

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:10.03.2015

CORAM

THE HONOURABLE Mr. JUSTICE SATISH K.AGNIHOTRI
AND
THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

W.A.No.120 of 2015 and
M.P.No.1 of 2015

A.Saravanan

... Appellant/Petitioner

V.

1. The Director of Art & Culture
Halls Road, Egmore,
Chennai - 600 008.

2. The Principal,
Tamil Nadu Government Music College,
D.G.S. Dinakaran Salai,
Chennai - 600 028.

... Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent Act, against the order of this Court dated 09.10.2014 made in W.P.No.22682 of 2014.

W.P.No.22682 of 2014:

Petition under Article 226 of the Constitution of India for issuance of a Writ of Certiorari by calling for the records relating to the transfer of the petitioner from Tamil Nadu Government Music College, Chennai to Tamilnadu Government Music College, Madurai, made in Proceedings No.4238/E1/2014 dt. 18.8.2014 on the file of the first respondent and the consequential order made in Proceedings No.510/B/2014 dt. 19.8.2014 on the file of the second respondent, and quash the same.

For Appellant : Mr.V.Ravi

JUDGMENT

(Judgment of the Court was delivered by M.VENUGOPAL, J.)

The Appellant/Petitioner has focussed the instant Writ Appeal as against the order dated 09.10.2014 in W.P.No.22682 of 2014 passed by the Learned Single Judge.

2.The Learned Single Judge, while passing the impugned order dated 09.10.2014 in W.P.No.22682 of 2014 (filed by the Appellant/Petitioner), in paragraph 14, had inter alia observed that '... In this case, it cannot be said that the first respondent has acted with mala fide and the respondent has acted on the basis of the recommendation of the Principal of the College in the interest of the institution and the first respondent is the competent authority to pass an order of transfer and there is no violation of any statutory rules and the transfer order was passed in the interest of administration and in the welfare of the students and hence, the same cannot be interfered with by the Court by exercising extra-ordinary jurisdiction under Article 226 of the Constitution of India' and resultantly, dismissed the Writ Petition without costs.

3.The Learned Counsel for the Appellant urges before this Court that the order of transfer under Proceedings No.4238/D1/2014 dated 18.08.2014 of the 1st Respondent is vitiated by mala fide attitudes of both the Respondents and further, the Writ Court had not considered the real reason in regard to the transfer of the Appellant and also had committed an error in accepting the afterthought reasoning like 'the interest of the administration, maintain decorum' etc.

4.According to the Learned Counsel for the Appellant, the order of transfer dated 18.08.2014 is an unconstitutional one as it affects the image and name of the Appellant and thereby the right to life guaranteed under Article 21 of the Constitution of India was affected along with the different treatment made out by proceeding against the Appellant alone leaving one C.David in contrary to the tenor of Article 14 of the Constitution of India.

5.The Learned Counsel for the Appellant strenuously contends that the Writ Court had not considered the submissions made as regards the presence of C.David, Co-lecturer, i.e. when the Appellant informed the Bursar in regard to the causing of loss to the leather instruments by the rats, admittedly the said C.David was also present and moreover, proceeding against the Appellant alone and directing him to handover the charge to the same C.David is not a legally valid one.

6.The Learned Counsel for the Appellant projects an argument that the Writ Court should have seen that even as per the letter of the 2nd Respondent dated 18.08.2014 wherein the 1st Respondent was requested to transfer the Appellant, there is no serious allegation except mentioning about the incident dated 14.08.2014.

7.The Learned Counsel for the Appellant brings it to the notice of this Court that the Writ Court had failed to take note of a fact that the action of the 2nd Respondent, through his own Proceeding viz., consequential order dated 19.08.2014 wherein the Appellant was asked to handover the charge to C.David, discloses the mala fide attitudes of the Respondents.

8.Finally, it is the submission of the Learned Counsel for the Appellant that the Writ Court had committed an error in not applying the ruling of the decision in Somesh Tiwari V. Union of India reported in (2009) 2 SCC 592. Also, the Writ Court had failed to appreciate that the instant case on hand is different from the facts of the case in the decision Union of India V. Janardhan Debanath reported in (2004) 4 SCC 245.

9.Further, the Learned Counsel for the Appellant/Petitioner cites the following decisions:

(a) In the decision of the Hon'ble Supreme Court in S.R.Venkataraman V. Union of India and another, (1979) 2 Supreme Court Cases 491 at page 492, wherein it is held as follows:

"In the present case, there was nothing on record to show that the appellant's superior was able to influence the Central Government in making the order of premature retirement. It was, therefore, not the case of the appellant that there was actual malicious intention on the part of the Government in making the impugned order so as to amount to malice in fact.

Malice in law is different from malice in fact and may be assumed from the doing of a wrongful act intentionally but without just cause or excuse, or for want of reasonable or probable cause."

(b) In the decision of the Hon'ble Supreme Court in Somesh Tiwari V. Union of India and others, (2009) 2 Supreme Court Cases 592 at special page 597 & 598, wherein in paragraph 16, it is observed as under:

"16. Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where inter alia mala fide on the part of the authority is proved. Mala fide is of two kinds - one malice in fact and the second malice in law. The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground i.e. on the allegations made against the appellant in the anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal."

(c) In the decision of the Hon'ble Supreme Court in Union of India and others V. Janardhan Debanath and another, (2004) 4 Supreme Court Cases 245, at special page 251 & 252, whereby and whereunder, in paragraph 14, it is observed as follows:

"14. The allegations made against the respondents are of serious nature, and the conduct attributed is certainly unbecoming. Whether there was any mis-behaviour is a question which can be gone into in a departmental proceeding. For the purposes of effecting a transfer, the question of holding an enquiry to find out whether there was mis-behaviour or conduct unbecoming of an employee is unnecessary and what is needed is the prima facie satisfaction of the authority concerned on the contemporary reports about the occurrence complained of and if the requirement, as submitted by learned counsel for the respondents, of holding an elaborate enquiry is to be insisted upon the very purpose of transferring an employee in public interest or exigencies of administration to enforce decorum and ensure probity would get frustrated. The question whether respondents could be transferred to a different division is a matter for the employer

to consider depending upon the administrative necessities and the extent of solution for the problems faced by the administration. It is not for this Court to direct one way or the other. The judgment of the High Court is clearly indefensible and is set aside. The writ petitions filed before the High Court deserve to be dismissed which we direct. The appeals are allowed with no order as to costs."

(d) In the decision of the Hon'ble Supreme Court in S.Thilagavathy V. State of Tamil Nadu and others, (2011) 6 Supreme Court Cases 365, wherein 'The Appellant was granted liberty to file review petition pointing out an error apparent on the face of record'.

(e) In the order dated 10.09.2009 in W.P.No.10770 of 2009 between A.Kaliyamoorthy V. The District Collector/ Inspector of Panchayats, Perambalur and another, this Court, in paragraph 7, had referred the Judgment of the Hon'ble Supreme Court in Somesh Tiwari V. Union of India and others, reported in (2009) 3 MLJ 727, wherein in paragraph 20, the Hon'ble Supreme Court has held as follows:

"20.The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground i.e. on the allegations made against the appellant in the anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal."

10.At this stage, a perusal of the averments made by the Appellant/Petitioner in the Writ Affidavit indicates that Appellant/Petitioner had taken a plea that only in order to protect the leather instruments like Mrithangam, urgently he had met the Bursar and further that, in the meanwhile even before considering his explanations dated 18.08.2014, the 1st Respondent on a letter sent by the 2nd Respondent in Letter No.551/b1/2014 dated 18.08.2014 had passed an order of transfer on the same day in Proceedings No.4238/D1/ 2014. Further, he was transferred from the Tamil Nadu Government Music College, Chennai to Tamil Nadu Government Music College, Madurai and also the 2nd Respondent, in his proceedings

No.510/B/ 2014 dated 19.08.2014 issued an order relieving the Appellant/ Petitioner on the forenoon of 19.08.2014 from the post of Selection Grade Mrithangam Lecturer. Also, in the Writ Affidavit, the Appellant/ Petitioner had stated that when already a show cause notice was issued by the 2nd Respondent on 14.08.2014 and a weeks' time was given to him for furnishing a reply and even before the receipt of reply on 18.08.2014 requesting the 1st Respondent to transfer the Appellant/ Petitioner and the impugned transfer order of the 1st Respondent are unsustainable in law.

11.The stand of the Appellant/Petitioner in para 4 of the Affidavit of the Writ Petition is that in his reply dated 18.08.2014 he had explained that since the Mrithangam class rooms of the 1st, 2nd and 3rd year students, there was lot of rat problems as they cut the leather instruments regularly and this was informed by the students to him to get the problems solved and since the Principal (in charge) was not available, he went to the office of the next senior in charge of their college viz., Bursar and explained to him.

12.It comes to be known that the Appellant/Petitioner was issued with a memo dated 14.08.2014 by the 2nd Respondent stating that on 14.08.2014 morning at about 11.00 a.m. he along with his class students and colleague lecturer C.David came to the room of Bursar and requested for solving the defects in the class room and change of class room, but without informing the 2nd Respondent/Principal coming to the office directly with group of students is an objectionable act and also that, as against him numerous complaints are received in this office and it shows that the Appellant/Petitioner is not doing his duty properly. Therefore, for this act, he is advised to submit his explanation as to why the disciplinary proceedings should not be initiated against him within one week from the date of receipt of copy of the letter.

13.That apart, the 2nd Respondent/Principal (I) of Tamil Nadu Music College, Chennai had addressed a Letter No.551/B1/2014 dated 18.08.2014 to the Commissioner of the 1st Respondent inter alia stating that the Appellant/Petitioner is not doing duties to the students properly, the interest of the students' education is getting affected and therefore, a humble request in the interest of administration and students, to transfer the Appellant/Petitioner to some other College. Also, the 1st Respondent, in Proceedings No.4238/D1/2014 dated 18.08.2014 with reference to the letter dated 18.08.2014 of the 2nd Respondent had transferred the Appellant/Petitioner from the Tamil Nadu Government Music College, Chennai to Tamil Nadu Government Music College, Madurai and in his place one K.Thiyagarajan, Mrithangam Lecturer was posted at the Tamil

Nadu Government Music College, Chennai. Also that, on 19.08.2014, the 2nd Respondent passed a consequential order stating that the Appellant was relieved from duty in the forenoon of 19.09.2014 and instructed him to handover the charge of his class to C.David, Selection Grade Mrithangam Lecturer.

14.It is to be borne in mind that a transfer is an incident of an employee's service. It is for the appropriate authority to decide who should be transferred from one place to another. Only when the transfer is made in violation of any statutory provisions or the transfer order is vitiated by mala fides, a Court of Law can intervene. Further, mere averments of mala fides is not enough and this must be supported by facts and in some what overwhelming details interwoven to indicate a bad motive or intention to cause deliberate prejudice.

15.Coming to the aspect of 'Malice', it means want of good faith, personal bias, grudge, oblique or improper motive or ulterior purpose. In common parlance 'Malice' means 'ill will, spite or Malevolence'. 'Malice is an exercise of discretion without just cause or excuse.

16.It is to be noted that a Government Servant is liable to be transferred as per the administrative exigencies from one place to the other. Admittedly, 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, as per decision of the Hon'ble Supreme Court in Rajendra Singh V. State of U.P. (2009) 15 SCC 178.

17.Ordinarily, a Court of Law must be reluctant to interfere with the transfer order of an employee unless such transfer is vitiated by the breach of some statutory provisions or suffers from mala fides. Moreover, no Government Servant has any legal right to insist for being posted at any particular place, as per decision of the Hon'ble Supreme Court in Union of India V. Vijaya Kumar, (1994) Supp. 3 SCC 649.

18.It is true that an order of transfer can and very often cause hardship to the aggrieved/affected. But it is to be remembered that in the absence of strong and compelling grounds rather than the transfer order improper or unjustified, such an order is not subject to Judicial Review. Affording prior hearing is not necessary when transfer order is made on account of exigencies of administration, as per decision Director of School Education V. O.Karuppa Thevan, (1994) Supp 2 SCC 666.

19. In reality, the ambit of 'Judicial Review' is restricted in matters of transfer of Government Employees and the High Court ought not to interfere with the said transfer order in a light hatred manner. Furthermore, if the transfer order does not suffer from any flaw, the same has to be necessarily upheld. Apart from the above, to determine whether transfer order is mala fide, a Court of Law is to look into the entire factual aspects of the matter and it should not enter into a roving enquiry, in the considered opinion of this Court.

20. On a careful consideration of the Appellant/Petitioner's contentions and in view of the fact that the Appellant's transfer was in the interest of College Administration and Students' Education as per Proceedings No.4238/D1/2014 dated 18.08.2014 of the Commissioner of the 1st Respondent and also this Court taking note of the fact that the 2nd Respondent had relieved the Appellant/Petitioner from the post of Selection Grade Mrithangam Lecturer on 19.08.2014 at the Tamil Nadu Government Music College, Chennai etc., this Court is of the considered view that the order of transfer dated 18.08.2014 cannot, by any stretch of imagination, be construed to be a case of mala fide one and in fact, there is no 'Malice in Law' or 'Malice in Fact' in the instant case. Admittedly, the 1st Respondent, being the Competent Authority, had issued the impugned transfer order and the same does not suffer from any material infirmity or patent illegality in the eye of Law. Per contra, the order of transfer dated 18.08.2014 passed by the 1st Respondent and the consequential order of the 2nd Respondent dated 19.08.2014 are perfectly valid and legal and they are not liable to be interfered with, in the considered opinion of this Court. Viewed in that perspective, the Writ Appeal fails.

21. In the result, the Writ Appeal is dismissed, leaving the parties to bear their own costs. Resultantly, the order dated 09.10.2014 in W.P.No.22682 of 2014 passed by the Learned Single Judge is confirmed by this Court for the reasons assigned in this Appeal. Consequently, connected Miscellaneous Petition is closed.

Sd/-
सत्यमेव जयते

Assistant Registrar

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Sub Assistant Registrar

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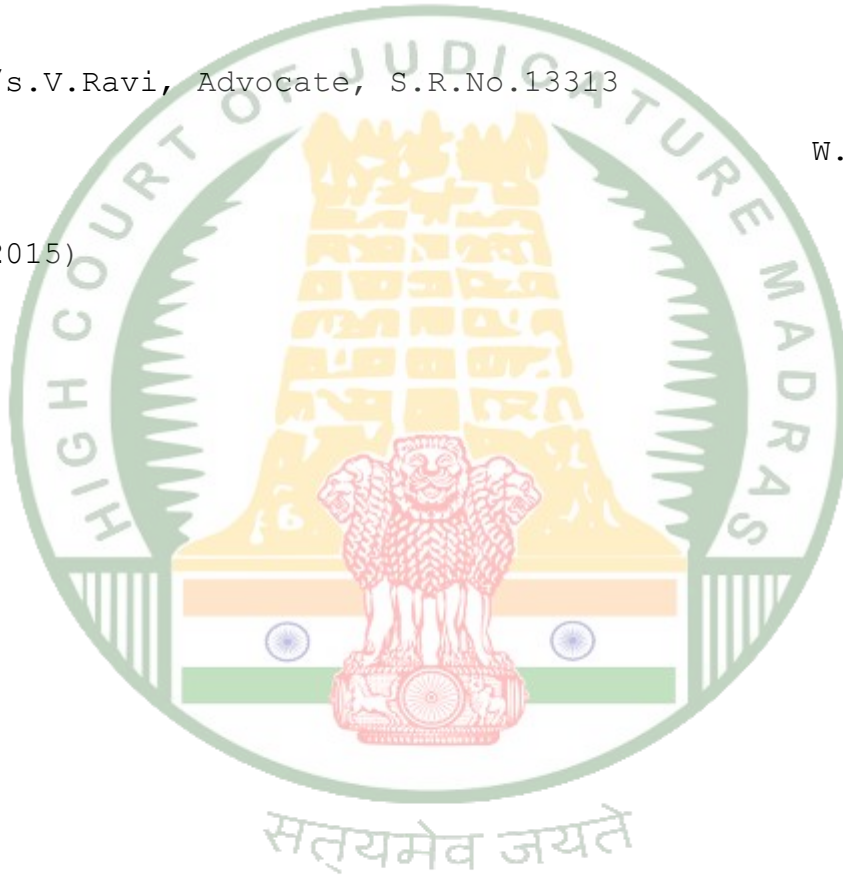
To

1. The Director of Art & Culture
Halls Road, Egmore,
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Chennai - 600 028.

+1cc to M/s.V.Ravi, Advocate, S.R.No.13313

W.A.No.120 of 2015

UG(CO)
CA(20/03/2015)



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