

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2015

CORAM:

The Honourable Mr.Justice K.K.SASIDHARAN

W.P.No.17808 of 2014
& M.P.Nos.1 and 2 of 2014

S. Porchezhan

..Petitioner

-Vs.-

1. The Joint Director (Personal)
Department of School Education
College Road
Chennai-600 006.
2. The District Collector
Dharmapuri District
Collectorate
Dharmapuri.
3. The Chief Educational Officer (SSA)
Old DEO Office
Near Periyar Statute
Dharmapuri
Dharmapuri District.
4. The Assistant Project Officer
SSA Office
Dharmapuri
Dharmapuri District.
5. District Revenue Officer
Dharmapuri
Dharmapuri District.

6. Mr. Basvaraj ..Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorari calling for the records of the first respondent pertaining to the impugned transfer order dated 19.6.2014 made in R.O.C.No.43093/C4/E1/2014 and quash the same as illegal.

For Petitioner : Ms. A. Arulmozhi

For Respondents: Mr.M.S. Ramesh
Addl. Govt. Pleader
for RR1 to 5

ORDER

The order transferring the petitioner from Dharmapuri District to Sivagangai is challenged on the ground that it was a malafide exercise of power.

The facts:

2. The petitioner is presently working as Block Resource Teacher Educator. He was originally posted at Block Resource Centre, Anakkavur, Thiruvannamalai District. The petitioner was transferred to Palacode in the District of Dharmapuri on 29 October 2010. The petitioner appears to have cited the attention of the authorities with regard to the financial misconduct committed by the fourth respondent. The petitioner filed Criminal Original Petition in CrI.O.P.No.7277 of 2014 praying for a direction to register a complaint against the fourth respondent. The fourth respondent influenced the authorities and the same resulted in deputing the petitioner to Karimangalam. The petitioner joined duty at Karimangalam on 1 April 2014. Thereafter deputation was cancelled and the petitioner joined at Palacode. The first respondent in the meantime issued a charge memo to the petitioner dated 5 May 2014 alleging that he has been making false complaints against Superiors.

3. While so, the first respondent by order dated 19 June 2014 transferred the petitioner from Palacode to Sivagangai District. According to the petitioner, the transfer order was not issued on administrative grounds. The petitioner therefore challenges the transfer order on multiple grounds.

4. The first respondent filed a counter affidavit wherein it was contended that the transfer has nothing to do with the proceedings initiated against the petitioner. According to the first respondent the petitioner preferred series of complaints alleging certain irregularities against the fourth respondent. The third respondent submitted a report to the effect that complaints were all false in nature. The transfer was a routine one. Accordingly the first respondent justified the impugned order.

5. I have heard the learned counsel for the petitioner and the learned Additional Government Pleader on behalf of respondents 1 to 4.

Discussion:

6. The petitioner was initially appointed in Block Resource Centre at Thiruvannamalai District. He was transferred to Palacode in the District of Dharmapuri on 29 October 2010. The affidavit filed in support of the writ petition contains details of proceedings initiated by the petitioner against the fourth respondent. The counter affidavit filed by the first respondent also contains details of such proceedings, enquiry conducted by the third respondent and the orders passed by the competent authority.

7. The first respondent in his counter affidavit very clearly admitted that the transfer order was issued pursuant to the letter dated 12 June 2014 issued by the second respondent. Therefore it is very clear that it was only on account of the instruction given by the District Collector the petitioner was transferred. The first respondent was therefore not correct in his contention that the transfer was only on administrative grounds.

8. The counter affidavit filed by the first respondent very clearly shows that it was prepared by none other than the fourth respondent against whom allegations were made by the petitioner.

9. The following instances would make it clear that the counter affidavit was drafted only by the fourth respondent.

(a) In paragraph 7 of the counter affidavit it was indicated that the said School is run by a lady Block Resource Teacher Educator and "not by me". Similarly in paragraph 18 of the counter affidavit it is stated that the fifth respondent conducted enquiry on 26 February 2014 in which 31 persons were enquired including the petitioner and "me".

(b) Admittedly the complaint was preferred only against the fourth respondent. Therefore the word "me" refers only to the fourth respondent. The first respondent appears to be a name lender. The first respondent simply signed the counter affidavit prepared by the fourth respondent.

(c) The series of proceedings referred to in the counter affidavit filed by the first respondent shows that it was only by way of punishment the petitioner was transferred from Dharmapuri District to Sivagangai.

10. The petitioner has produced a copy of the D.O. Letter dated 12 June 2014 whereby and whereunder the District Collector, Dharmapuri called upon the Director of School Education to transfer the petitioner out of Dharmapuri District in the interest of administration. Therefore, it is very clear that the transfer was made only on the basis of the request made by the District Collector.

It is therefore very clear that the transfer was not on administrative grounds.

The Authorities:

11. 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."

12. 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:

13. The materials available on record very clearly shows that only by way of punishment the petitioner was transferred from Dharmapuri District to Sivagangai. The mala fide nature of transfer is clearly borne out by records. I am therefore of the view that the petitioner must succeed.

Disposal:

14. In the result, the impugned order dated 19 June 2014 is set aside. The first respondent is directed to permit the petitioner to join duty at Palacode forthwith.

15. The writ petition is allowed as indicated above. Consequently, the connected MP is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Tr/
To:

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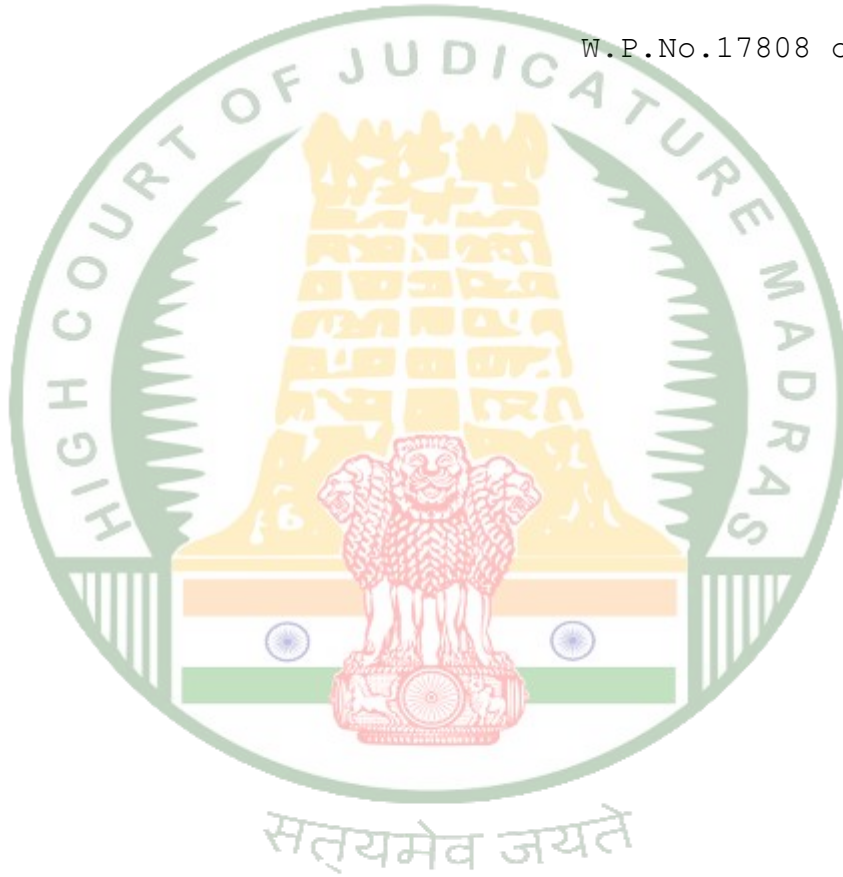
5. District Revenue Officer
Dharmapuri
Dharmapuri District.

+ 1 cc to M/s. A. Arulmozhi, Advocate SR.13363

+ 1 cc Government Pleader Sr.13277

RSY(CO)
EU 19.03.2015

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