

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

Writ Petition Nos.26975 and 26976 of 2016
and

WMP.Nos.23186 to 23189 of 2016
W.M.P. No. 24591 and 24592 of 2016

R.Ganesan ... Petitioner in W.P.No.26975 of 20
U.Rajan ...Petitioner in W.P.No.26976 of 2016

-versus-

1. The Secretary,
Government of Tamil Nadu,
Education Department,
Fort St. George,
Chennai-600 009.
2. The Director of School Education,
DPI, Nungambakkam,
Chennai-600 006.
3. The Joint Director,
(Services)
School Education,
DPI, Nungambakkam,
Chennai-600 006.
4. The District Elementary Educational Officer,
Thiruvavur District.
5. The Director of Vigilance and Anti Corruption,
No.293, M.K.N.Salai,
Alanthur,
Chennai-600 016. ... Respondents in both W.P.'s

PRAYER in both W.P.'s : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records on the file of the 3rd respondent in connection with proceedings in Na.Ka.No.033129/A3/E1/2016 dated 27.05.2016 and quash the same and consequently direct the respondents to retain the petitioners at the office of the fourth respondent.

For petitioner : Mr.T.Aananthi
(in both W.P.'s)

For Respondents: Mr.Gunasekaran
(in both W.P.'s) Additional Government Pleader

C O M M O N O R D E R

These Writ Petitions have been filed by the petitioners challenging the orders of transfer passed by the third respondent on the ground that the such orders of transfer have been passed not on any administrative exigency but as a measure of punishment. Further, the orders of transfer have been passed purportedly on the basis of an alleged letter dated 23.05.2016 received from the Directorate of Vigilance. However, according to the petitioners, the said letter has turned out to be a bogus letter or a forged letter, but without even verifying the same, the petitioners have been transferred.

2. The learned counsel for the petitioners would contend that the reasons stated in the impugned orders of transfer dated 27.05.2016 is that the third respondent has received a letter dated 23.05.2016 from the Directorate of Vigilance and Anti Corruption. According to the learned counsel for the petitioner, the alleged letter dated 23.05.2016 has not been served to the petitioners, however, it was relied on by the third respondent to pass the impugned orders of transfer. When the petitioners sought for a copy of the letter dated 23.05.2016, they were only permitted to peruse the same. In the said letter dated 23.05.2016 it was alleged as though the petitioners have demanded money for including the "names of individuals" in the seniority list for promotion. It is not known as to who are the individuals from whom the petitioners sought money, what was the promotional post for which seniority list has been prepared, who has given the complaint etc., If really a complaint has been received by the Vigilance and Anti Corruption Department, they have to request the official respondents to conduct enquiry and to find out the veracity or genuineness of such complaint. Rather, in the letter dated 23.05.2016, the third respondent was asked to effect transfer of the petitioner. Therefore, the petitioner, on their own, conducted an enquiry and found that the letter itself was bogus inasmuch as there is no "Eastern Range" exist in the Vigilance and Anti Corruption Wing, as indicated in the letter dated 23.05.2016. The official respondents, without even verifying the veracity or genuineness of the letter said to have been received from the Vigilance and Anti Corruption Wing have passed the impugned orders of transfer. In any event, the orders of transfer have not been passed due to administrative exigency, but mainly on the basis of the bogus letter dated 23.05.2016 said to have been sent by the Vigilance and Anti Corruption

Department. Thus, the official respondents, without even conducting any enquiry on the basis of the letter dated 23.05.2016, passed the orders of transfer on 27.05.2016. Immediately, thereafter, the petitioners have availed leave and did not join the places to which they were transferred. Therefore, the learned counsel for the petitioners prayed this Court to set aside the impugned orders of transfer and to regularise the period during which the petitioners have availed leave without joining the places to which they were transferred.

3. Today, when the writ petitions are taken up for hearing, the learned Additional Government pleader, on instructions from the respondents, would submit that the alleged letter dated 23.05.2016, said to have been received from the Vigilance and Anti Corruption Department, has turned out to be bogus. The learned Additional Government Pleader would further submit that at the time when the impugned orders of transfer has been passed, the third respondent has no knowledge that the letter dated 23.05.2016 was a bogus.

4. I heard the counsel for both sides. At the outset, this Court is pained to note that the official respondents, on receipt of a bogus letter dated 23.05.2016, mechanically, the third respondent has ordered to effect transfer of the petitioners herein without even conducting any enquiry. The letter dated 23.05.2016 was received by the department and immediately, within a day or two, the petitioners were ordered to be transferred. Such an action on the part of the official respondents has to be deprecated. Before effecting transfer, the official respondents ought to have conducted some enquiry to ascertain the genuineness of such letter or atleast they should have served a copy of the same to the petitioners. In any event, the impugned orders have been passed only on the basis of the alleged letter dated 23.05.2016 received by the official respondents and the transfer has not been effected on any administrative exigency. In such circumstances, I am of the view that the impugned orders are legally not sustainable. In this context, useful reference can be made to the Judgment of the Hon'ble Supreme Court in Somesh Tiwari Verses Union of India and others reported in (2009) 2 SCC 592 wherein it was held that when transfer has been effected on irrelevant ground or malice, the same cannot be sustained under law. The relevant portion of the said Judgment is extracted hereunder:

"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 malafide on the part of the

authority is proved. Mala fide is of two kinds- one malice is in fact and the second malice is 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 is another thing to say that the order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal.

20. The respondents knew that the matter was pending before the Tribunal. They did not approach the Tribunal to obtain leave for passing the second order of transfer. They passed an order of transfer while considering the cases of promotion and transfer of a large number of officers. The order of transfer suffered from a total non-application of mind insofar as it proceeded on the premise that the appellant had already joined his post at Shillong. Even it was not stated that the said order of transfer was being passed in modification of the earlier order of transfer or upon reconsideration of the matter afresh on humanitarian ground or otherwise. We may place on record an extract from the note-sheet of Member (P&V) dated 31.10.2005 which reads as under:

"AC(P) (i.e. Petitioner) has tried to fix responsibility on some superintendents for loss/closure of some files about investigations against assessors, those superintendents, who happened to belong to SC/ST category on being thus pressured, had complained to the police and other agencies alleging harassment of backward classes by Shri Somesh Tiwari, a Brahmin, these complaints were found to be baseless and the police had not pursued the

matter. Having failed at the local level, it is possible that these officers had lodged the complaint at Delhi which resulted in Shri Tiwari's transfer. Shri. Tiwari is an honest and well-intentioned officer...It is proposed to given him less harsh posting."

Removal of the appellant from Bhopal to a place which is "less harsh" was thus recommended, which had evidently been acted upon. It is thus demonstrable that "Shillong" was considered to be a harsh posting."

5. In the present case, there is no basis for passing the orders of transfer against the petitioners. The impugned orders of transfer have been passed only on the basis of an alleged letter dated 23.05.2016 received by the department without even conducting any basic enquiry as to the genuineness of such letter. It is admitted that the said letter dated 23.05.2016 turned out to be a bogus one. In such view of the matter, I am of the view that the impugned orders of transfer are not legally sustainable and the petitioners are entitled to get the period during which they were on leave regularised by treating it as a duty period. Further, the fifth respondent to take necessary action on this issue. It is needless to mention that the fifth respondent shall conduct appropriate enquiry to find out as to who was instrumental to send such a letter or from whom such letter has emanated and to submit a report thereof in accordance with law.

6. Accordingly, the impugned orders of transfer are set aside. The Writ Petitions are allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

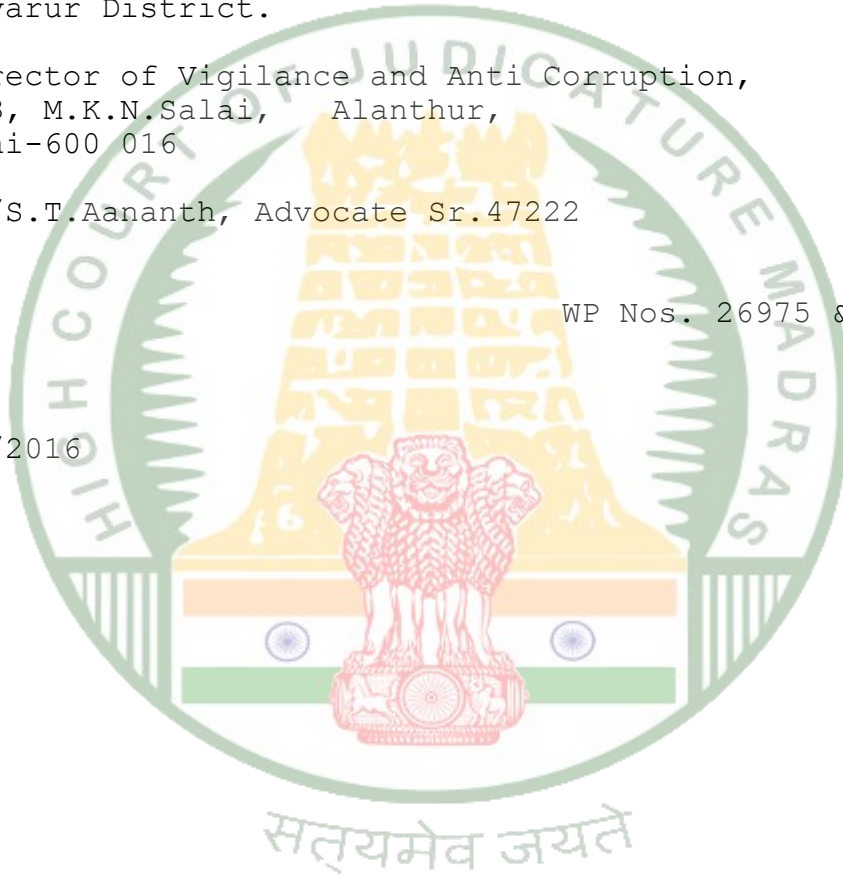
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Chennai-600 016

+2cc to M/S.T.Aananth, Advocate Sr.47222

WP Nos. 26975 & 26976/2016

rsk[co]
srg 30/08/2016



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