

(2011) 06 MAD CK 0009

In the Madras High Court

Case No : Writ Petition No"s. 5528 and 5529 of 2011 and M.P. No"s. 1 and 2 of 2011

H. Rahothisuman and K. Gopalakrishnan

APPELLANT

Vs

Tamil Nadu State Transport Corporation Ltd.

RESPONDENT

Date of Decision : 28-06-2011

Acts Referred:

Constitution of India, 1950 — Article 14
Industrial Disputes Act, 1947 — Section 25T, 25U

Citation : (2012) 3 LLJ 99 : (2012) LLR 183 : (2011) WritLR 676

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : V. Ajay Khose, for the Appellant; T. Chandrasekaran, for the Respondent

Final Decision : Dismissed

Judgement

T. Raja, J.—The Petitioners herein, who are working as Tradesman and Selection Grade Driver respectively, have come up with the present

writ petitions seeking to issue writs of certiorari to call for the records pertaining to the proceedings in Ka.Ku. No. 10/30/Ni.3/TNSTC (V)/2011

and Ka.Ku. No. 43/3889/Ni.2/TNSTC (V)/2011, both dated 26.02.2011, in and by which, the Petitioners have been transferred from

Villupuram Depot to Sankarapuram Depot near Kallakurichi and to Koyambedu Depot respectively, and to quash the said transfer orders by

allowing the writ petitions with costs.

2. Both these writ petitions challenging the transfer orders issued by the same Respondents/authorities have been heard together and they are

disposed of by this Common Order.

3. Mr. Ajay Khose, learned Counsel appearing for the Petitioners, at the first instance, submits that the transfer orders under challenge came to be passed as a punitive measure with mala fide intention against the Petitioners, who are Vice-President and Depot President respectively of the Arasu Pokkuvarathu Uzhiyar Sangam, Villupuram and Puducherry, for their unsparing efforts in getting pay and allowances for the co-employees on par with Electricity Board Employees and to see that the existing Pension Trust is taken over and administered by the Government. He pointed out that, emphasising the implementation of their demands, the Petitioner's Union along with 7 other Unions and LPF, submitted a Common Charter of Demands and only when the exhaustive efforts yielded No. fruitful outcome, the Union issued a strike Notice dated 30.12.2010 proposing to go on strike after 14 days. Without resorting to any conciliation proceeding to resolve the issue, after the peaceful strike on 27.01.2011, the Respondents/Corporation started to have a vindictive approach against the office-bearers of the Union in particular against the Petitioners and ultimately served the impugned transfer orders on them and other members. According to the learned Counsel, the timing and background in which the impugned orders came to be passed need No. deep analysis for one to understand that it is nothing but an hostile approach of the Corporation against the Petitioners, who strived for the cause of the co-employees in getting the allowances due to them and in having their pension Trust administered by the Government. Therefore, the impugned orders are unjust, unreasonable and violative of Article 14 of the Constitution and further, transfer of the Petitioners from Puducherry Depot to Sankarapuram and Koyambedu Depots under the guise of administrative exigency when, in fact, there was No. such administrative exigency, would undoubtedly amount to unfair labour practice within the meaning of Section 2(ra) read with Item No. 7 of Part-I of the v. Schedule to the Industrial Disputes Act (Industrial Disputes Act, 1947) and such practice is prohibited u/s 25(T) and punishable u/s 25(U) thereof. Learned Counsel further added that insofar as the Petitioner in W.P. No. 5528 of 2011 is concerned, to reach the transferred place from his native place, he would have to take three buses travelling 6 hours to cover 120 kms both for onward and return journey, and as regards the Petitioner in W.P. No. 5529 of 2011, he may have to travel for about 199 kms both for

onward and return journey every day. Further, in both the cases, the Petitioners are not yet relieved and No. one is posted in their places at the Puducherry Depot. By referring to an unreported decision of this Court dated 01.04.2011 passed in W.P. Nos. 4262 to 4265 of 2011, wherein, this Court after finding fault with the very same Respondents for transferring 4 of the employees/Petitioners as a punitive measure under the guise of administrative exigency, ultimately quashed those orders, learned Counsel submitted that, in the instant cases also, without any necessity or administrative exigency, the Respondents-corporation have passed the transfer orders against the Petitioners only as a measure of punishment and such punitive action under the guise of administrative reasons or convenience is liable to be interfered with, as otherwise, much prejudice would result in to the Petitioners, hence, the prayer sought to quash the impugned orders may be granted.

4. A detailed counter affidavit has been filed and, referring to the same, learned Counsel appearing for the Respondents-Transport Corporation, by stoutly denying the allegation that the transfer order was passed with mala fide intention and as vindictive action, submitted that the Petitioner-Union is not interested in maintaining the industrial peace among the workers for personal gains and it is only the persons like the Petitioners, who act with vindictive attitude towards the Management and also act in a manner disturbing the peaceful atmosphere purely for personal gains. Ultimately, they cause inconvenience to the general public by calling for strikes often without any rhyme or reason. If at all the Petitioner's union is aggrieved over pay fixation on par with employees of other units and bringing the pension trust under the direct control of the Government, they could have resorted to the legal course available. Only as a measure to restore peace and better administration, by keeping in mind the principle that transfer is not only a condition of service but also incidence of service which implies that the Petitioners have to work anywhere in the operational jurisdiction of the Respondent-Corporation, the transfer orders came to be passed purely to meet the administrative exigency. Further, holding a post or being a member of a Labour Union does not mean that an employee should not be transferred from one place to another within the jurisdiction of the Respondent's corporation unit. If the office-bearers of the union are excluded from the purview of transfer simply because of the reason that they

belong to a particular union, other employees would feel bad against the management and have a negative impression that the management is

adopting selective approach among the employees which trend would certainly cause loss of faith in the management. On that basis, learned

Counsel appearing for the Respondents prayed this Court not to accept the bare allegations made by the Petitioner that they have been transferred

as a result of mala fide and motivated action, for, the transfer is actually made to meet the administrative exigency.

5. Considered the rival submissions made on either side. Inasmuch as the submissions made by the learned Counsel for the Petitioner revolve

around the findings rendered in the unreported decision of this Court in WP Nos. 4262 to 4265 of 2011, this Court has to examine whether those

findings and the ultimate order passed in favour of the employees/Petitioners therein can be made applicable to the instant cases also. Firstly, it

must be pointed out that, in the said case, the factual aspect involved was that when some of the employees went on strike pursuant to the strike-

call given by their Labour Unions that too during the pendency of the conciliation talks with the management, those employees were suspended

with specified charges against each employee and, even before the charges pending against them were enquired into by the Corporation, the

suspension orders came to be revoked and later, the employees were transferred. After elaborately delving into the matter, the learned Judge was

of the view that the en-masse transfer of all the suspended employees clearly indicated that the transfer was not due to any policy decision or on

administrative reasons but only to punish the Petitioners. According to the learned single Judge, the Corporation having placed some of the

employees under suspension, by later revoking such suspension, should not have resorted to transfer as it is not in line with fair labour practice and

it would only amount to imposition of punishment.

Coming to the present case, it is not case of the Petitioners that they were ever charged or chargesheeted or there was any conciliation talks or

proceedings in progress between them and the Corporation so as to suggest that, to impose the punishment otherwise, bypassing the disciplinary

proceedings intended to be pursued against them, the Corporation resorted to the transfer mode. Moreover, in the very same order, the learned

single Judge has made it clear that the Respondent-Corporation has No. sufficient power to transfer the employees from one depot to another as found from the Certified Standing Orders.

6. Coming to the legal provisions, it must be highlighted that Section 2(ra) defines the term "unfair labour practice" to mean any unfair practice specified in the v. Schedule appended to the Act and under the said schedule of the Act, commission of unfair labour practices are prohibited. Item No. 7 of Part-I of the v. Schedule says that, to transfer a workman mala fide from one place to another under the guise of following management policy is an unfair labour practice. Section 25-T of the Act is all-embracing in the sense that it prohibits unfair labour practice either by the employer or workman or trade union and if there is violation and commission of unfair labour practice, it can be visited with penalty as provided u/s 25-U of the Act. Therefore, the scheme as provided in the Act is very clear that the transfers ordered on account of mala fide and motivated attitude of the Managements would amount to unfair labour practice. However, transfers ordered for smooth running of administration and as public policy can never be said to be unfair labour practice, for, Section 25-U prohibits unfair labour practice on the part of the employees as well which means that where transfer of employees is essential and necessary, the employees should readily comply with the transfer order. The settled principle is that normally, an order of transfer is an administrative order and that transfer is ordinarily an incidence of service not to be interfered with by courts unless it is clearly proved that a transfer order is tainted with mala fides and arbitrary exercise of power.

7. In the case on hand, except the self claim of the Petitioners that only because of the agitations and strikes called for by them, the aggrieved management, to wreck vengeance against them, resorted to transfer, there is No. substantive material made available before this Court to act upon such claim. In the referred to case, mala fides could be easily seen from the attitude of the management in issuing transfer orders immediately after dropping the suspension orders. Such is definitely not the case herein. The Petitioners, if at all were struggling and striving for a just cause for others, could have very well resorted to lawful means in getting their demands fulfilled. It must be highlighted that calling for strikes by employees

working in transport corporations would undoubtedly cause untold hardships to the general public including students, office-goers, patients, elders

etc. Therefore, the employees connected to essential services should always serve with a sense of dedication as any move to strike by them would

have adverse impact on the general mass. This does not mean that this Court approves or endorses any vindictive measure and anti-labour practice

of the managements and that the unions and employees should not insist upon for the rights and privileges they are legally entitled to. For any

aggrieved individual or Unions representing 13 employees, there is always legal means available for redressal of the grievances and without

resorting to such course, through which, they would definitely get their rights established in an effective manner, one should not be allowed to say

that strikes and lock-out are the only solution to win the case. Further, an employee cannot dictate upon the management to post him or transfer

him at one particular place suiting his convenience. The management has the absolute right and discretion to transfer an employee when such

transfer is warranted in terms of public policy and to meet an administrative exigency. It is the discretion of the management to examine and decide

as to whether a junior should be transferred in a particular place or a senior depending upon the nature of the route the buses ply and the

experience of the hand to be deployed at a particular place.

8. Time and again, it has been reiterated by the Honourable Apex Court that the courts should not interfere with transfer orders which are made in

14 public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of

mala fide. Where a competent authority issues transfer orders with a view to accommodate a public servant to avoid hardship, the same cannot

and should not be interfered with by the court merely because the transfer orders were passed on the request of the employees concerned. For this

proposition, reference can be had from Mrs. Shilpi Bose and others Vs. State of Bihar and others, .

9. Again, the Apex Court, in Union of India and Others Vs. S.L. Abbas, , while reiterating that an order of transfer is not only a condition of

service but also an incidence of service, commented heavily against an order interfering with the transfer order and observed thus:

7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by malafides or is

made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must

keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the

appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband

and wife must be posted at the same place. The said guideline however does not confer upon the government employee a legally enforceable right.

10. Thus, when the position is well settled that courts cannot substitute their own judgment for that of the authority competent to transfer, this Court

is not able to find any reason much less acceptable reason to interfere with the impugned orders of transfer passed against the Petitioners herein.

11. Consequently, both the Writ Petitions fail and they are dismissed as devoid of any merit. No costs. Connected Miscellaneous Petitions are

closed.