

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 17.07.2019

Delivered on : 31.07.2019

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.15569 of 2019 and
W.M.P.Nos.15467 & 18446 of 2019

S.Nagaraj

.. Petitioner

Versus

1. The Additional Chief Secretary to
Hon'ble Governor,
Raj Bhavan, Chennai-22.

2. The Deputy Secretary to Governor & Comptroller,
Governor's Secretariat,
Raj Bhavan, Chennai-22.

.. Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, to call for records relating to the order of the 2nd respondent made in Office Proceedings No.175 dated 29.05.2019 and quash the same.

For Petitioner : Mr.L.Chandrakumar

For Respondents : Mr.Vijay Narayan, AG
assisted by J.Pothiraj, Spl GP

ORDER

This Writ Petition has been filed, praying for the issuance of Writ of Certiorari, to call for records relating to the order of the 2nd respondent made in Office Proceedings No.175 dated 29.05.2019 and quash the same.

2. Although what is challenged in the Writ Petition is the order of transfer, transferring the petitioner as Under Secretary to Raj Bhavan, Ooty, yet the issue as such, has its

roots as claimed by the petitioner herein, which are briefly stated hereunder:

3. The petitioner was appointed as Steno Typist on 01.08.1983 in Animal Husbandry Department. On being qualified in the Departmental Tests, he was allotted to the Raj Bhavan by proceedings dated 01.10.1989 in terms of the extant Rules. Subsequently, he was absorbed in the Governor Secretariat at Raj Bhavan, Chennai. According to the petitioner, his appointment was made by recruitment by transfer and the same was made regular in terms of the Rules. The petitioner, however, sought to be re-transferred to his parent unit on the premise that the appointment was on deputation basis wherein, the fact remained that it was recruitment by transfer.

4. Objecting to his re-transfer, the petitioner approached the Tamil Nadu Administrative Tribunal in O.A.No.343 of 1997. On abolition of the Tribunal, the application was transferred to this Court and numbered as W.P.No.28103 of 2006. Ultimately, the Writ Petition was allowed by this Court on 30.09.2009, holding that the appointment of the petitioner was on regular basis and as per Rules and therefore, repatriation from the Governor Secretariat was not permissible. The learned Judge who allowed the Writ Petition, directed to pay all consequential benefits of promotion on par with the petitioner's junior in the Governor Secretariat. Aggrieved by the order, a Writ Appeal in W.A.No.224 of 2011 was preferred and the same came to be dismissed by a Division Bench of this Court, vide its order dated 18.04.2012. While dismissing the appeal, it appears that the learned Division Bench directed the respondents therein to extend the benefits on par with the junior of the petitioner, within a period of two weeks from the date of receipt of a copy of that order. Against the said dismissal order, a Special Leave Petition was filed before the Hon'ble Supreme Court in SLP No.21401 of 2012 and the same was rejected on 25.10.2013. Despite the petitioner succeeding before all the Courts, the consequential benefits on par with his junior, were not extended to him. In the above circumstances, the petitioner was constrained to approach this Court in CP No.545 of 2014. In the meanwhile, on behalf of the respondents therein, a Review Application was filed in Rev.Appln.No.217 of 2015 and a Division Bench of this Court, vide its order dated 07.10.2015 dismissed the Review Application and directed listing of the Contempt Petition within two weeks. However, the Contempt Petition was not listed as directed by the Division Bench. When the Contempt Petition was again listed after considerable lapse of time on 19.2.2019, still the benefits which were due to the petitioner were not settled and therefore, a statutory notice was ordered by the Division Bench for appearance of the contemnors, returnable by 19.3.2019.

5. While matters stood thus, the petitioner was promoted as Under Secretary on 19.02.2019 with all consequential benefits both monetary and service benefits. While granting promotion to the petitioner, he was posted to Ooty Raj Bhavan as Under Secretary in order to manage the administration of Raj Bhavan at Ooty. However, subsequently, on the same day, another order was issued cancelling the transfer order dated 19.2.2019 and suddenly once again, on 02.03.2019, the petitioner came to be transferred as Under Secretary to Raj Bhavan, Ooty with immediate effect to look after the administration of Raj Bhavan, Ooty and on the same day, he was relieved from the Governor Secretariat, Chennai. By proceedings, dated 05.03.2019, the petitioner was also directed to vacate the quarters immediately. Subsequently, by proceedings dated 22.03.2019, the petitioner was transferred back and posted to work at Raj Bhavan, Chennai with immediate effect.

6. While so, on 23.5.2019, the Contempt Petition in CP No.545 of 2014 came up for hearing and it was reported to the Division Bench that the order has been complied with and all consequential monetary benefits were also settled. In view of due compliance of the order passed by this Court, the Contempt Petition came to be closed on 25.3.2019. The learned Judges recorded the due compliance reported on behalf of the first respondent. Thereafter, the present transfer order was issued by Office proceedings dated 29.5.2019, once again posting the petitioner as Under Secretary to Raj Bhavan, Ooty which is put to challenge in the Writ Petition.

7. On 3.6.2019, the petitioner also came to be relieved from the Governor Secretariat, Raj Bhavan, Chennai and he was directed to report duty at Raj Bhavan, Ooty immediately after receipt of transfer order dated 29.05.2019. The petitioner has submitted his representation to the first respondent, requesting to cancel the transfer order in view of his impending retirement in 11 months time. Since his representation was not considered and as he was also subsequently relieved from the Governor Secretariat, Chennai, the petitioner is before this Court, challenging the order of transfer dated 29.5.2019.

8. Mr.L.Chandrakumar, learned appearing for the petitioner would vehemently contend that in the back ground narrated above, the transfer order was not passed on any administrative consideration or requirement, but it was passed only in order to punish the petitioner for having initiated contempt proceedings against the first respondent and other officials. He would also contend that on the face of it, the transfer order is tainted with mala fides and also the same is in violation of the G.Os. regulating the transfer of Government Servants. Earlier, the petitioner was transferred twice on 19.2.2019 and 02.03.2019

which came to be rescinded immediately. This was because at that time, the Contempt Petition was pending and the first respondent wanted to play safe and the Contempt Petition was hence closed on 25.03.2019, the petitioner was immediately transferred on 29.5.2019 for the third time. In fact, when the petitioner was earlier transferred on 02.03.2019, he was directed to vacate the quarters within 24 hours. Such exhibition of conduct by the Official concerned would demonstrate that all was not well in the relationship. Therefore, the mala fide is writ large in the transfer order and the Courts have held that the transfer order can be interfered with if the same is in violation of any statutory rules or the same is passed on mala fide consideration. In this case, the learned counsel would submit that the transfer order was not only issued on mala fide consideration, but also in violation of Government Orders.

9. In this regard, the learned counsel would draw the attention of this Court to G.O.Ms.No.10 dated 07.01.1994 issued by the Personnel and Administrative Reforms (Personnel-S) Department, which regulates transfers wherein, Sub Clause (j) of Clause III -Exceptions to General Guidelines, stipulates that if a person was due for transfer on completion of 3 years of service in a seat/post, need not be transferred to any other station if his left over service before retirement is one year or less. In case of transfer of such cases, he should be given a change of post/seat in the same station or if that is not possible, he may be allowed in the same post until his retirement. The learned counsel would further submit that G.O.Ms.No.431 P & AR (Per.M) Department dated 25.4.1981 provides that while posting the Government Officers to Nilgiris District, all Heads of Departments should consider and post young persons who are below 40 years of age, as far as possible. Therefore, he would submit that the impugned transfer is not only hit by mala fides, but the same is also passed in flagrant violation of G.Os. as stated above. In fact, the learned counsel would submit that at the time when Contempt Petition was taken up for hearing, the learned counsel appearing for the first respondent had assured the Court that no further action would be taken against the interest of the petitioner and on the basis of such assurance, no further action was taken in the Contempt Petition and the same was closed. The learned counsel would also submit that the assurance was however, not recorded in the order in view of the standing of the learned counsel who appeared for the first respondent in the Contempt Petition. He would therefore submit that in all fours, the impugned transfer order cannot be countenanced both in law and on facts and therefore, the same has to be set aside.

10. Per contra, Shri Vijay Narayan, learned Advocate General appearing for the respondents would submit that the plea of mala fide in the matter of transfer of the petitioner, has no basis, as the facts would disclose which necessitated the transfer of the petitioner to Raj Bhavan, Ooty as Under Secretary. The learned Advocate General would submit that initially, he was transferred to Raj Bhavan, Ooty on 19.02.2019 and on the same day, it was cancelled because of the fact that His Excellency the President of India was to visit and stay at Raj Bhavan, Chennai on 21st and 22nd of February, 2019 and in order to avoid any dislocation in managing the affairs of Raj Bhavan, particularly during the visit by the highest dignitary of the country, his transfer was immediately withdrawn.

11. According to the learned Advocate General, there are two sanctioned posts of Under Secretaries in Governor Secretariat and out of two, one Mr. Seeralan, who was working as Under Secretary, was compulsorily retired with effect from 27.2.2019. Since the other Under Secretary who was working for number of years in the Governor Secretariat and was looking after the personal affairs of His Excellency the Governor, was retained in the Governor Secretariat, Chennai and since the petitioner was posted as Under Secretary in 2019, the Governor Secretariat thought to utilize his service as Under Secretary at Raj Bhavan, Ooty in order to manage the affairs of Raj Bhavan, Ooty. Therefore, in such circumstances, he was transferred on 02.03.2019, however, the said order also came to be rescinded on 22.3.2019 in view of the Contempt Petition being listed for hearing during the time. After the closure of the Contempt Petition on reporting due compliance of the order of this Court, the Governor Secretariat felt that the services of the petitioner have to be utilized at Raj Bhavan, Ooty. In this regard, the Government, issued a letter dated 22.05.2019, a copy of which was produced before this Court, stating that there are nearly 40 employees working at Raj Bhavan, Ooty and pay for those employees have to be drawn and as there was no independent officer designated as Pay and Drawing Officer and therefore, to overcome the difficulties in managing the affairs of Raj Bhavan, Ooty, directed the Treasury Officer, Ooty to authorize to assign a new Drawing Officer in the cadre of Under Secretary to the Governor, Ooty Raj Bhavan. In this background as there was immediate requirement of Pay and Drawing Officer to manage the affairs of the Raj Bhavan and its employees, the petitioner was transferred to Ooty as Pay and Drawing Officer. Therefore, the learned Advocate General would submit that there is nothing amiss in such transfer since it was purely on administrative exigency and its requirement and unfortunately, his transfer was linked to the pendency of the Contempt Petition before this Court.

12. The learned Advocate General would submit that in fact, on behalf of the petitioner, there is too much said about the pendency of the Contempt Petition and the petitioner was transferred as punitive measure, but the fact of the matter is that the contempt was initiated much before the present first respondent assumed the office as Secretary to the Governor, as the Contempt Petition was of the year 2014. In fact, the first respondent was not even aware of the pendency of the contempt petition and only when the statutory notice was received in 2019, he came to know about such proceedings before the Division Bench of this Court. On being summoned to this Court, the first respondent ensured that all payments due to the petitioner were immediately settled to the tune of several lakhs of rupees. Therefore, the allegation of mala fides against the first respondent has no basis at all as he was not responsible for non-implementation of the orders of this Court which became implementable much before the posting of the first respondent to the Governor Secretariat.

13. Moreover, the learned Advocate General would submit that the present transfer order was issued after necessary approval of His Excellency the Governor of Tamil Nadu against whom no mala fides could be alleged. In fact, His Excellency the Governor of Tamil Nadu himself felt that the petitioner's services are required in order to manage the affairs of Ooty Raj Bhavan and therefore, he has personally approved the order of transfer. In support of his submissions, the Advocate General has placed a Note File for perusal of this Court.

14. According to the learned Advocate General, it is easier to make allegations of mala fide against high officials, but it is difficult to prove them. The allegations do not become facts or true unless the same are established beyond any doubt. According to the learned Advocate General, the reliance placed on two G.Os., by the learned counsel appearing for the petitioner would not really advance the case of the petitioner in his favour for the reason that the same G.O. which was relied on by the learned counsel for the petitioner, i.e., G.O.Ms.No.10, dated 7.1.1994, wherein, a Clause cautiously makes an exception that 'if the post is a sensitive one and there is no other suitable post in the Station, then he should be transferred to another station.' Therefore, the G.O. relied on behalf of the petitioner, is not absolute, but an exception has been carved out. In this case, Under Secretary to the Governor is a sensitive post and therefore, his services are required at Raj Bhavan, Ooty and since no other independent Pay and Drawing Officer is available in order to manage 40 odd employees and huge estate of Raj Bhavan. As regards the other G.O. relied upon by the petitioner, that young employees are to be posted to

Nilgiris District, he would submit that even that G.O. is not absolute, but only as far as possible such transfers could be made. In this case, the only Office that is available other than the Governor Secretariat at Chennai, is only Ooty Raj Bhavan and no other place. Therefore, there is dire necessity for the first respondent to post the petitioner only at Ooty Raj Bhavan. Therefore, the said G.O. relied upon by the petitioner cannot be made applicable to his case.

15. The learned Advocate General would further submit that the allegation of mala fide is absolutely without any basis and the same is unfounded and contrary to the records. The plea of violation of G.Os. is also not valid in view of the above position as explained and therefore, the petitioner is not entitled to the relief as claimed in the Writ Petition.

16. By way of reply, the learned counsel, Mr.L.Chandra Kumar, appearing for the petitioner would submit that originally there is no Office located for Under Secretary to perform his duties at Raj Bhavan, Ooty as the earlier Officer, who was looking after the affairs of Ooty Raj Bhavan, namely, Mr.Seeralan before his compulsory retirement on 28.02.2019, was operating the affairs from Chennai. According to the learned counsel, there was no requirement of physical presence of Under Secretary at Ooty Raj Bhavan at all as only few gardeners and Sanitary employees being employed at Ooty Raj Bhavan for which, there is a separate office to look after their affairs. In any case, he would submit that the backdrop and the entire circumstances under which, transfer came to be issued for the third time in a quick session would unequivocally demonstrate that the plea of mala fide is made out without any doubt and once the plea of mala fide gets established, the transfer order becomes per se illegal, arbitrary, unreasonable and the same is liable to be interfered with. In support of his contentions, the learned counsel would rely upon a decision of the learned single Judge of this Court passed in W.P.No.19244 of 2014, dated 27.11.2014, wherein, he would draw the attention of this Court to paragraphs 15 and 20, which are extracted hereunder:

"15. In the judgment reported in (2009) 2 Supreme Court Cases 592 supra, the Supreme Court held that the order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer. As stated supra, the ground on which the impugned order of transfer was passed was proved to be false and no acceptable explanation was given by the first respondent for not effecting the transfer order dated 26.11.2012 and for posting the petitioner to FPS Office as per

the impugned order.

"16. to 19.

"20. In this case, having regard to the reasons stated above, the transfer order dated 08.07.2014 is vitiated by mala fide and therefore, it is liable to be set aside and the same is set aside. To that extent, the Writ Petition is allowed. No costs. The connected Miscellaneous Petition is closed."

17. In the above decision, the learned Judge has held that the transfer order was vitiated because the same was passed on mala fide consideration. The learned counsel would also rely on the observations of the learned Division Bench, which heard the Contempt Petition, in its order dated 25.03.2019, wherein, the Division Bench has noted before closing the Contempt Petition, that the petitioner was transferred back to Chennai on 22.03.2019 in consequence of the original transfer order dated 02.03.2019. The Division Bench has recorded the statement from the first respondent and closed the Contempt which meant that the petitioner should not be disturbed any further. The learned counsel would also rely on a decision of the Hon'ble Supreme Court reported in "1991 Supp (2) SCC 659 (Shilpi Bose (Mrs) and others versus State of Bihar and others)" which although ultimately held in favour of the transfer, he would particularly draw the attention of this Court to the observation that the Court should not interfere with the transfer order which is made in public interest and for administrative reasons, unless the transfer orders are made in violation of any statutory rules or on the ground mala fide. In this case, the learned counsel would point out that the transfer order is liable to be interfered with, since the same is tainted with the mala fide and the mala fide stood established beyond any pale of doubt.

18. The learned Advocate General in support of the legal contention that the Courts cannot normally interfere with the orders of transfer, would rely on the following decisions, viz.,

i) 1995 Supp (2) SCC 151 (State of U.P. Versus Dr.R.N.Prasad)

In this case, the Hon'ble Supreme Court has held that in the absence of prima facie materials to establish the mala fides, the High Court ought not to have passed any interlocutory orders staying the operation of the transfer orders.

ii) 2009 (8) SCC 337 (Airports Authority of India versus Rajeev Ratan Pandey)"

In this case, the Hon'ble Supreme Court has held that the High Court should not interfere with the transfer order lightly and consequently, the order of the High Court was set aside by the Hon'ble Supreme Court of India. In that case, the plea of mala fide was not originally raised in the Writ Petition, but in

the supplemental affidavit, it was raised and the Supreme Court has held that there was no convincing and cogent material in support of the plea of mala fide and therefore, the interference of the High Court was not warranted. The learned Advocate General would submit that in this case also, as the facts would disclose that no allegation of mala fide was made against His Excellency the Governor of Tamil Nadu, who personally approved the transfer order and also no allegation was made against the first respondent either in his personal capacity. Therefore, this Court ought not to have granted interim order of stay of transfer order.

iii) 2004 (1) SCC 402 (State of Utter Pradesh versus Gobardhan Lal)

The learned Advocate General would draw the attention of this Court to paragraphs 7 and 8, which are extracted as under:

"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 he 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 cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in

violation of any statutory provision.

"8. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the Courts or Tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that Courts or Tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the Court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer."

In the above case, the Hon'ble Supreme Court has held that the Courts must be wary in interfering with the order of transfer since the transfer is an incidence of service to any Government servant and the High Court cannot act like appellate authority and appreciate the necessity of the administrative requirement and substitute its own decision in the matter of transfer.

The learned Advocate General would submit that in this case there is imminent requirement of Under Secretary to be posted at Raj Bhavan, Ooty as Pay and Drawing Officer to manage the affairs of the estate of Ooty Raj Bhavan and also for preparation of bills and salaries of more than 40 employees employed therein.

iv) 1993 (1) SCC 54 (M.Sankaranarayanan, IAS versus State of Karnataka and others)" सतयमेव जयते

In this case, the Hon'ble Supreme Court has dealt with the transfer order of Chief Secretary, wherein, the Chief Secretary and the transferring authority (Chief Minister of the State of Karnataka) had several differences of opinion in the affairs of the State and in that context, the transfer was made at the instance of the Hon'ble Chief Minister. Though the Supreme Court found that the transfer was because of difference of opinion between the Chief Secretary and the Chief Minister on day today administration, yet the Hon'ble Supreme Court has held in paragraph 12 as follows:

"12. After considering the respective contentions of the learned counsels appearing for the parties, it appears to us that the appellant

has not been able to lay any firm foundation warranting a finding that the impugned order Of transfer was passed mala fide and/or for an oblique purpose in order to punish the appellant and/or to humiliate him. The pleadings of the appellant before the Central Administrative Tribunal only indicate that some of his suggestions in the matter of posting of senior bureaucratic officers of the State had not been accepted by the present Chief Minister of the State. Such facts alone do not constitute any foundation for a finding that because the appellant was not agreeable to oblige the Chief Minister by accepting all his suggestions and putting up notes to that effect, he had incurred the displeasure of the Chief Minister and the impugned orders had been passed not on administrative exigencies but only to malign the appellant and to humiliate him. It may not always be possible to demonstrate malice in fact with full and G elaborate particulars and it may be permissible in an appropriate case to draw reasonable inference of mala fide from the facts pleaded and established. But such inference must be based on factual matrix and such factual matrix cannot remain in the realm of insinuation, surmise or conjecture. In the instance case, we are unable to find that there are sufficient materials from which a reasonable inference of malice in fact for passing the impugned order of transfer can be drawn. It is an admitted position that the Chief Secretary and the Chief Minister had differences of opinion on a number of sensitive matters. If on that score, the Cabinet and the Chief Minister had taken a decision to relieve the appellant from the post of Chief Secretary and post a very senior officer of their confidence to the post of Chief Secretary, it cannot be held that such decision is per se illegal or beyond the administrative authority. The position in this regard has been well explained in Royappa's case by this Court."

The learned Advocate General would submit that even in case of the above nature, the Hon'ble Supreme Court has held that the transfer order cannot be interfered with and cannot be held to be invalid or illegal. More so, in this case, where no such mala fide is alleged against the ultimate authority, namely, His Excellency the Governor of Tamil Nadu, who has personally approved the transfer order.

v) "(2001) 1 SCC 182 (Kumaon Mandal Vikas Nigam Ltd. versus Girja Shankar Pant and others)", wherein, the learned Advocate General would draw the attention of this Court to paragraphs 27 and 28, in which, the Hon'ble Supreme Court has discussed about the concept of bias, which are extracted hereunder:

"27. The concept of Bias however has had a steady refinement with the changing structure of the society: Modernisation of the society, with the passage of time, has its due impact on the concept of Bias as well. Three decades ago this Court in S. Parthasarathi v. State of Andhra Pradesh (1974 (3) SCC 459) proceeded on the footing of real likelihood of bias and there was in fact a total unanimity on this score between the English and the Indian Courts.

"28. Mathew, J. in Parthasarthis case observed:

'16. The tests of real likelihood and reasonable suspicion are really inconsistent with each other. We think that the reviewing authority must make a determination on the basis of the whole evidence before it, whether a reasonable man would in the circumstances infer that there is real likelihood of bias. The Court must look at the impression which other people have. This follows from the principle that justice must not only be done but seen to be done. If right minded persons would think that there is real likelihood of bias on the part of an inquiring officer, he must not conduct the enquiry; nevertheless, there must be a real likelihood of bias. Surmise or conjecture would not be enough. There must exist circumstances from which reasonable men would think it probable or likely that the inquiring officer will be prejudiced against the delinquent. The Court will not inquire whether he was really prejudiced. If a reasonable man would think on the basis of the existing circumstances that he is likely to be prejudiced, that is sufficient to quash the decision (see per Lord Denning, H.R. in Metropolitan Properties Co. (F.G.C.) Ltd. v. Lannon and Others, etc. : (1968) 3 WLR 694 at 707). We should not, however, be understood to deny that the Court might with greater propriety apply the reasonable

suspicion test in criminal or in proceedings analogous to criminal proceedings."

The learned Advocate General would submit that the Court must be careful in interfering with the transfer order unless the plea of mala fide is established on the basis of bias exhibited by the authorities unequivocally. In this case, the plea of bias or likelihood of the same is not attributed to the first respondent in his personal capacity nor a plea is taken or could be taken against highest dignitary of the State, His Excellency the Governor of Tamil Nadu. In the absence of plea of mala fide, the contention that the transfer order is vitiated on the ground of mala fide has to be rejected outright.

19. Lastly, the Advocate General would submit that in regard to the so-called assurance given by the learned counsel appearing for the first respondent in the contempt proceedings, such assurance cannot be relied upon by the petitioner for the reason that there was no recording of any assurance. Even otherwise, such assurance given by the learned counsel does not tie the hands of the administration in transferring the Government servants while administrative exigencies mandate such transfer. Therefore, the learned Advocate General would submit that the plea of mala fide solely premised on the basis of pendency of Contempt Petition, the petitioner is desperately attempting to make a mountain out of molehill and thus the entire edifice built on the plea of mala fides, has to crumble, being unfounded and baseless.

20. Considered the submissions of the learned counsel for the petitioner and of the learned Advocate General for the respondents. Perused the materials and pleadings placed on record.

21. Although the arguments advanced on behalf of the petitioner, particularly in regard to plea of mala fide, appeared to have some force on the cursory glance of events which preceded before issuing of the impugned order of transfer dated 29.05.2019 yet when the Court's attention is drawn to certain facts which culminated in the issuance of transfer order, would demonstrate the case of mala fide sought to be established on behalf of the petitioner has a weak basis compelling this Court to react favourably on that plea alone. As events unfolded and disclosed by the learned Advocate General that the initial order of transfer dated 19.2.2019 was rescinded on the same day in view of the visit by His Excellency the President of India on the following days and the cancellation of transfer order dated 02.03.2019 was issued subsequently was also due to the fact that the Contempt Petition was listed during the time, it cannot be gainsaid that the petitioner's transfer was

ultimately aimed to punish him after the closure of the contempt petition. As rightly canvassed by the learned Advocate General, the first respondent was not the implementing authority when the contempt was initiated by the Court and incidentally when the contempt petition was listed, the first respondent was serving as Secretary to the Government and in due compliance of the notice of contempt, the entire monetary dues and promotion were granted to the petitioner and consequently, the contempt petition was closed. Therefore, the plea of mala fide against the first respondent even in his official capacity is not demonstrated in unequivocal terms for this Court to interfere with the order of transfer on the basis of plea of mala fide alone.

22. The petitioner has placed too much reliance of the pendency of the contempt petition in order to highlight the plea of mala fide to draw the attention of this Court, which, in the opinion of this Court, is not supported by the factual events, which actually formed the basis of the transfer order of the petitioner. The Court cannot act simply on the basis of surmise and conjecture and interfere with the transfer order unless the plea of mala fide against the official concerned is established beyond any pale of doubt and the Court in order to interfere with the transfer order, must be compelled to act when no other conclusion is possible except to accept the plea of mala fide. In this case, such compelling circumstances do not exist particularly with reference to plea of mala fide taken by the petitioner against the first respondent.

23. First of all, the transfer order is finally approved by none other than His Excellency the Governor of Tamil Nadu, who is the highest constitutional authority of the State, against whom, no mala fide is alleged nor could be alleged by the petitioner. Once the transfer order has been approved by the highest constitutional dignitary, it is presumed that the transfer order was passed for bona fide consideration. Such presumption can be dislodged by the petitioner only if he comes with much stronger case of bias or mala fide against His Excellency the Governor of Tamil Nadu and also the first respondent in his personal capacity. As stated earlier, the only point that gave rise to the plea of mala fide is the pendency of contempt petition filed by the petitioner in 2014 which was taken up for hearing in 2019 and that alone cannot be the basis for strong case of mala fides against high officials of the Government or His Excellency the Governor of Tamil Nadu. The plea of mala fides can be easier to make against the officials, but it is difficult to prove unless such proof is presented to this Court that the very foundation of transfer order is motivated and for a mala fide consideration, this Court cannot per se act on such apprehended malice on the part of the

officials concerned. Malicious intent on the part of the officials concerned is too deep and unfathomable, this Court cannot venture into real intent of the author of transfer and unearth the design or purpose of such action. Unless, the person who makes allegation, has come up with unimpeachable evidence and support of his allegation. In this case, this Court does not find any such concrete basis for the allegation vis-a-vis the explanation submitted on behalf of the respondents.

24. The learned Advocate General has succinctly narrated sequence of events which led to the cancellation of two transfer orders dated 19.2.2019 and 02.03.2019 and also subsequent passing of transfer order which is impugned in the Writ Petition dated 29.5.2019. A letter from the Government sanctioning Pay and Drawing Officer and posting of the Under Secretary to the Governor to Ooty Raj Bhavan, i.e. the petitioner, are all well explained by supporting materials on behalf of the respondents. In fact, the original Note file maintained by the Governor Secretariat was produced for perusal of this Court, wherein, it is seen that His Excellency the Governor of Tamil Nadu himself has approved the transfer order on 29.5.2019. In such view of the matter, this Court does not think that the plea of mala fide can be considered to be established at all for this Court to interfere with the transfer order.

25. As regards the violation of G.Os., is concerned, G.O.Ms.No.10 dated 7.1.1994 is in regard to transfer of person who has only year left for retirement, which is not absolute. In fact, the learned Advocate General has clarified the same Clause (j) relied upon by the learned counsel for the petitioner, stating that in sensitive post, persons could be transferred. No doubt as far as the position held by the petitioner herein concerned being Under Secretary to the highest dignitary of the State, he holds a sensitive post and his services are stated to be imminently required as Pay Disbursing Officer at Ooty Raj Bhavan. This was also due to the fact that the earlier Under Secretary who was looking after the affairs of Ooty Raj Bhavan, Mr.Seeralan was compulsorily retired with effect from 28.2.2019. In fact, the learned Advocate General would submit that out of two Under Secretaries attached to the Governor Secretariat, the petitioner is the junior and the other person who was working as Under Secretary to the Governor and looking after the personal affairs of the Governor for a long period of time. Therefore, the only choice for the Governor Secretariat to make arrangement for looking after its affairs at Ooty Raj Bhavan is the petitioner and it became definitely an administrative necessity for transferring the petitioner to manage the affairs of the Raj Bhavan, Ooty. Therefore, the administrative exigency appears to be more established than the plea of mala fides by the petitioner. Even if there is some truth in the allegation, ultimately this Court finds that there is administrative

requirement of managing the affairs of Raj Bhavan, Ooty and the Governor Secretariat had only Hobson's choice, i.e. the petitioner herein to work as Under Secretary In-charge of Raj Bhavan, Ooty. In regard to the posting of young officers to Nilgiris District, such G.O. cannot be pressed into service as far as the present transfer is concerned. Raj Bhavan, Chennai is having only one branch at Ooty and any officer working in Governor Secretariat can be shuffled between Chennai and Ooty. Therefore, such plea that the petitioner being old and cannot be transferred to Ooty, does not merit any serious consideration by this Court. Even otherwise, the said G.O. is not absolute and it can be construed only as a guideline, as it speaks about posting of young officers only as far as possible. In this case, posting of the petitioner became an administrative necessity in view of the circumstances explained above and therefore, the age factor cannot be successfully pleaded by the petitioner in order to avoid transfer to Raj Bhavan, Ooty. In regard to the submission made on behalf of the petitioner by Mr.L.Chandrakumar, learned counsel that the assurance given by the learned counsel on behalf of the first respondent before the Division Bench in Contempt proceedings, this Court cannot act on such assurance since nothing was ultimately recorded by the learned Division Bench which disposed of the Contempt Petition. In any event, as rightly contended by the learned Advocate General, the assurance given by the learned counsel appearing for the first respondent cannot tie the hands of the administration when there is requirement of competent hands to run the administration of Raj Bhavan, Ooty and the only competent hand at the level of Under Secretary who is available to be posted, is the petitioner alone and therefore, the choice naturally fell on.

26. In view of the above narrative, this Court is of the view that the case of the respondent that the petitioner was transferred not on mala fide action or violation of G.Os., but that was made only on the basis of administrative requirement stands established beyond any doubt. Therefore, this Court does not think that the petitioner is entitled to the relief as prayed for in the Writ Petition.

27. In the circumstances, this Court ultimately finds that there is no merit in the Writ Petition and hence, the same is dismissed. The interim order passed by this Court on 07.06.2019 is hereby vacated. No costs. Consequently, connected WMPs are closed.

Suk

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1. The Additional Chief Secretary to
Hon'ble Governor,
Raj Bhavan, Chennai-22.

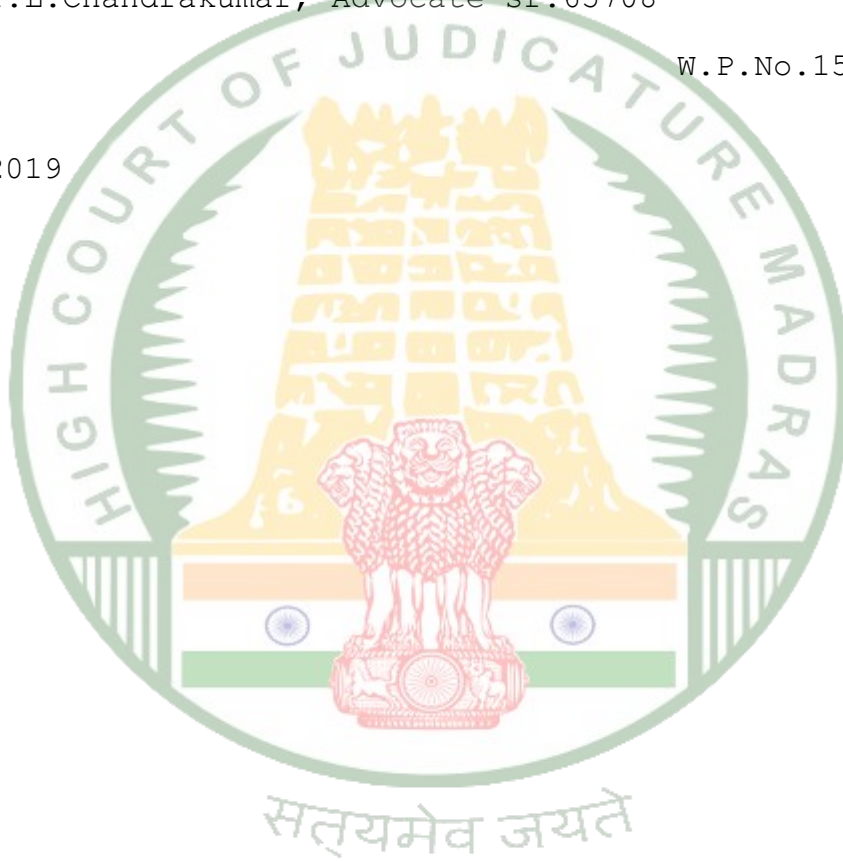
2. The Deputy Secretary to Governor & Comptroller,
Governor's Secretariat,
Raj Bhavan, Chennai-22.

+1cc to Government Pleader sr.65910

+1cc to Mr.L.Chandrakumar, Advocate sr.65708

W.P.No.15569 of 2019

ssd(co)
nr 24/09/2019



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