



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.01.2017

C O R A M

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THE HONOURABLE Mr.JUSTICE R.SURESHKUMAR

Writ Petition (MD) No.5369 of 2013
and
M.P. (MD) Nos.1/13 and 1/15

M.Ravindran Mariappan

.. Petitioner

Vs.

1.The Secretary to the Government,
Youth Welfare and Sports Development (YW),
NCC Directorate
(Tamilnadu, Pondicherry and Andaman),
Chennai - 9.

2.The Deputy Director General of NCC,
Directorate of NCC,
St.George Fort, Chennai.

3.The Group Commander,
NCC Group Head Quarters,
No.86/1, P.T.Rajan Road,
Madurai.

4.The Commanding Officer,
3(TN) NU NCC,
Lions Town, Thoothukudi.

5.P.S.Rana,
The Commanding Officer,
3(TN) NU NCC,
Lions Town, Thoothukudi.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the entire records pertaining to the second respondent vide his Memorandum No.1338/1/SC, dated 25.03.2013 as well as the consequential order passed by the fourth respondent vidw Memo No.10/2013, dated 26.03.2013 and quash the same.

For Petitioner
For R1 & R2

... Mr.R.Anand
... Mr.V.Muruganantham
Additional Government Pleader

For R3 & R4

... Mr.C.Nandagopal



O R D E R

The prayer in the writ petition is for a Writ of Certiorari to call for the records pertaining to the second respondent vide Memorandum No.1338/1/SC, dated 25.03.2013 as well as the consequential order passed by the fourth respondent vide Memo No.10/2-13, dated 26.03.2013 and quash the same.

2.The case of the petitioner is that the petitioner was appointed as Boat Keeper on 08.02.1995 under the control of the respondents. He was working in the said post for several years. While so, during the year 2013, in the month of February, since his family was at Chennai and his son became sick, he ought to urgently leave from Tuticorin and therefore, he applied for leave for two days i.e. on 11th and 12th February, 2013. After reached Chennai, he came to know that his son affected by Chicken Pox and therefore, his presence was very much required to look after his ailed son. Therefore, he sent a telegram on 13.02.2013 to the respondents for extension of leave for further three days even for Earned Leave. The said request was refused and in fact, turned down by the fourth respondent, who in turn sent a communication to the petitioner on 14.02.2013 that his leave application was rejected and therefore, the petitioner was directed to join duty immediately. Pursuant to the said directives issued by the fourth respondent, the petitioner immediately rushed to Tuticorin and joined duty on 15.02.2013. Because of this confusion, as the petitioner had been in leave for four days and the same not sanctioned immediately, his salary was not immediately paid to the petitioner. Therefore, the petitioner on 10.03.2013 had sent a representation to the respondents and a copy of the same also has been marked to the Chief Minister. Got annoyed with the way, in which, the representation has been sent by the petitioner to the Chief Minister, instead of sending it through proper channel, the fourth respondent had issued a show cause notice on 12.03.2013 against the petitioner asking show cause as to why action should not be initiated against him. The petitioner promptly replied to the said show cause notice. Thereafter, though no direct action was initiated against the petitioner immediately, however, completely annoyed with the said attitude on the part of the petitioner, since he had applied leave by sending a telegram from Chennai and as he did not receive the salary from the month of February, 2013, he had made a representation not to the proper respondent, but also to all higher authorities including the Chief Minister of this State, the second respondent has issued the impugned transfer order dated 25.03.2013 and pursuant to which, the fourth respondent has issued the consequential impugned order dated 26.03.2013 and both these orders of transfer are under challenge before this Court in this writ petition.

3.The learned counsel for the petitioner, after having fully narrated the said events from 11.02.2013 till 26.03.2013, has submitted that the impugned transfer order was issued, by which, the petitioner being a low grade servant working as Boat Keeper, has

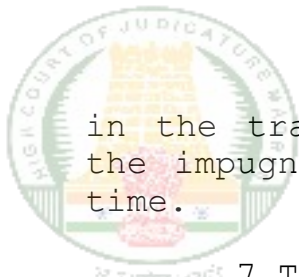


been transferred from Tuticorin to Cuddalore, which is nearly about 250 kms from Tuticorin. The said transfer order, though has been styled as 'for administrative necessity', it was issued only for the said reasons and circumstances, which was prevailed between the respondents and the petitioner. The past events would clearly establish that because of the mala fide intention on the part of the fourth respondent, such an impugned order was passed and therefore, challenging the same, the petitioner has come out with this writ petition.

4.The learned counsel for the petitioner would also submit that subsequently, a disciplinary proceedings also was initiated against the petitioner. Though it was ended in punishment against the petitioner, by which, the petitioner's service was dispensed with and he was removed from service, subsequently on appeal, the same was reversed and the petitioner has rejoined duty at Cuddalore and presently he is working at Cuddalore i.e. in the transferred place. Though the petitioner has approached this Court in time challenging the very impugned orders of transfer dated 25.03.2013 and 26.03.2013, since the said orders of transfer were not stayed by this Court and more particularly, disciplinary proceedings were initiated, the petitioner has to face the same and after reinstatement, now the petitioner has no way except to join in the transferred place at Cuddalore. Accordingly, he joined at Cuddalore on 23.05.2016 and presently he is working there. As the petitioner is a very low grade servant getting a very meagre salary, he cannot be driven to pillar to post i.e. from Tuticorin to Cuddalore. The post which was held by the petitioner at Tuticorin is still kept vacant. Therefore, his request to be posted him at Tuticorin again, is to be considered sympathetically by the respondents.

5.The learned counsel appearing for the respondents would submit that the order of transfer which is impugned herein was passed on administrative reasons and there is no mala fide alleged against the respondents, who passed the impugned order except by naming the fourth respondent by name as fifth respondent in this writ petition. The transfer which is impugned is not by way of punishment and it is one of the service conditions which every employee has to face. More over, the order of transfer was issued pursuant to the orders of the second and fourth respondents and both are competent authorities to pass order of transfer against the petitioner. Therefore, even for want of jurisdiction, the transfer order which is impugned herein cannot be questioned.

6.The learned counsel appearing for the respondents would further submit that the law is well settled in this regard as that without those two reasons, the transfer, made, that too, for the administrative reason, cannot be interfered with. Therefore, since the impugned order of transfer is not subjected to any of the two infirmities viz., (i) mala fide transfer or (ii) transfer without jurisdiction, the same is fully sustainable and in fact, pursuant to the said transfer, atleast belatedly, now the petitioner has joined



in the transferred place and working there peacefully. Therefore, the impugned orders need not be interfered with at this length of time.

7. This Court heard the submissions made by the learned counsel appearing on either side.

8. No doubt, the orders impugned are only transfer orders and transfer is one of the service conditions that every employee has to face. More over, in the impugned transfer order, it is specifically mentioned that on the grounds of administrative necessity, the transfer has been made. Therefore, whenever transfer is made on administrative ground, normally this Court is very slow in interfering in such transfers. However, in the present case in view of the aforesaid facts atleast some displeasure noticed between the petitioner and the employer because of the petitioner instead of making the sober application to the respondents either for leave sanction or the salary sanction for the month of February, 2013, has given representation with some hard language and the same also had been marked to the Chief Minister of the State.

9. This Court feels that once the petitioner makes an application to the respondents to get him posted at Tuticorin, the same can be considered on merits by the respondents. Therefore, by disposing this writ petition, this Court permits the petitioner to make a representation, if he is advised to do so to the second respondent requesting him to consider for posting for him at Tuticorin, where the post held by the petitioner is still kept vacant and in such case, the petitioner's representation, to be filed, shall be considered on merits and a reasoned order shall be passed by taking a pragmatic view and also taking the family circumstances of the petitioner. The needful, as directed above, shall be done by the second respondent, within a period of four weeks from the date of receipt of such a representation from the petitioner. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS II)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary to the Government,
Youth Welfare and Sports Development (YW),
NCC Directorate
(Tamilnadu, Pondicherry and Andaman),
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NCC Group Head Quarters,
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Madurai.

4.The Commanding Officer,
3(TN) NU NCC,
Lions Town, Thoothukudi.

+1cc to special Government Pleader SR.No.4497
+1cc to Mr.R.Anand, Advocate Sr.No.4360

rj2
sm:CM-MSA:SAR I:3.3.2017:5P/7C

W.P. (MD) No.5369 of 2013
25.01.2017