



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.04.2017

Date of Reserving the Judgment	Date of Pronouncing the Judgment
21.03.2017	03.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

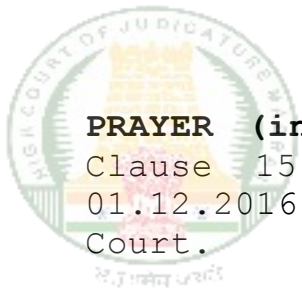
and

THE HONOURABLE MR.JUSTICE P.VELMURUGANW.A.(MD) Nos.256 & 266 of 2017andC.M.P.(MD) Nos.2603 & 2721 of 2017 respectively

1. The Director of School Education
College Road, Chennai-600 006
2. The Chief Educational Officer
Nagercoil, Kanyakumari District
3. V.Jeyakumar
Chief Educational Officer
Nagercoil, Kanyakumari District
... Appellants in W.A.(MD) No.256 of 2017
- 4.T.Radhakrishnan ... Appellant in W.A.(MD) No.266 of 2017

-vs-

- 1.V.Suresh
- 2.T.Radhakrishnan ... Respondents in W.A.(MD) No.256 of 2017
- 3.V.Suresh
- 4.The Director of School Education
College Road, Chennai-600 006
- 5.The Chief Educational Officer
Nagercoil, Kanyakumari District
- 6.V.Jeyakumar ... Respondents in W.A.(MD) No.266 of 2017



PRAYER (in W.A.(MD) No.256 of 2017) : Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 01.12.2016 made in W.P.(MD) No.15190 of 2016, on the file of this Court.

PRAYER (in W.A.(MD) No.266 of 2017) : Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 01.12.2016 made in W.P.(MD) No.15190 of 2016, on the file of this Court.

For Appellants : Mr.V.R.Shanmuganathan
(W.A.(MD) No.256 / 2017) Special Government Pleader

For Appellant : Mr.K.N.Thambi
(W.A.(MD) No.266 / 2017)

For 1st Respondent : Mr.T.Cibi Chakraborty
(in both W.As)

For 2nd Respondent : Mr.K.N.Thambi
(W.A.(MD) No.256 / 2017)

For R2 to R4 : Mr.V.R.Shanmuganathan
(W.A.(MD) No.266 / 2017) Special Government Pleader

Prayer in WP(MD). 15190/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari calling for the records relating to the impugned order of transfer issued by the 1st respondent Director of School Education in Na.Ka.NO. 114/C1/E1/2016 dated 11.08.2016 (served on 13.08.2016), Quash the same.

C O M M O N J U D G M E N T

T.S.SIVAGNANAM, J.,

Since both the writ appeals have directed as against the very same order of the Writ Court, they have been clubbed together, heard together and are being disposed of by this common Judgment.

2. For the sake of convenience, the parties are referred to as per the ranking in W.A.(MD) No.256 of 2017.

3. Writ appeal, in W.A.(MD) No.256 of 2017, has been preferred by the Government against the order, dated 01.12.2016, passed in W.P.(MD) No.15190 of 2016, filed by the first respondent. Whereas, W.A.(MD) No.266 of 2017 has been preferred against the very same order, by the fourth respondent, who is the ~~first respondent~~ and who has been transferred to the place, where the first respondent / writ petitioner was working.

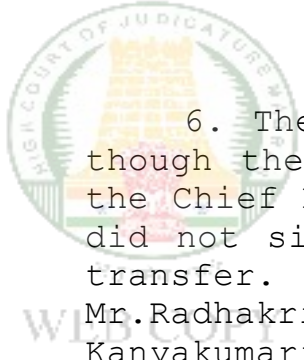


4. The first respondent challenged his order of transfer, dated 11.08.2016, which was quashed by the impugned order and aggrieved over which, the appellants and the fourth respondent in the writ petition are before this Court by way of the present appeals.

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5. The facts, which are necessary for the disposal of the appeals are as follows:

- (i) The first respondent, namely, Suresh was appointed as a B.T.Assistant in History in a Private Aided School at Sankarankoil, Tirunelveli District and after which, he was transferred and posted as B.T.Assistant in History in Government Higher Secondary School at Sankarankoil, Tirunelveli District. He was promoted as Headmaster in the year 2013. The first appellant / Director of School Education appointed the first respondent as Personal Assistant to the second appellant / Chief Educational Officer (C.E.O.), which post is equivalent to that of the post of Headmaster of Higher Secondary School. The third appellant, namely, V.Jeyakumar, Chief Educational Officer, in his personal capacity, was impleaded as the third respondent in the writ petition.
- (ii) A complaint was lodged by the third appellant against the first respondent regarding misplacement of a Certificate of Transfer of Charge (C.T.C.), which was signed by the third appellant, when he was transferred and joined as the Chief Educational Officer in the office of the second appellant. Pursuant to the said complaint, the first appellant issued a charge memo to the first respondent, under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1973. The first respondent submitted his explanation denying the charges levelled against him. An officer in the cadre of Joint Director of School Education was appointed as an Enquiry Officer, who submitted a report holding that the charges were proved. Though the said report was submitted on 26.04.2016, till date the first appellant / Disciplinary Authority has not taken further action in the disciplinary proceedings initiated against the first respondent. While so, an order of transfer was passed on 11.08.2016, which was challenged by the first respondent as being arbitrary and tainted with malice and with a view to unduly favour the second respondent, who was the incumbent and transferred to the post occupied by the first respondent.

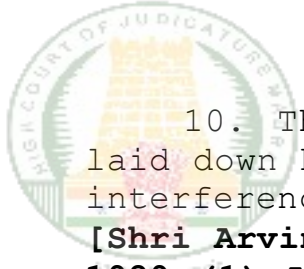


6. The appellants resisted the writ petition contending that though the second respondent was posted as Personal Assistant to the Chief Educational Officer, on 13.08.2016, the first respondent did not sign the relieving register nor acknowledge the order of transfer. It was further stated that on 02.06.2015, one Mr. Radhakrishnan, who was working as Chief Educational Officer in Kanyakumari was transferred and a new Chief Educational Officer, Mr. Jayakumar took charge and signed the C.T.C. The said Radhakrishnan challenged the order of transfer before this Court by way of a writ petition, in W.P.No.8948 of 2015, in which an interim order was granted stating that there will be an order of stay, if the petitioner therein has not already been relieved. The allegations made against the first respondent are that he had facilitated the said Officer by handing over the original C.T.C. register to him and suppressed the fact that he had already been relieved.

7. The said Radhakrishnan had filed two other writ petitions challenging the order of punishment and seeking for promotion. The writ petition challenging the punishment was allowed with a direction to grant him promotion, which order was confirmed by the Division Bench of this Court. However, the other writ petition challenging the order of transfer was dismissed along with contempt application, which had filed alleging disobedience of the interim order of stay. Thus, the allegation made against the first respondent was that he had removed the official record from the Office of the Chief Educational Officer and handed it over to the erstwhile Chief Educational Officer, who had already been relieved.

8. With regard to the challenge to the impugned order of transfer is concerned, the appellants contended that the transfer was on the administrative grounds; the first respondent was not co-operating with the staff; he was quarrelling and threatening them and thereby interfering with the smooth administration and his continuance as Personal Assistant to the Chief Educational Officer would be detrimental to the establishment.

9. With regard to the allegation of the first respondent that the order of transfer was passed to accommodate the second respondent, the appellants contended that the second respondent was working at Nagapattinam and he made a request for transfer on spouse priority and to take care of his mentally challenged brother and he was accommodated in the post, which was occupied by the first respondent. Further, the place to which, the first respondent has been transferred is less than 15 kilometers from his native town and no prejudice would be caused as he has once again been posted as Headmaster. The appellants to support their contention, submitted that the order of transfer was on administrative grounds referred to G.O.(Ms) No.10, dated 07.01.1994.



10. The learned Single Judge, after taking note of the law laid down by the Hon'ble Supreme Court with regard to the scope of interference with the orders of transfer, namely, **(1997) 6 SCC 169 [Shri Arvind Dattatraya Dhande v. State of Maharashtra and others]**, **1989 (1) LLJ 139 [P.Pushpakaran v. Coir Board and another]**, **2014 (1) CWC 867 [Y.Jeyakumar v. Additional Director of Police]** and **1980 (1) LLJ 1 [C.Ramanathan v. Acting Zonal Manager, FCI, Madras and others]** allowed the writ petition and quashed the order of transfer.

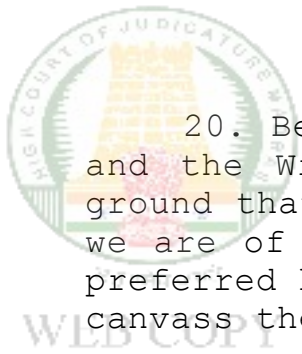
11. The learned Special Government Pleader appearing for the appellants contended that the order of transfer was on administrative grounds and this Court should not have been interfered with such an order in the facts and circumstances of the case and taking into consideration the interest of the administration of the Office of the Chief Educational Officer.

12. The second respondent, who is the incumbent and who has been posted in the place of the writ petitioner, with much vehemence contended that the writ petition ought to have been dismissed for the reason that the order of transfer cannot be interfered and the Honourable Supreme Court has laid down in several decisions that transfer orders can be issued to avoid hardship and such orders cannot be interfered merely on the ground that the incumbent sought for a request transfer. In support of his contention, the learned counsel for the second respondent referred to the decisions of the Honourable Supreme Court in **T.D.Subramaniam v. Union of India**, reported in **(1981) 4 SCC 150**; **Shilpi Bose and others v. State of Bihar and others**, reported in **1991 Supp (2) 659** and **N.K.Singh v. Union of India and others**, reported in **(1994) 6 SCC 98**.

13. We have elaborately heard the learned counsel for the parties and carefully considered the materials placed on record.

14. It is a settled legal principle that under normal circumstances, the orders of transfer should not be interdicted by Courts. Yet, an exception has been carved out, wherein Courts have held that the orders of transfer, if vitiated by malice or mala fide, can be interfered. The learned Single Judge, in our opinion, has, after taking note of the legal principle, given a deep consideration to the factual position. The factual matrix, which has been culled out in the impugned order is from the order of transfer. As noticed above, though a charge memo was issued to the first respondent on 10.06.2015 and an Enquiry Officer was appointed to enquire into the charges, who submitted his report on 26.04.2016, the Disciplinary Authority is yet to take any action on the said enquiry report and for the reasons best known the same has been kept pending.

appellant



20. Before the Writ Court, the first respondent had succeeded and the Writ Court has set aside the order of transfer on the ground that it suffers from malice in law. In such circumstances, we are of the opinion that the appeal in W.A.(MD) No.266 of 2011 preferred by the second respondent cannot be considered nor can he canvass the case of the appellants.

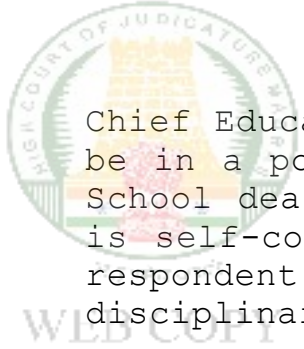
21. The decision in **T.D.Subramaniam's** case (cited supra) relied on by the learned counsel appearing for the second respondent is factually distinguishable and wherein the Court was considering the case of an Officer, who had been transferred and who had lacked tact.

22. In the case of **Shilpi Bose** (cited supra), the order of transfer was not interfered on the ground that it was with a view to accommodate a public servant to avoid hardship. However, in the case on hand, the transfer order has been challenged on the ground that it is tainted with mala fide.

23. In the case of **N.K.Singh** (cited supra), the facts are totally different, that pertaining to an Officer of C.B.I., and when it was put to challenge, the Honourable Supreme Court pointed out that there is not even mention about the appellant's successors in the C.B.I., or his credentials or even a whisper against him and he has neither been named nor impleaded as a party. Further, the Honourable Supreme Court observed that C.B.I., is competent and fit to conduct the sensitive investigation and his successor would stand automatically discredited without any such allegation being made or hearing given to him and that indeed is a tall order and impermissible in these proceedings, where the other officers are not even participants. The said decision of the Honourable Supreme Court is not applicable to the facts of the present case, more so when in the impugned order of transfer, the first appellant has paid encomiums to the second respondent.

24. Thus, we find that this is one of the rarest of rare cases, wherein the first respondent was able to establish before the Writ Court on facts that the order of transfer is vitiated on account of mala fide and made to appear as if it is an innocuous order of transfer. The order of transfer speaks for itself. We have in the preceding paragraphs stated about the contents of the order of transfer, which clearly would go to show that it has been made as a measure of punishment. The reasons assigned by the learned Single Judge are cogent and in accordance with law laid down by the Honourable Supreme Court in the various decisions relied on.

25. We are in full agreement with the views expressed by the learned Single Judge that if, according to the appellants, the first respondent is not suitable to work in the Office of the



Chief Educational Officer as Personal Assistant, then how would he be in a position to work as a Headmaster in the Higher Secondary School dealing with the young minds. Thus, the order of transfer is self-contradictory and passed with a view to punish the first respondent while putting on hold the further action in the disciplinary proceedings.

26. Thus, for the above reasons, we do not find any good ground to interfere with the order passed by the learned Single Judge and therefore, the appeals are liable to be dismissed.

27. In the result, the writ appeals fail and they are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To:

1. The Director of School Education,
College Road, Chennai-600 006.

2. The Chief Educational Officer,
Nagercoil, Kanyakumari District.

+2 cc to Mr.K.N.Thampi, Advocate, SR.No.18822 & 18823

+1 cc to Special Government Pleader, SR.No. 19285

+1 cc to Mr.T.Cibi Chakraborty, Advocate, SR.No. 19033

**PRE-DELIVERY
COMMON JUDGMENT
IN**

**W.A. (MD) Nos.256 & 266 of 2017
and**

**C.M.P. (MD) Nos.2603 & 2721 of 2017
respectively
03.04.2017**

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