



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.10.2015

Coram

THE HONOURABLE MR.JUSTICE T.RAJA

W.P. (MD) No.19223 of 2015
and
M.P. (MD) No.1 of 2015

R.Velmurugan

:Petitioner

Vs.

1.The Joint Director,
Department of Stationary and Printing
110, Anna Salai,
Chennai - 600 002.

2.The Deputy Works Manager,
Government Branch Press,
Madurai - 7.

: Respondents

Prayer: Petition is filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorari, calling for the entire records in connection with the impugned order passed by the 1st respondent in Eyak.Se.Mu.Aa.No.D2/19407/15, dated 06.10.2015 and consequently the order passed by the 2nd respondent by his proceedings in A1/2588/2015, dated 08.10.2015 and quash the same.

For Petitioner :Mr.K.K.Kannan

For Respondents :Mr.S.Sadeeskumar
Additional Govt.Pleader

O R D E R

This Writ Petition has been filed by Mr.R.Velmurugan, challenging the impugned order of transfer, dated 06.08.2015.

2. Learned counsel appearing for the petitioner assailing the impugned order would submit that the impugned order of transfer has been passed against the petitioner by way of punishment, therefore, the same is against the service jurisprudence.

<https://hcservices.ecourts.gov.in/hcservices/>

3. When the petitioner has approached the 2nd respondent seeking permission to open a portrait of Dr.B.R.Ambedkar, in order to honour the National leader, the 2nd respondent declined to grant permission.



Therefore, the petitioner has made a complaint to the first respondent against the 2nd respondent on 06.07.2015. In the meanwhile alleging that a false complaint has been made against the petitioner, as if he made a life threat to him by physically assaulting him, the impugned order of transfer has been effected, which is running contrary to the Judgment of the Hon'ble Apex Court. In support of his contention, he has also relied upon a Judgment of the Hon'ble Apex Court in the case of **Somesh Tiwari Vs. Union of India and Others** reported in (2009 (3) MLJ 727 (SC)) wherein it is held that no transfer order can be passed with mala-fide intention and if any order of transfer is passed in lieu of punishment, the same is liable to be set aside. For the same proposition, learned counsel also relied upon a Judgment of this Court in **S.Sevugan Vs. The Chief Educational Officer, Virudhunagar District** reported in (2006 (2) CTC 468) wherein it has been held that the transfer order by way of punishment cannot be resorted to except by conducting enquiry.

4. A complaint was made against the petitioner by A.Ganesan and Puthiyavan stating that the petitioner has made a life threat by assaulting them. On receipt of the complaint, the 2nd respondent forwarded a letter to the 1st respondent on 26.09.2015, as referred to in the impugned order. Subsequently, the petitioner has been transferred by the impugned order, dated 06.10.2015 transferring him from Madurai to Pudukottai following by the relieving order dated 08.10.2015. In this context it is relevant refer the G.O.Ms.No.10, Personnel and Administrative Reforms (Personnel-S) Department, dated 07.01.1994 wherein, certain exceptions to general guidelines of transfer are given. The relevant portion of the said Government Order reads as follows:-

"III. Exceptions to the General Guidelines:

(vii) These guidelines do not apply to the transfers of the following types of officers / cases:

- (a) Officers of All-India Services;
- (b) Heads of Department (non-IAS) or equivalent officers,
- (c) Personal staff of the Governor, the Chief Minister and other Ministers.
- (d) Government servants in Group 'D' posts.
- (e) Transfers within the same office or within the same station, provided that a person is not allowed to continue in the same seat / post for more than three years - this is also subject to the condition that there shall generally be no change of post or seat in the intervals of less than one year. A transfer within three years in cases not involving change of station will not be violative of the three year transfer policy in the interest of flexibility in administration. Where there are no such possibilities available, then the person can be transferred to another station on completion of three years. (See Govt.Lr.No.86456/Per-S/93-7 dated 09.08.94).

(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 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."



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 can 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.

(g) Transfers necessitated on account of any emergency or natural calamity when, existing manpower in any area is not adequate to handle the situation, or surplus manpower has to be moved out."

5. A mere perusal of the Clause F mentioned above shows that where serious allegations are pending enquiry, the officer may be transferred in the public interest and also sufficient in lieu of suspension. Admittedly, in the present case, the said Ganesan and Puthiyavan have made a complaint against the petitioner before the 2nd respondent who also forwarded the same to the first respondent on 26.09.2015. Secondly, the petitioner has also made a complaint against the 2nd respondent on 06.07.2015 before the 1st respondent complaining that the 2nd respondent has refused to give permission for opening a portrait of Dr.B.R.Ambedkar, in the office. Since the petitioner appears to be a cause for frequent turmoil in the office, the impugned order has been rightly passed and the same also falls within the aforementioned exceptions to the general guidelines of transfer. In the light of the above, the said two rulings relied on by the petitioner cannot be made applicable in the present case. Moreover, this Court finds no merits in the writ petition and hence, the same is liable to be dismissed.

6. In the result, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1.The Joint Director, Department of Stationary and Printing
110, Anna Salai, Chennai - 600 002.

2.The Deputy Works Manager, Government Branch Press, Madurai - 7.

+1cc to M/S.K.K.Kannan, Advocate in SR.No. 62365

+1cc to Special Government Pleader in SR.No. 62532.

TS/04.11.2015/3P-5C/KBM