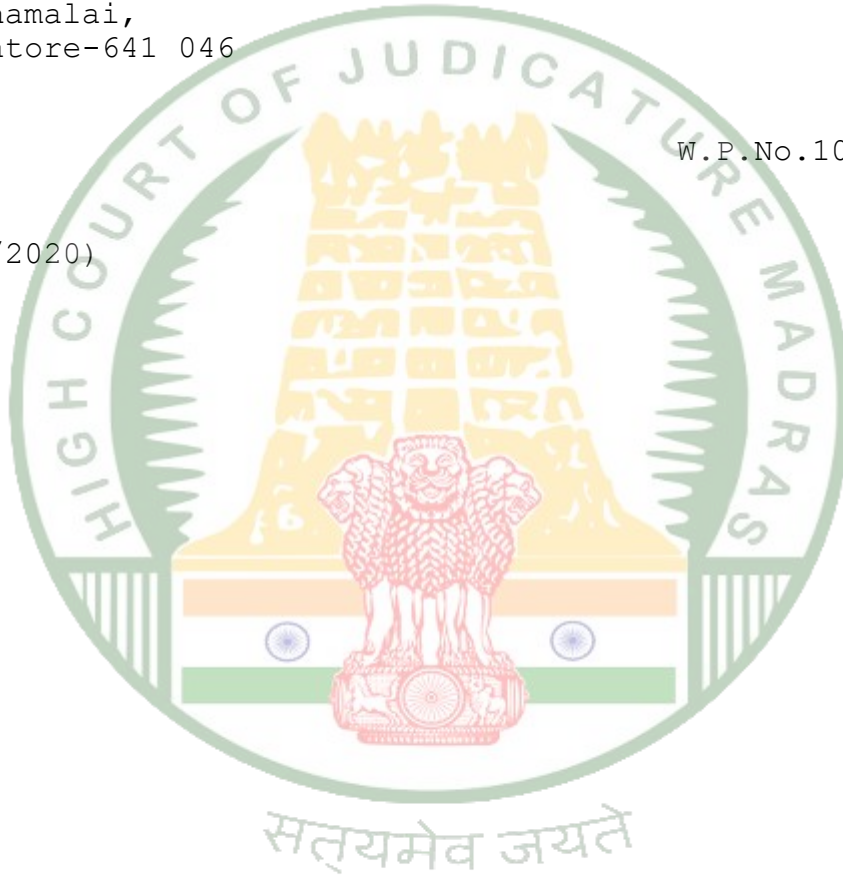
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W.P.No.10374 of 2020

SPD (CO)
GMY (19/10/2020)



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