



W.P(MD)No.11713 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.08.2022

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THE HONOURABLE MR.JUSTICE G. CHANDRASEKHARAN

W.P(MD).No.11713 of 2017

and

W.M.P(MD)Nos.9026, 9027 and
10030 of 2017 and 14871 of 2020

1. V.Elavarasan,

: Petitioner

Vs

1. The Management of State Express
Transport Corporation (Tamilnadu) Ltd.,
Rep. by its Managing Director,
Pallavan Salai, Chennai - 2.

2. The General Manager,
State Express Transport Corporation
(Tamilnadu) Ltd.,
Rep. by its Managing Director,
Pallavan Salai, Chennai - 2.

Prayer : Writ Petition filed under Article 226 of the Constitution of India,
praying this Court to issue a writ of Certiorari calling for the records
pertaining to the impugned order of transfer in Ref.025198/HR4/SETC



W.P(MD)No.11713 of 2017

TN/2017/4125 dated 30.05.2017 and quash the same.

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For Petitioner : M/s.A.Rahul,

For Respondents : Mr.K.Sathiya Singh
Standing Counsel

ORDER

This writ petition has been filed in the nature of Certiorari, seeking to quash the impugned order of transfer in Ref.025198/HR4/SETC TN/2017/4125, dated 30.05.2017.

2.The learned Counsel appearing for the petitioner submitted that the petitioner was suspended by the proceedings, dated 30.05.2017, for abusing the time keeper. The suspension had taken effect from 29.05.2017. Immediately on the next day, he was transferred by the impugned order from Kumbakonam to Madurai. Therefore, this petition has been filed. In support of his submission, he relied on two judgments in the case of ***M.Kandasami Vs.Tamil Nadu Electricity Board***, represented by the ***S.E. S.A. Vallalar E.D.C and two others***, reported in ***1996 (1) CTC 364*** and in the case of



Somesh Tiwari Vs. Union of India and Others, reported in **2009 (3) MLJ**

727 (SC) for the proposition that though transfer is an incident of service, if a transfer is effected due to a *mala fide* reason, it would cause havoc not only in the personal life of the staff but also to his/her family members. It is pertinent to extract the relevant portion in **1996 (1) CTC 364**.

'5. I have considered the contentions of the learned counsel for the petitioner and also the respondents 1 and 2. In the instant case it is clear that the petitioner has been transferred three times before the impugned order of transfer, viz., on 7.9.1993 the petitioner was transferred from Tholudur to Avinangudi; on 4.4.1995. Avinangudi to Veppur; he joined duty on 15.4.1995 and within 11/2 months he has been transferred to Cuddalore on 30.6.1995, From the above facts it is clear that there has been frequent transfers during the aforesaid period. In the case, the Supreme Court has observed as follows and referred to, Rovappa Vs.State of Tamil Nadu.

"It is an accepted principle that in public service transfer is an incident of service. It is also an implied condition of service and appointing authority has a wide discretion in the matter. The Government is the best Judge to decide how to distribute and utilise the services of its employees. However this power must be exercised honestly, bona fide and reasonably. It should be exercised in public interest. If the exercise of power is based on extraneous consideration or for achieving an alien purpose or an oblique motive it would amount to mala fide and colourable exercise of power. Frequent transfers, without sufficient reasons to such transfers, cannot but be held as mala fide. A transfer in mala fide when it is made not for professed purpose, such as in normal course or in public or administrative interest or in the exigencies of service but for



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other purpose than is to accommodate another person for undisclosed reasons. It is the basic principle of rule of law and good administration, that even administrative actions should be just and fair." The observation that transfer is also an implied condition of service is just an observation is passing.

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"One cannot but deprecate that frequent unscheduled and unreasonable transfers can uproot a family, cause irreparable harm to a Government Servant and drive him to desperation. It disrupts the Education of his children and leads to numerous other complications and problems and results in hardship and demoralisation. It therefore follows that the policy of transfer should be reasonable and fair and should apply to everybody equally."

It is clear from the above ruling of the Supreme Court that it is accepted principle that transfer is an incident of service. But the said power of transfer should be exercised fairly and in a just manner and frequent transfers without sufficient cause to justify such transfers cannot but be held to be mala fide. In the instant case, the petitioner has pointed out the difficulties in his life faced by him, viz., that the he has got 70 years old mother and his handicapped wife cannot look after herself his aged mother and his younger son who is mentally retarded and pointed out the hardships that he has to suffer by frequent transfers. Even if hardships of the petitioner are taken and considered as incidental to transfer, in the instant case there are frequent transfers from which it can be inferred that such transfers are not just and fair. As observed by the Supreme Court the transfer is an implied condition of service but such transfers should be just and fair. Upon the facts and circumstances of the instant case, I am of the view that the frequent transfers of the petitioner from one place to another during a short period is not just and fair. The rulings cited by the learned counsel for the respondents are not applicable to the peculiar facts and circumstances of



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the case. In view of the above, the impugned order is quashed and set aside.'

It is pertinent to extract the relevant portion in **2009 (3) MLJ 727 (SC)**.

'19.Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where inter alia mala fide on the part of the authority is proved. Mala fide is of two kinds-one malice in fact and the second malice in law.

20. The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground i.e. on the allegations made against the appellant in the anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal. '

3.In response, the learned Standing Counsel appearing for the respondents submitted that Rule 22 of the Common Service Rules provides that an employee can be transferred to any work station of the respondent Transport Corporation. Not only that, the appointment order specifies that the petitioner is liable to be transferred to any place. His transfer was effected due to administrative exigency. There is no *mala fide* in his transfer.



W.P(MD)No.11713 of 2017

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4.I have considered the rival submissions and perused the materials.

5.On a perusal of records, it is seen that the petitioner along with one Neelamegam were suspended by proceedings in Ref.025198/HR4/SETC TN/2017/4125, dated 30.05.2017 for abusing the time keeper. The suspension had taken effect from 29.05.2017. Immediately on the next day, he was transferred to Madurai, on administrative grounds.

6.In this connection, this Court finds no *mala fide* action on the part of the respondents in ordering the transfer of the petitioner. It can be said that the reason for transferring the petitioner was that he abused the time keeper and spoiled the work atmosphere. The petitioner filed this petition in 2017 and it is reported that due to the interim order passed, he is working in the same place till now. It is now open to the respondents that they may transfer the petitioner as per the impugned order, dated 30.05.2017 or by passing a fresh order of transfer to any other place.



W.P(MD)No.11713 of 2017

7. Therefore, I find no merit in this petition. Hence, this writ petition stands dismissed. Consequently, connected miscellaneous petitions are closed.

08.08.2022

Index : Yes / No

Internet : Yes/ No

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To

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Transport Corporation (Tamilnadu) Ltd.,
Pallavan Salai, Chennai - 2.

2. The Managing Director,
The General Manager,
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W.P(MD)No.11713 of 2017

G. CHANDRASEKHARAN, J.

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W.P(MD).No.11713 of 2017

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