IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 08.09.2015

Delivered on : 21.09.2015

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.21975 of 2015
and M.P.Nos.2 and 3 of 2015

N.Saravanakumar .. Petitioner

Vs.

1.The Government of Tamil Nadu
Rep. By its Secretary,
Commercial Taxes and Registration Department,
Fort St.George,
Chennai-600 009.

2.The Principal Secretary/Commissioner of
Commercial Taxes,
O/o The Commissioner of Commercial Taxes,
Ezhilagam, Chennai-5.

3.K.Rajaraman,
Principal Secretary/Commissioner of
Commercial Taxes,
O/o The Commissioner of Commercial Taxes,
Ezhilagam, Chennai-5. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records from the second respondent in connection with the impugned order of transfer under Proc.No.CP2/10306/2015 dated 14.07.2015 issued by the second respondent insofar as transferring the petitioner from Tambaram, Assessment Circle, Chennai (East) to Assistant Commissioner (CT) (Audit), Namakkal, Salem Division and quash the same.

For Petitioner : Mr.V.Prakash, Senior Counsel
for Mr.K.Krishnamoorthy

For Respondents: Mr.P.H.Arvind Pandian,
Additional Advocate General
assisted by
Mr.V.Haribabu, AGP(Taxes)

O R D E R

The petitioner was recruited as Assistant Commercial Tax Officer by way of direct recruitment in the year 2008 through open competitive examinations conducted by the Tamil Nadu Public Service Commission (TNPSC) in respect of vacancies arose between 2001 and 2007. The petitioner got promotion to the post of Commercial Tax Officer in the year 2011, but according to him, promotion was given to him only on 19.07.2012. in pursuant to the order passed in W.P.No.19088 of 2012. The petitioner would further state that since his juniors were sought to be promoted to the post of Assistant Commissioner, W.P.Nos.11129 and 11324 of 2013 were filed and the petitioner and others got promotion as Assistant Commissioners with effect from 20.02.2014 on par with their juniors and in compliance of the orders passed in the above said writ petitions, the petitioner was posted as Assistant Commissioner (Commercial Taxes), Dindigul Enforcement Wing, instead of posting him in the Assessment Circle.

2. The petitioner would further state that he has submitted a representation dated 23.05.2014 to the second respondent requesting him to post in the assessment circle during the general transfer, which was not acceded to and according to him, when the above said writ petitions were pending, an audit was said to have been conducted on 30.10.2014, wherein he was stated to be absent and based on the said report, petitioner was issued with a charge memo by the second respondent under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and it was not even preceded by a show cause notice and by way of punitive measure, he was transferred from the post of Assistant Commissioner (Commercial Taxes), Dindigul Enforcement Wing to the post of Assistant Commissioner (Audit), Sivaganga District. It is also stated by the petitioner that some of his batchmates had filed writ petitions challenging G.O.Ms.No.40, issued by the first respondent, empaneling the juniors for promotion to the post of Deputy Commissioners and this Court has granted an order of ad-interim stay in W.P.No.9926 of 2015 and it is still pending and the third respondent is giving much benefits to the transferees in the matter of seniority, overlooking the genuine claim of directly recruited Assistant Commercial Tax Officers for the year 2008 and the petitioner has been singled out and he has also been subjected to unfair treatment.

3. The petitioner would contend that as per Tamil Nadu Commercial Taxes service rules, an Assistant Commissioner, for getting promotion to the post of Deputy Commissioner, has to put in 2 years of assessment experience in the cadre of Assistant Commissioner and since the petitioner has been transferred from Enforcement Wing to Audit Wing, he may not be able to fulfill the said mandatory criteria so as to enable him to get promotion to the post of Deputy Commissioner. The petitioner would further contend that he has been subjected to frequent transfers for the reason that he was posed at Assistant Commissioner (CT), Tambaram Assessment Circle, vide proceedings dated 13.07.2015 and when he was about to join in the said assessment circle, by another order dated 14.07.2015, the petitioner was transferred from Tambaram Assessment Circle (East) to Assistant Commissioner (CT) (Audit), Namakkal, Salem Division stating that grave charges or reports of

grave misconduct are pending against him and though he has been transferred, the post which he was holding at Tambaram Assessment Circle is still vacant and challenging the legality of the said proceedings dated 14.07.2015, the petitioner came forward to file this writ petition.

4. Mr.V.Prakash, learned Senior Counsel appearing for the petitioner has drawn the attention of this Court to the typed set of documents and would contend that the petitioner has been singled out for unfair treatment and he has been compelled to approach this Court for getting the relief and so far, he is successful and though he was posted in Tambaram Assessment Circle, vide proceedings dated 13.07.2015, within one day from the said order, the impugned order came to be passed transferring him from that post to Assistant Commissioner (CT) (Audit), Namakkal, Salem Division alleging that grave charges or reports of grave misconduct is pending and the said impugned order is vitiated on account of mala fide and it is also punitive and hence, the said order is unsustainable in law. It is also contended by the learned Senior Counsel appearing for the petitioner that though the petitioner is eligible to get included in the panel for promotion to the post of Deputy Commissioner, he could not get that chance for the reason that unless and until he completes two years of service in the assessment circle, his name may not be included in the panel for promotion to the said post and therefore, prays for quashment of the impugned order and consequently directing the respondents to repost him in the very same post from where he was transferred.

5. Per contra, Mr.P.H.Arvind Pandian, learned Additional Advocate General assisted by Mr.V.Haribabu, learned Additional Government Pleader (Taxes) has drawn the attention of this Court to the counter affidavit filed on behalf of the respondents and would contend that as per G.O.(3D).No.24 of the first respondent dated 01.08.1995, every Assistant Commissioner (Commercial Taxes) shall be given opportunity to work in assessment wing for three years, not necessarily in a continuous manner and in accordance with the said norm, the petitioner was originally posted as Assessment Commissioner (CT) (Enforcement), Dindigul on promotion and thereafter, transferred and posted as Assistant Commissioner (CT) (Audit), Sivagangai and he joined in the said post on 22.11.2014 and it is a non-assessment post. The decision taken to post him in the non-assessment post was for the reason that he has committed some irregularities while working in Melur Assessment Circle as Commercial Tax Officer, involving huge amount of revenue loss to the Government to the tune of Rs.8.25 crores and while he was functioning in that capacity from 30.07.2012 to 28.02.2014, he failed to take proper action in the collection of arrears to the tune of Rs.11,22,11,701/- from Tvl.Solaimalai Automobiles Private Limited under the provisions of Revenue Recovery Act and also failed to monitor the finalization of assessment of the said dealer under Tamil Nadu Value Added Taxes Act and Tamil Nadu Tax on Entry of Motor Vehicles to Local Areas Act, 1990 for the year 2009-2010 to 2012-2013 and also failed to take action under the Negotiable Instruments Act, 1881, in respect of dishonour of cheque given by

the above said assessee for a sum of Rs.825,57,198/- and he has failed to take into consideration the interest of the State revenue. Action was taken to recover the said amount from the said dealer under Rule 9(4) of the Tamil Nadu Value Added Taxes Rules, 2007 which creates prohibition to register any vehicle of the said dealer with the concerned Regional Transport Office and further, "Form U" Notice has been issued in favour of the said dealer on 23.01.2013 by the petitioner and thereby, he acted against the interest and prejudicial to the revenue collection and on account of the above said series of lapses, the petitioner was issued with a charge memo dated 30.10.2014 under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules and charges were also framed against him, which was served on him on 15.11.2014 and the petitioner is yet to submit his written statement of defence.

6. It is the further submission of the learned Additional Advocate General that transfer of the petitioner was made purely on account of public interest and also as per the guidelines laid down in G.O(3D).No.24 of the first respondent dated 01.08.1995 r/w. G.O.Ms.No.10, Personnel and Administrative Reforms Department dated 07.01.1994 and it is an administrative decision, taken to place the petitioner in a non-assessment post. The learned Additional Advocate General has invited the attention of this Court to Rule 4 of the Special Rules for Tamil Nadu Commercial Taxes Service which speaks about qualification for promotion and as per the said rule, an officer in the cadre of Assistant Commissioner satisfactorily completes his probation and satisfies other conditions such as clean record of service, no punishment etc. for being considered for promotion to the post of Deputy Commissioner and no service right or his seniority has been affected on account of framing of the said charges or based on the consequent transfer and further that only officers of clean record of service have been posted in the assessment wing and the petitioner has been posted to non-assessment post to ensure that persons working in assessment wing have unblemished record of service and public interest is the foremost criteria while taking such a decision. Insofar as the submission made by the learned Senior Counsel appearing for the petitioner that unless and until the concerned officer possess two years of assessment experience, he cannot be considered for promotion to the next post, it is the submission of the learned Additional Advocate General that as per Rule 4(c) of the Tamil Nadu Commercial Taxes Service Rules, approved probationer is the only eligible criteria for being considered for promotion to the post of Deputy Commissioner (CT) and therefore, prays for dismissal of this writ petition.

7. The petitioner has filed a rejoinder to the counter affidavit and would contend that as per the counter affidavit, the impugned order of transfer came to be issued only in the light of the charges levelled against him and based on the very same charges, he was transferred from Dindigul to Sivagangi, vide order dated 30.10.2014 and once again he was transferred from Sivagangai to Tambaram and on the very next day, he was transferred from Tambaram to Namakkal and he has been subjected to transfers three

times a year as a punitive measure and while placing him in the non-assessment post, the respondents went upon to disqualify him for getting promotion to the next post and also dealt with the merits of the charge memo also. The learned Senior Counsel appearing for the petitioner has also relied upon the judgment of this Court in Somesh Tiwari v. Union of India and Others [(2009) 2 SCC 592] wherein it has been observed that when an order of transfer is passed in lieu of punishment, the same is liable to be set aside as the same is wholly illegal.

8. This Court paid it's best attention to the rival submissions and also perused the materials placed before it as well as the judgment relied on by the learned Senior Counsel appearing for the petitioner.

9. In G.O.Ms.No.10 issued by the Personnel and Administrative Reforms (Personnel) Department dated 7.1.1994 stipulates revised instructions with regard to the transfer of Government servants from one station/post to another once in three years and as per Annexure-I, while effecting general transfers of Government servants in Group A, B and C, the said transfer to be effected during a specific period only and clause III of Annexure I speaks about exceptions to the general guidelines and as per sub-clause (f) "in cases where severe allegations are pending enquiry, when it is considered necessary in the public interest and sufficient in lieu of suspension, that the officer may be transferred; in that case, transfer shall be effected to a vacant post in another station or to the post where the junior most person of the same category is working. Subsequently the said department has issued consolidated clarifications and directions in Letter No.23847/S/98-1 dated 5.8.1998 and clause III of the said letter/instructions deals with exceptions to the general guidelines and it is relevant to refer to Clause (f) of the said exceptions as under:

> "In cases where serious allegations are pending enquiry, when it is considered necessary in the public interest, and sufficient in lieu of suspension, the officer may be transferred-in such cases, transfer shall be effected to a vacant post in another station or to the post where the junior most person of the same category is working.
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> Transfers shall not be effected on the basis of allegations, unless the allegations are found to be prima facie true by a preliminary enquiry and it is decided by the transferring authority that the continuance of the Officer in the same station is injurious to public interest and that he cane be transferred rather than suspended from service. When such transfers on complaints/allegations are made after preliminary enquiry, it should be followed up by a detailed investigation and disciplinary action instituted on allegations finally found to be substantiated. (see Govt. Lr.No.86456/P&A.R.(Per.S)/93-7 dated 9.8.94)"

10. Admittedly the second respondent has issued a charge memo dated 30.10.2014 and it is relevant to extract Annexure-I of the Statement of charges framed against the petitioner:

"Charge No.1:

That Thiru.N.Saravanakumar, Assistant Commissioner (CT) while holding the post of CTO, Melur during the period from 30.07.2012 to 28.02.2014 had failed to take action relating to arrear collection of Rs.11,22,11,701/- from Tvl.Solaimalai Automobiles (P) Ltd. (TIN:3344941175) under Tamilnadu Revenue Recovery Act, 1864 read with Section 49 of the TNVAT Act, 2006 and Section 5 of Tamil Nadu Tax on Entry Tax on Entry of Motor Vehicles to Local Areas Act, 1990 and thereby caused loss of revenue to the State.

Charge No.2

That Thiru.N.Saravanakumar, Assistant Commissioner (CT) during the aforesaid period in the aforesaid office had failed to monitor the finalization of the Assessments of Tvl.Solaimalai Automobiles (P) Ltd. (TIN 3344941175) under the TNVAT Act, 2006 and Tamil Nadu Tax on Entry Tax on Entry of Motor Vehicles to Local Areas Act, 1990 for the years 2009-10 to 2012-13.

Charge No.3

That Thiru.N.Saravanakumar, Assistant Commissioner (CT) during the aforesaid period in the aforesaid office being the custodian of the Public Revenue and incharge of reconciliation for the Assessment circle failed to action under the Negotiable Instruments Act 1881 on the dishonouring of the cheques by Tvl.Solaimalai Automobiles (P) Ltd. (TIN 3344941175) to an amount of Rs.8,25,57,198/- and thereby acted against the interest of Public Revenue.

Charge No.4

That Thiru.N.Saravanakumar, Assistant Commissioner (CT) during the aforesaid period in the aforesaid office lifted the Form 'U' notice, though the dealer was in arrears of tax for the years 2009-10 to 2012-13 under the TNVAT Act, 2006 and Tamil Nadu Tax on Entry Tax on Entry of Motor Vehicles to Local Areas Act, 1990, with ulterior motive and non-application of mind and thereby acted against the interest of Govt. Revenue.

Charge No.5

That Thiru.N.Saravanakumar, Assistant Commissioner (CT) during the aforesaid period in the aforesaid office failed to watch the prompt filing of returns by

Tvl.Solaimalai Automobiles (P) Ltd. (TIN 3344941175) under Section 21 of the TNVAT Act, 2006 and Section 7 of the Tamil Nadu Tax on Entry Tax on Entry of Motor Vehicles to Local Areas Act, 1990 for the years 2009-10 to 2012-13 and thereby acted against the interest of Public Revenue.

Charge No.6

That Thiru.N.Saravanakumar, Assistant Commissioner (CT) during the aforesaid period in the aforesaid office failed to levy and collect interest under Section 42(3) of the TNVAT Act, 2006 and Section 15 of the Tamil Nadu Tax on Entry Tax on Entry of Motor Vehicles to Local Areas Act, 1990 for the years 2009-10 to 2012-13 from Tvl.Solaimalai Automobiles (P) Ltd. (TIN 3344941175) for their belated payment of tax dues and thereby caused loss of Revenue of Rs.2,96,15,734/- to the State.

Charge No.7

That Thiru.N.Saravanakumar, Assistant Commissioner (CT) during the aforesaid period has failed to produce true facts to the superiors. As per statistics for the Madurai Division upto August 2014 the revenue involved relating to uncollected dishonoured cheques is Rs.5.10 crore only. Whereas actual revenue involved because of dishonoured cheque relating to Tvl.Solaimalai Automobiles (P) Ltd., alone amounts of Rs.2.96 crores. This discrepancy points out to deliberated intention on the part of Thiru.N.Saravanakumar, Assistant Commissioner (CT) suppress true facts from the superior authorities.

Charge No.8

That Thiru.N.Saravanakumar, Assistant Commissioner (CT) by his aforesaid acts during the aforesaid period in the aforesaid post had failed to maintain absolute integrity and devotion to duty and thereby caused huge loss of revenue to the exchequer and by the above said lapses he has thereby violated Rule 20(1) of the Tamil Nadu Government Servants Conduct Rules, 1973."

11. It is the stand of the official respondents that in the light of the grave and serious charges pending against the petitioner, decision has been taken in public interest keeping him out of the post involving assessment, till the completion of disciplinary proceedings and therefore, he has been transferred to an non-assessment post. The petitioner to some extent justified in expressing his grievance for the reason that he has been subjected to frequent transfers within a year. The petitioner was transferred and posted as Assistant Commissioner (CT) Assessment Circle Tambaram, Chennai, vide order of the second respondent dated 13.07.2015 and it seems that the office of the second respondent

has realized the mistake that he has been posted from non-assessment post to assessment post and immediately effected transfer to the post of Assistant Commissioner (CT) (Audit), Namakkal, Salem Division, vide impugned order dated 14.07.2015. The second respondent should have taken extra care while effecting transfer of the petitioner to the assessment circle but the said official has not done so. Further the counter affidavit of the official respondents would disclose that since the irregularities committed by him in Melur Assessment Circle as Commercial Tax Officer resulted in huge revenue loss, Government took a decision in public interest and it cannot be faulted with. It is also pertinent to point out at this juncture that fair and proper collection of taxes bring more revenue to the State which would ultimately benefit the public and in the light of the seriousness of the charges framed against the petitioner, the second respondent took a decision in public interest to post the petitioner in a non-assessment post and it cannot be faulted with.

12. No doubt, it is well settled position of law that transfer is an incidence of service and no public servant can claim as a matter of right to get posted to a particular post or place and further that punitive transfers cannot be effected.

13. It is also relevant and useful to refer the judgment of the Hon'ble Supreme Court of India in The Registrar General, High Court of Judicature at Madras v. R.Perachi and Others[2011 (10) Scale 606 = 2012-I-M.L.J. 289 (SC)= (2011) 12 SCC 137]. The facts of the case would disclose that the respondent was holding the additional charge of Personal Assistant to District Judge, Thoothukudi and he was expecting regular promotion to the post of Personal Assistant to District Judge and he along with two other employees were transferred out of the District by the appellant on administrative grounds and it was put to challenge. The respondent took a stand that though the Registrar General is having ample power to transfer employees from one District to another District and there was no mala fide intention in transfer and the chance of getting promotion is getting affected on account of inter-district transfer. The Division Bench of this Court has found that the orders or transfers were effected on the basis of the report received from the Vigilance Cell of Madras High Court and found that the order of transfer came to be passed on an anonymous letter and thereafter on the basis of a report from the District Judge and after ordering for a vigilance enquiry. The Division Bench of this Court has decided the case in favour of the respondent/employee holding that the employer is entitled to consider whether the particular employee is suitable to work in a particular place or to continue there and it is however to be seen that transfer has not affected the service conditions in any way and their chances of promotion were also not diluted. The Division Bench also observed that after obtaining the remarks of the District Judge, the appellant ought to have issued a notice and sought explanation from him and since such a course was not adopted, has set aside the transfer with a direction to restore him to the original place of posting. The Registrar General of High Court of Madras, aggrieved

by the order passed by the Division Bench, has filed S.L.P.(C) No.647 of 2009 and it was admitted and numbered as C.A.No.7936 of 2011 and the Hon'ble Supreme Court of India has taken into consideration very many judgments rendered by it and allowed the appeal and thereby sustained the order of transfer. It is relevant to extract paras 27 and 32 of the said judgment:

> "27. The other ground on which the Division Bench has interfered with the transfer order is that according to the Division Bench, but for this transfer order there was no other impediment for the District Judge to promote the Respondent 1. The Division Bench was of the view that the first respondent had lost the opportunity of getting promoted to the post of PA to the District Judge on account of this transfer, and therefore the same was punitive. As far as this finding of the Bench is concerned, it ought to have noted that the transfer is an incident of service, and the first respondent himself had clearly stated in Para 8 of his affidavit in support of the petition that there was no mala fide exercise in the present transfer. As seen above, 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.
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> ....
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> 32. As can be seen from these judgments, they were all rendered in altogether different context. In the present case we are concerned with a Sheristadar who has been transferred on receiving a complaint, although an anonymous one, but against whom a departmental enquiry is pending. He has been transferred to another district though retaining him in the same cadre with the same pay as well as his seniority. Such an action was fully justified and within the authority of the High Court. No observations were made against him, nor was any stigma attached. The reliance on the above three judgments to interfere in such an order clearly shows a non-application of mind by the Division Bench to the problem which the High Court Administration was faced with, and which was being attended in accordance with the relevant rules. In Centre for Public Interest Litigation [(2005) 8 SCC 202] the grievance was with respect to the likely appointment of Respondent 3 to the post of Chief

Secretary, Uttar Pradesh when she was facing criminal prosecution. This Court had therefore directed that she be transferred to some other post in the cadre/grade to which she belonged. It was in this context that the Court made a general observation that postings in sensitive posts should be made in a transparent manner so that there is no scope for making grievance, though grievances can be made for ulterior motive with the intention of damaging the reputation of an officer who is likely to be appointed in a sensitive post. These observations have also no application in the present case since all that has happened is that the first respondent has been transferred from one district to another in view of a complaint received against him and a pending inquiry. It cannot be said that the action was with a view to deny him any post. In fact the first respondent himself had stated in his writ petition to the High Court that there was no mala fide exercise in his transfer."

14. The second respondent should be extra careful and conscious while effecting frequent orders of transfer even in respect of officials who are facing disciplinary proceedings and they need not be subjected to frequent transfers within a short span of time. The point urged by the learned Senior Counsel appearing for the petitioner that in the absence of experience in assessment circle for a particular period of term, the petitioner chances of getting promotion to higher rank is getting affected, is unsustainable in the light of the stand taken by the official respondents in para 10 of the counter affidavit which is based on Special Rule 4(c) of Tamilnadu Commercial Taxes Service Rules.

15. This Court on a thorough appreciation of rival submissions and careful scrutiny and consideration of entire materials placed before it, is of the view that there is no error or infirmity in the impugned order of transfer passed by the second respondent.

16. In the result, this Writ Petition is dismissed. It is made clear that the observations made herein are only for the purpose of disposal of this writ petition and this Court has not gone into merits of the charges framed against the petitioner as well as the defence to be projected by the writ petitioner and the Disciplinary Authority is to adjudicate the same, based on appreciation of materials placed before him. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar (Judicial)

/true copy/

Sub Asst. Registrar

jvm

To
1.The Secretary,
Government of Tamil Nadu
Commercial Taxes and Registration Department,
Fort St.George,
Chennai-600 009.

2.The Principal Secretary/Commissioner of Commercial Taxes,
O/o The Commissioner of Commercial Taxes,
Ezhilagam, Chennai-5.

+1 cc to Special Government Pleader, sr.51166

W.P.No.21975 of 2015

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