



W.P.(MD)No.30658 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 06.02.2025

Pronounced on : 08.04.2025

CORAM

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P.(MD)No.30658 of 2024
and WMP(MD)Nos.2285, 25739 and 25742 of 2024

R.Sivakumar

... Petitioner

Vs.

1.The Managing Director,
Tamil Nadu State Transport Corporation (Madurai) Ltd.,
Madurai Division, Bye-Pass Road,
Madurai – 625 010

2.The General Manager,
Tamil Nadu State Transport Corporation (Madurai) Ltd.,
Madurai Region, Bye Pass Road,
Madurai – 16.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari calling for the records relating to the impugned transfer order passed by the second respondent in Parvai.Niruvagam/A1/11071/2024 dated 26.11.2024 in respect of the petitioner and quash the same as illegal.

For Petitioner : Mr.M.Mahaboob Athiff
For Respondents : Mr.S.C.Herold Singh



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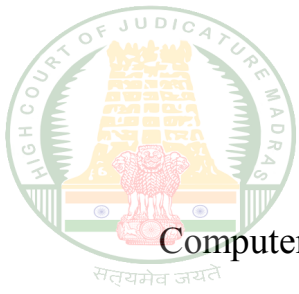
ORDER

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This writ petition is filed against the order passed by the second respondent in Parvai.Niruvagam/A1/11071/ 2024 dated 26.11.2024.

2. The brief facts of the case are as follows:

(I) Initially, the petitioner was appointed in the respondent Corporation as Non ITI Helper (Tyrena) on 02.11.1995. The said appointment was made on temporary basis. Subsequently, the said appointment was made permanent vide order dated 23.09.1996 and the said post was upgraded to the post of Senior Helper and it was re-designated on 13.05.2010 as Senior Attender. In the month of November 2007, the petitioner completed his Post Graduate Diploma in Computer Applications and in the year 2009, he completed his Post Graduate in Master of Computer applications and in the year 2014, he completed his master degree in Business Administration. As the petitioner has acquired Master Degree in Computer Applications and other degree relating to the Computer Courses, the second respondent by order dated 16.02.2016 had re-designated the petitioner from Senior Attender to Programmer with some conditions. Thereafter, on 23.02.2019, the petitioner has made a representation to the respondents stating that the post of Programmer is equivalent to that of the



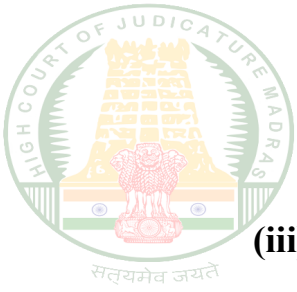
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Computer Programmer and requested him to fix the pay scale on par with other

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similarly placed persons and that the petitioner is also entitled to same scale of pay on par with the Computer Programmer. But the second respondent passed the order on 24.12.2019 rejecting the request of the petitioner against the said order the petitioner has filed a writ petition in WP(MD)No.737 of 2020 before this Court. The said writ petition was allowed by this Court by order dated 09.10.2020 and the impugned order there is quashed.

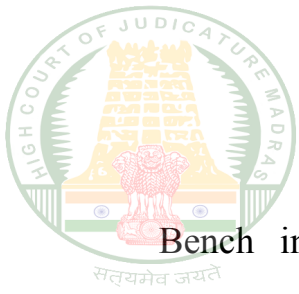
(ii) Against the said order, the respondent Corporation preferred a writ appeal in WA(MD)No.678 of 2021. The said Writ Appeal was dismissed by a Division Bench of this Court dated 08.07.2021. Against the judgment of the Division Bench, the respondents preferred an Appeal before the Apex Court in Civil Appeal No.8423 of 2022 and the same was dismissed by judgment dated 22.03.2023. Thereafter, the respondents did not comply the judgment of the Division Bench of this Court. Thus, he filed a contempt petition in Cont.P(MD)No.764 of 2023. During the pendency of the said contempt petition, the Managing Director of the respondent Corporation appeared before the Court as per the order of the Court and sought time to comply the order.



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(iii) Since the petitioner filed contempt petition against the respondent management, they accused him with false accusations and false charges resulting in the second respondent issued punishment order imposing stoppage of increment for three months without cumulative effect. Thereafter, due to serious health problems, the petitioner applied for medical leave from 14.11.2024 to 05.12.2024 and the same was sanctioned by the second respondent. Thereafter, on conduct of medical examination, Doctors opined a Oesophageal problem need to be monitored frequently and advised to take rest under medical supervision. Hence, the petitioner on 04.12.2024 sent a representation to the second respondent to extend the medial leave till 02.01.2025. Without considering the same, by proceedings dated 07.12.2024 directed the petitioner to join duty though the petitioner is having eligible medical leaves for more days. On 07.12.2024, the petitioner admitted in the hospital due to ill-health.

(iv) In the interregnum period, the petitioner came to know through his co-employee that by proceedings dated 26.11.2024, the second respondent has passed impugned transfer order by transferring him from commercial department to legal department (MCOP) on the date of issuing the transfer order, the respondents are in person appeared before the Hon'ble Division



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Bench in contempt proceedings on 26.11.2024 after attending the court proceedings the respondents passed the impugned order with illegal intention to dilute the contempt proceedings. The transfer order is not communicated to the petitioner till the date of filing of the writ petition. Aggrieved by the said transfer order dated 26.11.2024, the present writ petition is filed.

3. The learned counsel for the petitioner submits that the impugned order passed by the second respondent is illegal, arbitrary and legally not sustainable. He contends that the second respondent passed the impugned transfer order to harass the petitioner to withdraw the contempt proceedings. Hence, the impugned transfer order is punitive in nature and liable to be set aside. The learned counsel further contends that the second respondent issued the transfer order to transfer the petitioner to do the work of legal department (MCOP). The nature of work at legal department is that he would have to travel all the way where the Madurai region buses have service and if any accident took place, the petitioner has to travel there and inspect irrespective of work time and also wherever MCOP cases pending against the respondent Corporation, the petitioner needs to travel. This work pattern is completely contrary to the petitioner's designation, which is against the order of this Court. The learned



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counsel further contends that the second respondent sanctioned medical leave from 14.11.2024 to 05.12.2024 for 20 days to the petitioner. By knowing very well about granting medical leave the second respondent passed the impugned transfer order on 26.11.2024 while the petitioner was on leave and as on the date, admittedly the respondents are in person appeared before the Division Bench of this Court in contempt proceedings, which shows the unfair practise of the respondent and the order of transfer is punitive in nature and thus, it is liable to be set aside.

4. A counter affidavit is filed by the second respondent. It is averred in the counter affidavit that the appearance of the officials before the Hon'ble Court has nothing to do with the administrative order of transfer, which was passed on 26.11.2024. In fact, the proposal for transfer was already discussed in the office note dated 22.11.2024 along with other office staff due to administrative reasons. Since the writ petitioner claimed to have specific skills in programming, in order to utilize the services in consonance with the skill in the needy department, the order of transfer was passed. It is averred that being the employee of the Transport Corporation even at the time of appointment, it was made clear that his services were liable to be transferred. As such, transfer



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is not only a condition of service but an incident of service. Moreover, no prejudice would be caused inasmuch as the transfer is from one seat to another seat. It is further stated that the work already discharged by the petitioner at commercial section is a clerical and data entry work and it was allocated to others since the petitioner was under leave. However, in compliance with the interim order passed by this Court, he was now posted to his original post.

5. The learned Standing Counsel appearing for the respondents would submit that the service of the writ petitioner is very much required in the legal section and considering the same, the order of transfer was passed. He further submits that the order of transfer is passed purely on administrative grounds and there is no **malafide** intention. As the petitioner is claiming the post of Programmer, he is bound to discharge his duties in systemizing the legal section. The learned Standing Counsel further submits that due to the interim order passed by this Court, the work of computer programming of the second respondent was stalled and sought to vacate the interim order passed by this Court by dismissing the writ petition.

6. Having considered the facts and circumstances of the case, all the facts



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from the date of appointment of the petitioner as Tyreman till the disposal of the

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Special Leave Petition filed by the respondent Corporation are undisputed. It is also an admitted fact that the petitioner succeeded in his earlier round of litigations upto the Apex Court and subsequently filed a contempt petition against the respondents for non-compliance of the orders of the court. The respondents appeared before the court in person as per the orders of the court and sought time to comply the orders. During the pendency of the said proceedings on 26.11.2024, the impugned order is passed. It is an admitted fact that on the same day, the respondents appeared before the Division Bench of this Court in person. It is also an admitted fact that the second respondent granted medical leave to the petitioner from 14.11.2024 to 05.12.2024. During the period of that medical leave on 26.11.2024, the impugned transfer order is passed. The averments made in the counter affidavit by the respondents appears to be intentionally to damage the petitioner, all those averments are made. In paragraph No.3 of the counter affidavit, the respondents stated that the petitioner was re-designated as Programmer without any change in his emoluments and in the same paragraph, it is stated that there is no such post of Programmer available in the Transport Corporation. There is no answer from the respondents if there is no such post of Programmer for what reasons they re-



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designated the petitioner as a Programmer. It appears the disciplinary proceedings initiated against the petitioner in the year 2024 also pertaining to the alleged irregularities happened in the year 2019, which also discloses that during the legal proceedings pending before this Court against the respondents, to victimize the petitioner, they initiated the proceedings against the petitioner. Admittedly, the contention of the petitioner is that he is suffering from serious health problems and Doctor advised to take rest under medical supervision at the relevant point of time and later, he was periodically under the medical checkup also not considered by the respondents. The vindictive attitude of the respondents also establishes from rejecting the medical leave letter dated 14.12.2024 of the petitioner to extend his medical leave, though the petitioner is having eligible medical leaves for more days and insisting the petitioner to join duty immediately.

7. Considering the facts and circumstances of the case, this Court cannot brush aside the contention of the petitioner that the attitude of the second respondent in passing the impugned order with *mala fide* intention and with punitive nature. This Court is very conscious that the court should not interfere with the orders of transfer, which are issued in discharge of administrative or



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executive powers. But if the transfer order is issued in *mala fide* or in colourable exercise of power, the court is bound to interfere since *mala fide* exercise of power is not legal exercise of power.

8. In the present case, considering the facts and circumstances of the case, this Court is of the considered opinion that the order of transfer impugned in this writ petition is punitive order issued with *mala fide* intention and as such, it would not sustain in the eye of law and it is liable to be quashed.

9. Accordingly, this writ petition is allowed by quashing the impugned order passed by the second respondent dated 26.11.2024 in respect of the petitioner.

There shall be no order as to costs.

Consequently, connected miscellaneous petitions are closed.

08.04.2025

NCC : yes/no
Index : yes/no
Internet: yes/no
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To:

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Tamil Nadu State Transport Corporation (Madurai) Ltd.,
Madurai Division, Bye-Pass Road,
Madurai – 625 010

2.The General Manager,
Tamil Nadu State Transport Corporation (Madurai) Ltd.,
Madurai Region, Bye Pass Road,
Madurai – 16.



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BATTU DEVANAND, J.

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**Pre-delivery order made in
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