

**(2008) 10 MAD CK 0128**

**In the Madras High Court**

**Case No :** Writ Petition No's. 20602 to 20606 of 2008, 20899 to 20910 of 2008 and 21013 of 2008 and M.P. No's. 1, 2 and 3 of 2008

T. Jayapandi

APPELLANT

Vs

State Express Transport Corporation Limited, The General Manager (Operation and Administration) and The Branch Manager, State Express Transport Corporation Limited

RESPONDENT

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**Date of Decision :** 13-10-2008

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227  
Industrial Disputes Act, 1947 — Section 9A

**Citation :** (2009) 1 CTC 322

**Hon'ble Judges :** P. Jyothimani, J

**Bench :** Single Bench

**Advocate :** D. Hariparanthaman, for the Appellant; Jayesh B. Dolia, for the Respondent

**Final Decision :** Dismissed

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**Judgement**

P. Jyothimani, J.—The common issue involved in these Writ Petitions is about the validity of the impugned orders of transfer effected in respect of the petitioners. The petitioners are all working as either drivers, conductors or tradesmen in the State Express Transport Corporation Limited. The impugned orders have been effected in respect of these petitioners. It is stated by the respondents Corporation in the affidavit filed in support of the Vacate Stay Petition that the administration had to effect these transfers due to administrative exigencies. The case of the petitioners is that they all belong to CITU (Centre of India Trade Unions) and some of them are its office bearers and others are its committee members holding the post in the concerned depots. It is their case that there has been some dispute with the Corporation by the members of CITU in respect of the payment of over time allowances, short payment of wages and relating to attendance, etc. and those matters were effected orally without any written orders and in fact W.P. No. 10666/2004 has been filed before this Court

complaining about the reducing of attendance to conductors and changing of OT pattern from hourly based to flat rate and while admitting the Writ Petition, the Court has granted an interim injunction on 17.4.2004 in W.P.M.P. No. 11740/2004. The complaint of the petitioners and the Union which they belong to is to the effect that the Respondent Corporation is attempting to interfere with the alteration of the OT pattern without complying with Section 9A of the Industrial Disputes Act and there has been protest in the respective depots also and the agitations were conducted in a peaceful manner. Subsequently, talks were held on 16.08.2008 between all Trade Unions with the respective management in which the deduction of attendance was withdrawn and ceiling in respect of the over time was made at Rs. 75/- instead of Rs. 65/- and thereafter the strike and the agitations were called for. According to the petitioners, since in the said agitation, the Union in which they belong to has taken a major role, it is to seek revenge, the present impugned orders of transfer are passed and therefore, the same are tainted with mala fide.

2. On the other hand, it is the specific case of the respondents in the affidavit filed in support of the Vacate Stay Petition that the present transfers were made in the administrative routine fashion. In paragraph 4 of the affidavit, it has been stated that the transfers were to be effected by taking into account the total strength of existing excess or short staff in which the respondent was working as well as in which depot he has been transferred. It is also stated that the petitioners are liable to transfer to any place within the jurisdiction of the Transport Corporation and therefore, this Court has no jurisdiction to interfere. It is also admitted that in some cases, transfer was from Madurai to Senkottai, which is 172 kms. away from the earlier place, where the present petitioners were working. It is also their case that some of the petitioners were working in the same station for a long period and therefore in the interest of justice, transfer should be effected. Therefore, the transfer was effected in a routine and administrative fashion.

3. Mr. Hariparanthaman, learned counsel appearing for the petitioners would state that normally, in cases of transfer, this Court would not interfere by exercising its power u/s 226 of the Constitution of India, but in cases where mala fide is attributed and prima facie it is proved, there is no hindrance to interfere u/s 226 of the Constitution of India. It is also submitted that all the 18 Writ Petitioners belong to the same Union and the transfer orders have been effected only in respect of the office bearers including the active members in the concerned depots. Therefore, it is stated that the transfer orders have been effected with mala fide intention. He would also submit that even though it is not the case of the petitioners that the transfers should not be effected in respect of these petitioners, the present transfers have been effected to threaten the petitioners, who have taken active role in the agitation and in respect of union activities. Therefore, the transfer orders have been effected with mala fide intention.

4. On the other hand, the learned counsel for the respondents Mr. Jayesh B. Dolia submitted that there is nothing on record to show that there has been any mala fide intention. Further, in the absence of any specific averments, there was no question of interfering u/s 226 of the Constitution of India. He would also submit various judgments to support his contention that normally, in transfer matters, the Court should not interfere.

5. It is seen in the affidavit filed by the petitioners that the transfer was due to the reason that the petitioners belong to a particular Union and there has been some agitation and that agitation has ended in success in favour of the Union and immediately after the completion of the agitation, the present transfers came to be passed only in respect of these 18 petitioners, who belong to a particular union and that aspect has not been denied in the affidavit filed by the respondents.

6. It is stated in the affidavit as I have elicited above that taking the total strength of excess in each of the category, the present orders have been passed. In this regard, para 4 of the counter affidavit reads as follows:

I submit that in the normal course of business by way of administrative measure on taking note of the strength of drivers, conductors and technicians, the petitioner have taken a decision to adjust the excess man power in accordance with the requirement as well as the situation in various depots by taking into account the total strength of existing excess or short staff in which the respondent was working as well as in which depot he is transferred to. The respondent at the time of joining the service had undertaken to serve in any place of posting in the jurisdiction of Transport Corporation. Now he is not willing to obey his own undertaking.

A reference to the list of the 18 petitioners, which has been furnished in the typed set of papers shows that these petitioners were either Tradesman, Conductors or Drivers and according to the learned counsel for the petitioners, they are from Class III or Class IV employees and not Officer Cadre Employees. The particulars regarding each of the employee and their place of transfer are given as follows:

Further, it is seen that out of the 18 petitioners, five are Conductors and nine are Tradesman and four are drivers. It is seen that in respect of the Conductor, one of the petitioners has been transferred from Madurai-I to Chennai-III, but in respect of another conductor, he has been transferred to Coimbatore. If really the case of the respondent is that based on the existing excess strength in the particular station, the transfers have been effected, it is not known, as to how, the present transfers have been passed, transferring one person to Chennai and another person from Chennai to any other place. It is also seen that in respect of drivers, a person has been transferred from Nagai to Chennai and at the same time, a person from Chennai has been transferred to Thiruvananthapuram. That is also seen in respect of Drivers from Thirunelveli to Chennai. In the impugned

orders of transfer, nowhere it states about the reason except in the affidavit filed in support of the Vacate Stay Petition, wherein it has been stated that the transfers were due to administrative exigencies. It is also seen that in respect of some of the cases, out of the 18 Writ Petitioners, they were transferred to different and new routes like Trichy to Thiruvananthapuram, Cuddalore to Bangalore, Chennai to Kadampuzha, Rameswaram to Bangalore etc. It is also not in dispute as submitted by the learned counsel for the petitioners that the petitioners are transferable to any place. But the submission made by the learned counsel for the petitioners is that on the factual situation, the mala fide can be interfered. It is in this regard relevant to note about the judgment of the Supreme Court as pointed out by the learned counsel for the petitioners in *B. Varadha Rao Vs. State of Karnataka and Another*, The Supreme Court, while holding that transfer is an incident of service, has however held that the policy of transfer should be reasonable and should apply to everybody equally. It is relevant to refer the para 6 of the judgment in respect of Class III and Class IV of categories of employees, which is held as follows:

One cannot but deprecate that frequent, unscheduled and unreasonable transfers can uproot a family, cause irreparable harm to a Government servant and drive him to desperation. It disrupts the education of his children and leads to numerous other complications and problems and results in hardship and demoralisation. It therefore follows that the policy of transfer should be reasonable and fair and should apply to everybody equally. But, at the same time, it cannot be forgotten that so far as superior or more responsible posts are concerned continued posting at one station or in one department of the Government is not conducive to good administration. It creates vested interest and therefore we find that even from the British times the general policy has been to restrict the period of posting for a definite period. We wish to add that the position of Class III and Class IV employees stand on a different footing. We trust that the Government will keep these considerations in view while making an order of transfer.

7. On a similar situation Justice K. Venkatraman in *P. Vasu, D. Devadhasan, M. Govindasamy and D. Purushothaman Vs. Tamilnadu State Transport Corporation (Villupuram) Ltd.*, has observed that against the employees, who have participated in an agitation, transfer should not be used as a tool against them in the hands of the Management. The operative portion reads as follows:

Regarding the orders of transfer made against the petitioner, it cannot be denied that the petitioners have been transferred for their participation in the agitation called by a political party which is an opposition party in the State. Even the impugned orders of transfer do not say that the petitioners have been transferred on administrative grounds. Though I am conscious of the fact that the order of transfer could not normally be interfered, as has been held by the various pronouncements of this Court as well as by the Honourable Apex Court, since I have come to the conclusion that the present orders of transfer have been

passed in view of the participation of the petitioners in the agitation called by the opposition party, I am inclined to interfere with the orders of transfer passed against the petitioners. The impugned orders of transfer make it explicitly clear that implied malice is writ large on the face of the records and the order of transfer cannot be a tool in the hands of the respondents and be used as a weapon in the interest of administration.

That was also the view taken by this Court in W.P. Nos. 7183 and 7184 of 1998 in respect of the State Express Transport Corporation. The operative portion is as follows:

All these circumstances make it clear that the impugned order was passed for the reasons stated in the Writ Petitions and not for administrative reasons. Order of transfer has been issued at the instance of the Member of Parliament, carried out by the 3rd respondent and subsequently obeyed by the respondents 1 & 2. It is a result of non-application of mind. It is tainted with mala fides. Consequently, the impugned order of transfer, in so far as the petitioners are concerned, is quashed.

8. The Supreme Court in *State of U.P. and Others Vs. Siya Ram and Another*, , has stated that the transfer is an incident of service and it is in the interest of public administration. However, if mala fide is attributed and the same have shown or transfer effected in violation of the statutory provisions, the High Court can interfere u/s 226 of the Constitution of India. The operative portion is as follows:

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. That would essentially require factual adjudication and invariably depend upon peculiar facts and circumstances of the case concerned. No Government servant or employee of a public undertaking has any legal right to be 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 other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an 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 appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this Court in *National Hydroelectric Power Corporation Ltd. v. Shri Bhagwan*.

6. The above position was recently highlighted in *Union of India v. Janardhan Debanath*. It has to be noted that the High Court proceeded on the basis as if the transfer was connected with the departmental proceedings. There was not an

iota of material to arrive at the conclusion. No mala fides could be attributed as the order was purely on administrative grounds and in public interest.

That was also the view of the Honourable Apex Court in *Kendriya Vidyalaya Sangathan Vs. Damodar Prasad Pandey and Others*, in which it is held as follows:

Transfer which is an incidence of service is not to be interfered with by the Courts unless it is shown to be clearly arbitrary or visited by mala fide or infraction of any prescribed norms of principles governing the transfer *Abani Kanta Ray Vs. State of Orissa and Others*, . Unless the order of transfer is visited by mala fide or is made in violation of operative guidelines, the Court cannot interfere with it. *Union of India and Others Vs. S.L. Abbas*, . Who should be transferred and posted where is a matter for the administrative authority to decide. Unless the order of transfer is vitiated by mala fide or is made in violation of operative any guidelines or Rules the Courts should not ordinarily interfere with it.

The various judgments, which are rendered by our High Court also in support of the fact that the transfer is an incident of service be effected in the better administration and no one can claim as a matter of right to continue in the same position, however, held in cases, where there is a mala fide which is attributed and proved prima facie and the transfer is effected against the statutory rules, interference u/s 226 of the Constitution of India is not a bar as held in *State of U.P. and Others Vs. Gobardhan Lal*, . The operative portion is as follows:

It is too late in the day for any Government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. 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 contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made.

9. The learned counsel appearing for the petitioners also cited the following decisions in support of his contention:

1. *Union of India and Others Vs. S.L. Abbas*,
2. *Rajendra Roy Vs. Union of India (UOI) and Another*,
3. *Abani Kanta Ray Vs. State of Orissa and Others*,
4. *State of U.P. and another v. V.N. Prasad*, 1995 Supp (2) SCC 151; and
5. *S.C. Saxena v. Union of India and others*, 2006 (9) SCC 583.

Therefore, law is well settled that unless mala fide is attributed and proved, transfer cannot be questioned and interfered with under Article 226 of the

Constitution of India.

10. On the narration of above facts, there is no difficulty to come to the conclusion that the petitioners belong to the Union, which in fact involved in the agitation, as the same has not been denied by the respondent in their affidavit and they have been transferred immediately after the agitation and subsequent settlement was over. The 18 petitioners are either office bearers or acting members of CITU either in the particular depots or head office. Therefore, eventhough there is no mala fide attributed to the particular officer, as held by the Supreme Court in B. Varadha Rao Vs. State of Karnataka and Another, in respect of Class III and Class IV employees, the onus is on the employer to prove. It is also relevant to point out that pursuant to the interim order passed by this Court the respondents have allowed the petitioners to join in their original place before transfer. In view of the above, the Writ Petitions stand allowed and the impugned orders of transfer are set aside. Consequently, connected Miscellaneous Petitions are closed. However, it is made clear that this order cannot be taken as a precedent in future. It is also open to the respondents to take such actions on administrative ground, since law is well settled that no one can claim to continue in the same position for ever.