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W.P.No.20008 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2023

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THE HONOURABLE MS. JUSTICE R.N.MANJULA

W.P.No.20008 of 2021

C.Rajasekaran

... Petitioner

Vs.

1.The Metropolitan Transport Corporation

Rep. by its Managing Director,
Pallavan House, Anna Salai,
Chennai 600 002.

2.The Tamil Nadu State Transport Corporation,

(Vizhupuram) Ltd.,
Rep by its Managing Director,
3/137, Salamedu,
Vizhupuram - 02.

3.The General Manager,

Thiruvanamalai Region,
Tamil Nadu State Transport Corporation
(Vizhupuram) Ltd.,
District Collector Major Projects Complex,
Bye-pass Road, Vengikkal Pudur Village and Post,
Thiruvanamalai Taluk,
Thiruvanamalai - 606 604.

4.The Senior Deputy Manager (HR),

The Metropolitan Transport Corporation,
Pallavan House, Anna Salai,
Chennai - 600 002.

... Respondents



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Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the respondents 1 and 4 to allow the petitioner forthwith to join duty as a Driver with effect from 19.07.2021 with wages and all other consequential benefits as per the order dated 30.01.2021 of the 2nd respondent in Memo No.1002/PaPi(Po)5/Ma.Po.Ka.2020-6, which is mentioned in the order dated 06.02.2021 of the second respondent and as per the orders dated 06.02.2021 and 05.07.2021 of the 2nd and 3rd respondents and as per the order dated 16.07.2021 of the 3rd respondent.

For Petitioner : Ms.H.Nandhini
For Respondents : Mr.R.Balaji for R1 & R4
Mr.M.Aswin for R2 & R3

ORDER

This Writ Petition has been filed seeking issuance of Writ of Mandamus to direct the respondents 1 and 4 to allow the petitioner forthwith to join duty as a Driver with effect from 19.07.2021 with wages and all other consequential benefits as per the order dated 30.01.2021 of the 2nd respondent in Memo No.1002/PaPi(Po)5/Ma.Po.Ka.2020-6, which is mentioned in the order dated 06.02.2021 of the second respondent and as per the orders dated 06.02.2021 and 05.07.2021 of the



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2nd and 3rd respondents and as per the order dated 16.07.2021 of the 3rd respondent.

2. Heard Ms.H.Nandhini, learned counsel for the petitioner and Mr.R.Balaji, learned counsel for the respondents 1 and 4 and Mr.M.Aswin, learned counsel for the respondents 2 and 3.

3. The learned counsel for the petitioner submitted that the petitioner was appointed as a Driver with the 1st respondent corporation/MTC on 09.02.2007 and he was posted at Mandaveli Depot, Chennai. He would submit that the petitioner has given a request to transfer him from the 1st respondent corporation /MTC to 2nd respondent corporation/ TNSTC(Villupuram). Based on the relieving order dated 10.12.2010 issued by the 1st respondent, the petitioner was allowed to join duty at TNSTC (Villupuram) and he was also joined duty in Chengam Depot. However, during Covid-19 pandemic, due to personal reasons, once again the petitioner has given a request to transfer him to 1st respondent Corporation/MTC. He would also submit that one



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G.Dharani Raja, who was working as a Driver with the 1st respondent corporation/MTC gave a request to transfer him to TNSTC (Villupuram).

Based on their mutual requests, the 1st and 2nd respondents issued mutual transfer orders dated 30.01.2021 and 06.02.2021.

4. It is the specific contention of the petitioner that the said Dharani Raja was allowed to join at TNSTC (Villupuram) but the petitioner was not allowed to join with the 1st respondent corporation/MTC. Aggrieved by the same, the petitioner is before this Court by way of this writ petition seeking direction to the 1st and 4th respondents to allow the petitioner to join duty as a Driver with effect from 19.07.2021 with wages and all other consequential benefits as per order dated 30.01.2021.

5. The learned counsel for R1 & R4 submitted that the petitioner did not produce the relieving order and did not come to the fourth respondent office to join and hence, the respondents 1 and 4 cannot be blamed for the wrongs of the petitioner.



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6. The learned counsel for the respondents 2 and 3 submitted that the petitioner's transfer order was subsequently cancelled on 01.09.2021 and the petitioner has challenged the same by filing 2A dispute under the Industrial Disputes Act before the Labour Commissioner, Chennai and it is still pending and hence the petitioner has to seek his remedy only through that course and not by way of filing a Writ Petition.

7. The Writ Petition has been filed even before the petitioner has initiated 2A dispute for reinstatement before the Labour Commissioner. The fact that the petitioner and the other person Dharani Raja has been given with mutual transfer is not denied. when Dharani Raja is allowed to join at Tamil Nadu State Transport Corporation, Villupuram, the second respondent herein, the petitioner ought not to have denied to join at Metropolitan Transport Corporation, Chennai. Even though the learned counsel for the respondents 1 & 4 submitted that the relieving order of the petitioner has not been issued, the relieving order of the petitioner has been issued on 05.07.2021 itself after marking a copy to the Metropolitan Transport Corporation, the respondents 1 and 4 herein.



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8. However, it is submitted that the copy has been obtained by the respondents 1 and 4 only after five months. But no records have been shown that the copy of the order has been served upon the respondents 1 to 4 only after five months. In the usual course, this kind of order will be issued to the individual employee and will also be sent to the concerned authorities immediately. So far as the cancellation of transfer order dated 01.09.2021 is concerned that has been done *suo motu* by the second respondent. The second respondent has given the original transfer order and it is mutual. In such case, the second respondent could not have cancelled the part of the order dated 20.02.2021 by retaining the remaining part of the order dated 20.02.2021 relating to the transfer of Dharani Raja. However before passing the order dated 01.09.2021, the petitioner has not been given with notice.

9. In mutual transfer order, where one person is allowed to join at one destination, the other person should also have been allowed to join at the other destination to which he was transferred. The entire confusion



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was caused due to the inaction on the part of the respondents 1 and 4 who were not willing to act upon the relieving order given to the petitioner on 05.07.2021. Because it has already been observed that the copy of the order has been served upon the fourth respondent office also. Without allowing the petitioner to join the duty, the transfer order ought not to have been cancelled arbitrarily by the second respondent. Since the cancellation order has been passed without following the principles of natural justice, the cancellation order stands non-est. Since the petitioner who has been mutually transferred with Dharani Raja has been treated discriminately, I feel the Writ of Mandamus as prayed should be given irrespective of the fact of pending Section 2A proceedings before the Labour Commissioner.

10. The second respondent has cancelled the transfer order and that prompted the petitioner to file Section 2A proceedings also before the Labour Commissioner. However, the matter lies on a different footing because it is seen now that one part of the mutual transfer order itself has been cancelled by retaining the other part arbitrarily, since such an action



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is against the principles of natural justice. Therefore, this Writ Petition should be allowed.

11. In the result, this Writ Petition is allowed and the respondents 1 and 4 are directed to allow the petitioner forthwith to join duty as a Driver with effect from 19.07.2021 with wages and all other consequential benefits as per the order dated 30.01.2021 of the 2nd respondent in Memo No.1002/PaPi(Po)5/Ma.Po.Ka.2020-6, which is mentioned in the order dated 06.02.2021 of the second respondent and as per the orders dated 06.02.2021 and 05.07.2021 of the 2nd and 3rd respondents and as per the order dated 16.07.2021 of the 3rd respondent. No costs.

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Index : Yes
Internet : Yes/No
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To

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The Metropolitan Transport Corporation
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- 2.The Managing Director,
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3/137, Salamedu,
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R.N.MANJULA, J.

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