

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2015

CORAM:

The Honourable Mr.Justice K.K.SASIDHARAN

W.P.No.31396 of 2014
& M.P.Nos.1 and 2 of 2014

Dr.P.Santhi

... Petitioner

-Vs.-

1. The Government of Tamilnadu
Rep by its Secretary
Department of Higher Education
Fort St. George
Chennai - 600 009.
2. The Director of Collegiate Education,
DPI Campus, College Road
Chennai -600 006.
3. The Regional Joint Director of Collegiate Education
Trichy Region
Trichy - 21.
4. The Regional Joint Director of Collegiate Education
Vellore Region
Vellore - 6.
5. Thiruvalluvar University
Rep by its Registrar
Serkadu
Vellore 632 115.
6. Pachaiyappas Trust Board Management
rep by its Secretary
Pachaiyappas College Campus
Chennai - 30.

7 . C.Kandasami Naidu College for Women
Rep by its Secretary
College Committee
Cuddalore - 1.

8. The Principal
C.Kandasami Naidu College for Women
Cuddalore - 1.

9. Dr.Mallika Chandran

10. The Principal
Pachaiyappas College for Men
Kancheepuram.

... Respondents

Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying for a Writ of Certiorari calling for the records pertaining the order dated 26.11.2014 passed by the 7th respondent in R.C.No.A1/2054/2014 and quash the same.

For Petitioner : Ms.R. Vaigai
for V. Ajoy Khose

For Respondents : Mr. M.S.Ramesh
Addl. Government Pleader
for RR1 to 4

Mr.S.T.Rajan for R.5

Mr.K. Doraisami
Senior Counsel
for Mr.M. Devendran for RR 6 to 8 & 10

Mr.N. Baskaran for R.9

ORDER

The petitioner challenges the order dated 26 November 2014 transferring her from C.Kandasamy Naidu College for Women at Cuddalore to Pachaiyapa's College for Men, Kancheepuram with immediate effect on the ground of malafides and affecting her status as the Head of the Department and Member of the Syndicate of Thiruvalluvar University.

The facts:

2. The petitioner is an Associate Professor and Head of the Department of Mathematics. She is presently a faculty member in C.Kandasamy Naidu College for Women at Cuddalore. She is also a member of the Syndicate of Thiruvalluvar University from the Teachers Constituency. She is stated to be the office bearer of the Association of University Teachers. The College is managed by Pachaiappa's Trust. The Trust is running several colleges and educational institutions. Each College is stated to be a separate and independent unit for appointment of both teaching and non-teaching staffs. The petitioner appears to have made series of complaints against the ninth respondent ever since her appointment as Principal of C.Kandasamy Naidu College for Women at Cuddalore. The Syndicate of Thiruvalluvar University pursuant to the complaint preferred by the petitioner debarred the ninth respondent for a period of five years from undertaking the examination related works of the University for certain irregularities relating to awarding internal marks.

3. According to the petitioner, the ninth respondent prevailed upon the management to transfer her as her presence was not conducive for her mismanagement of the institution. The Secretary of the College Committee vide order dated 26 November 2014 transferred the petitioner from C.Kandasamy Naidu College for Women, Cuddalore to Pachaiyapa's College for Men, Kancheepuram. The transfer order is challenged on various grounds including jurisdiction.

Defense:

4. The Secretary, Pachaiyapa's Trust in his counter affidavit contended that due to administrative exigencies and to maintain peace and proper atmosphere in C.Kandasamy Naidu College for Women, Cuddalore, it became necessary for the College Committee to transfer the petitioner from C.Kandasamy Naidu College for Women, Cuddalore to Pachaiyapa's College for Men, Kancheepuram. According to the Secretary, pursuant to the decision taken by the College Committee of C.Kandasamy Naidu College for Women, Cuddalore, transfer order was issued by him in his capacity as Secretary of the College Committee. The Secretary has given details of the agitations and dharnas conducted by the petitioner along with others to recall the order passed by the management. According to the Secretary, the order of transfer was issued by the competent authority in a lawful manner under administrative exigencies and it was approved by the competent authority.

5. The ninth respondent filed a counter affidavit wherein it was contended that she has not played any part in so far as the transfer of the petitioner is concerned. According to the ninth respondent, the order passed by the University debarring her from undertaking examination related works is the subject matter of a writ petition before this Court.

Rival contentions:

6. The learned counsel for the petitioner made the following substantial contentions.

(i) The transfer order was issued by the Secretary, College Committee of C.Kandasamy Naidu College for Women, Cuddalore. It was not issued by Pachaiyappa's Trust. The Secretary of the College Committee has no jurisdiction to transfer a teacher from one college to another college.

(ii) The petitioner was transferred to a Junior College and as such it would affect her status.

(iii) The petitioner by virtue of her position as faculty member of C.Kandasamy Naidu College for Women, Cuddalore was elected to the Academic Council of Thiruvalluvar University and thereafter to the Syndicate of the said University. Her term would expire only on 22 September 2016. She would lose her membership on account of the transfer to a College functioning under a different University.

(iv) The transfer order was not issued in public interest or on account of administrative reasons. It was a mala fide exercise of power.

(iv) The ninth respondent took the matter with the educational authority and transferred the petitioner.

7. The learned Senior Counsel for Pachaiyappa's Trust justified the impugned order. Following are his substantial contentions:

(i) The Government have passed orders treating the Colleges administered by Pachaiyappa's Trust as one Unit for the purpose of appointment of staff, their promotions, transfers, etc. The management was therefore perfectly correct in transferring the petitioner from one institution to another.

(ii) The appointment order issued to the petitioner dated 23 December 1985 contained a provision that she is liable to be transferred to any College under the Pachaiyappa's Trust. The

transfer order therefore was made in accordance with the condition stipulated in the appointment order. The petitioner has therefore no right to challenge the transfer order.

Factual Analysis:

8. The petitioner was initially appointed as Assistant Professor by order dated 23 December'1985. The appointment was made by Pachaiyappa's Trust, Chennai. The petitioner was promoted as Associate Professor. She is presently the Head of the Department of Mathematics in C.Kandasamy Naidu College for Women, Cuddalore.

9. The petitioner appears to have taken up the issue regarding the alleged financial irregularities committed by the ninth respondent. The Regional Joint Director of Collegiate Education appears to have conducted surprise inspection and thereafter recommendation was made for appointment of a new Principal in the place of the ninth respondent. Similarly, pursuant to the complaint preferred by the petitioner, the University took action against the ninth respondent. The University issued an order debarring the ninth respondent from all examination related works of Thiruvalluvar University for a period of five years on account of the irregularities committed by her in awarding internal assessment marks.

10. While the matters stood thus, the Secretary, College Committee of C.Kandasamy Naidu College for Women, Cuddalore transferred the petitioner from the said institution to Pachaiyappa's College for Men, Kancheepuram.

Power to Transfer:

11. The first and foremost issue that arises for consideration is whether it was open to the Secretary, College Committee of C.Kandasamy Naidu College for Women, Cuddalore to transfer a faculty member of the said College to Pachaiyappa's College for Men, Kancheepuram.

12. There is no dispute that both C.Kandasamy Naidu College for Women, Cuddalore and Pachaiyappa's College for Men, Kancheepuram are educational institutions functioning under Pachaiyappa's Trust. The Trust is managed by the Chairman and Trustees. The Secretary of the Trust undertakes the functions for and on behalf of the Trust Board. The counter affidavit filed on behalf of respondents 6 and 7 does not contain a specific statement to the effect that Pachaiyappa's Trust has taken a decision to transfer the petitioner from C.Kandasamy Naidu College for Women, Cuddalore to Pachaiyappa's College for Men, Kancheepuram.

13. The learned Senior Counsel for the Pachaiyappa's Trust has taken up a contention that the Secretary of the Pachaiyappa's Trust is also the Secretary of C.Kandasamy Naidu College for Women, Cuddalore and as such a decision was taken by him to transfer the petitioner to Pachaiyappa's College for Men, Kancheepuram. I am not inclined to accept the said argument. Merely because the sixth respondent is also the Secretary of the concerned Educational Institution, it cannot be said that he is entitled to transfer a faculty member from one college to another.

14. The transfer order in question was issued by the Secretary of C.Kandasamy Naidu College for Women, Cuddalore. Even according to the respondents there is a committee constituted for the College at Kancheepuram. The Secretary of the College Committee of C.Kandasamy Naidu College for Women, Cuddalore is stated to be the Secretary of Pachaiyappa's College for Men, Kancheepuram. The Secretary is expected to function as the Correspondent of the institution.

15. The post of Secretary of the College Committee is constituted in accordance with the Tamil Nadu Private Colleges Act 1976. Each College has got its own Secretary. The fact that the Secretary of one College is also the Secretary of another College would not give him a right in his capacity as the Secretary of that College to transfer an employee to another College for the reason that he is the Secretary of the transferee college also. The transfers from one College to another should be made only by the Pachaiyappa's Trust. The Secretary of the Trust is empowered only to implement the order passed by the Trust. I therefore hold that the Secretary of C. Kandasamy Naidu College for Women, Cuddalore has no authority to transfer a Teacher from that College to another College managed by the Trust.

Pachiappa's Trust - A Corporate Body:

16. (a) The other contention taken by the petitioner relates to the transfer from one unit to another. According to the petitioner, C.Kandasamy Naidu College for Women, Cuddalore and Pachaiyappa's College for Men, Kancheepuram are separate, independent and individual units and as such transfer from one College to another is not permissible.

(b) The contention regarding individual units was answered by the learned Senior Counsel for the Trust by citing the Government order in G.O.Ms.No.1228 Education Department dated 27 June 1981 and the Government letter dated 9 June 1993. The Government have recognised the Pachaiyappa's Trust as a corporate body for the

purpose of making transfers from one institution to another.

(c) The Department of Collegiate Education vide letter dated 9 June 1993 made it very clear that six colleges run by Pachaiyappa's Trust should be treated as one Unit for purposes of appointment of staff, their promotions, transfers, etc. In view of this statutory recognition under the provisions of the Tamil Nadu Private Colleges Act and Rules and Regulations made thereunder, I accept the position highlighted by the learned Senior Counsel for the Trust. I therefore hold that the Colleges administered by Pachaiyappa's Trust are part of a corporate body and the Trust is having every authority to transfer teachers from one college to another without affecting their service rights.

Whether transfer would affect status:

17. The petitioner has taken up a contention that her position and status as Head of the Department of P.G. Department of Mathematics, C.Kandasamy Naidu College for Women, Cuddalore would get altered if she is transferred to Pachaiyappa's College for Men, Kancheepuram as there is no P.G. Course available in that College. The petitioner has taken up a further contention that by virtue of her appointment and service as Associate Professor in C.Kandasamy Naidu College for Women, Cuddalore which is affiliated to Thiruvallur University, she was selected to the Academic Council of the said University. Similarly, by virtue of her election to the Academic Council of Thiruvalluvar University she was elected as Syndicate Member of the said University. She is now transferred to Pachaiyappa's College for Men at Kancheepuram which is affiliated to a Madras University. The petitioner by virtue of her transfer to a College affiliated to a different University would lose her status as Head of the Department besides membership in the academic council and Syndicate of Thiruvalluvar University.

18. The Supreme Court in Vice-Chancellor, L.N. Mithila University v. Dayanand Jha (1986) 3 SCC 7, indicated that transfers must be made to an equivalent post. The Supreme Court observed:

"16. The true criterion for equivalence is the status and the nature and responsibility of the duties attached to the two posts. Although the two posts of Principal and Reader are carried on the same scale of pay, the post of Principal undoubtedly has higher duties and responsibilities. Apart from the fact that there are certain privileges and allowances attached to it, the Principal being the head of the

college has many statutory rights, such as: (i) He is the ex officio member of the Senate. (ii) He has the right to be nominated as the member of the Syndicate. (iii) As head of the institution, he has administrative control over the college Professors, Readers, Lecturers and other teaching and non-teaching staff. (iv) The Principal of a constituent college is also the ex officio member of the Academic Council of the university. And (v) he has the right to act as Centre Superintendent in the university examinations. It is thus evident that the High Court was right in holding that the post of Reader could not be regarded as an equivalent post as that of Principal in the legal sense. Maybe, when the affairs of a college maintained by the university are mismanaged, the Vice-Chancellor may, for administrative reasons, transfer a Professor or Reader of any department or college maintained by it to the post of the Principal of such college, but the converse may not be true. While the Professors and Readers by reason of their learning and erudition may enjoy much greater respect in society than the Dean or Principal of a college, it does not follow that the post of Principal must be treated as equivalent to that of a Reader for purposes of Section 10(14) of the Bihar State Universities Act, 1976, as amended."

19. The Supreme Court in *Tejshree Ghag v. Prakash Parashuram Patil*, (2007) 6 SCC 220, observed that an order of transfer cannot prejudicially affect the status of an employee. The Supreme Court said:

"15. The orders of transfer were passed by Authority in purported exercise of its executive power. Executive power can be exercised only in terms of the extant rules. It is well settled that where executive order results in civil consequences, principles of natural justice are required to be complied with prior thereto. It is not a case where an order of transfer was passed by way of change of place of employment within an organisation simpliciter. An order of transfer ordinarily should be in terms of the existing rules. Transfer may even be incidental to the

conditions of service, but thereby nobody can be deprived of his existing right. Existence of a power and exercise thereof are two different concepts. An executive power in absence of any statutory rules cannot be exercised which would result in civil or penal consequences. Such exercise of power must, moreover, be bona fide. It cannot be done for unauthorised purpose. An executive order passed for unauthorised purpose would amount to malice in law. An order of transfer cannot prejudicially affect the status of an employee. If orders of transfer substantially affect the status of an employee, the same would be violative of the conditions of service and, thus, illegal. Transfers must be made to an equivalent post. "

20. The petitioner has been working as Head of the Department of C.Kandasamy Naidu College for Women, Cuddalore. The said college is affiliated to Thiruvalluvar University. She is now transferred to Pachaiappa's College for men at Kancheepuram, which would come under the jurisdiction of Madras University. The impugned transfer order would therefore result in civil consequences to the petitioner. She would be deprived of her elevated position as a Member of the Syndicate on account of her transfer to a College which comes under the jurisdiction of a different University.

21. There is no Post Graduate Course in Mathematics in Pachaiappa's College for Men at Kancheepuram. The petitioner is therefore correct in her contention that she would lose her status as Head of the Department of Mathematics on account of transfer to a Junior College, besides her membership to the Syndicate of Thiruvalluvar University. I therefore hold that the transfer would affect the status of the petitioner and as such the same would be violative of the conditions of service.

Transfer - Whether mala fide exercise of power:

22. The transfer order proceeds as if it is a simple transfer on administrative ground. However, the counter affidavit filed by the sixth respondent indicates that it was only to maintain peace and proper atmosphere in C.Kandasamy Naidu College for Women, Cuddalore the petitioner was transferred to a College at Kancheepuram. The counter affidavit filed on behalf of the Trust very clearly stated that the decision in question was taken only by the College Committee of C.Kandasamy Naidu College for Women, Cuddalore and the sixth

respondent in his capacity as the Secretary of the said College issued the transfer order. This clearly supports the contention of the petitioner that Pachaiyappa's Trust has not passed the order of transfer.

23. The ninth respondent in her counter affidavit contended that she has not played any role in the matter of transfer of the petitioner and it was a simple and pure administrative transfer. The petitioner has produced a copy of the representation submitted by ninth respondent to the District Collector, Cuddalore and the Regional Joint Director of Collegiate Education, Trichy requesting to remove the petitioner from the College. According to the ninth respondent until and otherwise bad elements like the petitioner and three other faculty members are removed from the College it would not be possible to produce outstanding students with good conduct. This document was filed along with the typed set of papers as early as on 28 November 2014. The ninth respondent filed her counter affidavit on 9 February 2015. The ninth respondent has not denied the genuineness of the document produced by the petitioner. Therefore it is clear that the ninth respondent played an active role in transferring the petitioner from Cuddalore to Kancheepuram.

24. There is no dispute that transfer is a management function. It is open to the management to transfer employees on administrative reasons. The transfer being an incident of service, the employees cannot be heard to say that they should be permitted to work for years together at a particular place. Even the appointment order issued to the petitioner contained a clause that she is liable to be transferred to any of the Colleges under the Pachaiyappa's Trust. Therefore, it is very clear that the Trust has got every right to transfer her. However, transfer should not be a mala fide exercise of power. The transfer should not be punitive also.

25. In case the management is of the view that the petitioner has indulged in acts detrimental to the interest of the institution, nothing prevented the trust board from taking action against her. The College should be conducted in a peaceful atmosphere. Students should be in a position to learn without any problem. Teachers should be a role model to the students. In case disciplinary action is taken against an employee, he/she would be in a position to submit his/her explanation and to defend the proceedings. However that would not be in the case of transfer. The transfer order would appear as if it is an administrative transfer. However at times it would be for achieving something which cannot otherwise be achieved. In case transfer was made as a punitive measure, such orders would be amenable to judicial review.

26. In *P. Pushpakaran v. Coir Board and another* 1979 (1) LLJ 139 (Kerala) V. Khalid, J (as His Lordship then was) observed that a transfer can uproot a family, cause irreparable harm to an employee and drive him to desperation. The learned Judge further said:

"24. The right to transfer an employee is a powerful weapon in the hands of the employer. Sometimes it is more dangerous than other punishments. Recent history bears testimony to this. It may, at times, bear the mask of innocuousness. What is extensible in a transfer order may not be the real object. Behind the mask of innocence may hide sweet revenge, a desire to get rid of an inconvenient employee or to keep at bay an activist or a stormy petrel. When the Court is alerted, the Court has necessarily to tear the veil of deceptive innocuousness and see what exactly motivated the transfer. This Court can and should, in cases where it is satisfied that the real object of transfer is not what is apparent, examine what exactly was behind the transfer."

27. The Supreme Court in *Somesh Tiwari v. Union of India*, (2009) 2 SCC 592, held that judicial review would lie in case of punitive transfer. The Supreme Court said:

"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.

Conclusion:

28. The materials available on record very clearly shows that only as a measure of punishment, the petitioner was transferred from Cuddalore to Kancheepuram. The representation submitted by the ninth respondent to the District Administration and Education Department proceeds as if the petitioner and other faculty members have been disturbing the normal functioning of the College from 2002 onwards. The petitioner is therefore justified in her contention that under the guise of transfer the sixth respondent was actually implementing a hidden agenda. I am therefore of the view that the transfer was made only as a punitive measure and it was not a simple transfer on administrative ground as projected by the sixth respondent.

Disposal:

29. In the result, the order dated 26 November 2014 is set aside. However, I make it clear that this order would not stand in the way of taking appropriate action by Pachiappa's Trust to re-open the College, to ensure orderliness and to enforce discipline inside the campus.

30. In the upshot, I allow the writ petition. Consequently, the connected MPs are closed. No costs.

Sd/-
Asst. Registrar

/true copy/

Sub Asst. Registrar.

Tr

To

1. The Government of Tamilnadu
Rep by its Secretary
Department of Higher Education
Fort St. George , Chennai - 600 009.
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+1cc to Mr.V.Ajoy Khose, Advocate, S.R.No.11166
+1cc to Mr.N.Bhaskaran, Advocate, S.R.No.11705
+1cc to Mr.M.Devendran, Advocate, S.R.No.11173

AD(CO)
CA(05/03/2015)

W.P.No.31396 of 2014

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