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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED :27.06.2016
CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P(MD)No.11437 of 2016
and

WMP(MD)No.8752 of 2016

P.Rathinagandhi

.. Petitioner

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

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus calling for the records pursuant to the impugned order of transfer passed by the second 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 first 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 Petitioner : Mrs.Porkodi Karnan

For R-1 & R-2 : Mrs.S.Bharathi,
Government Advocate

ORDER

The petitioner Mrs.P.Rathinagandhi, who is serving as an Administrative Officer in the office of Superintendent of Police, Virudhunagar, has been transferred and posted to the office of the Superintendent of Police, Krishnagiri District, on administrative grounds, with immediate effect. Assailing the same, the petitioner has filed this Writ Petition.

2. Mrs.S.Bharathi, learned Government Advocate takes notice for respondent Nos.1 and 2.

3. The learned counsel appearing for the petitioner would submit that the impugned order of transfer is not only illegal but also against the second respondent has no authority to transfer the petitioner. Therefore, the impugned order of transfer is liable to be set aside. Adding further, it is contended that the timely transfer is



illegal and violative of fundamental rights, because the petitioner has been transferred by way of punitive measure. But this Court has repeatedly held that no order of transfer can be passed as a punitive measure and hence, the impugned order is liable to be set aside, she pleaded.

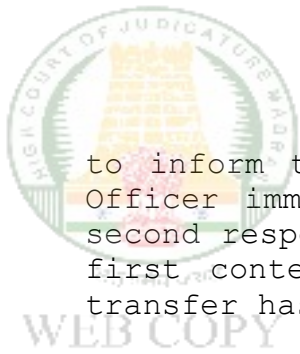
4. Taking reliance from the order of the Division Bench of this Court in W.P(MD)No.7121 of 2007, dated 28.08.2008, it is submitted by the learned counsel appearing for the petitioner that petition-mongers are growing in large numbers addressing anonymous petitions to the authorities with bald and baseless allegations, without any specifications and even without offering their name and address and not even signing the petitions, thus interfering in the administration, no order of transfer should be passed entertaining the mere anonymous complaints.

5. In the present case, she pleaded, on the pretext of a resolution passed by the Ministerial Staff Association, Virudhunagar, condemning the high handed attitude of the petitioner herein, the second respondent has effected the transfer order. Therefore, it goes without saying that the petitioner has been punished without holding any proper enquiry.

6. Again, the learned counsel appearing for the petitioner contended that the husband of the petitioner is suffering from physical conditions since he has sustained injuries in his brain, hence, if the petitioner is transferred at the time of need, she would be left with no other option except to leave her husband without anyone to take care of him or to take him to the place transferred.

7. Replying to the above three contentions, the learned Government Advocate appearing for the respondents would submit that the second respondent Superintendent of Police, Madurai District, in-charge of Virudhunagar District, has not effected the transfer order as he has implemented the transfer order passed by the first respondent Director General of Police, Chennai, therefore, no illegality can be attributed on the transfer order. Again, placing on record the proceedings issued by the first respondent Director General of Police in Rc.No.18119/GBVI(1)/2016, dated 16.06.2016, by which, the first respondent has transferred the petitioner, who is serving as an Administrative Officer in the office of the Superintendent of Police, Virudhunagar, with immediate effect, learned Government Advocate would say that the second paragraph of the said proceedings shows that 'all the Officers concerned are requested to relieve the above Administrative Officers and inform the date of relieving or joining of the above Officers to the Chief Officers immediately'. Pursuant thereto, the impugned order has been passed, for which, the learned counsel for the petitioner submitted that the original proceedings of the first respondent has not been issued to the petitioner and thus, the petitioner was kept under darkness.

8. In any event, since the first respondent Director General of Police, who is the competent authority has passed the present transfer order directing the Unit Officer, namely, the second respondent herein



to inform the date of relieving/joining of the Officers to the Chief Officer immediately, the present impugned order has been passed by the second respondent. Therefore, this Court does not find any merit in the first contention raised by the petitioner that the impugned order of transfer has been passed by an incompetent authority.

9. With regard to the second contention that the impugned order has been passed by way of punitive measure, again, I find that no merits in the said contention as well. Since, the Ministerial Staff Association, Virudhunagar, has passed a resolution contemning the high handed attitude of the petitioner, on the complaint received from the members, only pursuant thereto, a written complaint has also been received from one Tmt.Kaveri, Assistant in Cash Section complaining that the Administrative Officer(Accounts) Tmt. P.Rathinaganthi, the petitioner herein had made a telephonic call on 16.03.2016 around 09.30 p.m., and used unparliamentary language against her. On account of this allegation, the Additional Superintendent of Police, Prohibition Enforcement Wing, Virudhunagar, was directed to conduct an enquiry. Subsequently, it appears that the petitioner was issued with a charge-memo on 11.04.2016 and the petitioner also on receipt of the same has given explanations and only thereafter, the impugned order has been passed. Moreover, the proceedings of the Superintendent of Police, Virudhunagar District, also shows that around 600 police personnel have not received the salary for the month of February, 2016, till date. For all these reasons, an enquiry has been conducted and after receiving explanation only, the impugned order of transfer has been passed. Therefore, this Court is not able to agree with the contention of the petitioner that the impugned order has been passed with punitive measure.

10. The exceptions to the General Guidelines given in G.O.Ms.No.10 Personal and Administrative Reforms(Personnel-S) Department, dated 07.01.1994, envisaging transfer policy also brings the case of the petitioner into exception, so as to keep the impugned transfer order away from challenge. The exceptions to the General Guidelines given in G.O.Ms.No.10 Personal and Administrative Reforms(Personnel-S) Department, dated 07.01.1994, is given as under:

III .Exceptions to the General Guidelines

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

- (a) Officers of the 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 provided that a person is not allowed to continue in the same seat for more than three years.**
- (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 that case, transfer shall**



be effected to a vacant post in another station or to the post where the juniormost person of the same category is working.

(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.

(viii) Cases of the following types need not be submitted to Government unless required under any rules/other orders in force:

(a) Mutual transfers

(b) Request transfers to stations where vacant posts exist.

(c) Re-posting on expiry of leave, on revocation of suspension etc.

(d) Transfers necessitated on account of promotion/reversion of the individual concerned.

However, mutual transfers and request transfers shall also be effected only during the transfer period.

11. Clause III(f) of the exception to the General Guidelines says that in cases where severe allegations are pending enquiry, in lieu of suspension, the Officer may be transferred. In the present case, as highlighted above, when complaints were given for her dereliction while serving as Administrative Officer, a show-cause notice has been given to the petitioner, for which, she has also given her explanation and finding her explanation not satisfied, instead of placing her under suspension, the present impugned transfer has been effected, therefore, I do not find any error in the impugned order, because, the impugned transfer is saved by exception under G.O.Ms.No.10, dated 07.01.1994.

12. Thirdly, the learned Government Advocate submitted that the petitioner has already completed more than 3 ½ years of service in the present station from 30.11.2012, therefore, she is not entitled to continue. When the petitioner has been staying in the present Post for three years and seven months, this Court is not inclined to interfere with the impugned order of transfer.

13. In the matter of transfer, it has been well settled by this Court as well as by the Honourable Apex court in umpteen number of judgments that no transfer order can be questioned unless it is passed on *mala fide* or in violation of the statutory Rules. Therefore, when a Government Servant posted at one place and transferred to another place due to administrative reason, he cannot as a matter of right, challenge the correctness of the transfer order, for the reason that no Government servant has got indefeasible right to stay at one place for long time. If anyone is aggrieved by an order of transfer, such person can make a representation only to the employer, who will be in just to say, who should be transferred there. It is also brought to the notice of this Court that the third respondent, who has been transferred to the place of the petitioner, has also taken charge and for that reason also, this Court does not find any merit in the Writ Petition.



14. In the result, the Writ Petition fails and the same is dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

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Sd/
Assistant Registrar(T&P)

Sub Assistant Registrar

To

1.The Director General of Police,
Chennai.

2.The Superintendent of Police,
Virudhunagar.

+1cc to M/S.Polax Legal Solutions,Advocate in SR.No.33264
+1cc to Special Government Pleader in SR.No.33389

W.P. (MD)No.11437 of 2016
27.06.2016

PM
PA/NGM-MP/SAR I/01.07.2016/5P/5C (IT)