



W.P.(MD).Nos.4715, 4716 and 4717 of 2016

THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.03.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

**W.P.(MD).Nos.4715, 4716 and 4717 of 2016
and
W.M.P.(MD).Nos.4260, 4261, 4264 of 2016
and
18798, 18799 and 18800 of 2017**

W.P.(MD).No.4715 of 2016:

R.Rajesh Kumar

... Petitioner

Vs.

- 1.The Tamil Nadu State Transport Corporation,
(Kumbakonam) Limited,
Represented by its General Manager,
Divisional Office,
Karaikudi Division, Karaikudi,
Sivagangai District.
- 2.The Tamil Nadu State Express Transport Corporation,
(Tamil Nadu) Limited, Represented by its,
Managing Director, Thiruvalluvar House,
Palavan Salai,
Chennai – 2.



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3.The State of Tamil Nadu,
Represented by its Secretary to Government,
Transport Department,
Fort St.George,
Secretariat,
Chennai – 9.

... Respondents

(R-3 is impleaded vide Court Order dated 24.03.2017 in W.M.P.(MD).No. 13910 of 2016)

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the entire records relating to the impugned order of transfer passed by the first respondent dated 23.11.2015 in Tha.Aa.Poa.Kaa/Karai/pa.pi/Pa.2/122/2015 and quash the same insofar as the petitioner is concerned and consequently direct the first respondent to retain the petitioner in its Division and continue to employ as a Driver.

W.P.(MD).No.4716 of 2016:

K.Senthil Kumar

... Petitioner

Vs.

1.The Tamil Nadu State Transport Corporation,
(Kumbakonam) Limited,
Represented by its General Manager,
Divisional Office,
Karaikudi Division, Karaikudi,
Sivagangai District.



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2.The Tamil Nadu State Express Transport Corporation,
(Tamil Nadu) Limited, Represented by its,
Managing Director, Thiruvalluvar House,
Palavan Salai,
Chennai – 2.

3.The State of Tamil Nadu,
Represented by its Secretary to Government,
Transport Department,
Fort St.George,
Secretariat,
Chennai – 9.

... Respondents

(R-3 is impleaded vide Court Order dated 24.03.2017 in W.M.P.(MD).No.13911 of 2016)

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the entire records relating to the impugned order of transfer passed by the first respondent dated 23.11.2015 in Tha.Aa.Poa.Kaa/Karai/pa.pi/Pa.2/122/2015 and quash the same insofar as the petitioner is concerned and consequently direct the first respondent to retain the petitioner in its Division and continue to employ as a Driver.

W.P.(MD).No.4715 of 2016:

M.Suresh Babu

... Petitioner

Vs.



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- 1.The Tamil Nadu State Transport Corporation,
(Kumbakonam) Limited,
Represented by its General Manager,
Divisional Office,
Karaikudi Division, Karaikudi,
Sivagangai District.
- 2.The Tamil Nadu State Express Transport Corporation,
(Tamil Nadu) Limited, Represented by its,
Managing Director, Thiruvalluvar House,
Palavan Salai,
Chennai – 2.
- 3.The State of Tamil Nadu,
Represented by its Secretary to Government,
Transport Department,
Fort St.George,
Secretariat,
Chennai – 9.

... Respondents

(R-3 is impleaded vide Court Order dated 24.03.2017 in W.M.P.(MD).No. 13912 of 2016)

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the entire records relating to the impugned order of transfer passed by the first respondent dated 23.11.2015 in Tha.Aa.Poa.Kaa/Karai/pa.pi/Pa.2/122/2015 and quash the same insofar as the petitioner is concerned and consequently direct the first respondent to retain the petitioner in its Division and continue to employ as a Driver.



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(In all Writ Petitions):

For Petitioner : Mr.K.S.Muthu
For R-1 : Mr.D.Sivaraman,
Standing Counsel.
For R-2 : Mr.K.Sathiyasingh,
Standing Counsel.
For R-4 : Mr.R.Suresh Kumar,
Additional Government Pleader.

COMMON ORDER

The Writ Petitions have been filed challenging the transfer order dated 23.11.2015 and consequently direct the first respondent to retain the petitioners in its Division and continue to employ as a Driver.

2. The contention of the respondents is that since the petitioners were serving in the Express buses, when the Division was sub-divided, all the drivers who were working in the Express buses were transferred to the Tamil Nadu State Express Transport Corporation. Therefore, the petitioners cannot have any grievance at all.



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3. It is settled proposition that transfer is incident of service and hence the petitioners cannot object to the transfer. More so, when the State Transport Corporation, Kumbakonam was sub-divided as Kumbakonam Division and Express Transport Corporation. Therefore, this Court is of the considered opinion that the transfer order is legally valid.

4. It is stated by the petitioners as well as the respondents that the petitioners were working as “Reserve Crew Driver”, which means the petitioners were not made permanent and they are working temporarily. The respondents follow a procedure that whenever the petitioners were considered for absorption, then the number of working hours would be calculated. In the present case, since the petitioners had challenged the transfer order and obtained interim order and hence during the interregnum period they could not work, consequently their absorption would be delayed. Therefore, this Court is of the considered opinion that based on the order of interim stay, the petitioners are entitled to continuity of service. Hence, the respondents shall notionally calculate the period and take the same for granting absorption. However, under 'No Work No Pay' principle, the petitioners are not entitled to salary for the said



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notional period. The said exercise shall be completed within a period of eight (8) weeks from the date of receipt of a copy of this order.

5. With the above direction, the Writ Petitions are disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

29.03.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
Nsr



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To

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1. The General Manager,
The Tamil Nadu State Transport Corporation,
(Kumbakonam) Limited,
Divisional Office,
Karaikudi Division, Karaikudi,
Sivagangai District.
2. The Managing Director,
The Tamil Nadu State Express Transport Corporation,
(Tamil Nadu) Limited,
Thiruvalluvar House,
Palavan Salai,
Chennai – 2.
3. The Secretary to Government,
The State of Tamil Nadu,
Transport Department,
Fort St. George,
Secretariat,
Chennai – 9.



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S.SRIMATHY, J.

Nsr

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29.03.2023