IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2017

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.22949 of 2017
and
W.M.P.Nos.24095 and 24096 of 2017

R.Gunasekaran ... Petitioner

Vs

The Additional Chief Secretary/
Commissioner of Commercial Taxes
Ezhilagam, Chepauk, Chennai 5. ... Respondent

PRAYER : Petition filed Under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the respondent in Proc.No.CP2/2454/2017-III dated 31.07.2017 and quash the same.

For Petitioner : Mr.V.Perumal

For Respondent : Mrs.Narmadha Sampath
Special Government Pleader

O R D E R

The order of transfer, transferring the writ petitioner from Chennai to Sivagangai in Proceedings dated 31.07.2017, is under challenge in this writ petition.

2. The learned counsel appearing for the writ petitioner states that the writ petitioner is working as Assistant Commissioner(CT) in the Department of Commercial Taxes, since 10.08.2010 and he is having a short span of service and therefore, the impugned transfer is liable to be set aside. Further, it is stated that the writ petitioner was included in the panel for promotion to the post of Deputy Commissioner for the year 2014-15 and due to the pendency of certain case, he is unable to get his promotion. In fact, the writ petitioner is due to retire from service on 30.06.2018 and left with 11 months of service. Under these circumstances, the impugned administrative transfer was issued transferring the writ petitioner from Chennai to Sivagangai in proceedings dated 31.07.2017.

3. The learned counsel for the petitioner submits that, since the writ petitioner is due to retire within one year and he should not have been transfered. The Government has also issued instruction in this regard and impugned order is issued in violation of the Government guidelines in the matter of transfer.

4. The Government letter, issued in the form of an instruction, will not confer any legal right on the employees to claim that they should be allowed to remain in a particular place or post. The guidelines/ instructions are issued by the Government to the Competent Authorities to consider the cases wherever required and this will not have the effect of statutory rules. Thus, the Government instructions cannot be a ground for the employee to move this writ petition to remain in a particular place or post. It is the discretion of the Competent Authorities to consider these aspects and ultimately, the interest of administration and the public interest alone should prevail over and above the instructions issued in the form of concessions. These Government instructions are issued in order to extend certain concessions and facilities to the Government employees. Such concessions or facilities cannot be construed as if they provide a right to the Government employees.

5. The plea of sympathy has to be put-forth only before the Competent Authorities and the Constitutional Court cannot interfere in the day-to-day administration of the State. Transfers are incidental to service, more-so, a condition of service. Judicial review against the orders of transfer are certainly limited and the Courts have to be cautious before interfering with the administrative orders of transfer.

6. The writ petitioner is working in the cadre of Assistant Commissioner of Commercial Taxes, which is a responsible position and he has to serve for the public and in the interest of public. His personal interest or certain difficulties, cannot be pleaded in public service, when he is holding the higher post of the Assistant Commissioner of Commercial Taxes.

7. The Government employees are entitled to enforce their legal rights entitled under the Act and statutory Rules. However, they are not entitled to claim right based on certain facilities and concessions issued by the Government by way of Government letters/instructions. The State, being the model employer, time and again provide certain concessions/ facilities for the welfare of its employees and to encourage them, so as to run the administration in an effective manner. But those concessions/ facilities can never be a matter of legal right to the Government employees. The Constitutional Courts need not extend any consideration based on such facilities/instructions/

guidelines extended by the Government in order to motivate the Government employees for running the State administration more effectively.

8. A mere forthcoming retirement or short tenure, cannot constitute a ground to attack the administrative orders of transfer. Thus, the present writ petition filed by the writ petitioner deserves no consideration at all. No doubt, certain difficulties may arise in the family of the Government servants in the event of an order of administrative transfer. But the interest of administration and the public in general alone are the paramount importance and this Court cannot extend any leniency to the Government employees on pleadings of personal grievances. It is for the Competent Authorities to consider those grievances and even in case, such grievances are not considered by the original authority, it is left open to the Government employees to approach the higher authorities or the Government in this regard, but certainly not this Court under Article 226 of the Constitution of India.

9. Thus, this Court is of the firm opinion that administrative transfers are never to be interfered with under Article 226 of the Constitution of India. This being the consistent view taken by the Hon'ble Supreme Court of India as well as the High Courts, no further consideration or adjudication needs to be entertained in this writ petition on the grounds raised in the affidavit.

4.The learned counsel appearing for the respondent brought to the notice of this Court, the following judgment relating to the administrative transfers reported in 1974 (4) SCC 3 [E.P.Royappa Vs. State of Tamil Nadu] and it is relevant to extract Para Nos.91 and 92 of the said judgment:

> "91.The only question before us is whether the action taken by the respondents includes any component of mala fides whether hostility and malus enimus against the petitioner were the operational cause of the transfer of the petitioner from the post of Chief Secretary. Secondly, we must not also overlook that the burden of establishing mala fides in very heavy on the person who alleges it. the allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility. Here the petitioner, who was himself once the Chief Secretary, has flung a series of charges of oblique conduct against the Chief Minister. That is in itself a rather extra-ordinary and unusual occurrence and if these charges are true, they are bound to shake the confidence of the people in the political custodians

of power in the State, and therefore, the anxiety of the Court should be all the greater to insist on a high degree of proof. In this context it may be noted that top administrators arc often required to do acts which affect others adversely but which are necessary in the execution of their duties. These acts may land themselves to misconstruction and suspicion as to the bona fide of their author when the full facts and surrounding circumstances are not known. The Court would, therefor be slow to draw dubious inferences from incomplete facts placed before it by a party,, particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the administration. Such is the judicial perspective in evaluating charges of unworthy conduct against ministers and other high authorities, not because of any special status which they are supposed to enjoy, nor because they are highly placed in social' life or administrative set up these. considerations are wholly irrelevant in judicial approach but because, otherwise, functioning effective y would become difficult in a democracy. It is from this stand point that we must assess that merits of the allegations of mala fides made by the petitioner against the second respondent.

92.Now extensive arguments were addressed before us by counsel on both sides and we were taken through a mass of documents, papers and official nothings on this part of the case but we are afraid it is not possible for us to say that the onus of establishing mala fides against the second respondent, heavy as it is, has been discharged by the petitioner. The allegations of mala fides have been dealt with fully in the judgment of the learned Chief Justice and we do- not think it will serve any useful purpose for us to discuss the merits of those allegations once again in this judgment, as we are substantially in agreement with what the learned Chief Justice has said. But we cannot help mentioning that there are certain disturbing features which cause us anxiety. We may take by way of example the imputation in regard to the Coom River Project. It seems that in or about the beginning of February 1970 the second respondent asked the Director of Vigilance to look into the affairs relating to Coom Improvement Project as he apprehended that there were certain malpractices in the execution of that scheme. Whether this was done by the second respondent on his own initiative or at the instance of the petitioner is immaterial and we need not go into. that controversy. The Director of Vigilance, as his subsequent letter dated 25th February, 1970 shows, informed the second respondent that without a discreet inquiry it would not be possible to allay or confirm the apprehensions with any degree of credibility since the head of the concerned engineering department was personally involved in the execution of the scheme and he accordingly by that letter pointed out to the petitioner that he needed authorisation to embark on the inquiry and Government order in that be,half should therefore be obtained and communicated to him. The petitioner made an endorsement on this letter on the very next day with a remark that the Public (Secret/Confidential) Department should deal with it immediately. The Public (Secret/Confidential) Department prepared a note at the foot of the letter and submitted it for circulation to the Minister for Works and the second respondent for orders whether the Director of Vigilance should be requested to make a discreet inquiry and send his report. The endorsement made below the note shows that it was submitted for circulation on 3rd March, 1970. It appears, however, that this note remained unattended until the middle of September 1970. On 12th September, 1970 the Minister for Works made an endorsement that the Director of Vigilance may make a discreet inquiry and this endorsement was approved by the second respondent on 20th September, 1970. The file containing the note together with the endorsements of the Minister for works and the second respondent was thereafter placed before the petitioner along with a draft of the memorandum to be addressed by the petitioner to the Director of Vigilance. It is common, ground that no memorandum in terms of this draft was issued by the petitioner to the Director of Vigilance. The case of the petitioner was that he. did not do so because the second respondent subsequently ordered that no inquiry need be made in this matter. This position was disputed by the second respondent who stated that to the best of his recollection he did not make any such order cancelling the inquiry. That is a matter of con- troversy between the parties and as pointed out above it does not fall within our province to investigate it. But the fact remains, and that cannot be disputed, that no inquiry thereafter took place in the affairs of the Coom Improvement Scheme. It is a little interesting to note that Sabanayagam addressed a letter dated 31st July, 1971 to the petitioner stating that though the Personal Assistant to the Chief Secretary had been reminded to send back the file relating to this matter, it had not been received and the petitioner should arrange to send it back, 13-L522 SCI/74 if it was with him. The petitioner immediately replied to this letter on 8th August, 1971 pointing out that he distinctly remembered that the second respondent had subsequently ordered that no inquiry need be made in this matter and the file was not with him. It is significant that though the petitioner stated categorically that the second respondent had subsequently ordered that no inquiry need be made, Sabanayagam did not write back challenging the correctness of this statement. The file pertaining to this matter was all throughout in the possession of the Government and even after the petitioner pointed out that it was not with him, curiously enough, it could not be traced until the filing of the petition. In fact, the absence of the Me could not have stood in the way of ordering an inquiry. These and a few other circumstances do create suspicion brunt suspicion cannot take the place of proof and, as pointed out above, proof needed here is high degree of proof. We cannot say that evidence generating judicial certitude in up-holding the plea of mala fides has been placed before us in the present case. We must, therefore, reject this contention of the petitioner as well. We accordingly dismiss the petition with no order as to costs."

10. In view of this factum, the order of administrative transfer need not be interfered with, by this Court and accordingly, the writ petition stands dismissed. However no order as to costs. Consequently, connected Miscellaneous Petitions are also dismissed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

dna

To

The Additional Chief Secretary/
Commissioner of Commercial Taxes
Ezhilagam, Chepauk, Chennai 5.

+1cc to Mr.Adithiya Reddy, Advocate, S.R.No.61993

W.P.No.22949 of 2017

SJ(CO)
CA(09/10/2017)