



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.06.2017

Coram:

WEB COPY

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P. (MD) No.8687 of 2017

and

W.M.P (MD) No.6590 of 2017

S.Sathyabama

...Petitioner

-Vs-

1.The Director General of Police,
Office of the Director General of Police,
Kamarajar Salai, Chennai.

2.The Commissioner of Police,
Madurai City.

...Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, Writ of Certiorarified Mandamus to call for the records connected with the transfer and posting order in C.No.A1/2453/82/2015/CPO No.618/2017, dated 25.04.2017 issued by the Respondent No.2 and quash the same as illegal, consequently to direct to Respondents to pass appropriate order to permit the petitioner to continue his service in V.2 Avaniyapuram police station, Madurai City.

For Petitioner : Mr.R.Alagumani
For Respondents : Mr.B.Pugalendhi,
Additional Advocate General
Assisted by
Mr.M.Murugan
Government Advocate

ORDER

This writ petition is filed for issuing a writ of certiorarified mandamus to quash the order of transfer in question, dated 25.04.2017 passed by the second respondent and consequently to direct the respondents to pass appropriate order to permit the petitioner to continue in the present station where the petitioner is working.

2.The impugned order is an order by which the Commissioner of Police, Madurai City has transferred the petitioner from Madurai City to the Police Station, Chinnelvi District. This order of transfer was on the basis of the transfer order, dated 17.08.2016 received from the Head Office.



3.The case of the petitioner in brief are as follows:-

The petitioner was appointed as Second Grade Police Constable in Tamil Nadu Police Service in the year 2005. Later, she participated in the direct Sub-Inspector examination in the Police Department and was selected as Sub Inspector of Police. After completing the training in Vandalur and undergoing law and order training in Thiruchendur Police Station, she was posted as Sub Inspector of Police, Nanguneri Police Station, where she worked from 18.08.2012 to 05.09.2014. Thereafter, she worked as Sub-Inspector of Police in Tirunelveli All Woman Police Station. While she was working in Tirunelveli District, the petitioner used to come to the office of the Public Prosecutor of this Bench to give instructions. At that time, an Advocate compelled the petitioner to marry him and problem started from then for the petitioner, which propelled her to give a compliant before the Palayamkottai Police Station on 02.11.2015. However, she was transferred from Tirunelveli All Women Police Station to Madurai City Police Station. Immediately, thereafter on 11.11.2015 she joined as Women Sub Inspector of Police in Anna Nagar Police Station. Thereafter, she was transferred from Anna Nager Police Station to Avaniyapuram Police Station, within four months i.e., on 09.03.2016. The petitioner was facing several harassment by the same Advocate and therefore, she gave another complaint on 26.08.2016 before the Mathichiyam Police Station, Madurai City and an FIR was registered against the Advocate in Cr.No.815 of 2016 under Sections 294(b), 341, 336, 353, 354, 366, 384, 307 of IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act, 2002. It was thereafter, the petitioner has been transferred to Coimbatore by the impugned proceedings, dated 25.04.2017.

4.The learned counsel for the petitioner submitted that the petitioner has now been transferred from Madurai City to Coimbatore District I.e., from South Zone to West Zone. The Superintendent of Police, Madurai City is not a competent person to transfer the petitioner from South Zone to West Zone as it is only the Additional Director General of Police, who is the competent authority to transfer the police officers from one zone to another zone. It was therefore, the learned counsel for the petitioner contended that the order of transfer is without an authority and hence, liable to be quashed.

5.The next submission of the learned counsel for the petitioner is that the petitioner faced several harassment and it was the petitioner, who undergone mental agony and repeated harassments by the Advocate against whom she has given complaints. However, when she gave a complaint in Tirunelveli, she was transferred from Tirunelveli to Madurai. Since the physical harassment continued by the same Advocate even when she came to Madurai, she gave another complaint. But she was immediately transferred from South Zone to West Zone. As a result the



petitioner has been victimized for giving complaint against the wrong doer. Hence, the impugned order of transfer which is not purely on administrative ground and ignoring the inconvenience caused to the petitioner cannot be permitted.

6.Thirdly, the learned counsel for the petitioner submitted that the petitioner was transferred three times within a short span of two years and that therefore, the impugned order of transfer is against law and liable to be set aside.

7.The first issue is answered by the Additional Advocate General by referring to the order passed by the competent authority. Therefore, it is only on the basis of the Chief Office transfer order vide proceedings in R.C.No.3262-8/NGB.V(1)/2016, dated 17.08.2016, the petitioner was transferred and posted to Coimbatore District. Since the transfer order has been passed by the competent authority, the question raised by the petitioner's counsel that the transfer is without jurisdiction or authority, cannot be accepted.

8. In the judgment of the Hon'ble Supreme Court in *Shilpi Bose v. State of Bihar*, Manu/SC/0147/1991: 1991 Supp(2) SCC 659:LNIND 1990 SC 722: 1991-II-LLJ-591 it has been held as follows:

4.In our opinion, the courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department. If the courts continue to interfere with day-to-day transfer orders issued by the government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders."

9. Similarly, the Hon'ble Supreme Court in the judgment in *State of U.P. And Others v. Gobardhan Lal*, AIR 2004 SC 2165:(2004) 11 SCC 402 :LNIND 2004 SC 386 : 2004-III-LLJ-749 has held as

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"7.It is too late in the day for any Government Servant to contend that once appointed or posted in a



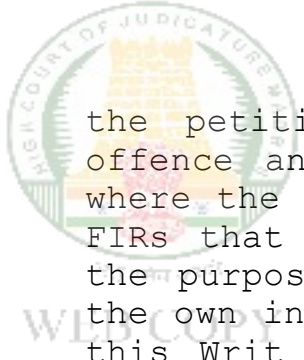
particular place or position, he should continue in such place or position as long as desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer can not lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made."

10. The limited scope of judicial review has been reiterated by a Division Bench of this Court in the judgment in *General Manager (Personnel), National Insurance Co. Ltd. And Another v. Dr. S. Ashok Kumar*, 2010 (2) CWC 90: LNIND 2010 MAD 1788 : (2010) 4 MLJ 433 and the relevant portion reads as follows:

"13. It is the cardinal principle that the transfer is ordinarily an incident (sic incidence) of service. The Court should not interfere with a transfer order which is made for administrative reasons unless the transfer orders are made in violation of any mandatory or statutory rule or on the ground of mala fide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other and he is liable to be transferred from one place to other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order, instead affected party should approach the higher authorities in the department. Indisputably, the order of transfer is an administrative order and there can not be a doubt whatsoever that the transfer is an incident of service and the same should not be interfered with save in cases where *inter alia* mala fide of the authority is proved.

11. In this case, the question of jurisdiction raised by the petitioner is answered. No malafide is alleged against the respondents. This Court is not inclined to interfere with the order of transfer as it has been repeatedly held that the transfer is an incident of service and the same cannot be interfered with, unless there is malafide or lack of jurisdiction.

12. In this case, the order of transfer appears to be on administrative grounds, especially having regard to the fact that



the petitioner has given a written complaint alleging serious offence and it is not desirable to keep her in nearest station where the petitioner is working. This Court also went through the FIRs that was registered at the instance of the petitioner. For the purpose of avoiding embarrassment, it is also desirable in the own interest of the petitioner to accept the transfer. Hence, this Writ Petition is dismissed, as devoid of merits. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub-Assistant Registrar

To

1.The Director General of Police,
Office of the Director General of Police,
Kamarajar Salai, Chennai.

2.The Commissioner of Police,
Madurai City.

+One cc to Mr.R.Alagumani, Advocate, SR.No.61824

+One cc to The Special Government Pleader, SR.No.62049

am

RL/5C/5P/KP/SAR1/12/7/2017

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23.06.2017