



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.09.2018

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THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.(MD) No.19055 of 2018 and
W.M.P.(MD) Nos.16893, 16894 & 17373 of 2018

S.Umarani

... Petitioner

vs

1. The Director of Town Panchayats,
Kuralagam, 4th Floor,
Parries Corner, Chennai.

2. The District Collector,
Karur District.

3. R.Krishnasamy

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records on the file of the 1st and 2nd respondents in their proceeding in Na.Ka.No.972/2018-2/A7 dated 16.08.2018 & Na.Ka.No.2554/2018/PeRu2 dated 18.08.2018 respectively and quash the same.

For Petitioner: Mr.Isaac Mohanlal, Senior Counsel

For Mr.M.J.Shabu Jose

For R1 & R2 : Mr.K.Chellapandian

Addl. Advocate General

Assisted by Mr.M.Rajarajan

Govt.Advocate

For R3 : Mr.D.Siva Raman

O R D E R

This petition has been filed, seeking to quash the order of the 1st respondent dated 16.08.2018 made in Na.Ka.No.972/2018-2/A7, vide which, the petitioner was transferred from Karur District to Trichy District on administrative reason. The petitioner also challenges the consequential relieving order dated 18.08.2018 issued by the 2nd respondent in Na.Ka.No.2554/2018/PeRu2.

Brief Facts:

<https://hcservices.ecourts.gov.in/hcservices/>

2. The case of the petitioner is that she was selected and appointed to the post of Bill Collector through TNPSC



recruitment in the year 1994 and was subsequently promoted as Executive Officer in the year 2006 and thereafter as Selection Grade Executive Officer in the year 2017. It is the grievance of the petitioner that within a short span of time, she was transferred to various places without any rhyme or reason;

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2.1. After several transfers, she was finally posted at Pallapatti Town Panchayat, Karur District on 27.06.2017 and on completion of one year of service in that place, all of a sudden she was transferred to Sirukamani Town Panchayat, Trichy District by way of the present impugned order dated 16.08.2018, which was served to her along with the relieving order dated 18.08.2018. Though she had received the relieving order, she has not handed over her charges to the 3rd respondent, who has been placed in her place on account of her poor health condition and personal inconveniences;

2.2. It is her further case that she was transferred in the middle of the academic year, that too, to a far off place having 130kms distance from the present station. Though there is a vacancy in Punjaipugalur Selection Grade Panchayat due to the transfer of the 3rd respondent, she was transferred from one District to another, which is construed only as a punishment transfer and is punitive in nature, even though she had faced any departmental proceedings so far;

2.3. She has stated that there was no administrative reason in her transfer and only to accommodate the 3rd respondent in her place, she was simply transferred from the present place, which is violative of the transfer policy of the Government in G.O.Ms.No.10 dated 07.01.1994 and the Government Letter No.23847 dated 05.08.1998 by the Personal and Administrative Reforms Department. Contending that her transfer is arbitrary, unreasonable and un-sustainable, it is prayed that her transfer order is liable to be interfered with by this Court by way of setting aside it.

3. The respondents 1 & 2 have filed a counter affidavit, wherein it has been *inter alia* stated as follows:

i) The petitioner's transfer to the present station was on account of her request to serve in her native place and therefore, it cannot be deemed to be a transfer. The transfer was purely on administrative reason and there is no mala fide intention on the part of the respondents in transferring her, as transfer is an integral part of service and the petitioner cannot deny to accept her transfer. It is further stated that she had already been transferred and in her place, the 3rd respondent had also joined duty with effect from 18.08.2018 by duly giving his joining report to the 2nd respondent;



ii) In Paragraph No.6 of the counter, it has been narrated that certain allegations have been levelled against the petitioner inasmuch as she had been indulging in falsification of records and misappropriation of funds of the Local Body, etc. It is further narrated that she has not submitted the Monthly Accounts from April 2018 and the Half Yearly Accounts as on 30.06.2018 to the Local Fund Audit for inspection and auditing. The plea of transfer during academic year does not weigh any importance, as the petitioner does not have any school going children and her only daughter is gainfully employed in outstation. Since the respondents 1 and 2 have followed all the procedures in the transfer of the petitioner, the petitioner is not entitled to any relief and therefore, the order of transfer is liable to be upheld.

4. The 3rd respondent has also filed a counter, contending that though both the petitioner and the 3rd respondent have duly received the transfer and relieving orders on the same day and also joined duty, suppressing the said fact, the petitioner had obtained a stay order from this Court on 03.09.2018, as if the 3rd respondent had so far not taken charge of her place. It is his further contention that the distance from Karur to Sirugmani is only 55kms having less than one hour travel and therefore, there was a misleading statement on the part of the petitioner that the distance is 130kms away from the present station. Since he was holding the additional charge of Punjaipugalur Town Panchayat, after his transfer to Pallapatti Town Panchayat, one Sathiamoorthy was transferred and posted in Punjaipugalur Town Panchayat and as such, there is no vacancy in the said Panchayat. Finally, it is contended that since much water has flown over the bridge after passing of the impugned orders, this petition has no merits and is liable to be dismissed *in limine*.

5. Learned Senior Counsel for the petitioner has submitted that when the transfer is by way of punishment, the Court is empowered to quash the order of transfer and in support of his submission, he has also relied upon the following two judgments of this Court:

i) **Ramanathan and Acting Zonal Manager, Food Corporation of India, Madras and others**, reported in **1979 I LLN 81**;

"12. In our preface to the judgment, we have referred to the salient principles which should prompt a Court to interfere with an ordinary order of transfer. Do the facts disclosed in this case an inner motive or design on the part of the first respondent when the challenged order was made ? In the counter-affidavit, we have seen that the first respondent admits that he might have objected



on an earlier occasion to the re-posting of the appellant to Madras. This appears to be the starting point for the internal bickerings between the appellant and the first respondent. The first respondent became very touchy when it is alleged that the appellant sent various telegrams to the Ministers and higher authorities of the Corporation and he would allege that authorities of the Corporation and he would allege that a show cause memo was also issued against the appellant calling upon him to explain as to why disciplinary action should not be taken against him. It has not been brought to our notice that any such action has ever been taken at all against the appellant for any alleged act of misconduct on his part. He would admit that the usual joining time was not given to the appellant and that was again due to exigencies of circumstances. His leave application was rejected as it is contended that it was not in order. We do not find however, any data produced before us to justify that the leave was properly refused and the appellant was bona fide not granted the usual joining time. The confession made by the first respondent strongly suggests that because of various reports levelled against this employee about his modus operandi in threatening other officers by sending petitions that the order of transfer has been made, though it is said that it was in the interests of the administration. The first respondent has given a certificate that the appellant has proved to be a most undesirable character in the service of the Corporation and in order to force and maintain discipline, the transfer was effected. Again, it is pretended that this is for administrative convenience. The first respondent is certainly aware of the transfer policy which was evolved as early as in 1973. A copy of the said policy has been produced before us. We find there that in the case of categories III and IV employees to which category the appellant belongs, transfers from one place to another should not be a matter of routine. Category III employees stationed at one station for more than five years could be considered for transfer to other places preferably within the region. The learned Counsel for the first respondent is unable to say that this policy which binds the Corporation has been remembered or adverted to in the order of transfer when it was made. One has to, therefore, necessarily highlight the intentions behind the order of transfer having regard to the specific allegations made by the first respondent in the counter-affidavit. We agree with Mr. Venkataswamy. On a fair reading of the



counter-affidavit it is seen that the order of transfer has been made in order to bypass the disciplinary machinery and circumvent the well accepted rule of fair hearing before an adverse order is made and that in substance and in effect the order of transfer though appears to be eonomine a normal one, has been passed in the instant case to achieve a collateral purpose. The appellant being a public servant he ought not to have been dealt with in the manner he has been tossed from one place to another in utter disregard of the transfer policy. The allegation is that even earlier when he was about to be transferred from Nizambad to Madras, the first respondent interfered. The allegations in the counter-affidavit as made by the first respondent is in our view a clear pointer to the effect that it was not to improve the career or responsibility of the appellant that the order was made, but on the other hand it was made because of the open maladjustment which is demonstrably visible from the record and which was present for a considerable time as between the appellant and the first respondent. It, therefore, appears to us that as soon as the first respondent be came the acting Zonal Manager, he availed himself of the opportunity to effect the transfer in order to given vent to hi ill-feelings which he was harbouring within himself as against the appellant. The fact that the first respondent characterised the appellant as a most undesirable character and that there were various reports levelled against the appellant for his misdemeanour acts are all vindicative and explanatory of the motive or the design behind this order of transfer. We are satisfied that the order was passed for a collateral purpose and not for administrative convenience in public interests. It is not presented that any disciplinary proceedings had been initiated though thought of by the Corporation. It is not even alleged before us that any such disciplinary proceedings are pending against him. The power of transfer in the instant case was adopted as an alternative for punishment which punishment cannot be inflicted without going through the process as prescribed under Article. 311 of the Constitution of India. We are, of course, conscious of the fact that innocuous and normal orders of transfers ought not to be interfered with by Courts if it was made for administrative exigencies or other valid reasons. But as in our view the order in question has been passed to bypass the disciplinary machinery and in order to avoid a fair opportunity being given to the



appellant to explain his alleged misconduct we are constrained to interfere in the instant case. Having regard to the specific allegation made in the counter affidavit by the first respondent we are going behind the apparent reasons given in support of the order of transfer and after appreciating all the circumstances in the case, we are of the view that the order of transfer though apparently innocuous was meant really to impose a punishment on the officer concerned. It appears to us to be a colourable exercise of power or an exercise of power surcharged with bad faith as irrelevant considerations motivated the passing of the challenging order. Instead of taking disciplinary action against the appellant, this order of transfer has been made in order to circumvent the prescribed process in an action ordinarily undertaken against a Government servant for misconduct.

13. There are two other notable circumstances in this case which also prompt us to come to the same conclusion as above that the challenged order is not an order of transfer simpliciter. The guidelines fixed for transfer have not been followed and why there has been a deviation thereto there is no explanation at all.

14. Secondly, when the challenged order was made, no joining time was also given. But for the fact that this Court gave the appellant a breathing time, he would have suffered the greatest inconvenience. These factors also taken cumulatively along with other circumstances lend support to the conclusion that the order of transfer is not a fair order."

ii) **R.Mohanasundaram vs. The Principal Chief Conservator of Forests, Panagal Buiuldings, Saidapet, Chennai and others,** reported in **2009 (5) CTC 231**, wherein it has been held as under:

"11. In yet another decision of the Division Bench of this Court in W.A.(MD)Nos.5 and 7 of 2007 dated 09.01.2007, it was held that though in the impugned order of transfer it was stated that the transfer was affected on administrative ground, it is made clear in the counter affidavit filed in the writ petition that the petitioner had not taken any efforts to collect the sales proceeds of Fair Price shops as detailed therein and accordingly further held that,



received from the Circle Deputy Registrar, Paramakudi who is the Supervisory authority of all Co-operative Societies functioning in Paramakudi Circle recommending for the writ petitioner's transfer and further it is seen that due to improper management by the petitioner, there is a loss to the tune of Rs.2,96,959.30 to the Society funds, the first respondent transferred the petitioner on administrative grounds to safeguard the interest of the society. Considering the facts and circumstances of the case, the learned single Judge came to the conclusion that it is not a transfer simpliciter, but it is a transfer with stigma. Therefore, the petitioner is entitled for opportunity of enquiry to establish his case."

12. The above settled principle of law laid down by the Hon'ble Apex Court and this Court is squarely applicable to the facts of the case on hand as in this case also the impugned order revealed that the petitioner was transferred on administrative grounds, but the counter filed by the third respondent made it abundantly clear that the transfer order was passed against the petitioner not on administrative reasons, but the impugned order was passed by way of punishment on the basis of certain allegations and adverse remarks made against the petitioner.

13. In view of the above said reasons, this Court is constrained to quash the impugned order and accordingly, the impugned order passed by the second respondent in his proceedings in S.O.No.16/09/Pa dated 18.05.2009 is hereby quashed. However, it is made clear that if there is any complaint against the petitioner, it is open to the Department to initiate appropriate action in accordance with law and on such event the petitioner shall be given sufficient opportunity by conducting proper enquiry in the manner known to law."

Thus, learned Senior Counsel for the petitioner has contended that since the petitioner is the State President of Tamil Nadu Town Panchayat Employees Association, her transfer was effected with mala fide intention and not with any other reasons adduced by the respondents and therefore, the transfer order is liable to be set aside.

6. Per contra, learned Additional Advocate General has pointed out that it is the duty cast upon a Government employee to obey the order of transfer and refusal to accept the transfer and



also to report for duty at the new place, instead indulging in litigation, should be curbed. In support of the said submission, he has cited a judgment of the Hon'ble Supreme Court in the case of **S.C.Saxena vs. Union of India and others**, reported in **(2006) 9 SCC 583**, wherein it was observed as follows:

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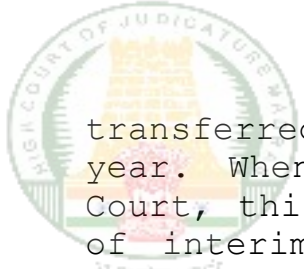
"6. In the first place, a government servant cannot disobey a transfer order by not reporting at the place of posting and then go to a court to ventilate his grievances. It is his duty to first report for work where he is transferred and make a representation as to what may be his personal problems. This tendency of not reporting at the place of posting and indulging in litigation need to be curbed. Apart therefrom if the appellant really had some genuine difficulty in reporting for work at Tezpur, he could have reported for duty at Amritsar where he was so posted....."

7. Learned Additional Advocate General has further brought to the attention of this Court that the Association, in which the petitioner is the President has organized an agitation and they have also received a circular dated 12.09.2018 to that effect. In reply to the above, learned Senior Counsel for the petitioner has reciprocated that the petitioner is not aware about the agitation that is called for in pursuance of her transfer.

8. Learned counsel for the 3rd respondent has submitted that the petitioner has not approached this Court with clean hands and the present writ petition came to be filed with several suppressions, based on which, the petitioner had also succeeded in obtaining an interim stay of her transfer. Though she had received the relieving order as early as 18.08.2018, she waited till 30.08.2018 to approach this Court and pursuant to the order issued to him, he had joined duty in Pallapatti Town Panchayat on the 18.08.2018 itself and has been executing his work for the past one month. Therefore, learned counsel for the 3rd respondent has prayed for dismissal of the writ petition.

9. Heard the learned Senior Counsel for the petitioner, the learned Additional Advocate General appearing for the respondents 1 & 2 and also the learned counsel for the 3rd respondent. This Court also perused the material documents available on record.

10. It is seen that the petitioner has challenged the transfer order stating that her transfer was effected on malafide reasons and she was periodically transferred from one place to another. It is the claim of the petitioner that on 23.06.2017, she was promoted and transferred from Tharamangalam, Salem District to Pallapatti, Karur District and though she has been working in Karur District without any blemish, she has been all of a sudden



transferred to Trichy District immediately after completion of one year. When the petitioner challenged her transfer before this Court, this Court, by order dated 03.09.2018 has granted an order of interim stay. It is stated by the petitioner that she was transferred frequently from Karur, Salem and several other places without allowing her to execute her work in a peaceful manner at one station. It is further stated that though the Government has prescribed certain norms, while transferring an employee from one place, the 1st respondent has not followed any such procedures before effecting her transfer.

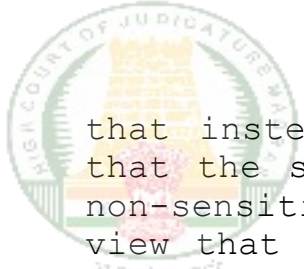
11. It was vehemently argued by the learned Senior Counsel for the petitioner that if it is found that the order of transfer was passed on the ground of mala fide and certain adverse remarks and allegations have been taken into consideration for passing the order of transfer, then it should be construed as a transfer on misconduct and in that event, the same can be interfered with by this Court without any hesitation, as it casts a stigma on the petitioner.

12. It is pertinent to mention here that if a person is charged with misconduct, then the said person has got to be transferred or shifted and in that case, it will be construed as a stigma, is an old theory. Under some pretext or the other, interim orders are obtained against the order of transfer, with which, employees attempt to serve for decades in the same place. It is appropriate to state here that if a routine transfer takes place after a period of three years, dehors the interim order passed by this Court, the person can be disturbed and has to be transferred on regular basis. If the person refuses to go on transfer, then he/she will not be entitled to any wages and it will never be construed as disobedience of the orders of this Court.

13. The Hon'ble Supreme Court in the case of **Ajay Kumar Choudhary vs. Union of India through its Secretary and another, reported in 2015 (3) CTC 119**, has held as under:

"14. We, therefore, direct that the currency of a Suspension Order should not extend beyond three months if within this period the Memorandum of Charges/Chargesheet is not served on the delinquent officer/employee; if the Memorandum of Charges/Chargesheet is served a reasoned order must be passed for the extension of the suspension. As in the case in hand, the Government is free to transfer the concerned person to any Department in any of its offices within or outside the State so as to sever any local or personal contact that he may have and which he may misuse for obstructing the investigation against him."

14. As per the said judgment, an inference can be drawn



that instead of keeping a person under suspension, it is better that the suspension can be reviewed, transferred and posted in a non-sensitive place. In view of the later development, I am of the view that even without suspending an employee, the delinquent can be transferred to some other place on the ground of charges / misconduct, which will not amount to stigma. Otherwise, by getting an interim order, the employees would continuously serve in the same place for decade.

15. The Hon'ble Supreme Court in yet another case in **Addisons Paints and Chemicals Ltd., vs. Workmen, Rep. by the Secretary (A.P. & C) Assistants' Association and another**, reported in **(2001) 2 SCC 289** had held as under:

"6.....The employee Nagarajan had refused to accept the transfer order and refused to report for duty after his transfer. We see no substance in the contention that he was entitled not to join. ***In our view the dispute could have been raised and agitated even after joining. There was no justification for not reporting for duty.*** In spite of Nagarajan not having worked he has been awarded 25% of back wages. This was within the discretion of the Court and we see no reason to interfere. At the request of the Appellants in C.A. No. 392 of 1997, they are granted time of eight weeks from today to pay 25% of the back wages.

7. Accordingly, both the Appeals stand dismissed. There will be no Order as to costs."

From the above, it is clear that the person, who was transferred, is entitled to question the same after joining the new place of posting, but in the present case on hand, the petitioner has neither joined the transferred place nor handed over the records to her successor. In all fairness, once an new person has taken charge, it is the duty cast upon the petitioner to hand over the records, as the transfer is an incident of service, which cannot be avoided in the Government service.

16. The Hon'ble High Court of Kerala in the case of **P. Pushpakaran vs Coir Board and another**, reported in **(1979) 1 LLJ 139** was pleased to hold that "the right to transfer an employee is a powerful weapon in the hands of the employer. Sometimes it is more dangerous than other punishments. Recent history bears testimony to this. It may, at times, 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. This Court can and should, in cases where it is satisfied that the real object of transfer is not what is apparent, examine what exactly was behind the transfer".

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17. From the reading of the entire averments and upon hearing the submissions made on either side, this Court finds no malafide intention on the part of the respondents in transferring the petitioner to a new place, as some of the transfers made in respect of the petitioner were on account of her own request and therefore, the plea of frequent transfer does not hold good. When the Court is alerted about the illegal transfer, the Court has to necessarily tear the veil of deceptive innocuousness and see what exactly motivated the transfer. In this case, this Court does not see any hidden agenda in respect of the transfer of the petitioner and therefore, I am of the view that the transfer order needs no interference by this Court and the impugned orders are liable to be upheld.

18. Accordingly, this writ petition is dismissed. Consequently, the connected miscellaneous petition for interim stay is dismissed and the vacate stay petition is hereby allowed, thereby vacating the interim stay already granted by this Court.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar (CS-IV)

To

1. The Director of Town Panchayats,
Kuralagam, 4th Floor,
Parries Corner, Chennai.
2. The District Collector,
Karur District.

+ 1 CC TO MR.D.SIVA RAMAN, ADVOCATE IN SR NO.86087
+ 1 CC TO M/s.ISAAC CHAMBERS, IN SR NO.85746

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