

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.01.2024

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THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.31202 of 2023
and WMP(MD) No.26728 of 2023

S.Kalaimani

... Petitioner

Vs

1. The Managing Director,
Tamil Nadu State Transport Corporation (Tirunelveli) Limited,
23/2, Thoothukudi Road,
V.M.Chathiram, Kattabomman Nagar,
Tirunelveli District.
2. The General Manager,
Tamil Nadu State Transport Corporation (Tirunelveli) Limited,
Vannarapet, Tirunelveli District.
3. The Assistant Manager (Disciplinary),
Tamil Nadu State Transport Corporation (Tirunelveli) Limited,
Tirunelveli Division, Tirunelveli District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of 3rd respondent, dated 07.12.2023 made in A.Aa.No. 10360/ Niya 5 /TNSTC / Tv1 / 2022 and quash the same as

arbitrary, illegal and consequently directing the respondents to permit the petitioner to work in Sankarankovil.

For Petitioner : Mr. N.Shanmuga Selvam

For Respondents : Mr.K.Jebaraj
Standing Counsel

ORDER

The present writ petition has been filed challenging the impugned order of 3rd respondent, dated 07.12.2023 made in A.A.No. 10360/ Niya 5 /TNSTC / Tvl / 2022 and quash the same as arbitrary, illegal and consequently to direct the respondents to permit the petitioner to work in Sankarankovil.

2.By consent of both parties and considering the limited relief sought for by the petitioner, this Writ Petition is taken up for final disposal at the stage of admission itself.

3.Heard, the learned counsel appearing for the petitioner, the learned Standing Counsel appearing for the respondents. Perused the materials on record.

4(i).The petitioner joined service as a Driver before the 2nd respondent on 31.01.2014. He was allotted to drive the bus in the route from Sankarankovil to Surandai. As per the permit condition, 10 single trips has to be taken every day from Sankarankovil to Surandai and be halted at Sankarankovil. However, contrary to the said permit condition, he was forced to ply 12 single trips every day from Sankarankovil to Surandai, apart from deviating the route to Valarammapuram, increasing 7 kilometers for every trip. The petitioner was also asked to halt at Surandai instead of Sankarankovil without any basic amenities like bathroom and restroom. Extra payment was also not given for working over time. Therefore, the petitioner and other workers made representations on 20.03.2023, 31.03.2023 and 30.10.2023 to the respondents seeking to provide basic facilities.

(ii).On 18.10.2023, the petitioner made a representation to the Regional Transport Officer, Sankarankovil to specify the route as per the permit, enabling him to follow the same as per the Motor Vehicles Act. That apart, he also preferred complaints on 20.11.2023 and 04.12.2023 as to the violation of permit conditions to the respondents. Within a period of three days from the date of his last complaint, ie., on 07.12.2023, the impugned order of

transfer has been passed on administrative grounds. Challenging the same, this writ petition came to be filed.

5.The learned counsel for the petitioner vehemently submitted that the transfer order has to be put to judicial review and the same has to be tested by going into the order elaborately and looking into the matter as if whether the order is bonafide or the same is passed with a malafide intention. He further submitted that the proximity of the impugned order, dated 07.12.2023 itself would reveal that the same has been passed pursuant to the complaint, dated 04.12.2023 regarding the violation of permit condition and though the transfer order has been passed on administrative grounds, the same is punitive in nature. Hence, prayed to allow the petition.

6.The learned Standing Counsel appearing for the respondents submitted that there is no breach of permit conditions and there is no malafide intention in the impugned transfer order and the same is passed only on administrative grounds. The learned Standing Counsel further relying upon the Standing Order of the respondent Corporation submitted that the order of

transfer is an incident of service and the petitioner has to comply with the transfer order and prayed to dismiss the petition.

7.A critical perusal of the counter would reveal that the second respondent has effected the impugned transfer order only because of the activity of the petitioner, which is against the Corporation rules and regulations, since he maintained indiscipline among the employees. It is a settled proposition of law that whenever a person's activity is against the employer and if an order of transfer is effected for maintaining discipline, it is mandatory on the part of the employer to put the employee on notice with respect to his indiscipline and adverse activity and thereafter, to pass appropriate orders.

8.In view of the admission made in the counter, no doubt the impugned order is punitive in nature. Hence, the impugned order is hereby quashed, thereby, directing the respondents to permit the petitioner to work in Sankarankovil.

9. Accordingly, this writ petition stands allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

29.01.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
PNM

To

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L.VICTORIA GOWRI, J.

PNM

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