
(2012) 11 MAD CK 0147

In the Madras High Court

Case No : Writ Petition No. 21986 of 2012 and M.P. No's. 1 and 2 of 2012

G. Thavamani

APPELLANT

Vs

Tamilnadu State Transport Corporation (Salem) Ltd.

RESPONDENT

Date of Decision : 27-11-2012

Acts Referred:

Constitution of India, 1950 — Article 19(1)

Industrial Employment (Standing Orders) Act, 1946 — Section 12A

Citation : (2012) 11 MAD CK 0147

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : V. Ajoy Khose, for the Appellant; P. Paramasiva Doss, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice K. Chandru

The petitioner has filed the present writ petition seeking to set aside the order dated 2.8.2012. By the impugned order, the petitioner, who was working as a Conductor in Uthangarai Branch, was transferred and posted to work at Salem Branch. The writ petition when it came up for admission on 10.08.2012, this court found that the petitioner was transferred on three occasions in quick successions. In terms of the judgment of the Supreme Court in B. Varadha Rao Vs. State of Karnataka and Others, such practice should be deprecated. Though transfer was said to be on administrative ground, since transfer has been made in quick successions, there will be stay for one week. Subsequently, the stay was extended from time to time.

2. On notice, the respondent has filed a counter affidavit, dated Nil (November, 2012). The contention was that under the terms of appointment order, he is liable to be transferred to any where within the jurisdiction of the corporation and the complaint made by him was imaginary. Only due to exigencies of service and in view of the shortage of conductors, the staff were transferred. But, however,

curiously in answering to the allegations made in paragraph 6 of the affidavit, in paragraph 11 of the counter, it was averred as follows :

11. I state that in para No. 6, the petitioner himself has admitted that he canvassed one Rajni Selvam who contested the Local Body election for Thiruvanapatti panchayat. As a public servant and service Rules of the Respondent Corporation his activities of canvassing political party in the election is against the rules and Regulation of Respondent corporation and it is also liable for taking disciplinary action against the petitioner.

3. When asked as to how the action of the petitioner in canvassing for a political party is contrary to rules, the learned counsel for the respondent Corporation produced the conduct rules prescribed in Annexure III. Rule 23 prohibits employees from canvassing for the political party and also to take part in the election. The petitioner is admittedly a conductor governing by the provisions of the Standing Orders. Rule 23 reads as follows : "Rule 23: TAKING PART IN POLITICS AND ELECTIONS :

(1) No employee shall take active part in, subscribe in aid of or assist in any other manner, any political movement or activity or demonstration.

(2) No employee shall canvass or otherwise interfere or use his influence in connection with, or stand for or take part in election to the Parliament or any State Legislature or Local Authority or Body.

4. Governing by the provisions of the Standing Orders certified under the Industrial Employment (Standing Orders) Act, 1946, even if there are no certified standing orders, the respondent corporation as per Section 12A of the IESO Act, the model standing orders will apply and there is no provision under the standing orders to prohibit a workmen from canvassing in the election. Even under the Trade Unions Act, 1926, which is a pre-colonial legislation, Section 16 provides for the trade union to keep a political fund to be used in the elections to support a candidate of their choice. Such political right given to the workman is not taken away by any legislation. Admittedly, India is a political democracy and that to deprive the right of a workman who indulged in politics, there must be a valid law in consonance with Article 19(1) of the Constitution. Apart from the fact, the general rule will not apply to the workman as he is governed by the standing orders.

5. Similar provision found in Rule 25(1) of the Life Insurance Corporation of India (Staff) Regulations was struck down by the Bombay High Court as well as U.P. High Court. The said judgment came to be upheld by the Supreme Court in Sukhdev Singh Vs. Bagatram Sardar Singh Raghuvanshi and another reported in AIR 1975 SC 1331. If the petitioner cannot canvass in the panchayat elections, it is not clear as to how he can be effectively participate in the panchayat. It is not the case that he stood in the election contrary to any rules or diverting his attention from being the full time employee. A mere canvassing for a candidate of his choice is not prohibited. It is very clear from the counter that the motive

for transferring the petitioner is clearly not admissible and it is only to take an action against him as a measure of political victimization. This court is not inclined to accept that the impugned order of transfer is a mere routine transfer based on exigency, but it is clearly motivated as found from the paragraph of the counter extracted above. In the light of the above, the writ petition will stand allowed and the impugned order of transfer is set aside. No costs. Consequently, connected miscellaneous petitions stand closed.