

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date:- 12-02-2015

Coram

The Honourable Mr. Justice SATISH K. AGNIHOTRI

and

The Honourable Mr. Justice M. VENUGOPAL

W.A.No.225 of 2015
and M.P.No.1 of 2015

- 1 The Secretary to Government
Health and Family Welfare Department
Government of Tamil Nadu
Fort St. George
Chennai 600 009
 - 2 The Director of Medical and Rural Health Services
Teynampet
Chennai 600 006
 - 3 The Director of Medical and Rural Health Services (ESIS)
Teynampet
Chennai 600 006
- Appellants/ Respondents
- Vs.
- Dr. S. Raja Rajan Respondent / Petitioner

Writ appeal preferred under Clause 15 of the Letters Patent against the order dated 04.07.2014 made in W.P. No.33498 of 2013.

W.P.No.33498 of 2013:- This petition prayed to issue a writ of certiorarified mandamus to call for the records on the file of the first respondent in connection with the impugned orders of transfer passed by the Secretary to Government Health and Family Welfare Department Government of Tamilnadu the 1st respondent herein in his proceedings No.G.O.(Rt) No.698 dated 19.7.2013 and Letter No. 32252/A2/2012-6 dated 18.10.2013 and the consequential orders of relieving passed by the third respondent vide Ref.No.17354/ESI/E1/1/2013 dated 13.8.2013 and Ref.No. 17354/ESI/E1/1/2013 dated 5.11.2013 respectively and quash the same as illegal and consequently direct the respondents to retain the petitioner as the Regional Administrative Medical Officer (ESIS) Coimbatore.

For appellants Mr. N. Sakthivel
Government Advocate

For respondent Mr. K. Ramanraj

JUDGMENT

(Judgment of the Court is delivered by SATISH K. AGNIHOTRI, J.)

The instant intra-court appeal arises from the order dated 04-07-2014 passed in W.P.No.33498 of 2013.

2. The writ petitioner, while working as Regional Administrative Medical Officer (Employees State Insurance Scheme (for short "the ESIS") and refitted as Chief Civil Surgeon (General) for administrative purpose, was transferred and posted as Chief Civil Surgeon (Orthopaedics Specialist) at Government Headquarters Hospital, Tenkasi, Tirunelveli vide G.O.(Rt)No.698 dated 19-07-2013. Thereafter, he made a representation dated 26-07-2013 to re-consider his request for transfer. The same was rejected vide communication dated 18-10-2013. By orders dated 13-08-2013 and 05-11-2013, he was directed to hand over the complete charge to Dr. Rajendran. Being aggrieved, the writ petitioner has come up with the instant writ petition, questioning the legality and validity of the aforesaid transfer orders, mainly on the ground that his transfer was made on account of some complaint as he had questioned the subordinate officer for his absence. Thus, the impugned transfer order was passed on account of mala fide exercise of power and also in violation of Rule 15(a) of the Tamil Nadu Government Fundamental Rules. The learned Single Judge, relying upon a decision of the Supreme Court in Rajendra Roy Vs. Union of India¹, held that if the veil of deceptive innocuousness is removed, the real object of transfer is not the administrative exigency but to get rid of an inconvenient employee from the present place of work. Thus, the instant intra-court appeal by the authorities.

3. The learned Government Advocate appearing for the appellants would submit that the authorities are competent to transfer an employee on account of certain complaints. On this basis, it cannot be held that the transfer was made on account of mala fide exercise of power. It was further contended that it is for the employer to post the employee in public interest and administrative exigency to have effective and efficient service. It was next contended that the conclusion of the learned Single Judge, that the real reason for transfer was not due to administrative exigency, is based on presumptions and was also not on the basis of any substantive material.

1 1993 (2) SCC 48

4. On the other hand, the learned counsel appearing for the writ petitioner/ respondent herein would submit in support of the order passed by the learned Single Judge contending that the transfer was made on the basis of a complaint. In that event, the writ petitioner should have been given an opportunity of hearing before the impugned transfer order was passed. The writ petitioner was holding an administrative post and therefrom, he has been transferred as Chief Civil Surgeon. It was next contended that the writ petitioner is retiring in the month of May 2015. Thus, the authority should consider posting him nearer to a place, where he proposes to settle down after retirement.

5. We have carefully examined the rival submissions of the learned counsel appearing for the parties, perused the pleadings and documents appended thereto.

6. It is well-settled principle that the High Court should exercise its extraordinary jurisdiction in cases of transfer, only in case of mala fide exercise of power, violation of any statutory provision and incompetency of the Officer, passing the order. In the case on hand, there is no grievance with regard to the incompetency of the Officer, who passed the impugned transfer order. So far as the violation of the Rules is concerned, it cannot be held that there was infraction of Rule 15(a) of the Fundamental Rules, as relied on by the writ petitioner/respondent herein. The rule clearly provides that the Government may transfer any Government Servant from one place to another, provided that on account of inefficiency or mis-behaviour or on his request, except that the Government Servant shall not be transferred substantively or appointed to officiate in a post carrying less pay than the pay of permanent post held by him. Thus, even on account of inefficiency of a Government Servant, the Government is competent to transfer him and as such, we do not find any breach of the statutory provision.

6. As far as the allegation of mala fides is concerned, except the self-serving statement that on the complaint of the Sub-ordinate Officer, the impugned transfer order was passed, the writ petitioner/respondent herein has not produced any material to substantiate his allegation that the transfer was made on the mala fide exercise of power. The transfer of a Government employee on a simple complaint to improve efficiency is permissible in law and that is within the domain of the employer to decide the administrative exigency and efficiency in the administration.

7. In *Rajendra Roy vs. Union of India and another* (supra), the Supreme Court held as under:

"7. x x x x x It is true that the order of transfer often causes a lot of difficulties and dislocation in the family set-up of the concerned employees but on that score the order of transfer is not liable to be struck down. Unless such order is passed mala fide or in violation of the rules of service and guidelines for transfer without any proper justification, the Court and the Tribunal should not interfere with the order of transfer. In a transferable post an order of transfer is a normal consequence and personal difficulties are matters for consideration of the department. x x x x x "

8. Further, in *State of Uttar Pradesh and another vs. Siya Ram and another*², the Supreme Court held as under:

"5. x x x x x 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. x x x x x "

9. Besides, in *State of Uttar Pradesh vs. Gobardhan Lal*, the Supreme Court held as under:

"7. x x x x x Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit³ 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

2 2004 (7) SCC 405

3 2004 (11) SCC 402

interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision."

That apart, in *Rajendra Singh vs. State of Uttar Pradesh*⁴, the Supreme Court held that transfer of an employee is not only an incident inherent in terms of appointment, but also, implicit as an essential condition of service in the absence of any specific indication to the contrary.

10. In *Registrar General, High Court of Judicature of Madras Vs. R. Perachi*⁵, the Supreme Court held thus:

"the transfer was purely on the administrative ground in view of the pending complaint and departmental enquiry against the first respondent. When a complaint against the integrity of an employee is being investigated, very often he is transferred outside the unit concerned. That is desirable from the point of view of the administration as well as that of the employee. The complaint with respect to the first respondent was that he was dominating the administration of the District Judiciary, and the District Judge had reported that his retention in the district was undesirable, and also that departmental enquiries were pending against him and other employees, with respect to their integrity. In the circumstances the decision of the then Chief Justice to transfer him outside that district could not be faulted."

11. For the reasons and analysis as aforesaid, the impugned order passed by the Writ Court is set aside. The writ petition is dismissed and the appeal is allowed. No orders to cost.

4 2009 (15) SCC 178

5 2011 (12) SCC 137

12. However, having regard to the fact-situation of the case, wherein the writ petitioner/respondent herein is likely to retire in the month of May 2015, if a representation after joining the place of posting is made by him for appropriate posting, the authorities are directed to consider the same sympathetically, so that the respondent can settle his life, after his retirement.

13. The connected miscellaneous petition is closed.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

glp

To

- 1 The Secretary to Government
Health and Family Welfare Department
Government of Tamil Nadu
Fort St. George
Chennai 600 009
- 2 The Director of Medical and Rural Health Services
Teynampet
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1 cc to Mr.K.Ramanraj, advocate, sr. 7948

1 cc to Government Pleader, Sr. 7652

JSV (CO)

KK 19/2

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