



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.11.2016

CORAM :

THE HONOURABLE MR.JUSTICE **M. GOVINDARAJ**

W.P (MD) No.3972 of 2011

and

M.P. (MD) No.1 to 3 of 2011

K.Selvarajan

... Petitioner

Vs.

1.The General Manager,
Tamil Nadu Tourism Development
Corporation Limited,
Wallajah Road, Chennai 600 002.

2.The Manager,
Tamil Nadu Hotel,
Kanyakumari P.O.,
Kanyakumari District.

... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned transfer order issued by the first respondent in his proceedings in Proc.No.826/A1/2011, dated 18.02.2011 and quash the same and direct the respondents to allow the petitioner to continue the second respondent's office with all attendant benefits.

For Petitioner

: Mr.K.Vamanan

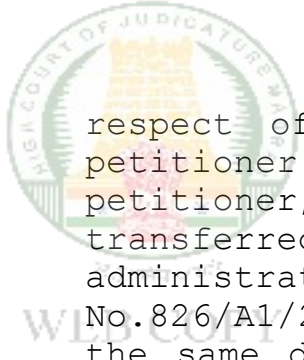
For Respondents

: Mr.V.Raghavachari

O R D E R

This writ petition has been filed to call for the records of the impugned transfer order passed by the first respondent in his proceedings in Proc.No.826/A1/2011, dated 18.02.2011, quash the same and direct the respondents to allow the petitioner to continue in the second respondent's office with all attendant benefits.

2.The petitioner was working as "Special Grade Plumber" in Hotel Tamil Nadu, Kanyakumari Branch under the second respondent. <https://hservices.rescourts.gov.in/hservices/> he was appointed on 16.12.1983 and he had put in 27 years of service. On 29.11.2010, the respondents issued transfer order in



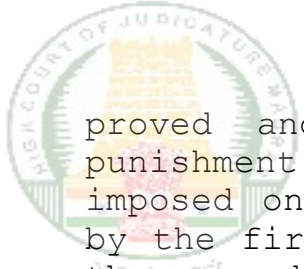
respect of four workmen to far away stations, for which, the petitioner objected. In view of the objection made by the petitioner, with a great vengeance, the second respondent again transferred the petitioner to Ulundurpet with immediate effect on administrative grounds, vide impugned proceedings in Proc. No.826/A1/2011, dated 18.02.2011 and he relieved the petitioner on the same day itself. Challenging the said transfer order passed by the second respondent, the present writ petition has been filed.

3.This Court, while ordering notice regarding admission, granted interim stay of the impugned order of transfer.

4.The respondents filed a counter affidavit stating that the allegations made by the petitioner are not correct. The transfer of four individuals was made based on administrative reasons. The respondents had never any illegal goal. The transfer of the petitioner was made purely based on administrative reasons as a plumber was required at that place. Insofar as the plea that the wife of the petitioner is also working in the same station is concerned, it is stated that as per Circular Memo No.20441/76-1, dated 28.04.1976, and all subsequent Government Orders, the married couple, if both of whom are in Government service, they should generally be posted to the same station, provided that the same can be done without disadvantage to the administration. It is not a mandatory direction, but it is only a general instructions given by the Government Order. Since the post of Senior Plumber does not have any work at the second respondent's office, the petitioner was transferred on administrative grounds and there is no mala-fide in the transfer.

5.When the matter was taken up for hearing, the learned counsel for the petitioner had produced certain documents, which he obtained through the Right to Information Act. In one of the said documents, namely, the letter No.182/HTN/KKY/2011, dated 17.02.2011, written by the second respondent to the first respondent, it is stated that the petitioner had used unparliamentary words against the second respondent now and then and also against the Hon'ble Minister for Tourism and the said unparliamentary words were recorded in a cassette and the same has also been sent to the first respondent by the second respondent. It is also stated that there were other instances, in which the petitioner lodged a police complaint and given trouble to other staff and also derelicted in his duty, the second respondent requested the first respondent to transfer the petitioner to some other unit. Therefore, according to the petitioner, the transfer is not on administrative ground, but it is punitive in nature.

6.The learned counsel for the petitioner submitted that for <https://hsr.ses.com/gov.in/hsr-services/> of allegations, charges were framed against the petitioner. In the disciplinary proceedings, admittedly three charges were framed against the petitioner. The first charge was



proved and other two charges were not proved. Hence, punishment of stoppage of one increment with cumulative effect was imposed on the petitioner. Therefore, the transfer order passed by the first respondent was influenced by the letter addressed by the second respondent to the first respondent and the transfer of the petitioner is purely punitive in nature as it is based on certain allegations and not to meet the administrative exigencies.

7. In support of his submissions, the learned counsel for the petitioner relied on the decisions of this Court in **Union of India and Others v. Dr.M.M.Cholan and Others** (2007 (6) MLJ 1303), **T.Jayapandi v. State Express Transport Corporation Limited, Rep. by its Managing Director and Others** (2009 (1) CTC 322) and **R.Mohanasundaram v. The Principal Chief Conservator of Forests** (2009 (5) CTC 231)

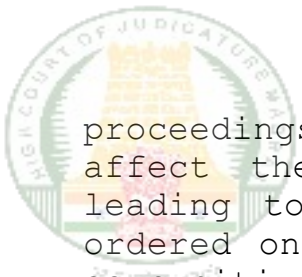
8. In the decision of this Court in **R.Mohanasundaram v. The Principal Chief Conservator of Forests** (2009 (5) CTC 231) (cited *supra*) it is stated that if transfer is based on some allegations, the petitioner shall be given sufficient opportunity to offer his explanation and by conducting proper enquiry in the manner known to law and no transfer can be made by way of punishment based on the allegations and adverse remarks.

9. The learned counsel for the respondents relied on the decision of the Supreme Court in **Union of India and others v. Janardhan Debanath and Another** (2004 (4) SCC 245) wherein, it is held thus:

"The transfer on the ground that the employee concerned was "undesirable" as he had misbehaved and if to be preceded by departmental enquiry and such transfer unless adversely affecting the service conditions or status or service prospects or leading to penal consequences, held need not be preceded by the same type of departmental enquiry as is conducted in cases leading to dismissal, discharge etc. and prima facie satisfaction of the authority concerned based on contemporary reports are sufficient."

10. The learned counsel for the respondents also relied on another decision of the Supreme Court in **State of Uttar Pradesh and Another v. Siya Ram and Another** (2004 (7) SCC 405).

11. On a perusal of the above decisions, it is clearly seen that in exceptional cases, an employee can be transferred on account of inefficiency or mis-behaviour or on his written request. If the departmental enquiry has to be proceeded on the misconduct, it is not necessary to wait for departmental



proceedings to get completed and the transfer, which does not affect the service conditions, status, service prospects or leading to penal consequences or reduction of status, can be ordered on the basis of contra report, then it cannot be termed as punitive transfer.

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12. In the decision of the Apex Court in **State of Uttar Pradesh and Another v. Siya Ram and Another (cited supra) (2004 (7) SCC 405)**, it is held that the transfer of an employee to a non-working post after initiation of disciplinary proceedings, cannot be termed as mala fide and the transfer cannot be held as punitive transfer as it is an incidence of service, but a condition of service as well as it is necessary in public interest and efficiency in public administration and no Government servant or employee of a public undertaking has any legal right to be posted for ever at any one particular place or of his choice.

13. In the instant case, the transfer, though is administrative transfer, was made on the basis of recommendation given by the second respondent, followed by departmental proceedings on the same charge. Ultimately, the departmental proceedings ended in imposing punishment, but he was not transferred on that ground.

14. In the decision in **Union of India and Others v. Dr. M.M. Cholan and others (2007 (6) MLJ 1303)**, it was held that if mala fide on the part of the employee has been proved and the transfer order was passed being influenced by the letters addressed by the petitioner to higher authorities, it was held that it can be done only on punitive and not as administrative transfer.

15. Even though the employee is not expected to continue in the same post for ever and the transfer is an incidence of service, such transfer shall not be made on the basis of adverse remarks. The transfer made by the superior authorities for imposing punishment based on the adverse remarks, is held to be punitive.

16. In the instant case, the petitioner was subjected to disciplinary proceedings and was imposed punishment of stoppage of increment with cumulative effect. At this juncture, imposing transfer will amount to another punishment and the contentions of the petitioner are acceptable. Therefore, this Court is inclined to interfere with the impugned order of transfer, since the petitioner had already suffered a punishment of stoppage of increment with cumulative effect. Hence, the transfer order issued by the first respondent based on adverse remarks had to be set aside.

17. However, the quashing of the impugned order will not give premium to the petitioner to stand at the same plea that the



respondents have not made transfer on administrative exigencies. Hence, it is open for the respondents to transfer the petitioner purely on administrative exigencies and it shall not be punitive in nature.

18. The writ petition is disposed of with the above observations. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

cla

To

1. The General Manager,
Tamil Nadu Tourism Development Corporation Limited,
Wallajah Road, Chennai 600 002.

2. The Manager,
Tamil Nadu Hotel,
Kanyakumari P.O.,
Kanyakumari District.

+1cc to Mr.K.Vamanan, Advocate Sr.No. 73600

+1cc to Mr.V.Raghavachari, Advocate Sr.No. 72637

JAM/09.03.17 /RR/5p-5c

W.P (MD) No.3972 of 2011
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