



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.03.2017

CORAM:

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THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P. (MD) Nos.19887 and 21806 of 2016

1. P.Mugendiran ... Petitioner in W.P.(MD) No.19887 of 2016
2. E.Shanmuganathan ... Petitioner in W.P.(MD) No.21806 of 2016

-vs-

1. The Joint Director (Higher Secondary),
O/o.The Joint Directorate of School Education Department,
DPI Compound, Chennai-6.
2. The Chief Educational Officer,
O/o. The Chief Educational Office,
Ramanathapuram,
Ramanathapuram District.
3. The District Educational Officer,
O/o.The District Educational Office,
Ramanathapuram,
Ramanathapuram District,
4. The Headmistress,
S.S.A.M.Government Higher Secondary School,
Thirupullani, Ramanathapuram District.
5. Tmt.M.Prema ... Respondents in W.P.(MD) No.19887 of 2016
1. The Joint Director (Higher Education),
O/o.The Directorate of School Education Department,
DPI Compound, Chennai-6.
2. The Chief Educational Officer,
O/o. The Chief Educational Office,
Ramanathapuram.
3. The Headmistress,
S.S.A.M.Government Higher Secondary School,
Thirupullani, Ramanathapuram District.
4. Smt.Prema
5. Mr.Jeyakannu
6. Duraimurugan
7. Sathiyamoorthi ... Respondents in W.P.(MD) No.21806 of 2016



Prayer in W.P. (MD) No.19887 of 2016: Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of Certiorari, calling for the records relating to the impugned transfer order passed by the 1st respondent in his proceedings in Na.Ka.No.049797/W2/E1/2015 dated 08.09.2016 (served to the petitioner on 03.10.2016) and the consequential relieving order passed by the 4th respondent in her proceedings in Na.Ka.No.161 of 2016 dated 03.10.2016 and quash the same as illegal.

Prayer in W.P. (MD) No.21806 of 2016: Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of Certiorarified Mandamus, calling for the records of the 1st respondent in Na.Ka.No.049797/W2/E1/2015 dated 08.09.2016 and the consequential relieving order passed by the 3rd respondent in her proceedings in Na.Ka.No.150 of 2016 dated 16.09.2016 and quash the same as illegal and consequently direct the 1st respondent to post the petitioner in the 3rd respondent school.

For Petitioners : Mr.Ajmal Khan, Senior Counsel
Mr.C.Venkatesh Kumar
(in W.P. (MD) No.19887 of 2016)
Mr.V.Vijayshankar
(in W.P. (MD) No.21806 of 2016)

For Respondents : Mr.A.K.Baskara Pandian
Spl. Govt. Pleader
(For R1 to R4 in W.P. (MD) 19887/2016)
& R1 to R3 in W.P. (MD) 21806/2016
Mr.S.Viswalingam
(For R5 in W.P. (MD) 19887/2016)

C O M M O N O R D E R

These writ petitions have been filed, seeking to quash the transfer orders dated 08.09.2016 and also the relieving orders dated (03.10.2016 and 16.09.2016) of the respective respondents

2. Since the issue involved in these two writ petitions is one and the same, they are taken up together for disposal by this common order. For the sake of brevity, the parties to these writ petitions are referred to by their names.

3. For the sake of brevity, the facts are being taken up from W.P. (MD) No.19887 of 2016 and the case of the petitioner in the said writ petition is as follows:

(i) It is submitted that he has been working as P.G.Assistant (Chemistry) at S.S.A.M.Government Higher Secondary School (in short "the school") with effect from 01.09.2014; that he, being the member of the Tamil Nadu Higher Secondary Post Graduate Teachers



Association, had participated in so many agitations along with the Secretary of the Association E.Shanmuganathan / petitioner in W.P. (MD) No.21806 of 2016 and they used to send representations with regard to the poor quality of teaching of the school;

(ii) In the meanwhile, one Mr.Sundaramoorthy, working as P.G.Assistant in the school gathered some information about the Headmistress of the school that she obtained forged community certificate for her two sons and daughter, which was also brought to knowledge of the concerned authority and therefore, the Headmistress decided to wreak vengeance against them; that since the Headmistress was not able to obtain any complaint from the present students, she obtained a false letter from one Gowthami / former student of the school under coercion and threat, as if the petitioner along with Sundaramoorthy and E.Shanmuganathan sexually harassed her; that subsequently, the very same student had given a petition to the District Collector, Ramanathapuram on Monday Grievance Day by refuting the allegations made against them.

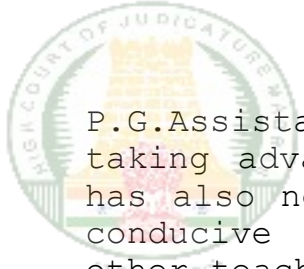
iii) When the matter stood thus, all of a sudden, the petitioner was transferred to Nagapattinam District; that though six documents were relied on in support of his transfer, the same have not been furnished to him; that though the transfer has been effected based on two documents, viz., one is the letter given by the former student and other one by one R.Elamparuthi, the District Secretary of SC/ST/BC Educational Association, who is not traceable and the former student also refuted the allegations.

iv) It is also submitted that no notice has been given before issuing the transfer order and the order has been issued by way of punishment and therefore, the impugned transfer order is unjust and unsustainable in law, which has to be interfered with by this Court.

4. The respondents 1 to 3 in W.P.(MD) No.19887 of 2016 have filed a counter affidavit, wherein it has been stated as follows:

i) There were series of allegations against three teachers, namely, Shanmuganathan, P.G.Assistant (Zoology), Mugendiran, P.G.Assistant (Chemistry) and Sundaramoorthy, P.G.Assistant (Tamil) with regard to sexual harassment on girl students and those complaints were enquired into by the Committee, constituted by the District Child Protection Officer, Protection Officer (NGO) and the Conducts Officer (Legal); that during the enquiry, since it was found to be proved, they had sent a report dated 22.08.2016 to the District Collector, Ramanathapuram and the District Child Protection Officer had also recommended to the 2nd respondent for appropriate action against them by proceedings dated 22.08.2016; that on receipt of criminal complaint, the Sub-Inspector of Police, Thirupullani also recommended for departmental proceedings against them;

ii) It is stated that out of three teachers, though Sundaramoorthy, P.G.Assistant (Tamil) and P.Mugendiran/petitioner in W.P.(MD) No.19887/2016 have not joined duty,; that Shanmuganathan,



P.G.Assistant (Zoology) has withdrawn the writ petition previously, taking advantage of the pendency of the present writ petition, he has also not chosen to join duty; that since the atmosphere is not conducive to keep them in the school, the petitioner along with other teachers were transferred to other schools, which is purely on administrative reasons; that there is no mala fide intention on the part of the respondents in effect transfer of the petitioners and therefore, the writ petition is liable to be dismissed *in limine*.

5. Learned Senior Counsel for the petitioner would submit that the transfer orders are nothing but fulfilment of evil desire by the Headmistress of the school to wreck vengeance against the petitioners. In the absence of any complaint and without any necessity, as the former student voluntarily refuted the allegations before the District Collector and the other complainant by name R.Elamparuthi was only an imaginative character, the transfers effected on the petitioners can be construed only as punishment and therefore, the impugned orders are to be set aside.

6. Per contra, learned Special Government Pleader appearing for the respondents 1 to 3 in W.P.(MD) No.19887 of 2016 would contend that transfer is an incident of service and the Government employees cannot choose their place of working; that they are constrained to work wherever posted on administrative reasons. In these cases, one Sundaramoorthy, P.G.Assistant (Tamil), who is not before this Court and the petitioners have not joined their duties and remained absent for long time. He would further contend that action has been initiated against these teachers only based on the recommendation of the District Child Protection Officer and also the Sub-Inspector of Police, Thirupullani, who had conducted thorough enquiry into the veracity of the complaint and instructed suitably. Therefore, the impugned orders are perfectly valid in the eye of law and need not be interfered with.

7. Learned counsel for the Headmistress, while reiterating the very same contentions raised by the learned Special Government Pleader, would submit that owing to existence of unhealthy atmosphere and also based on the recommendation, the Headmistress has acted entirely in consonance with law and the argument with regard to ill motive of the Headmistress is only the argument made in the air without any substantive materials

8. Heard the learned counsel on either side.

9. A perusal of the averments would amply reveal that admittedly out of three teachers, namely, Shanmuganathan, P.G.Assistant (Zoology), Mugendiran, P.G.Assistant (Chemistry) and Sundaramoorthy, P.G.Assistant (Tamil), the first two have approached this Court, challenging their transfer orders. It is represented that a former student was made as a tool to take vengeance on the petitioners by the Headmistress of the school. Subsequently, the girl is stated to have refuted the allegations, saying that out of



compulsion and threat, she had lodged such a complaint to defame the petitioners at the instance of the Headmistress.

10. This Court, in order to ascertain as to what has actually happened and also with the consent of the learned counsel for the parties, enquired the said girl, who is present before this Court personally along with her mother. She has stated that she has already left the school and she has been asked by the Headmistress to copy the contents that has been written by the school; that she has also been threatened that if it is not written as per the dictate, her sister studying in the very same school would be taken to task; that the teachers have very good behaviours and there cannot be any complaint against them and that though Sundaramoorthy, P.G. Assistant (Tamil) has beaten her, he has also later on repented for his act.

11. It is seen that the students studying in the school and their parents have conducted protest against the transfer of teachers in front of the Collector Office and demanded for their reinstatement in the same school. Initially, apart from the complaint made by the said former student, another complaint was also preferred by one R.Elamparuthi, the District Secretary of SC/ST/BC Educational Association and based on his complaint, action has been initiated. Admittedly, no enquiry has been conducted and completely in violation of the principles of natural justice, the transfer orders have been issued by victimizing them and therefore, it cannot be said that the transfer orders are on account of administrative exigencies.

12. From the records produced, it is apparent that the Headmistress, by name Prema, with ill motive and in collusion with other officials, arranged for such stage-management against these teachers. That apart, the Sub-Inspector of Police has given a statement that the complainant is not residing in the address given and the villagers have also spoken that there is no such address in the locality. If a girl student is really affected, there is no need for her and her parents to approach the District Collector, feeling sorry for her act and to insist upon the Collector to put them back in the school and the boy students also boycotted their classes for the similar issue. Though complaint of sexual harassment has been made by R.Elamparuthi, on enquiry, it was found that there is no such person at all. Even assuming for the sake of argument, there is one person by the said name, nothing prevented him to be present for enquiry. It is represented that since these teachers have conducted agitation against the Headmistress and have earned good reputation among students, the Headmistress, enraged by the same, has acted with ill motive without knowing the ensuing consequences / implications.

13. After the matter was heard at length, a suggestion was made by this Court as to whether there is any possibility of compromise, so that the life of students could not be spoiled and the girl



student also need not be dragged to Court. For that learned Special Government Pleader would submit that these teachers may at first join duties in some other school and after the end of this academic year, they will be posted in the same school. It is represented by the petitioners that due to police complaint, a stigma has been caused on them and therefore, they are willing to continue to work in the very same school from where they were transferred and in the next counselling, they will participate and opt for some other school and therefore, these matters have to be decided on merits, as both parties did not agree to arrive at a compromise.

14. As rightly pointed out by the learned Senior Counsel for the petitioner, there is no enquiry conducted before effecting transfers and no one made bad remarks against these teachers regarding their characters. I had an occasion to deal with a case of teacher, where the teacher really misbehaved with the girl student and was very rude to the boys and in that case, I held that serious action need be taken and the same principle cannot be applied in each and every case, especially when the facts are entirely different. Moreover, there is a violation of principles of natural justice and though this Court does not uniformly hold that in this type of case, the person should not be transferred, but at the same time, the present situation prevalent should be analyzed before effecting such transfer. When serious allegations have been raised against these teachers, the person, who made the complaint ought to have been enquired into and produced for cross examination. Of course, it is true that when a written complaint is given, there is no need for cross examination, but the genuineness of the complaint has to be verified. In this case, there is no such complainant in the given address and therefore, the contention raised by the petitioners that the complainant is an anonymous one does hold good. When the complainant has given his address, what prevented him to provide his contact number and email address.

15. The right to transfer an employee is a powerful weapon in the hands of the employer. Sometimes it is more dangerous than other punishments and bear the mask of innocuousness. What is extensible in a transfer order may not be the real object. Behind the mask of innocence may hide sweet revenge, a desire to get rid of an inconvenient employee or to keep at bay an activist or a stormy petrel. When the Court is alerted, the Court has necessarily to tear the veil of deceptive innocuousness and see what exactly motivated the transfer. It is to be seen in depth in cases where the Court is satisfied that the real object of transfer is not what is apparent, examine what exactly was behind the transfer.

16. The Hon'ble Supreme Court in the case of **Rajendra Roy vs Union of India and Another**, reported in **AIR 1993 SC 1236** had laid down some parameters for the Subordinate Court to decide the issue of transfer, though in that case, the Apex Court refused to interfere with the transfer order. The relevant paragraphs of the said judgment are extracted below:



"7. After considering the respective contentions of the parties, it appears to us that the appellant has not been able to substantiate that the impugned order of transfer was passed mala fide against him for an oblique purpose and/or for wrecking vengeance against him because the respondent No. 2 was anxious to get rid of him and he seized the opportunity of transferring him from Delhi to Calcutta by transferring Shri Patra back to Orissa from Calcutta. It is true that the order of transfer often causes a lot of difficulties and dislocation in the family set up of the concerned employees but on that score the order of transfer is not liable to be struck down. Unless such order is passed mala fide or in violation of the rules of service and guidelines for transfer without any proper justification, the Court and the Tribunal should not interfere with the order of transfer. In a transferable post an order of transfer is a normal consequence and personal difficulties are matters for consideration of the department. We are in agreement with the Central Administrative Tribunal that the appellant has not been able to lay any firm foundation to substantiate the case of malice or mala fide against the respondents in passing the impugned order of transfer. It does not appear to us that the appellant has been moved out just to get rid of him and the impugned order of transfer was passed mala fide by seizing an opportunity to transfer Shri Patra to Orissa from Calcutta. It may not be always possible to establish malice in fact in a straight cut manner. In an appropriate case, it is possible to draw reasonable inference of mala fide action from the pleadings and antecedent facts and circumstances. But for such inference there must be firm foundation of facts pleaded and established. Such inference cannot be drawn on the basis of insinuation and vague suggestions. In this case, we are unable to draw any inference of mala fide action in transferring the appellant from the facts pleaded before the Tribunal. It appears that Shri Patra was transferred to Calcutta and after joining the post he had made representation on account of personal hardship. Such representation was considered and a decision was taken to transfer him back to Orissa region. As a result, a necessity arose to transfer an employee to Calcutta to replace Shri Patra. It cannot be reasonably contended by the appellant that he should have been spared and some one else would have been transferred. The appellant has not made any representation about the personal hardship to the department. As such there was no occasion for the department to consider such representation. This appeal, therefore, fails and is dismissed but we make no order as to costs. It is, however, made clear that the appellant will be free to make representation to the concerned department about personal hardship, if any, being suffered by the appellant in view



of the impugned order. It is reasonably expected that if such representation is made, the same should be considered by the department as expeditiously as practicable."

17. This Court in several cases has described the importance of the teacher in the society by citing a judgment of the Hon'ble Supreme Court in the case of Avinash Nagra Vs. Navodaya Vidyalaya Samiti and others, reported in 1997(2) SCC 534, wherein it has been held as under:

"Before answering the question whether the order terminating the services of the appellant in terms of his appointment letter is in violation of the Rules or the principles of natural justice, it is necessary to consider the need for the education and the place of the teacher in that behalf. Article 45 of the constitution enjoins the State to endeavour to provide free and compulsory education to all children, till they complete the age of 14 years. The Supreme Court has held that right to education is a fundamental right and the State is required to organise education through its agencies or private institutions in accordance with the law and the regulations or the scheme. The State has taken care of service conditions of the teacher and he owes dual fundamental duties to himself and to the society. As a member of the noble teaching profession and a citizen of India he should always be willing, self disciplined, dedicated with integrity to remain ever a learner of knowledge, intelligently to articulate and communicate the imbibe in his students, as social duty, to impart education, to bring them up with discipline, inculcate to abjure violence and to develop scientific temper with a spirit of enquiry and reform constantly to rise to higher levels in any walk of life nurturing constitutional ideals enshrined in Article 51 A so as to make the students responsible citizens of the country. The quality, competence and character of the teacher are, therefore, most significant to mould the institutions and to sustain them in their later years of life as a responsible citizen in different responsibilities."

10. Mahatma Gandhi, the Father of the Nation has stated that "a teacher cannot be without character. If he lacks it, he will be like salt without its savour. A teacher must touch the hearts of his students. Boys imbibe more from the teacher's own life than they do from books. If teachers impart all the knowledge in the world to their students but do not inculcate truth and purity amongst them, they will have betrayed them. ...



Acharya is one whose aachar or conduct is exemplary. He must be an example of Sadachar or good conduct. He must inspire the pupils who are entrusted to his care with love of virtue and goodness."

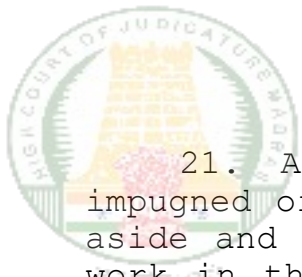
11. It is in this backdrop, therefore, that the Indian society has elevated the teacher as "**Guru Brahma, Gurur Vishnu, Guru Devo Maheswaraha**". As Brahma, the teacher creates knowledge, learning, wisdom and also creates out of his students, men and women, equipped with ability and knowledge, discipline and intellectualism to enable them to face the challenges of their lives. As Vishnu, the teacher is preserver of learning. As Maheswara, he destroys ignorance."

18. In yet another judgment in the case of **The Secretary, Sri Ramakrishna Vidhyalayam High School, Tirupparaithurai, Tiruchirapalli District Vs. State of Tamil Nadu, Rep. by Special Commissioner and Secretary to Government and others**, reported in **1990 (9) WLR 62**, this Court has categorically held as follows:

"51. It is very lamentable state of affairs that in this country, a teacher who was considered as equal to God, should fall from the high pedestal to the lowest level. Our scriptures command the students to consider the teacher as a God (Acharya Devo Bhava). The term "Acharya" in Sanskrit means a person who not only teaches lessons to students, but also ensures good conduct of his pupils. The more important part of the definition is that he shall himself practice what he preaches. In Sanskrit language the term "Guru" also means teacher. The syllable "Gu" represents darkness (symbolising ignorance). The syllable "Ru" represents the removal thereof. Thus, a Guru is so called as he removes the darkness and the ignorance from the minds of the students. In fact, there is a saying that it is only with the blessings of a teacher that a person blossoms into a full man."

19. The job of a teacher is equivalent to that of a Sculptor, who, with his profuse efficiency shapes a material like stone or wood, by whittling away at it. Likewise, a teacher brings out the dreams of students into reality so as to shine in the society like stars and because of involvement of reckless and unprincipled reprobate, like the Headmistress, the teachers lose their reputations in the society.

20. In view of what is stated herein-above, no other conclusion than the one that the impugned orders are unjust and unsustainable in law and not passed with the real intention, can be arrived at and therefore, the same are liable to be set aside.



21. Accordingly, these Writ Petitions are allowed and the impugned orders dated 08.09.2016, 16.09.2016 and 03.10.2016 are set aside and the respondents are directed to allow the petitioners to work in the same school, viz., S.S.A.M.Government Higher Secondary School, Thirupullani, Ramanathapuram District. This Court is of the view that if the good teachers are branded as bad by the inefficient person like the Headmistress, normally, good teachers will not prefer to continue in the contingent atmosphere or in case, they want to continue in the same school, the Headmistress should be transferred to some far off place for the welfare of the school, because transferring skilled teachers will definitely be detrimental to the students. It is made clear that this order will not preclude the petitioners from participating in the next counselling for transfer.

22. In fine, this Courts wants to impose costs on the Headmistress, namely, Tmt.Prema for creating restlessness among students and teachers through her unwarranted act. Accordingly, the Headmistress is directed to arrange for uprooting Karuvelam tree (கருவேலமரம்), having biological name prosopis juliflora to the extent of 2400 sq.ft. (1 ground), which will have to be identified by the State Government in and around Ramanathapuram District, preferably near to the school (S.S.A.M.Government Higher Secondary School, Thirupullani, Ramanathapuram District), within a period of two weeks from the date on which a copy of this order is made ready and the expenses for the same to be borne by her. The Principal District and Sessions Judge, Ramanathapuram District shall inspect the area and send a report about compliance along with photographs to the Registry of this Court immediately thereafter.

23. In case the Headmistress fails to come forward to eradicate the trees, the Government shall do the said exercise and recover the amount from the salary of the Headmistress. It is made clear that even after receipt of the instructions from the Government, if no action is taken by the Joint Director (Higher Secondary), Chennai to implement the order of this Court, he/she will have to face the disciplinary action for non-discharging of his/her duties. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar



To:

1. The Joint Director (Higher Secondary),
O/o.The Joint Directorate of School Education Department,
DPI Compound, Chennai-6.
2. The Chief Educational Officer,
O/o. The Chief Educational Office,
Ramanathapuram,
Ramanathapuram District.
3. The District Educational Officer,
O/o.The District Educational Office,
Ramanathapuram,
Ramanathapuram District.
4. The Principal District and Sessions Judge,
Ramanathapuram District
5. The Headmistress,
S.S.A.M.Government Higher Secondary School,
Thirupullani, Ramanathapuram District.

+ 1 CC TO Mr.S.VISVALINGAM, ADVOCATE IN SR No. 12465
+ 1 CC TO M/S.AJMAL ASSOCIATES, IN SR No. 12517
+ 2 CC TO Mr.V.KARTHIKEYAN, ADVOCATE IN SR No. 12481
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 12616

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TE/PM/SAR-II : 10/03/2017 : 11P/11C

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03.03.2017