

W.P.(MD)No.8770 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 26.02.2025

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THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

W.P.(MD)No.8770 of 2019

P.Karuthathurai

... Petitioner

Vs

1.The Secretary,
Transport Department,
Fort St.George, Chennai – 600 009.

2.The Transport Commissioner,
O/o.The Transport Commissioner,
Chepauk, Chennai – 5.

... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Se.Mu.Aa.No.1141/RP2/2018, (Pa.Aa.No. 52/2019) dated 08.02.2019 along with the connected impugned order in Se.Aa.No.11471/RO2/2019, (Pa.Aa.No.154/2019) dated 18.03.2019 on the file of the second respondent and quash the same as illegal and consequently direct the second respondent to regularise the period from 23.06.2017 to 09.02.2018 as the duty period within the time stipulated by this Court.

For Petitioner : Mr.S.Louis

For Respondents : Mr.G.V.Vairam Santhosh
Additional Government Pleader



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ORDER

The writ petition came to be executed challenging the order passed by the second respondent, dated 08.02.2019 and 18.03.2019.

2. It is the case of the petitioner that in the year 2014, while he was serving as Assistant in the office of the Deputy Transport Commissioner, Tirunelveli, he made a request seeking for transfer to the nearer place as his wife is employed at the office of the Assistant Elementary Educational Officer, Kadayanallur. Accordingly, he was transferred to Puliarai Check Post under the control of Regional Transport Officer, Tenkasi on 11.07.2014. While so after a short time of two years, the order of transfer, dated 01.12.2016 was issued transferring him from Puliarai to Trichy RTO (West), at a distance of about 300 kilometers. He was constrained to file a Writ Petition in W.P.(MD) No.23917 of 2016 challenging the transfer order dated 01.12.2016 and this Court was pleased to pass an order of interim stay. Thereafter, he was allowed to join duty again on 17.12.2016 till 23.06.2017. The second respondent has passed the transfer order, dated 19.06.2017 transferring and posting another person in his place. Again, he was constrained to file a Writ Petition in W.P. (MD).No.11768 of 2017 before this Court and this Court vide order, dated



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28.08.2017 by holding that if there is a vacancy either in Tenkasi or Sankarankoil, the petitioner can be considered to any of the available vacancy.

Aggrieved over the same, the second respondent preferred appeals in W.A(MD)Nos.134 and 135 of 2018 and while the pendency of the Writ Appeals, the second respondent agreed before the Division Bench of this Court to modify the transfer order and post the petitioner in any other nearby place. Accordingly, the petitioner was posted at Marthandam and surviving now at Marthandam since 10.02.2018. The period from 23.06.2017 to 09.02.2018 (8 Months) were not regularized. He sent a representation dated 15.03.2018 requesting for regularization of his service as duty period. As the said representation, dated 15.03.2018 was pending with the second respondent without any response, he was constrained to file a Writ Petition in W.P. (MD)No.22531 of 2018 and this Court vide order dated 08.11.2018 directing the second respondent therein to consider the representation of the petitioner, dated 15.03.2018 and pass appropriate orders in accordance with law. Thereafter only, the order impugned in the writ petition came to be passed rejecting the claim for regularization as duty period without any valid reasons whatsoever. The transfer order has not been upheld by this Court. Instead there was an interim order of *status quo* from the date of admission of the writ petition challenging the transfer order and thereafter in the final hearing of the



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case, the transfer order came to be quashed. Under such circumstances, the petitioner could not join duty and the period has to be necessarily treated as the duty period. Though the petitioner was relieved on 23.06.2017, no relieving order was served on him. During the pendency of the writ petition with the interim order, he was not permitted to continue in the same station, he was left with no other go except to offer some leave letters to satisfy the authorities. Otherwise the second respondent could even terminate him from service on the ground of unauthorized absence to service. Hence, the petitioner offered some leave letters citing his family situations and the same cannot be taken as a ground for rejecting the request for regularization of the period in which he was not permitted to join duty as per the interim order in the Writ Petition. Hence the impugned orders are liable to be set aside.

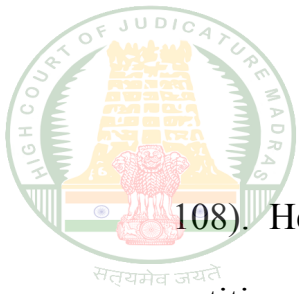
3. The learned counsel appearing for the writ petitioner would submit that during the pendency of the writ petition with an interim order, he was not permitted to continue in the same station and he was left with no other option except to offer some leave letters in order to satisfy the second respondent. Otherwise the second respondent could have terminated the petitioner from service on the ground of unauthorised absence to the service. In such circumstances alone, warranted to send leave letters by mentioning his family



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situation and the same cannot be taken as a ground for rejecting the request for regularisation of the period, in which the petitioner was not permitted to join the duty only in view of the interim order passed in the writ petition.

4. Per contra, the learned Additional Government Pleader for the respondents would submit that during the pendency of the writ petition and the contempt petition, the petitioner was transferred to Regional Transport Office, Marthandam by an order, dated 09.02.2018. The petitioner had also joined in the new station. He would submit that the order impugned is not arbitrary and it was made in accordance with law. He would submit that the interim order of *status quo* was ended with final order of this Court in W.P(MD)Nos.9067 and 9073 of 2017, dated 28.08.2017 and also in W.P(MD)No.11768 of 2017, dated 27.06.2017. The above orders were challenged by way of filing writ appeals by the respondents and there is no *status quo* had its operation in the matter of writ petition. He would submit that the transfer and posting orders were effected in a new place, which is purely in the interest of administration. He would submit that the leave availed by the petitioner has been regularised in accordance with the Rule 4(a) of the Tamil Nadu leave Rules and also in accordance with Fundamental Rules of Tamil Nadu Government Servants (under Rule 9-ruling 6(a) and Rule



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108). He drew attention of this Court that types of leave availed by the petitioner and the reasons stated thereon has been clearly stated in the counter affidavit.

5. This Court has considered the rival submission made on either sides and perused the available records.

6. It is not in dispute that the petitioner attained the age of superannuation on 31.05.2019. The petitioner challenged the transfer order dated 01.12.2016 transferring him from Puliarai to Trichy Regional Transport Office by way of writ petition in W.P(MD)No.23917 of 2016 and this Court has granted an order of interim stay of the operation of the transfer order and thereafter, the petitioner had joined duty on 17.12.2016. Again, the second respondent has passed the transfer order, dated 19.06.2017 transferring and posting another person in the place of the petitioner without specifying anything about the petitioner. The petitioner constrained to file writ petition in W.P(MD)No.11768 of 2017 before this Court. This court vide order, dated 28.08.2017 by holding that “ in view of the above, if there is vacancy either in Tenkasi or Sankarankovil, the petitioner can be considered to any of the available vacancy. If there is no vacancy in the aforementioned places, the



petitioner may be accommodated in any other place.” Accordingly, the impugned order is modified and the writ petition is disposed of. It is seen that aggrieved over the same, the second respondent had preferred writ appeals in W.A(MD)Nos.134 and 135 of 2018. Thereafter, after intervention of the Division Bench of this Court, the petitioner was posted at Marthandam since 10.02.2018.

7. According to the learned counsel for the petitioner, specific place of posting was not provided to the petitioner, therefore, he could not able to join the service till joining the service at Marthandam on 10.02.2018. Therefore, the period from 23.06.2017 to 09.02.2018 has necessarily to be considered and has to be regularised.

8. The learned Additional Government Pleader for the respondents drew attention of this Court to Paragraph No.2 (b) of the counter filed on the behalf of the respondents, wherein, it is stated as follows:

2 (b) It is submitted that, during the pendency of Writ Petition and Contempt Petition the writ petitioner was transferred by a new order of Transport Commissioner in proceeding R.No.R3/6521/2016, dated 09.02.2018 to Regional Transport Office, Marthandam. On receipt of above order the writ petitioner has joined the new station and now he is working in the above said station (i.e.) Regional Transport Office, Marthandam. It is submitted that, the writ petitioner has made leave application and also availed the same period. The following tabulation



is very clear about the leave enjoyed by the writ petitioner

S.No.	Leave period		Days	Kind of Leave	Reason
	From	To			
1	23.06.2017	07.09.2017	77	Earned Leave	Son's Marriage
2	08.09.2017	07.10.2017	30	Earned Leave	Son's Marriage
3	08.10.2017	31.10.2017	24	Earned Leave	Son's Marriage
4	01.11.2017	30.11.2017	30	Earned Leave	Son's Marriage, Personal Works
5	01.12.2017	17.12.2017	17	Earned Leave	Personal Works, Illness
6	18.12.2017	17.01.2018	31	Earned Leave	Personal Works, Illness
7	18.01.2018	09.02.2018	23	Earned Leave	Personal Works, Illness
Total			232		

9. It is seen that the leave availed by the petitioner and the reasons stated thereon and the order passed by this Court also referred in the order impugned in the writ petition, dated 18.03.2019, wherein it has been stated that the period from 23.06.2017 to 09.02.2018 could not be regularised and could not be treated as duty period as per Tamil Nadu Leave Rules and also as per the Fundamental Rules of Tamil Nadu Government Servants. The petitioner also attained the age of superannuation on 31.05.2019. The



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petitioner approached this Court against the transfer order passed by the second respondent all along in the year 2017 as well as in the year 2018. At that point of time, the leave application submitted by the petitioner which was considered only for the interregnum period of the transfer order alone. That was not challenged at earliest point of time before this Court and the order impugned has been cited reasons for rejecting by quoting the relevant service Rules applicable to the petitioner.

10. In the light of the same, there is no reason to interfere with the order of the second respondent. There is no merit in the writ petition and the writ petition is dismissed. No costs.

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Index : Yes / No
NCC : Yes / No
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M.JOTHIRAMAN,J.

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