

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18-11-2016

(Orders reserved on 09.11.2016)

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.38300 of 2016

and

W.M.P.No.32837 of 2016

R.Premkumar

.. Petitioner

Vs.

1. The Government of Tamil Nadu,
Rep. by its Secretary,
Department of Higher Education,
Secretariat, St.George Fort,
Chennai-600 009.
 2. Personal and Administrative Reforms Department,
Rep. by its Secretary,
Chennai-600 009.
 3. The Vice-Chancellor,
Annamalai University,
Annamalai Nagar-608 002.
 4. The Registrar,
Annamalai University,
Annamalai Nagar-608 002.
- .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records from the fourth respondent in connection with the impugned order of transfer, viz., University Order No.823/2016 (C2), dated 23.09.2016 issued by the fourth respondent on 31.10.2016, transferring the petitioner from Annamalai University, UWD Electrical Branch, Chidambaram to Directorate of Distance Education Study Centre at New Delhi and quash the same.

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

For Respondents : Mr.O.Selvam, Govt. Advocate for
RR-1 and 2
Mr.V.R.Kamalanathan for RR-3 and 4

ORDER

The petitioner has filed the above Writ Petition praying for issuance of a Writ of Certiorari to call for the records from the fourth respondent in connection with the impugned order of transfer, viz., University Order No.823/2016(C2), dated 23.09.2016 issued by the fourth respondent on 31.10.2016, transferring the petitioner from Annamalai University, UWD Electrical Branch, Chidambaram to Directorate of Distance Education Study Centre at New Delhi and quash the same.

2. In the affidavit filed in support of the Writ Petition, it is averred by the petitioner that he joined the service of the third respondent-University as Technical Assistant on 02.07.2009 and his service was regularised with effect from 15.09.2011. The appointing authority in the cadre of Technical Assistant is the fourth respondent herein. Though the petitioner has completed one year of service as on 01.10.2011, his probation was extended for a further period of one year with effect from 01.10.2012. Till date, the fourth respondent had not issued formal order of completion of probation period. It is further stated that as per Letter No.14735/S/10-1, dated 08.04.2010 issued by the second respondent, referring G.O.Ms.No.24, Personnel and Administrative Reforms Department, dated, 17.02.2010, the third and fourth respondents were instructed to issue the order of completion of probation in time. Even if formal orders are not issued on completion of two years within the continuous period of three years, it becomes deemed declaration of probation.

3. It is further stated by the petitioner that he availed Earned Leave from 30.04.2015 to 06.05.2015. The third respondent had not sanctioned the Earned Leave, but treated the leave as one of loss of pay. Hence, the petitioner filed W.P.No.12157 of 2016, which is pending before this Court. While the said Writ Petition was pending, the fourth respondent-Registrar, as a measure of vindictiveness, passed the impugned order of transfer, viz., University Order No.823/2016 (C2), dated 23.09.2016, which was issued to the petitioner on 31.10.2016. It is further stated that the petitioner was on Medical Leave from 06.10.2016 to 30.10.2016 and when he reported for duty on 31.10.2016, he was served with the impugned order of transfer,

transferring the petitioner from Annamalai University, Chidambaram to the Directorate of Distance Education Study Centre at New Delhi, with immediate effect. Challenging the said transfer order, the petitioner has filed this Writ Petition.

4. When the Writ Petition is taken up for consideration, learned counsel for the petitioner made detailed arguments by adverting to the averments made in the affidavit. It is his specific argument that the present transfer order was issued with mala-fide intention, since the petitioner has earlier challenged the order of the respondent-University in W.P.No.12157 of 2016 with regard to sanction of leave. That apart, learned counsel for the petitioner submitted that the respondent-Annamalai University is a State University, having jurisdiction within the State of Tamil Nadu, and therefore, it cannot have jurisdiction over New Delhi. Learned counsel further submitted that in New Delhi, there is no post of Technical Assistant in the Directorate of Distance Education, Study Centre. The transfer of the petitioner who is a Technical Assistant from Chidambaram to New Delhi, would clearly show that the said transfer order is passed only with mala-fide intention. In support of his submissions, learned counsel for the petitioner relied on a decision of the Kerala High Court reported in 1979 (1) LLJ 139 (P.Pushpakaran Vs. Coir Board) and contended that when allegation of mala-fide is made, the transfer order can be questioned in a Court of law. Hence, learned counsel prayed for quashing the impugned order of transfer.

5. Per contra, learned counsel for the respondents 3 and 4, by filing counter affidavit, submitted that the petitioner was appointed as Technical Assistant on consolidated pay basis on 02.07.2009; his services were regularised and placed on probation on 01.10.2011 and subsequently, his services were continued on probation from 01.10.2012 after completion of one year from the date of regularisation. The management and administration had been taken over by the Government and the orders regarding regularisation, confirmation of service and promotions have temporarily been stopped from the month of July 2012 and the passing of said orders is under active consideration of Syndicate and it will be issued to all the teaching and non-teaching staff. He further contended that the petitioner earlier filed W.P.No.12157 of 2016 challenging the order issued by the fourth respondent regarding non-sanctioning of Earned Leave for the period from 30.04.2015 to 06.05.2015 and the said Writ Petition is pending, which has nothing to do with the present impugned order of transfer of the petitioner. Learned counsel for the respondents 3 and 4 further contended that the petitioner was considered for his skill, talent and his performance to manage the maintenance of the building of the

Directorate of Distance Education Study Centre at New Delhi. Absolutely, there is no mala-fide as alleged by the petitioner. It is purely on administrative reasons and the Study Centre at New Delhi is functioning in their own building for more than 20 years and particularly, now it needs certain maintenance work to be carried out by a technical cadre person to supervise the said work to be undertaken.

6. Learned counsel for the respondents 3 and 4 further contended that the petitioner is working in the University at Chidambaram from 2009 and his appointment is subject to transfer to any Distance Education Centres and as per the Rules of the University, the third respondent-Vice Chancellor has power to transfer the teaching, non-teaching and technical staff to any Study Centre/Information Centre of Directorate of Distance Education on administrative grounds. Hence, there is no mala-fide intention for transfer of the petitioner to New Delhi and learned counsel for the respondents 3 and 4 prayed for dismissal of the Writ Petition.

7. Heard the learned Government Advocate appearing for the respondents 1 and 2 on the above aspects.

8. By way of reply, learned Senior Counsel appearing for the petitioner submitted that the petitioner has not been assigned with supervising authority to manage any worker, but he is only a Technical Assistant and he does not have the authority to supervise the electricians or other workers. Therefore, he contended that the impugned order of transfer was passed only with mala-fide intention.

9. Keeping in mind the above submissions made by learned counsel on either side, I have considered the same and perused the materials available on record.

10. It is the main contention of the petitioner that the impugned transfer order was passed with mala-fide intention. Except the said contention, there is no other tangible material to show that the impugned order was issued only with mala-fide intention. On the other hand, it is the assertive submission of the learned counsel for the respondents 3 and 4 that the impugned transfer order was passed on administrative reasons, taking into consideration the petitioner's skill, talent and performance to manage the maintenance of the building of the Directorate of Distance Education Study Centre at New Delhi, and hence, there is no mala-fide as alleged by the petitioner.

11. Irrespective of the submissions made by the learned counsel on either side, I am of the opinion that unless the petitioner produces strong material to show that the transfer

order was passed with mala-fide intention, the petitioner's submissions cannot be accepted. Except the bald statements made in the affidavit filed in support of the Writ petition, no other material is available to come to the conclusion that the impugned order of transfer is passed with mala-fide intention.

12. In the above context, learned counsel for the respondents 3 and 4 relied on the following decisions of the Supreme Court:

(a) 2004 (11) SCC 402 (State of U.P. Vs. Govardhan Lal):

" 8. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the courts or tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that courts or tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer."

(b) 2001 (8) SCC 574 (National Hydroelectric Power Corpn. Ltd. Vs. Shri Bhagwan):

"5. ... It is by now well settled and often reiterated by this Court that no government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals cannot interfere with such orders as a matter of routine, as though they are the appellate authorities substituting their own decision for that of the management, as against such orders passed in the interest of administrative exigencies of the service concerned."

13. While applying the above dictum laid down by the Supreme

Court in the decisions cited supra, in the instant case, I am of the opinion that there is no material to come to the conclusion that the transfer is outcome of any mala-fide exercise of powers and hence, this Court cannot interfere with the impugned order of transfer.

14. Hence, the Writ Petition is liable to be dismissed. Accordingly, the Writ Petition is dismissed. No costs. Consequently, W.M.P. is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Copy to

1. The Secretary,
The Government of Tamil Nadu,
Department of Higher Education,
Secretariat, St.George Fort,
Chennai-600 009.
2. Personal and Administrative Reforms Department,
Rep. by its Secretary,
Chennai-600 009.
3. The Vice-Chancellor,
Annamalai University,
Annamalai Nagar-608 002.
4. The Registrar,
Annamalai University,
Annamalai Nagar-608 002.

+1cc to Mr.K. Krishnamoorthy, Advocate, S.R.No.67160
+1cc to Mr.V.R.Kamalanathan, Advocate, S.R.No.67403
+1cc to the Government Pleader, S.R.No.67525

cwr(CO)
md(02/12/2016)

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