

(2012) 09 MAD CK 0214

In the Madras High Court

Case No : Writ Petition No. 5887 of 2010

K. Thirumalaisamy

APPELLANT

Vs

The Managing Director, Tamil Nadu State Transport Corpn.
(Coimbatore) Ltd. and Another

RESPONDENT

Date of Decision : 25-09-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 17(b)

Citation : (2013) 1 LLJ 626 : (2013) LLR 195

Hon'ble Judges : V. Dhanapalan, J

Bench : Single Bench

Advocate : S. Girija, for the Appellant; T. Chandrasekaran, for the Respondent

Final Decision : Dismissed

Judgement

V. Dhanapalan, J.—Heard Ms. S. Girija, learned counsel for the petitioner and Mr. T. Chandrasekaran, learned counsel appearing for the respondents. An administrative order of transfer passed by the 2nd Respondent in proceedings vide *****419*****10. dated 25.2.2010, has been called in question by the petitioner and seeking to quash the same and for a consequential direction to the respondents to allow him to continue to work in the same station (Gobi), he has filed the present Writ Petition.

2. According to the petitioner, he joined as a Driver on 20.2.1995 under the services of the Corporation and is working without any blemish. While so, he was dismissed from service in connection with the charge of unauthorised absence. He raised an industrial dispute before the Labour Court, Salem in I.D. No. 76/1996 and on 30.4.1997, an award has been passed by the Labour Court directing the respondent therein to reinstate the petitioner into service with 50% back-wages and other attendant benefits. Challenging the said Award, the Management had filed a Writ Petition in W.P. No. 2906 of 1998 before this Court, in which, by an order dated 30.3.2007, this Court held as follows:

13. Having regard to the fact that the finding of the Labour Court is very specific that the absence of the second respondent is not deliberate and not giving information about leave in advance, I confirm the order of the Labour Court, except to modify the award to the effect that the second respondent is not entitled to get any back-wages from the date of dismissal, i.e., from 16.9.1996 till the date of award of the Labour Court dated 30.4.1997. The second respondent is entitled to get back-wages from 1.5.1997 and also continuity of service and all other benefits from 16.9.1996. The amount of 17(b) wages already paid to the second respondent may be adjusted while settling the back-wages payable from 1.5.1997. The payment of 17(b) wages pending disposal of the writ petition establishes the fact of the second respondent's non-employment. Hence, he is entitled to get full back-wages after the award of the Labour Court. The petitioner-Management is directed to re-instate the second respondent with continuity of service from 16.9.1996, but without back-wages till 30.4.1997 and pay back-wages and all other benefits from 1.5.1997. Second respondent shall be re-instated to the service within four weeks from the date of receipt of a copy of this order and arrears payable from 1.5.1997 after adjusting the amount of 17(b) wages already paid, shall be made within eight weeks from the date of receipt of a copy of this order.

3. The said order of the learned Single Judge was challenged in W.A. No. 730 of 2008 and on the basis of an interim order passed in the above Writ Appeal, the petitioner was reinstated into service as Driver on 23.8.2008 and his pay was fixed at Rs. 5,455-115-8095. In the meanwhile, the Writ Appeal was disposed of by this Court on 11.9.2008 with the following direction:

4..... We dispose of this appeal confirming the award of the Labour Court as well as the order of the learned Single Judge in directing reinstatement of the second respondent. But the payment of back-wages for the period from 1.5.1997 to 23.8.2008 shall be at the rate of 50% after giving credit to whatever payment made as last drawn wages u/s 17(b) of the Industrial Disputes Act.

4. Pursuant to the said order of this Court, the petitioner made repeated written representations to the respondents to implement the order made in W.A. No. 730 of 2008 of this Court, and finally, he was paid Rs 17,279 as back-wages by way of a cheque on 17.7.2009. Since the back-wages received for the entire period from 1.5.1997 to 23.3.2008 was very low, the petitioner submitted a representation under Right to Information Act, to ascertain the method of calculation as to how the said figure of back-wages had been arrived at, for which he received a communication from the 2nd respondent in Proceeding No. 35387/SA1318/brayfk;/TNSTC (Div) dated 24.9.2009 stating that the petitioner was paid wages on a daily wage basis from 1.5.1997 to 13.5.1997 and from 14.5.1997 onwards with the basic pay at Rs. 1,735. The petitioner's total back-wages has been calculated at Rs. 8,70,857.45 and 50% of that was calculated as Rs. 4,35,428.70. From which, the last drawn wages (i.e., Rs. 3,20,460.10) paid during the pendency of the Writ Petition u/s 17(B) of the; I.D. Act, was deducted

and in the remaining amount of Rs. 1,05,500, the P.P. dues of Rs. 87,772 and the Employers Contribution of Rs. 43,886 had been further deducted and finally, the petitioner had been paid the only remaining amount of Rs. 17,279. The deduction of PF contribution payable by the Management from the legitimate arrears payable to the petitioner is against the E.P.F. Act. When this calculation was questioned by the petitioner under the RTI Act, the 2nd respondent passed the impugned order of Transfer on 25.2.2010 transferring the petitioner from Gobi to Tiruppur. The same was challenged by the petitioner on the ground that he was suffering from severe ulcer problem and therefore, applied for Medical Leave for one month from 1.3.2010 to 31.3.2010 enclosing the Medical Certificate. As he has proceeded both under the Right to information Act and has also issued a Contempt Notice, the 2nd respondent has passed the Transfer Order.

5. On the above background pleadings, learned counsel for the petitioner would contend that the transfer has been effected only because of the continued steps taken by the petitioner to get the calculation of back-wages and the issuance of the Contempt Notice and. therefore, the order of transfer is passed with a mala fide intention to victimize the petitioner.

6. Resisting the above contention, learned counsel for the respondents would contend that the petitioner joined in the present Station on 8.3.2009 and the transfer has been made on administrative ground only. In the present Department, where the petitioner is working as a Driver in a particular place, the need for transferring him to another place on administrative ground cannot be questioned and it is not a matter of right for him to remain in the same place.

7. I have given thoughtful consideration to the submissions made by the parties.

8. It is seen that the petitioner joined as a Driver in the respondent Department on 20.2.1995. It is hot in dispute that the petitioner was dismissed from service and the same was raised by way of a dispute in I.D. No. 76 of 1996 and an award was passed by the Labour Court directing the respondents to reinstate him into service with 50% back-wages, as against which the Management went on appeal in W.A. No. 730 of 2008 and an interim order was passed in the Writ Appeal and the petitioner was reinstated into service as Driver on 23.8.2008. Further, the appeal was dismissed on 11.9.2008 confirming the award of the Labour Court as well as the order of the learned single judge, with an observation that the payment of back-wages for the period from 1.5.1997 to 23.3.2008 shall be at the rate of 50% after giving credit to whatever payment made as last drawn wages u/s 17(b) of the Industrial Dispute Act. Pursuant to that, the petitioner made a representation under Right to Information Act to ascertain the method of calculation as to how the back-wages had been arrived at. While so, the respondent Management, transferred the petitioner from Gobi to Tiruppur on administrative ground. Assailing the said order of transfer, the petitioner filed the present Writ Petition on the ground that the transfer order has been passed with a mala fide intention to victimize him deliberately.

9. The litigations between the petitioner and the respondent Management over the issue of dismissal of the petitioner from service and the contest made by the parties before this Court both in the Writ Petition and the Writ Appeal are matters pertaining to the rights of the parties. The petitioner has been reinstated into service and the amount claimed by him appears to have been disbursed to him and the only grievance of the petitioner is that there was no proper calculation of the amount claimed by him. If that is so, can it be construed as a matter of mala fide intention on the part of the respondents to pass such an order of transfer on administrative reasons. It is not for this Court to examine all these aspects in the absence of clear pleadings. However, in matters of transfer on administrative grounds, the Supreme Court as well as this Court have repeatedly held that there cannot be any interference of the Court, unless mala fide is proved.

10. In Union of India (UOI) and Others Vs. Sri Janardhan Debanath and Another, the Supreme Court has held that, the High Court, while exercising jurisdiction under Articles 226 and 227 of the Constitution of India had gone into the question as to whether the transfer was in the interest of public service, which would essentially require factual adjudication and invariably depend upon the peculiar facts and circumstances of the case concerned. The law laid down by the Supreme Court on the question of interference in administrative transfers makes it clear that no government servant or employee of a public undertaking has any legal right to the posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to another is not only an incident, but a condition of service, necessary do in public interest and efficiency in the public administration. It was further held therein that unless in order of transfer is shown to be an outcome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals normally cannot interfere with such orders as a matter of routine, as though they were the appellate authorities substituting their own decision for that of the employer/management, is against such orders passed in the interest of administrative exigencies of the service concerned. his position was highlighted by the Supreme Court in National Hydroelectric Power Corporation Ltd. Vs. Shri Bhagwan and others,

11. In another decision, in Chief General Manager (Telecom), N.E. Telecom Circle and another Vs. Rajendra Ch. Bhattacharjee and others, , the Apex Court has held that it is needless to emphasise that a government employee or any servant of a Public Undertaking has no legal right to insist for being posted at any particular place. Further, in Rajendra Singh Vs. State of U.P. and Others, the Supreme Court has held that a government servant has no vested right to remain posted at a place of his choice nor can he insist that he must be posted at one place or the other and he is liable to be transferred in the administrative exigencies from one place to the other.

12. Transfer of an employee is not only an incident inherent in the terms of

appointment but also implicit as an essential condition of service in the absence of any specific indication to the contrary. No Government can function if the government servant insists that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires.

13. In the instant case, in the absence of any proof as to mala fide, this Court cannot interfere with the order of transfer. Therefore, this Writ Petition deserves no merit consideration and is liable to be dismissed.

14. However, learned counsel for the petitioner would make a plea that the petitioner is suffering from acute ulcer and, therefore, for the purpose of taking treatment, he came to Gobi on willingness, foregoing Travelling Allowance. At this point of time, learned counsel for the respondents would submit that more treatment facilities are available in the place of transfer i.e., Tiruppur, which can be utilized by the petitioner and the petitioner has made an attempt to thwart the transfer.

15. Learned counsel for the petitioner would however plead that the representation made by the petitioner may be looked into by the respondents in accordance with law.

16. In view of the said submissions, as the petitioner has continued working in the present Station, namely, Gobi from 8.3.2009, if he makes a representation to the respondents after joining the place of transfer i.e., Tiruppur, the same shall be looked into by the respondents in accordance with law. With the above direction, the Writ Petition stands dismissed. No costs. Consequently, connected M.P. No. 1 of 2010 is closed.