



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.08.2016

CORAM :

THE HONOURABLE MR.JUSTICE T.RAJA

Writ Petition(MD)No.12963 of 2016
and
W.M.P (MD)No.9764 of 2016

K.Kaliappan

... Petitioner

vs.

1)The Commissioner of Adi Dravidar Welfare,
Chepauk,
Chennai-5.

2)The District Adi Dravidar Welfare Officer,
Tirunelveli District,
Tirunelveli.

3)The Special Tahsildar (ADW),
Tenkasi Taluk,
Tirunelveli District.

4)Mrs.S.Nirmala,
District Adi Dravidar Welfare Officer,
Tirunelveli District,
Tirunelveli.

5)Mr.S.Ganesan

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records on the file of the 2nd Respondent in connection with the impugned order of transfer passed in her proceedings in Na.Ka.A3/43538/2015 dated 18.07.2016 and the consequential impugned relieving order passed by the 3rd respondent in his proceedings in Na.Ka.No.A/61/2016 dated 19.07.2016 and quash the both as illegal and arbitrary.

For Petitioner

: Mr.G.Thalaimutharasu

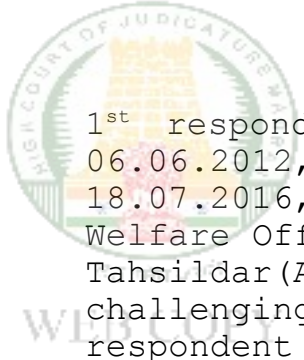
For R1 to R4

: Mr.M.Murugan

Government Advocate

ORDER

Mr.K.Kaliappan, who was appointed as a Secondary Grade Teacher, subsequently by way of counselling cum transfer, posted as a Warden at Government Adi Dravidar Welfare Boys Hostel, Mangalapuram, by the



1st respondent/Commissioner of Adi Dravidar Welfare, Chennai, on 06.06.2012, has been disturbed by the impugned transfer order, dated 18.07.2016, passed by the 2nd respondent/District Adi Dravidar Welfare Officer, Tirunelveli. Consequently, the 3rd respondent/Special Tahsildar(ADW), Tenkasi Taluk, has relieved the petitioner, hence, challenging the impugned order of transfer passed by the 2nd respondent dated 18.07.2016, transferring the petitioner from Mangalapuram, Tenkasi, to Government Tribal Residential High School, Melanai-Papanasam, and posting him as Secondary Grade Teacher, and the consequential relieving order, the petitioner has filed this writ petition, to quash the same.

2. Learned counsel for the petitioner would submit that the petitioner is a Warden/Whistle Blower and on many occasions, he has brought to light several irregularities taking place in Government Adi Dravidar Welfare Boys Hostel, Mangalapuram, to the notice of the respondents 1 to 4, to take necessary action, hence, he has been penalised by way of impugned transfer order, stating that the petitioner is unfit to be a Warden and therefore, he should be transferred as a Secondary Grade Teacher. The 2nd respondent cannot condemn the petitioner by passing a punitive transfer order, without giving him any opportunity of hearing to him, therefore, the same is liable to be set aside, as it is a well settled a legal position that no punitive transfer order can be passed without there being any enquiry.

3. Explaining further, he would submit that finding out certain irregularities in Government Adi Dravidar Welfare Boys Hostel, Mangalapuram, the petitioner has made a complaint in the remarks category of the Visitors' Register, stating that the Septic Tank has to be cleaned. Again, he has been intimating the respondents 1 to 4, to take necessary action to clean the septic tank, which was also entered in the Visitors Register on 17.06.2016, 02.07.2015 and 07.08.2015 respectively, but no action was taken to clean up the septic tank, nor funds were disbursed to clean the same. Out of the total expenses, 4% was automatically deducted by the 3rd respondent and 1% for Treasury, which is illegal, because, the said sum was deducted by taking into account the total strength of the students, without calculating the actual strength of the students, therefore, the petitioner made requisitions to the 3rd respondent on 03.08.2015 and 10.08.2015 respectively, to rectify the wrong practice. Moreover, contrary to the rules, students from local area were admitted in the hostel, so as to create more student strength, which is having an adverse impact for the needy students hailing from other places. It has been found that students from 5 kms away from the hostel alone have to be admitted, but the said rule was not followed and local students were admitted and they will skip the breakfast and supper by going to their houses on all evenings, but claims were made for the entire day, taking into account the total strength of the students. This is how loss had been caused to the Government and the petitioner also brought it to the notice of the higher officers.



4. Adding further, he would submit that when the petitioner made a detailed representation to the 2nd respondent/Adi Dravidar Welfare Officer, Tirunelveli, with regard to the illegalities namely, swindling of money by the Junior Engineer, delayed payment for the month of September 2013, failure of B Clerk to maintain the expense record, failure to grant 3% arrears of Basic Pay and the life threat given to him, for giving a complaint to the 3rd respondent/Special Tahsildar(ADW), Tenkasi Taluk, the 2nd respondent did not respond to his representation, hence, the petitioner gave a complaint on 10.12.2015, to the District Collector, who is the authority in administration of the hostel, intimating the abovesaid illegalities and sought for action and intervention. Instead of taking action on his complaint, surprisingly, the respondents 1 to 4 sought record from the petitioner and finally he was issued with a charge memorandum under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, by the 2nd respondent on 30.12.2015, making a baseless allegation against the petitioner. Subsequently, the petitioner was also imposed with a punishment of stoppage of increment for one year with cumulative effect, by order dated 10.06.2016 of the 2nd respondent. Before the said punishment, the petitioner sought for certain particulars, but the same was refused and finally he was punished.

5. It is his further contention that when the petitioner is working as a Warden/Whistle Blower, for the reason that he has given a complaint indicating certain irregularities in the hostel to the respondents 2 and 3 and the District Collector, in addition to the punishment of stoppage of increment for one year with cumulative effect, by the impugned order dated 18.07.2016 of the 2nd respondent, he has been wrongly transferred from Mangalapuram, Tenkasi, to Government Tribal Residential High School, Melanai-Papanasam, and posted as Secondary Grade Teacher, consequently, the 3rd respondent has also passed the relieving order.

6. Assailing the impugned order, learned counsel for the petitioner would submit;

(i) that the 2nd respondent/District Adi Dravidar Welfare Officer, Tirunelveli District, has no jurisdiction to pass the impugned order of transfer, since the 1st respondent/Commissioner of Adi Dravidar Welfare, Chennai, alone is the competent authority to pass the order of transfer, as a punitive measure;

(ii) that the impugned order of transfer has been passed on the basis of a complaint and after holding that he is ineligible to hold the post of Warden, but without conducting enquiry, the 2nd respondent cannot give a finding that the petitioner is ineligible to hold the post of Warden, when he has been working for the past 4 years, therefore, he pleaded, the impugned order amounts to punishment, which is unsustainable in law;

<https://hcservices.ecourts.gov.in/hcservices/>

(iii) that the 5th respondent has been transferred to the



petitioner's place on his request. As per the transfer guidelines issued in Government Letter No.23847/S/98-1, dated 05.08.1998, no transfer shall be effected on the basis of allegations, unless the allegations are found to be *prima facie* true by a preliminary enquiry;

(iv) that the respondents have wrongly accepting the request transfer application of the 5th respondent, violating Government Letter No.39201/Per.S/94-1 dated 11.07.1994, disturbed the petitioner, when the said Government Letter states that request transfer can be made only to stations where vacant posts exist, therefore, transferring the 5th respondent to the petitioner's place, by accepting his request, and transferring the petitioner from Mangalapuram, Tenkasi, to Government Tribal Residential High School, Melanai-Papanasam, and posting him as Secondary Grade Teacher that too 90 k.m away from the present place, for which, the petitioner has to travel 7 hours per day, clearly shows that it is purely a punishment transfer;

(v) that the petitioner's wife is also working as a Secondary Grade Teacher in Harijan Primary School, Kalangatha Kandi, Sencottah Taluk, and his children are studying at St. Joseph Matric Higher Secondary School, Panpozhi, in view of punitive transfer, the petitioner and his family members are put to harassment and mental agony, therefore, he pleaded, the impugned order of transfer is liable to be set aside.

7. Finally, concluding his arguments, he would submit that when there are several other persons like the petitioner, who is working for more than 4 years as Warden, transferring the petitioner alone is nothing but an act of *mala fide*. Further, the impugned order of punitive transfer transferring the petitioner to a far-off place, is contrary to the settled legal position in the following judgments:-

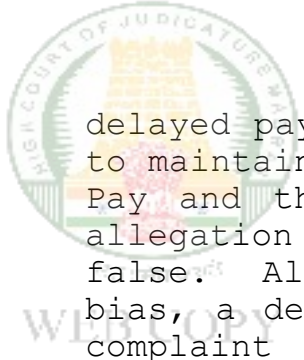
(i) Somesh Tiwari vs. Union of India, reported in 2009 (3) MLJ 727;

(ii) K.M. Elumalai vs. Superintendent of Prison (W.P.No.11352 & 17393 of 2009); and

(iii) J. Alex Durai Vedha Sam vs. DEO, Tirunelveli, reported in 2010 (6) MLJ 63.

8. A counter affidavit has been filed by the 2nd respondent/District Adi Dravidar Welfare Officer, Tirunelveli District. Mr. Murugan, learned Government Advocate appearing for the respondents 1 to 4 supporting the impugned order of transfer, would submit that the writ petition is not legally maintainable either on law or on facts, as it is a settled proposition of law that transfer is not only an incident of service, but also a condition of service, therefore, the employee has no indefeasible right to insist that he/she should be posted at one particular place.

9. He further submitted that the allegations made by the petitioner with regard to swindling of money by the Junior Engineer,

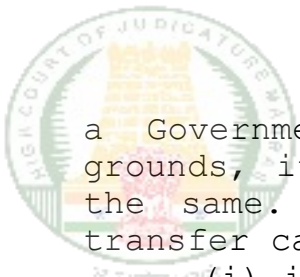


delayed payment for the month of September 2013, failure of B Clerk to maintain the expense record, failure to grant 3% arrears of Basic Pay and the 3rd respondent deducted 1% for Treasury, besides the allegation that there was a life threat to the petitioner, are false.⁴ Although the petitioner made some allegations, without any bias, a detailed enquiry was held to find out the veracity of the complaint preferred by him, however, after completion of the enquiry, finding that allegations are false and bereft of truth, a departmental enquiry was initiated against the petitioner, by issuing a charge memo under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, and finally he was found guilty, for which, he was also imposed with a punishment of stoppage of increment for one year, with cumulative effect, by order dated 10.06.2016 of the 2nd respondent, moreover, 60 students hailing from Adi Dravidar community have preferred a complaint against the petitioner, therefore, the 2nd respondent has transferred him by the impugned order, which cannot be questioned by him.

10. Adding further, learned Government Advocate would submit that the 5th respondent, who was acting as a teacher for more than 4 years, has made a request transfer, therefore, the 5th respondent was transferred and posted as Warden in the place of the petitioner and the petitioner has been transferred and posted as Secondary Grade Teacher, as he has served for more than 3 years as Warden. Moreover, the destination mentioned by the petitioner that the transferred place is 90 kms away from the present place, is not correct. In fact, the distance between the transferred place and the present place is only 40 kms, within Tirunelveli District. In any event, since the impugned transfer order has been passed only on administrative grounds, besides G.O.Ms.No.10 Personnel and Administrative Reforms (Personnel-S) Department, dated 07.01.1994, referred to by the petitioner, is only directive and not mandatory, he pleaded, there is no illegality in the impugned transfer order. Further, the 3rd respondent/Special Tahsildar(ADW), Tirunelveli District, who is a controlling authority, has already relieved the petitioner, hence, the present writ petition filed after issuing the relieving order, is not maintainable.

11. Heard the learned counsel for the petitioner and the learned Government Advocate for respondents 1 to 4.

12. It is a well settled legal position that transfer is not only an incident of service, but also a condition of service and no employee has indefeasible right to insist that he/she should be posted in a particular place. It is for the appointing/competent authority to decide as to whether an employee has to be retained in a particular station. The desirability, and suitability of a person to be posted in a particular place is left to the discretion of the appointing authority or the competent authority, who has to decide the place of posting. Once an employee has taken up a transferable post under the recruitment rules, he cannot claim any indefeasible right to squat in a particular place. In these circumstances, when



a Government servant/employee is transferred on administrative grounds, it is not for the Court to conduct a roving enquiry into the same. Equally, it is also well settled that an order of transfer can be interfered only on the following grounds:

- (i) if it is tainted with *mala fide*;
- (ii) if it is in violation of any statutory rules;
- (iii) if the authority, who has passed the order of transfer, has no jurisdiction to do so.

13. In the present case, the impugned order passed by the 2nd respondent shows that the petitioner, who is serving as a Warden in Government Adi Dravidar Welfare Boys Hostel, Mangalapuram, for more than four years, is held to be unfit to hold the post of Warden, hence, he has been transferred from Mangalapuram, Tenkasi, to Government Tribal Residential High School, Melanai-Papanasam, and posted as Secondary Grade Teacher. It is not known how such a finding is given against the petitioner behind his back, holding that he is unfit to continue as Warden. Having given such a finding, it is also not known that how the petitioner can be transferred and posted as Secondary Grade Teacher. Admittedly, no notice whatsoever has been given, before passing the impugned order, moreover, there is not even a preliminary enquiry held to reach the conclusion that the petitioner is unfit to hold the post of Warden, therefore, condemning the petitioner without hearing him, is unknown to law, hence, the impugned order of transfer is liable to be set aside.

14. Secondly, the 5th respondent has given his request transfer and entertaining his request, he has been transferred to the petitioner's place, by the impugned order. This type of transfer is prohibited by the guidelines to be followed while effecting transfers of Government servants in Groups A, B and C, issued in Government Letter No.23847/S/98-1, dated 05.08.1998. The relevant portion of the abovesaid guidelines is given as under:-

'' (Govt.Lr.No.86456/Per.S/93-7, dt.09.08.94)

(f) In cases where serious allegations are pending enquiry, when it is considered necessary in the public interest, and sufficient in lieu of suspension, the officer may be transferred - in such cases, transfer shall be effected to a vacant post in another station or to the post where junior most person of the same category is working.

Transfers shall not be effected on the basis of allegations, unless the allegations are found to be prima-facie true by a preliminary enquiry and it is decided by the transferring authority that the continuance of the officer in the same station is injurious to public interest and that he can be transferred rather than suspended from service. When such transfers on complaints/allegations are made after preliminary enquiry, it should be followed-up by a detailed investigation and disciplinary action instituted on allegations finally found to be substantiated.

(Govt.Lr.No.39201/Per.S/94-1, dt.11.7.94)



(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.''

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15. Clause (f) of Government Letter No.23847/S/98-1 dated 05.08.1998, giving exception to the general guidelines, shows that transfers shall not be effected on the basis of allegations, unless the allegations are found to be *prima facie* true, by a preliminary enquiry and it is decided by the transferring authority. In the present case, when the guidelines are very clear that before effecting transfer of a Government servant from one place to another place, on allegation, a preliminary enquiry should be held to find out the veracity of the allegation or complaint, the 2nd respondent without even holding a preliminary enquiry has come to the conclusion that the petitioner is unfit to hold the post of Warden at Government Adi Dravidar Welfare Boys Hostel, Mangalapuram, therefore, the impugned order of transfer, being punitive in nature, the same is liable to be set aside.

16. Thirdly, as I mentioned above, considering his request transfer, the 5th respondent has been transferred to the petitioner's place and posted as Warden, violating the transfer guidelines issued in Government Letter No.23847/S/98-1, dated 05.08.1998, which states that request transfer can be made only to stations where vacant posts exist, therefore, looking at the impugned order from any angle, it cannot be sustained. The impugned order shows that the same has been passed by way of punishment without holding enquiry, violating the aforementioned G.O.

17. In **State of U.P. and another vs. Siya Ram and another, reported in 2004 (7) SCC 405**, the Supreme Court held that no Government servant or employee of the public undertaking has any legal right to be posted forever at any one particular place or place of his choice 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 or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals normally cannot interfere with such orders as a matter of routine, as though they were appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned.

18. In **S. Sevugan vs. Chief Educational Officer, Virudhunagar District, Virudhunagar and another, reported in 2006 (2) CTC 468**, it has been observed as follows:



"7. It is seen from the impugned order of transfer that it is passed on administrative ground, but it appears that the order was passed by way of punishment and based on the complaint against the conduct of the petitioner. If that be so, the petitioner is certainly entitled for proper opportunity to defend himself as to whether the complaints against him by the Public or by the Headmaster is proper or not by way of an enquiry.

8. In these, circumstances, this Court is of the view that the transfer order passed by way of punishment is without any opportunity to the petitioner and on the face of it, the order of transfer is illegal and the same is liable to be set aside. Accordingly, the impugned order is set aside."

19. In **Somesh Tiwari vs. Union of India**, reported in **2009 (3) MLJ 727**, the Hon'ble Supreme Court has held as follows:-

"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.'"

20. For the reasons mentioned above, the impugned transfer order is set aside and the respondents 1 to 4 are directed to post the petitioner in the same place.

In the result, the writ petition is allowed. No costs. W.M.P (MD) No. 9764 of 2016 is closed.

Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar



To

1) The Commissioner of Adi Dravidar Welfare,
Chepauk,
Chennai-5.

2) The District Adi Dravidar Welfare Officer,
Tirunelveli District,
Tirunelveli.

3) The Special Tahsildar (ADW),
Tenkasi Taluk,
Tirunelveli District.

+1 cc to Mr.G.thalaimutharasu ,Advocate, Sr.No: 46958

+1cc to M/S Special Government Pleader, Sr No. 47425

JAM/SS 2/6.09.16/9p-6c

W.P (MD) No.12963 of 2016
24.08.2016