



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.07.2016

CORAM :

THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO
and
THE HONOURABLE MR.JUSTICE S.S.SUNDAR

Writ Appeal (MD) No.1090 of 2016
and
C.M.P (MD) No.6570 of 2016

P.Rathinagandhi

...Appellant

Vs.

1.The Director General of Police,
Chennai.

2.The Superintendent of Police,
Virudhunagar.

3.V.Kala,
Administrative Officer,
Office of Commandant,
TSP IV Battalion,
Madurai.

...Respondents

Appeal filed under Clause 15 of the Letters Patent against the Order dated 27.06.2016 made in W.P.(MD).No.11437 of 2016 on the file of this Court.

Prayer in WP(MD). 11437/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records pursuant to the impugned order of transfer passed by the 2nd respondent in C.No.A1 (3)/25836/2016 vide D.O.No.830/2016 dated 20.06.2016 (received only on 23.06.2016) pursuant to the order said to have been passed by the 1st Respondent in his proceedings Rc.No.18119/GBVI(1)/2016 dated 16.06.2016 and quash the same and issue a consequential direction, directing the 1st and 2nd respondents to repost the petitioner in the same place.

For Appellant

: Ms.Porkodi Karnan,
for M/s.Polax Legal Solutions

For Respondents 1&2

: Mr.S.Chandrasekar,
Government Advocate

JUDGMENT

(Judgment of the Court was delivered by NOOTY.RAMAMOohana RAO, J)

Heard Ms.Porkodi Karnan, learned counsel for the appellant who presented her case with admirable clarity.

2.This in-house appeal preferred by the appellant/writ petitioner is directed against the order and judgment rendered by the learned single Judge in W.P(MD)No.11437 of 2016 instituted challenging the correctness and validity of the order of transfer passed by the Superintendent of Police, Madurai District who is also in charge of the Virudhunagar District.

3.The appellant/writ petitioner was working as an Administrative Officer in the office of the Superintendent of Police, Virudhunagar District. It appears that the Director General of Police passed an order on 16.06.2016 transferring and posting a few Administrative Officers one of them being the appellant/writ petitioner and in accordance with and in furtherance thereof, the order of transfer dated 20.06.2016 has been communicated to the writ petitioner/appellant.

4.Ms.Porkodi Karnan, learned counsel appearing for the appellant would urge that the impugned order has been passed by the Director General of Police on 16.06.2016 and even without serving a copy of the said order on the appellant/writ petitioner, the Superintendent of Police, Virudhunagar District has passed the impugned order, transferring and posting the appellant/writ petitioner to the Office of the Superintendent of Police, Krishnagiri District.

5.The background in which the order came to be passed was that an explanation was called from the appellant/writ petitioner with regard to the discharge of duties by her at Virudhunagar District. She has drawn a detailed representation and submitted the same to the competent authority. Notwithstanding the otherwise satisfactory explanation offered by the appellant/writ petitioner, she has been subjected to hostile treatment of being shifted to a far-off place and hence, the impugned order of transfer has acquired punitive characteristics and in the garb of administrative exercise of transferring officers, the impugned order could not have been passed by the Director General of Police.

6.Learned counsel would submit that when an allegation has been thrown against the appellant/writ petitioner and when she has submitted her explanation, it is incumbent upon the competent authority to record a finding as to whether there was still any *prima facie* material against the appellant/writ petitioner to proceed any further. In the absence thereof, the order of transfer abruptly passed on 20.06.2016, becomes a punitive measure.

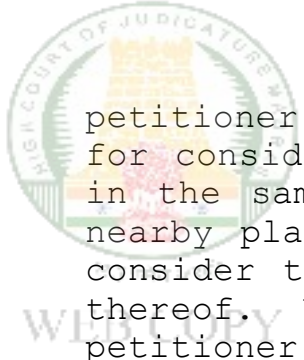
7.Before imposing punishment, a certain procedure prescribed under the Discipline Control and Appeal Rules has got to be followed. Since no such procedure is followed before passing the order of transfer, the same amounts to achieving indirectly what could not otherwise be achieved directly.



8. It appears that explanation of the appellant/writ petitioner was called for with regard to the services rendered by her as an Administrative Officer at the Office of the Superintendent of Police, Virudhunagar District. She may have also responded to it putting forth her defence in respect of the allegations levelled. But that is a different matter altogether. As to whether the conduct of the appellant/writ petitioner requires to be probed any further or not, the matter is dependent upon several other factors including the assessment with regard to the quality of material that can be gathered in support of the allegations levelled. Only when a reasonable view could be taken upon a proper and careful analysis of the material so gathered, a decision could be taken as to whether the appellant/writ petitioner shall also be subjected to further disciplinary proceedings or not. In the event, the disciplinary proceedings are needed to be initiated, the competent authority would do so by framing proper charge(s) against the appellant/writ petitioner. For the purpose of collecting the material and also for the purpose of preventing further access to the official record, it is desirable to transfer the employee concerned to a different station so that the process of collection of material may become easier. Sometimes, it will also help for people who are otherwise willing to come forward to make statements against the Government servant concerned. Therefore, it is considered prudent by the manager of human resources lately that instead of placing an employee under suspension, for the purpose of merely enabling the collection of material in support of allegations levelled against such servant, it would be extremely productive and profitable to transfer such employee to a far-off place. It would also serve the interest of the State inasmuch as it can continue to draw the service of the employee concerned instead of not utilising such services at all by placing the employee under suspension pending enquiry.

9. An administrative order can acquire punitive nature when the order is used with a view to penalise the individual rather than use the same for achieving some of the objectives referred to by us *supra*. It is a settled principle of law that notwithstanding the transfer of a Government servant being an incidence of service, the same power cannot be utilised for as a punitive measure. In our opinion, merely because the appellant/writ petitioner has been asked to put in her explanation with regard to certain allegations levelled against her, the impugned order does not amount to a punitive order of transfer. There must be something more that is needed to make the impugned order a punitive one.

9. Learned counsel appearing for the appellant would urge before us several genuine difficulties that are encountered by the appellant/writ petitioner in carrying out the transfer order. We are of the view that those factors cannot offer a justification on our behalf to interfere with an order of transfer passed by the competent authority. It is always open to the appellant/writ



petitioner to draw a detailed representation and submit the same for consideration of the competent authority either for retention in the same place or in the alternative to be transferred to a nearby place. But, however, it is for the authority competent to consider the same and we cannot pronounce any opinion in respect thereof. We are confident that in case the appellant/writ petitioner submits any such representation for either retention at Virudhunagar District or transfer to any other nearby place, the Director General of Police would surely spare adequate and appropriate consideration thereto and take appropriate decision thereon.

10. We see no reason to interfere with the order passed by the learned single Judge and accordingly, the writ appeal stands dismissed. No costs. Consequently, C.M.P(MD)No.6570 of 2016 is closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar(CS)
Madurai Bench of Madras High Court,
Madurai-23.

To

1. The Director General of Police, Chennai.

2. The Superintendent of Police, Virudhunagar.

+1cc to M/s.Polex Legal Solution, in SR.34899

+1cc to the Special Government Pleader, in SR.35178

Writ Appeal (MD) No.1090 of 2016
and
C.M.P (MD) No.6570 of 2016
05.07.2016

sms

PBK/NGM-SK/SAR-III 06/07/2016 ::4P-5C:: (IT)