

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :16.07.2019
Pronounced on :31.07.2019

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.18126 of 2019 and
W.M.P.Nos.17493, 17494 and 18473 of 2019

T.Kumaravel

... Petitioner

Vs.

- 1.The Additional Chief Secretary to Government
Revenue and Disaster Management Department,
Secretariat, Chennai - 9.
- 2.The Additional Chief Secretary,
Commissioner of Revenue Administration,
Chepauk, Chennai - 5.
- 3.The District Collector,
Villupuram.
- 4.The District Revenue Officer,
Villupuram.

5.S.Rajendran

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the first respondent vide G.O.[2D]No.156, Revenue and Disaster Management Department, Service Unit, Service 1, Section, dated 21.6.19 and to quash the same and consequently direct the respondents to permit the petitioner to continue in the post of Revenue Divisional Officer, Villupuram.

For Petitioner : Mr.S.Vijayakumar

For RR 1 to 4 : Mr.Vijay Narayan
Advocate General

Assisted by Mr.J.Pothiraj
Special Government Pleader

ORDER

The petitioner joined in the Revenue Department as Typist in 1993 and was allotted to Sivagangai District Revenue Unit. He was promoted to the post of Assistant in the year 1996 and thereafter further promoted to the post of Deputy Tahsildar in the year 2006. Thereafter, he was promoted to the post of Tahsildar in 2010 in Sivagangai District Revenue Unit. Subsequently, the petitioner became Deputy Collector on 12.03.2014 and posted at Coimbatore Collectorate. After serving in various places as Deputy Collector, he was eventually posted as Revenue Divisional Officer at Villupuram District and joined as Revenue Divisional Officer, Villupuram on 20.09.2018. According to the petitioner, throughout his carrier, he has not been subjected to any disciplinary proceedings.

2. On 07.01.2019, a show cause notice was issued to the petitioner seeking explanation as to the basis for rejecting the leave application of one S.Ganesh, who was acting as Personal Assistant to the petitioner. According to the petitioner, the application for leave was submitted by his Personal Assistant, seeking leave for 30 days without assigning any reasons. In view of not assigning any reasons and also on the ground that the said Personal Assistant did not meet him with relevant records of the Office Administration, despite repeated directions from him, the leave application was turned down by the petitioner.

3. It appears that the said S.Ganesh directly represented to the 3rd respondent/Collector about the rejection of his application for leave and on the basis of his representation without ascertaining the true facts, a show cause notice was issued to the petitioner on 07.01.2019 which was received by the petitioner on 18.01.2019. The petitioner has also submitted his explanation on 20.01.2019 explaining his position in regard to rejection of leave application submitted by his Personal Assistant. Further, according to the petitioner, he had directed proceedings against one Anbubalan, who was the Senior Revenue Inspector has committed fraud for several lakhs of rupees, which irregularity was in fact detected by his predecessor Tmt.Saraswathi and no proper proceedings were initiated against the purported act of fraud. According to the petitioner, he instructed the officials to cooperate with the investigation and filed a charge sheet immediately. The 3rd and 4th respondents, who had received representation from the said Anbubalan, were opposed to the initiative taken by the petitioner against him. Therefore, both 3rd and 4th respondents have become enimical towards the petitioner and thereafter, they started to interfere with the day to day functioning of the petitioner which forced the petitioner to address a detailed representation to the Chief

Secretary on 06.05.2019. While he was awaiting response from his representation, the Government has issued order G.O.[2D]No.156 dated 21.06.2019 transferring the petitioner and posting the 5th respondent in his place. While posting the 5th respondent in his place, the petitioner was not allotted any place of posting, strangely. The said order of transfer is put to challenge in the writ petition.

4.The impugned order of transfer is principally challenged on the ground as the same being tainted with mala fides as the 3rd and 4th respondents were responsible for issuing the transfer order, in order to remove him from the present place of posting at Villupuram. According to him, since he has addressed his grievances directly to the Chief Secretary about the functioning of 3rd and 4th respondents, the Government has passed order transferring the petitioner without giving him any posting not on the basis of any administrative requirement, but for extraneous consideration. According to him, the transfer order was also passed without allowing the petitioner to complete full period of 12 months as Deputy Collector which would make eligible to get promotion to the next higher post of District Revenue Officer in the District.

5.This Court, while admitting the writ petition, has granted interim stay on a prima facie consideration of the case of the petitioner.

6.On notice, Mr.J.Pothiraj, learned Special Government Pleader has entered appearance on behalf of the official respondents and a vacate stay application has been filed seeking to vacate the stay granted by this Court in W.M.P.No.18473 of 2019.

7.Mr.S.Vijayakumar, learned counsel for the petitioner would submit that 5th respondent was posted in the place of the petitioner, and that too posted only as in-charge and he was not regularly posted and as far as the petitioner is concerned, he was not given any posting at all as could be seen in the impugned transfer order. Although the impugned transfer order contains several persons' names, the petitioner alone has not been given any posting. In view of the fact that the petitioner was taking up the issue against the 3rd and 4th respondents with the Chief Secretary, the Government has passed an order of transfer and the transfer order is proximate to the show cause notice issued to the petitioner on 07.01.2019 and also further developments thereafter. Therefore, the transfer order is punitive in nature and passed on mala fide consideration and hence, the same is liable to be interfered with.

8.Mr.Vijay Narayan, learned Advocate General appearing for the official respondents would submit that the petitioner's transfer is a routine transfer and along with the petitioner, 18 other persons from various District in Tamil Nadu in the cadre of Deputy Collector were also transferred. Out of the 19 Deputy Collectors including the petitioner, eight of them were not given posting. Among them, the petitioner was the only person approached this Court, challenging the order of transfer. According to the learned Advocate General, it is one of the usual transfer and posting order issued by the Government on administrative grounds and 3rd and 4th respondents are no way connected with the transfer order issued by the Government.

9.The learned Advocate General would submit that the 5th respondent (Rajendran) was posted in the place of the petitioner who joined as Revenue Divisional Officer on 22.06.2019 and continued in the said post. The said Rajendran, R.D.O. submitted a report stating that while he was discharging his duties, the petitioner entered the R.D.O. office on 26.06.2019 and obstructed the 5th respondent from discharging his duties and forced him to leave the office stating that he had obtained an interim stay from this Court. Moreover, the petitioner is in the habit of going to public and used to give interview to Press and in Visual Media about the functioning of the Government officials particularly, the 3rd respondent. This is against the Tamil Nadu Government Servants Conduct Rules particularly Rule 12. Rule 12(1) of the Rules, which is relied on by the learned Advocate General and it is extracted as under:

"Rule 12.Criticism of Government:-

(1)No Government servant shall in any ratio broadcast or in any document published anonymously or in his own name or in the name of any other person or in any communication to the press or in any public utterance, make any statement of fact or opinion.

(i)which has the effect of an adverse criticism of any Current or recent policy or action of the Central Government or a State Government, or

(ii)which is capable of embarrassing the relations between this State Government and any other Government or

(iii)which is capable of embarrassing the relations between the Central Government and the Government of any foreign State.

Provided that nothing in this rule shall apply to any statement made or views expressed by a Government servant in his official capacity or in the due performance of the duties assigned to him;

Provided further that in the case of any

Government servant nothing contained in this rule shall apply to bonafide expression of views by him as an office bearer of any recognised association of Government servants for the purpose of safeguarding the conditions of service of Government servants or for securing an improvement thereof."

10. According to the learned Advocate General, the petitioner used to call Press meet from electronic media to his Government quarters and used to give open interview by falsely criticising the Government and respondents in violation of the Conduct Rules. The petitioner also used to text several messages criticizing the Government. It is also contended that the 5th respondent, who is posted in the place of the petitioner, is a regular appointee and is not appointed as in-charge as made out by the petitioner. He would also submit that immediately after the order was passed on 21.06.2019, the 5th respondent has assumed office on the same day.

11. The learned Advocate General would draw the attention of this Court to various interviews given by the petitioner in Print Media and those interviews were prominently published and which are filed as documents in the typed set of documents filed on behalf of the official respondents.

12. The learned Advocate General would also submit that as far as non-posting of the petitioner is concerned, he has been kept under compulsory wait, which is a very common factor as eight of the officers who were transferred in the same impugned order have not also been given any posting. He would submit that in the transfer order itself in paragraph V and VI, it is mentioned as under:

"(v) As per the Government letter No.44890/FR-III/95-1, Personnel and Administrative Reforms Department dated 28-8-95, in the case of officers for whom further posting orders have not been issued, but substitutes have been posted in their place they should, immediately on relief, report to the appropriate authority (i.e.) Commissioner of Revenue Administration for further postings.

(vi) Only in cases of reporting for duty in person before the appropriate authority (i.e.) Commissioner of Revenue Administration the period between the date of reporting for duty to the date of actual joining in a post subsequently, will be treated as compulsory wait under ruling 3 of FR 9(6) (b)."

13. The learned Advocate General would submit that the petitioner along with others will be given posting order in due course and presently, they are treated as compulsory wait under

Ruling 3 of F.R. 9(6)(b). According to the learned Advocate General, this is nothing, but an usual arrangement and a common factor in the Administration.

14. The learned Advocate General would submit that transfer orders cannot be interfered with by Courts lightly unless the same is passed on a mala fide consideration or in violation of any statutory regulations. According to him, the plea of mala fides is difficult to establish and in this case, the transfer order was issued by the Government itself and 3rd and 4th respondents are no way connected with the transfer order, who are far inferior in the rungs of bureaucratic hierarchy. According to him, Government is the best entity which can decide where the services of the officers are required and this being a routine transfer of containing several names, the petitioner cannot be said to be aggrieved and no valid grounds have been raised for opposing the transfer order.

15. In support of his contentions, the learned Advocate General would also rely on the following decisions:

(i) In the decision (1993) 4 Supreme Court Cases 357 [Union of India and others V. S.L. Abbas], the Hon'ble Supreme Court, at paragraphs 6 and 7, has observed as under:

"6. An order of transfer is an incident of Government Service. Fundamental Rule 11 says that "the whole time of a Government servant is at the disposal of the Government which pays him and he may be employed in any manner required by proper authority". Fundamental Rule 15 says that "the President may transfer a government servant from one post to another". That the respondent is liable to transfer anywhere in India is not in dispute. It is not the case of the respondent that order of his transfer is vitiated by mala fides on the part of the authority making the order, - though the Tribunal does say so merely because certain guidelines issued by the Central Government are not followed, with which finding we shall deal later. The respondent attributed "mischief" to his immediate superior who had nothing to do with his transfer. All he says is that he should not be transferred because his wife is working at Shillong, his children are studying there and also because his health had suffered a set-back some time ago. He relies upon certain executive instructions issued by the Government in that behalf. Those instructions are in the nature of guidelines. They do not have statutory force.

7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by malafides or is made

in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline however does not confer upon the government employee a legally enforceable right."

(ii) In (2009) 8 Supreme Court Cases 337 [Airports Authority of India V. Rajeev Ratan Pandey and others], the Hon'ble Supreme Court, at paragraph 7, has held as follows:

"7. In State of U.P. v. Gobardhan Lal (2004) 11 SCC 402, while dealing with a matter of transfer, this Court observed that allegations of mala-fides must inspire confidence of the Court and ought not to be entertained on the mere asking of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference would ordinarily be made with an order of transfer. That the burden of proving mala-fides is on a person leveling such allegations and the burden is heavy, admits of no legal ambiguity. Mere assertion or bald statement is not enough to discharge the heavy burden that the law imposes upon the person leveling allegations of mala-fides; it must be supported by requisite materials."

(iii) In (2009) 15 Supreme Court Cases 178 [Rajendra Singh and others V. State of Uttar Pradesh and others], the Hon'ble Supreme Court, at paragraphs 8 to 10, has laid down as follows:

"8. A Government Servant has no vested right to remain posted at a place of his choice nor can he insist that he must be posted at one place or the other. He is liable to be transferred in the administrative exigencies from one place to the other. 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 contrary. No Government can function if the Government Servant insists that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires [see State of U.P. v. Gobardhan Lal; (2004) 11 SCC 402, SCC p.406, para 7].

9. The courts are always reluctant in interfering

with the transfer of an employee unless such transfer is vitiated by violation of some statutory provisions or suffers from mala fides. In *Shilpi Bose v. State of Bihar* 1991 Supp(2) SCC 659, this Court held : (SCC p.661, para 4)

"4. In our opinion, the courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department. If the courts continue to interfere with day-to-day transfer orders issued by the government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders."

10. In *N.K. Singh v. Union of India* (1994) 6 SCC 98, this Court reiterated that: (SCC p.103, para 6)

'6. ... the scope of judicial review in matters of transfer of a Government Servant to an equivalent post without adverse consequence on the service or career prospects is very limited being confined only to the grounds of mala fides and violation of any specific provision.....'

16. In all the above cases, the Hon'ble Supreme Court has consistently held that transfer is incidence to Government Service and no employee has vested right to remain in same place and the Courts must be wary of interfering with transfer orders and such intervention can be only in exceptional circumstances viz., violation of any statutory regulation or transfer is issued on mala fide consideration. As far as mala fide consideration is concerned, the petitioner has not attributed any specific mala fides against the Government and in the grounds raised in the writ petition, no statutory violation has been pointed out. Therefore, the learned Advocate General would submit that the writ petition lacks merit and the same is liable to be rejected.

17.By way of reply, the learned counsel for the petitioner Mr.S.Vijayakumar would refute all the contentions put forth on behalf of the official respondents and he still reiterated that the 5th respondent was actually posted as in-charge on 22.06.2019 only, thereafter on 01.07.2019 he was allowed to assume charge. Therefore, he would submit that the statement that the petitioner was replaced regularly by 5th respondent is not correct. In any case, a detailed reply statement has been filed on behalf of the petitioner refuting each one of the contentions, as contained in the vacate stay petition filed on behalf of the officials respondents.

18.This Court considered the submissions of the learned counsel for the petitioner and also the submissions of the learned Advocate General on behalf of the official respondents and perused the pleadings and materials placed on record.

19.It appears that the petitioner is in the habit of going public by giving interviews to print media and also inviting persons from electronic media for criticising the Government and its officials. Such conduct on the part of the petitioner amounted to committing grave misconduct in violation of Tamil Nadu Government Servants Conduct Rules. Being a public servant, the petitioner has to refrain himself from going to public against his co-officials and should not indulge in making criticism against the Government. Such conduct on the part of the petitioner does not speak well of his position as a Senior Civil Servant holding the post of Deputy Collector.

20.Be that as it may. The transfer order was issued not only containing the name of the petitioner and the 5th respondent but also several other officers of the same rank and as rightly contended by the learned Advocate General that like the petitioner several other Deputy Collectors were transferred and not given any posting orders and they were all kept in the compulsory wait list, to be given posting in due course. As rightly contended by the learned Advocate General that the transfer orders cannot be interfered by Courts as a matter of routine unless the same is tainted with mala fides or the same is in violation of any statutory regulation. In the present case on hand, it is not spelt out as to what was wrong with the transfer order or issued in violation of any statutory regulation. The only other aspect for which this Court can be called upon to interfere with such transfer order is, whether such order was passed on a mala fide consideration. Although the petitioner has given complaints against his superiors viz., 3rd and 4th respondents to the Chief Secretary and also he has averred in the affidavit about his initiative in conducting investigation against a fraud committed by one of the officials,

that alone cannot be the basis for coming to an irresistible conclusion of mala fides against the Government which actually passed the order, transferring the petitioner along with the 18 other officers. It is easier to make allegation of mala fides in the affidavit, but it is very difficult to prove unless the petitioner is able to establish in unimpeachable terms that his complaints and his conduct which formed the foundation of the transfer order, such transfer order cannot be interfered with by this Court. Even assuming for a moment that the transfer order was issued in view of the conduct of the petitioner of going to public through Visual and Print Media, this Court finds that there is nothing amiss in such action being taken by the Government in order to have smooth administration in the District, since ultimately the Government's paramount interest is to uphold public welfare in its administration. If the relationship of the petitioner is strained and enimical with reference to his fellow superiors and officials, in the interest of administration, the Government can always re-arrange the posting of officers concerned in the larger public interest. Therefore, this Court, in such view of the matter, does not think that the transfer order can be the subject matter of interference by this Court.

21. Even otherwise, as rightly relied on by the learned Advocate General the above quoted Supreme Court orders have held that the Courts must be wary of interfering with the transfer orders unless for compelling reasons, like violation of statutory regulations or the order being passed on mala fide consideration. In this case, this Court does not think that there is compelling reason for this Court to interfere with the present transfer order. After all, the transfer order is passed by the Government against which no mala fides can be attributed and no inference could be drawn on the plea of mala fides because the petitioner has some differences of opinion in the day to day administration of the District with respondents 3 and 4. Such differences alone could not have invited the transfer order from the Government itself as the 3rd and 4th respondents are lower in the bureaucratic hierarchy and they cannot prevail over the Government for issuing transfer order. In any case, the impugned transfer order which was issued, contains 18 other names and therefore, it cannot be gainsaid that the petitioner has been singled out for any discriminatory treatment. This Court in the circumstances of the case, is perfectly in agreement with the submissions made by the learned Advocate General that this is the case where the Courts interference is not called for at all and the petitioner is only trying to make out a case of mala fides where none exists.

22. For the above said reasons, the Writ Petition is devoid of merits and substance and the same is dismissed. The interim

order of stay granted by this Court, is hereby vacated. No costs. Consequently, connected Miscellaneous Petitions are also dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Additional Chief Secretary to Government
Revenue and Disaster Management Department,
Secretariat, Chennai - 9.
- 2.The Additional Chief Secretary,
Commissioner of Revenue Administration,
Chepauk, Chennai - 5.
- 3.The District Collector,
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- 4.The District Revenue Officer,
Villupuram.
- 5.The Government Advocate,
High Court, Madras.

+1 cc to M/s.S.Vijaya Kumar, Advocate Sr.No. 65844

AKM/23.09.19/11P-7C /

सत्यमेव जयते

ORDER in
W.P.No.18126 of 2019

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