

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 31.12.2018

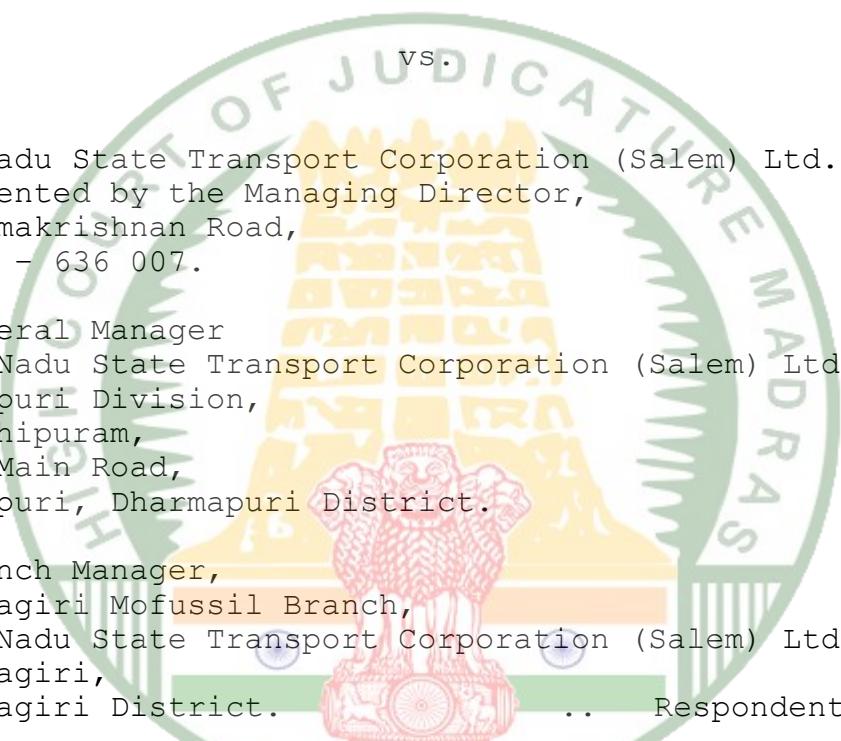
CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P.No.34678 of 2018 &
W.M.P. Nos.40227 & 40228 of 2018

Mr.V.Durai

.. Petitioner



1. Tamil Nadu State Transport Corporation (Salem) Ltd.,
Represented by the Managing Director,
12, Ramakrishnan Road,
Salem - 636 007.

2. The General Manager
Tamil Nadu State Transport Corporation (Salem) Ltd.,
Dharmapuri Division,
Bharathipuram,
Salem Main Road,
Dharmapuri, Dharmapuri District.

3. The Branch Manager,
Krishnagiri Mofussil Branch,
Tamil Nadu State Transport Corporation (Salem) Ltd.,
Krishnagiri,
Krishnagiri District. .. Respondents

Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Certiorari and Mandamus, to call for the records of the respondents relating to the Order of the second respondent bearing No.Ta.Aa.Po.Ka/Se/Ta.Ma/101/2018 dated 19.12.2018 and quash the same and direct the second respondent to reconsider the issue of the petitioner's transfer to Pennagaram in a sympathetic light taking into consideration his family circumstances.

For Petitioner : Ms.Ramapriya Gopalakrishnan

For Respondents : Ms.Rajeni Ramadoss

O R D E R

The petitioner has come forward with this Writ Petition challenging the order of transfer dated 19.12.2018 passed by the second respondent.

2. This is the third round of litigation and in the earlier occasion, the petitioner requested to consider retaining himself in the same place and until such time, he shall not disturbed.

3. According to the petitioner, his mother had hip fracture and there is no plea to that effect in the original Affidavit filed by him and no documents have been produced. The only ground projected by the petitioner is that his son was aged 10 years and his daughter was aged 6 years and hence, he will not be in a position to travel 100 kms each day. In the representation, however, it had been stated that his son was aged 16 years and was studying XI Standard and daughter was studying V Standard. The averments in the affidavit and the representation, dated 11.09.2018 are not consistent. Additionally, since the petitioner is facing serious charges, he has been transferred.

4. The respondent would submit that the transfer order has been issued as early as August 2018 and for the past five months the order has remained unworkable.

5. A glance of the impugned order would make it clear that the representation of the petitioner had been considered and subsequently rejected, hence, it cannot be interfered with. That apart, if a transfer order is issued on certain charges, the petitioner has to go and join in the transferred place. He has no right to chose or select the place, unless otherwise contemplated in the Government Order. The plea of victimization and penalization of the petitioner cannot be acceded.

6. At this stage of arguments, the petitioner wanted time to join in the transferred place and had requested that he may be granted time till March 2019. Learned counsel appearing for the Respondents opposed the same stating that the transfer order had to be acted upon immediately and the Petitioner cannot be allowed to stay in a particular place, when serious charges have been levelled against him.

7. At this juncture, it is worth referring to the Apex Court decision in the case of Ajay Kumar Choudhary vs. Union of India, reported in 2015 (3) CTC 119, wherein, it is held as under:

"8. Suspension, specially preceding the formulation of charges, is essentially transitory or temporary in nature, and must therefore be of short duration. If it is for an indeterminate period or if its renewal is not based on sound reasoning contemporaneously available on the record, this would render it punitive in nature. Departmental/disciplinary proceedings invariably commence with delay, are plagued with procrastination prior and post the drawing up of the Memorandum of Charges, and eventually culminate after even longer delay.

13. It will be useful to recall that prior to 1973 an accused could be detained for continuous and consecutive periods of 15 days, albeit, after judicial scrutiny and supervision. The Code of Criminal Procedure of 1973 contains a new proviso which has the effect of circumscribing the power of the Magistrate to authorise detention of an accused person beyond period of 90 days where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years, and beyond a period of 60 days where the investigation relates to any other offence. Drawing support from the observations contained of the Division Bench in *Raghbir Singh v. State of Bihar*, 1986 (4) SCC 481, and more so of the Constitution Bench in *Antulay*, we are spurred to extrapolate the quintessence of the proviso of Section 167(2) of the Code of Criminal Procedure 1973 to moderate Suspension Orders in cases of departmental/disciplinary inquiries also. It seems to us that if Parliament considered it necessary that a person be released from incarceration after the expiry of 90 days even though accused of commission of the most heinous crimes, a fortiori suspension should not be continued after the expiry of the similar period especially when a Memorandum of Charges/Chargesheet has not been served on the suspended person. It is true that the proviso to Section 167(2) Code of Criminal Procedure postulates personal freedom, but

respect and preservation of human dignity as well as the right to a speedy trial should also be placed on the same pedestal.

14. We, therefore, direct that the currency of a Suspension Order should not extend beyond three months if within this period the Memorandum of Charges/Cherished is not served on the delinquent officer/employee; if the Memorandum of Charges/Chargesheet is served a reasoned order must be passed for the extension of the suspension. As in the case in hand, the Government is free to transfer the concerned person to any Department in any of its offices within or outside the State so as to sever any local or personal contact that he may have and which he may misuse for obstructing the investigation against him. The Government may also prohibit him from contacting any person, or handling records and documents till the stage of his having to prepare his defence. We think this will adequately safeguard the universally recognized principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognize that previous Constitution Benches have been reluctant to quash proceedings on the grounds of delay, and to set time limits to their duration. However, the imposition of a limit on the period of suspension has not been discussed in prior case law, and would not be contrary to the interests of justice. Furthermore, the direction of the Central Vigilance Commission that pending a criminal investigation departmental proceedings are to be held in abeyance stands superseded in view of the stand adopted by us.

15. So far as the facts of the present case are concerned, the Appellant has now been served with a Charge sheet, and, therefore, these directions may not be relevant to him any longer. However, if the Appellant is so advised he may challenge his continued suspension in any manner known to law, and this action of the Respondents will be subject to judicial review."

8. With reference to the above Apex Court decision, this Court is of the view that when serious charges are levelled against a person, the employer may either suspend the employee or withdraw the order of suspension and transfer the person to a different place, in a non-sensitive post. Such action of the employer cannot be said to be malafide, particularly, when serious charges are levelled against the employee.

9. In this case, instead of suspending the employee, transfer order has been issued. Such act is well within the purview of the employer. It is better to transfer an employee facing charges rather than placing the employee under suspension for years together and waste the tax-payers' money by paying Subsistence Allowance. Thus, in the case on hand, the petitioner would have to proceed with his transfer immediately.

10. Taking note of the submissions of the learned counsel for the petitioner and the education of his children, the petitioner is granted time to join the transferred place till 28.02.2019 and he has to join duty in the transferred place on 01.03.2019. This Court clarifies that it is open to the petitioner to go on eligible leave till 28.02.2019 and if he has no eligible leave, the period of leave shall be treated as 'no work no pay'.

11. If the Petitioner fails to join the transferred place, the period during which he has not joined from the date of transfer will have to be treated as break-in-service. Due to break-in-service, the Petitioner will be treated as a new entrant without deduction in salary and the period from the date of transfer shall not be counted for granting gratuity and other terminal benefits. If the Petitioner disobeys the order of transfer, an enquiry has to be conducted against him and punishment should be imposed. The above observations will compel the petitioner to join the transferred place without seeking extension of time.

With these directions and observations, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

vrc/aeb

To:

1. Tamil Nadu State Transport Corporation (Salem) Ltd.,
Represented by the Managing Director,
12, Ramakrishnan Road,
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2. The General Manager
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3. The Branch Manager,
Krishnagiri Mofussil Branch,
Tamil Nadu State Transport Corporation (Salem) Ltd.,
Krishnagiri,
Krishnagiri District.

+1cc to Mr.S.Rajeni Ramadoss, Advocate Sr.423

+1cc to M/S.Rama Priya Gopalakrishnan, Advocate Sr.90116

W.P. No.34678 of 2018

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