



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.08.2016

CORAM :

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THE HONOURABLE MR.JUSTICE **K.K.SASIDHARAN**

and

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

Writ Appeal (MD) No.1169 of 2016

and

C.M.P.(MD) Nos.7495 to 7497 of 2016

R.Vanaraj

... Appellant/Petitioner

-Vs-.

1.The Principal Chief Conservator of Forests,
Panagal Buildings,
Saidapet, Chennai - 15.

2.The Conservator of Forests,
Tirunelveli Region,
Tirunelveli - 7.

3.The District Forest Officer,
Kanyakumari Division,
Nagercoil.

4.The District Forest Officer,
Thoothukudi Division,
Thoothukudi.

... Respondents/Respondents

Prayer:- Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 26.07.2016 made in W.P.(MD) No.13104 of 2016 on the file of this Hon'ble Court and allow this Writ Appeal.

Prayer in WP(MD). 13104/ 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 relating to the impugned transfer order dated nil passed by the 2nd respondent in Pa.AA.No. 21/2016 and quash the same as illegal and consequently direct the 2nd respondent to entertain the petitioners appeal dated 21.05.2016.

JUDGMENT

(Judgment of the Court was delivered
by **S.S.SUNDAR, J.**)

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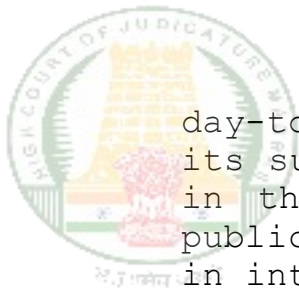
This Writ Appeal is directed against the order dated 26.07.2015, passed by a learned Single Judge of this Court in W.P. (MD) No.13104 of 2016, dismissing the Writ Petition filed by the appellant herein, challenging the transfer order passed by the second respondent, transferring the appellant from Kanyakumari Region to Tuticorin Region.

2.Since the appellant challenged the order of transfer only on the ground that there is no reason given in the impugned order of transfer, the learned Single Judge, after setting out the principles and legal position, has dismissed the writ petition. Before this Court, the appellant reiterated the same argument that the order of transfer without assigning any reason is bad in law. The counsel for the appellant also argued that the transfer of appellant from Kanyakumari Region to Tuticorin Region is by way of punishment and that the order also suffers from legal *mala fide*.

3.It is relevant to point out that in the affidavit filed in support of the Writ Petition, the petitioner has not pleaded *mala fide* against the second respondent though he used the word '*mala fide*' in one of the grounds. A reading of the affidavit discloses the fact that there was no pleading that can be reasonably inferred to sustain the plea of *mala fide* before us in this Writ Appeal.

4.Law is well settled and the Courts are always reluctant in interfering with the transfer of an employee unless such transfer is vitiated by violation of some statutory provisions or suffers from *mala fides*. In the judgment of the Hon'ble Supreme Court in **Shilpi Bose v. State of Bihar**, MANU/SC/0147/1991 : 1991 Supp (2) SCC 659 it has been held as follows:

"4.In our opinion, the courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of *mala fide*. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts should not interfere with the order instead affected party should approach the higher authorities in the department. If the courts continue to interfere with



day-to-day transfer orders issued by the government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders."

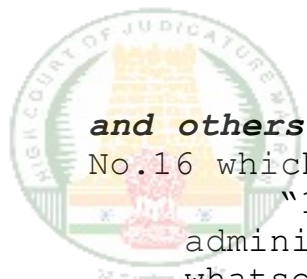
5. Similarly, the Hon'ble Supreme Court in the judgment in **State of U.P. and others vs. Gobardhan Lal** reported in (2004) 11 SCC 402 has held as follows:

"7. It is too late in the day for any Government Servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made."

6. The limited scope of judicial review has been reiterated by a Division Bench of this Court in the judgment in **General Manager (Personnel), National Insurance Co. Ltd., and another vs. Dr. S. Ashok Kumar** reported in 2010 (2) CWC 90 and the relevant portion reads as follows:

"13. It is the cardinal principle that a transfer is ordinarily an incident (sic incidence) of service. The Court should not interfere with a transfer order which is made for administrative reasons unless the transfer orders are made in violation of any mandatory or statutory rule or on the ground of mala fide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other and he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order, instead affected party should approach the higher authorities in the department. Indisputably, the order of transfer is an administrative order and there cannot be a doubt whatsoever that the transfer is an incident of service and the same should not be interfered with save in cases where *inter alia* mala fide of the authority is proved."

7. The learned counsel for the appellant relied upon a judgment of the Hon'ble Supreme Court in **Somesh Tiwari vs. Union of India**



and others reported in (2009) 2 SCC 592 and referred to paragraph No.16 which is extracted as under:

"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."

8. We have gone through the affidavit filed in support of the Writ Petition and the grounds raised by the appellant before us in the grounds of appeal. The order impugned is simply an order of transfer passed as an administrative order. The petitioner has not pleaded any *mala fides*, however, the learned counsel for the appellant submits that the impugned order suffers from legal *mala fides*. The learned counsel for the appellant has argued before the learned Single Judge that the order is vitiated as the same was passed without assigning any reasons. Now, the learned counsel for the appellant has relied upon the judgment of the Hon'ble Supreme Court reported in **Somesh Tiwari vs. Union of India and others** reported in (2009) 2 SCC 592 by stating that the order in the present case was passed on material which was non-existent. We find no reason to hold that the order of transfer suffers from legal *mala fides* particularly, when the transfer of appellant is purely due to administrative exigencies and no specific reason is required in law and no reason has actually been assigned by the second respondent. Hence, there is no reason to interfere with the order of the learned Single Judge dismissing the writ petition filed by the appellant. The Writ Appeal is, therefore, liable to be dismissed. Accordingly, it is dismissed. However, there is no order as to costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

/True copy/



To

1.The Principal Chief Conservator of Forests,
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2.The Conservator of Forests,
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3.The District Forest Officer,
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Nagercoil.

4.The District Forest Officer,
Thoothukudi Division,
Thoothukudi.

+1 cc to m/s.S.Sukumar, Advocate in SR.No.42360

+1 cc to The Special Government Pleader in SR.No. 42906

SRM

CSL/SK-SKN/23.08.2016: 5P/7C

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