

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :09.04.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.7570 of 2019
and
W.M.P.Nos.8213 & 8214 of 2019

D.Chandrasekaran

..Petitioner

vs

1.The Tamilnadu Agricultural University,
Rep.by its Registrar,
Coimbatore - 3.

2.The Director-Extension Education,
Tamilnadu Agricultural University,
Coimbatore - 3.

3.Dr.A.Akila
Professor
Rice Research Station,
Tirur, Tiruvallur District.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the 1st respondent in its No.A5/4900/2019 dated 05.03.2019 and quash the same in so far as the petitioner is concerned.

For Petitioner : Mr.V.Vijay Shankar

For Respondents : Mr.Abdul Saleem for R1 & R2

Mr.R.Saseetharan for R3

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O R D E R

The order of transfer dated 05.03.2019, transferring the writ petitioner from Tiruvallur to Kudumiyamalai is under challenge in the present writ petition.

2.The learned counsel appearing on behalf of the writ petitioner questioned the validity of the impugned order of transfer on the ground that the writ petitioner is working in

the Post of Office Assistant, which is Group D Services and therefore, he is not liable to be transferred to another District.

3.This apart, the writ petitioner earlier filed the writ petition in W.P.No.3945/2007, challenging the earlier transfer order and this Court allowed the writ petition by setting aside the order of transfer issued against the writ petitioner in proceedings dated 18.12.2006.

4.Thirdly, the learned counsel for the writ petitioner states that the allegation of mala fides are raised against the 3rd respondent and the order of transfer is liable to be scrapped on the ground of mala fides also.

5.The learned counsel appearing on behalf of the respondents 1 and 2 opposed the contentions by stating that the order of transfer is neither punitive nor issued on mala fide grounds. The order of transfer is purely on administrative reasons and the administrative reasons are explained even in the impugned order itself.

6.Relying on the counter affidavit filed by the respondents, it is stated that the Tamil Nadu Agricultural University was created by the Special Act known as Tamil Nadu Agricultural University Act, 1971 enacted by the Legislature of the State of Tamil Nadu, with the objects to impart education in the field of Agriculture and allied sciences, to prosecute further research in the field of Agriculture and allied Sciences and the extension of such research findings to the farmers in co-operation with the State Government Departments. The teachers and employees of the University are governed by the provisions of the said Act and other orders issued by the Board of Management of the University from time to time under the powers vested in the said Act. The University has 13 Colleges functioning in 9 campuses, 38 Research Stations, 13 Krishi Vigyan Kendras and 5 Plant Clinic Centres, which are situated in various districts of the State of Tamil Nadu. TNAU is a Non-Profit organization and plays a vital role in the development of agriculture besides furthering the advancement of learning, prosecution and promotion of education, research and extension in agriculture and allied sciences.

7.Paragraph 5 of the counter states that Agricultural College and Research Institute(AC & RI), Kudumiyamalai, Pudukottai District is one of the four newly sanctioned constituent colleges of Tamil Nadu Agricultural University, Coimbatore as per GO(MS) No.173 dated 20.11.2014 and started and functioning since 25.08.2014. Since there was a need of an Office Assistant at the AC & RI, Kudumiyamalai, the Post of Office Assistant at the Rice Research Station, Ambasamudram,

Tirunelveli was transferred to AC & RI, Kudumiyamalai and the petitioner herein was transferred to the said post, as the University thought it fit to appoint an experienced person in the said post the said AC & RI, Kudumiyamalai, required an experienced person as student activities are more prioritized in the newly established above said teaching campus.

8.Paragraph 6 of the counter affidavit states that the decision to transfer the Petitioner who is a Class IV employee was taken duly on administrative grounds and as there was a need. Hence, the contention of the Petitioner that the transfer was effected at the fag end of his employment as an vindictive measure and against the Government orders are highly tenable, without any proof and as such liable to be rejected.

9.Paragraph 7 of the counter affidavit states that from the date of appointment on compassionate grounds on 01.08.1983, the petitioner is working as Office Assistant at Rice Research Station, Tirur. The University, being the prime educational and research institute has to maintain the constituent colleges with adequate staff members in order to carry on with the day to day functioning of the colleges and considering the same the present order of transfer has been passed and the same cannot be termed as illegal and vindictive as claimed by the Petitioner.

10.Paragraph 8 of the counter affidavit states that the order of transfer was effected on 05.03.2019 and the Petitioner was relieved from the post on 07.03.2019 immediately the petitioner herein had filed the present Writ Petition on 12.06.2019. The petitioner who ought to have joined the duty immediately had reported on duty. The delay in reporting to duty has resulted in huge loss to the University and had hampered the daily activities of the AC & RI, Kudumiyamalai.

11.The learned counsel appearing on behalf of the 3rd respondent also contended that the writ petition is devoid of merits. The writ petitioner has failed to establish the mala fide allegations raised against the 3rd respondent with substantial evidences. In the absence of any clinching evidences, establishing the mala fides, the contentions raised by the writ petitioner deserves no merit consideration.

12.In this regard, the learned counsel for the 3rd respondent relied upon the judgment of the Hon'ble Supreme Court of India in the case of State of U.P and another Vs. V.N.Prasad (DR), reported in 1995 Supp(2) Supreme Court Cases 151, which reads as follows:-

"2. The High Court, at the interlocutory stage of writ petition moved by the respondent, Dr V.N. Prasad, Principal, B.R.D. Medical College, Gorakhpur challenging an order of transfer, has stayed its

operation. We are of the opinion that at the stage at which the matter was brought to engage the attention of the High Court, there was no prima facie material to establish any mala fides which required strong and convincing evidence. The presumption is in favour of the bona fides of the order unless contradicted by acceptable material. The interlocutory order of the High Court is, in our opinion, unjustified. The order is set aside. We request the High Court, however, to dispose of the main matter itself as expeditiously as possible."

13.It is further contended that the writ petitioner is serving as an Office Assistant in the Post of Watchman at Tiruvallur. Therefore, the administrative transfer order has been issued, posting the writ petitioner as an Office Assistant by transferring the vacant post of Office Assistant to Kudumiyamalai from Ambasamudram. The very order itself is self-evident that the order of transfer was issued on administrative reasons.

14.This being the factum, the allegations set out against the 3rd respondent are false, frivolous and not supported with any evidences.

15.It is further contended that the learned counsel for the respondents 1 and 2 that the writ petitioner was not serving under the 3rd respondent and 3rd respondent is not the higher authority as far as the writ petitioner is concerned. There is no administrative Subordination as far as the 3rd respondent and the writ petitioner is concerned.

16.This being the factum, the allegation of mala fides raised are untenable.

17.Considering the arguments, this Court is of an opinion that in normal circumstances, the employer would not transfer the Group D employees to other Districts. In the event of transferring such Group D employees to a far off place, their normal life would get affected as they will be receiving lesser salary than that of the higher officials. That is the reason why, Group D employees are not transferred to a far off place. However, such Group D employees also is liable to be transferred on certain exceptional circumstances. The Rule states that all the employees are liable to be transferred from one post to another post on administrative reasons. Non transferring of Group D employees are only exceptions. Thus, if the employer is able to establish that the order of transfers are issued on certain administrative reasons, and also on certain exceptional circumstances, then the Courts would not exercise the power of judicial review so as to quash the order

of transfer.

18. Under these circumstances, it is to be examined, whether the order of transfer is purely on administrative grounds or on the grounds raised by the writ petitioner. Undoubtedly, the writ petitioner raised a ground that the Group D employees are not liable to transfer from one place to another place. This apart, the writ petitioner had already completed more than 30 years of service in the present station at Tiruvallur. Further, the impugned order of transfer has been issued at the instance of the 3rd respondent and therefore, the writ petition is to be considered.

19. As far as the earlier writ petition is concerned, the order of this Court dated 26.03.2007 in W.P.No.3945 of 2007, enumerates that "the order of transfer has been passed in an innocuous manner, the counter affidavit more particularly the passage quoted above clearly shows that it has been passed due to certain misconduct allegedly committed by the petitioner. Time and again, Courts have held that transfer cannot be used as a subterfuge or a mechanism to by pass a disciplinary proceedings. In view of the categorical admission of the respondents that it has been passed with a view to punish the petitioner for his alleged misconduct, this cannot be approved. Under these circumstances, the impugned order of transfer is quashed."

20. Thus, the earlier transfer order was quashed by this Court in order dated 26.03.2007 on the ground that the order of transfer was issued by way of punishment. It is an established principle that the punitive order of transfer are liable to be quashed. Thus, the reliance placed in this regard by the learned counsel for the writ petitioner deserves no merit consideration as the earlier transfer order was passed by way of punishment.

21. In respect of the allegation of mala fides, the allegations raised against the 3rd respondent is not directly connected with the writ petitioner. The averments set out in the ground C of the affidavit filed in support of the writ petition, states that the 3rd respondent was waiting for an opportunity to settle scores with the writ petitioner. However, the said statement made has not been established with sufficient evidences. Mere statement cannot be construed for the purpose of confirming the allegation of mala fides. Thus, the allegation of mala fides stated in the affidavit is undoubtedly weak and deserves no merit consideration. Thirdly, as far as the Group D employees are concerned, they are not liable to be transferred frequently.

22. In the present case on hand, the writ petitioner is continuing in the same post for more than 30 years. The impugned

order of transfer states that there is need to Post an Office Assistant at Kudumiyam Malai on account of the fact that the new project has been undertaken by the respondents at Kudumiyam Malai, Pudukottai District. In order to run the administration efficiently, the vacant post of Office Assistant under Non Plan transferred from RRS, Ambasamudram was now transferred to Kudumiyamalai and in the transferred post of Office Assistant, the writ petitioner is accommodated and therefore, the said action of the respondents can never be construed as punitive.

23.This apart, the writ petitioner is working in the sanctioned Post of Watchman, though he was appointed as Office Assistant. The continuance of Office Assistant in the Post of Watchman for long time is also not desirable and against the rules. The Post of Watchman must be filled up in a proper manner and the writ petitioner, who was appointed as Office Assistant can never be allowed to work as a Watchman for number of years. Admittedly, the writ petitioner was accommodated in the Post of Watchman at Tiruvallur and now by shifting the Post of Ambasamudram to Kudumiyamalai, the writ petitioner is directed to join at Kudumiyamalai.

24.This being the nature of the administrative decisions taken by the respondents 1 and 2, this Court is of an opinion that the order of transfer impugned, was issued on administrative reasons and the respondents 1 and 2 are able to establish the same. However, the writ petitioner is at liberty to submit a representation in respect of his grievances, if any, to accommodate the same in any other available vacancies in other Districts. If such a representation is submitted, it is for the authorities to consider the same on merits and in accordance with law.

25.With these observations, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

s/d-

Assistant Registrar(CO)

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Sub-Assistant Registrar

To

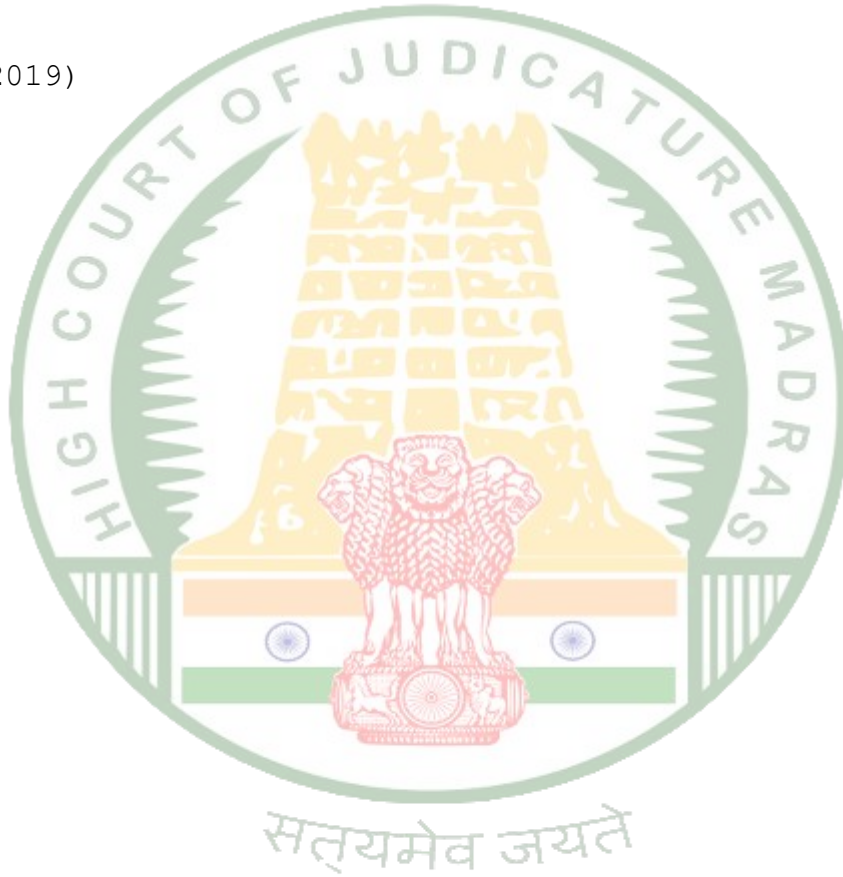
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+1 CC to M/s.Abdul Saleem, Advocate sr 35955.
+1 CC to Mr.V.Vijay Shankar, Advocate sr 35176.
+1 CC to Mr.R.Saseetharan, Advocate sr 34552.

W.P.No.7570 of 2019

SJ(CO)
SP(24/04/2019)



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