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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :07.11.2019

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.18445 of 2019

and

W.M.P.No.17769 of 2019

P.Kannan

..Petitioner

Vs.

1.The Chief Engineer (Personnel)

Tamil Nadu Generation & Distribution
Corporation Ltd., (TANGEDCO),
No.144, Anna Salai,
Chennai- 600 002

2.The Superintendent Engineer,

Cuddalore Electricity Distribution Circle,
Tamil Nadu Generation & distribution
Corporation Ltd., (TANGEDCO),
Cuddalore,

3.The Superintendent Engineer,

Villupuram Electricity Distribution Circle,
Tamil Nadu Generation & Distribution
Corporation Ltd., (TANGEDCO)
Villupuram.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned order dated 27.05.2019 in Memo No.032829/410/G.13/G.131/2019 passed by the 1st respondent and quash the same, and consequently direct the respondents to allow the petitioner to work at Viruthachalam under the control of 2nd respondent.

For Petitioner : Mr.Jothimanian M.R.

For R1 to R3 : M/s.M.Fakkir Mohideen

Standing Counsel for TNEB

O R D E R

The petitioner filed this Writ Petition seeking to call for the records of the impugned order dated 27.05.2019 in Memo No.032829/410/G.13/G.131/2019 passed by the 1st respondent and



quash the same, and consequently direct the respondents to allow the petitioner to work at Viruthachalam under the control of 2nd respondent.

2. Heard the learned counsel appearing for the petitioner and the learned Standing Counsel appearing for the respondents. By consent, the writ petition is taken up for final disposal.

3. The case of the petitioner is that he was appointed as Helper on 23.12.1987 by the first respondent and posted at the 2nd respondent Division. Subsequently, he was promoted as Assistant Engineer on 04.12.2008 and worked at various places in the 2nd respondent Division. Now he is working as Assistant Engineer/Electrical/O & M/Rural/North/Virudhachalam in the 2nd respondent Division. From the date of appointment to till date he has been working with the respondent Board without any blemish of records. He worked more than 31 years without any remarks. While so, on 15.06.2019, the first respondent issued transfer order dated 27.05.2019 to him by stating that he was transferred from Virudhachalam to Sornavoor, Villupuram District. However, the impugned transfer order is issued due to malafide intention and also a punishment order issued in the name of ''Administrative Grounds''. Hence the petitioner filed the Writ Petition.

4. The learned counsel for the petitioner submitted that though the enquiry under Rule 8(b) of the Tamil Nadu Electricity Board Employees (Discipline and Appeal) Regulations vide Memo No.262(5/4)/Nir.1/23/KOAK/2018 dated 25.06.2018 is pending against the petitioner, there is no necessity for the issuance of the impugned transfer order. He would further submit that the impugned transfer order is issued due to malafide intention and also a punishment order issued in the name of ''Administrative Grounds''.

5. Per contra, the learned Standing Counsel appearing for the respondents submitted that the transfer order of the petitioner was made purely on administrative grounds and no mala fides can be attributed. He would also point out that transfer is an incidence of service and the employee cannot resist the same, but has to necessarily oblige the same.

6. The grounds raised by the petitioner are not valid and it does not stand to scrutiny by this Court.

7. In this context, it is relevant to refer to two decisions of the Supreme Court. The first relates to E.P.Royappa Vs. State



of Tamilnadu reported in 1974 (4) SCC 3. The relevant passages found in paras 91 and 92 are reproduced below:

"91....The only question before us is whether the action taken by the respondents includes any component of mala fides; whether hostility and malus animus against the petitioner were the operational cause of the transfer of the petitioner from the post of Chief Secretary.

92. Secondly, we must not also overlook that the burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility. Here the petitioner, who was himself once the Chief Secretary, has flung a series of charges of oblique conduct against the Chief Minister. That is in itself a rather extraordinary and unusual occurrence and if these charges are true, they are bound to shake the confidence of the people in the political custodians of power in the State, and therefore, the anxiety of the Court should be all the greater to insist on a high degree of proof. In this context it may be noted that top administrators are often required to do acts which affect others adversely but which are necessary in the execution of their duties. These acts may lend themselves to misconstruction and suspicion as to the bona fides of their author when the full facts and surrounding circumstances are not known. The Court would, therefore, be slow to draw dubious inferences from incomplete facts placed before it by a party, particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the administration. Such is the judicial perspective in evaluating charge of unworthy conduct against ministers and other high authorities, not because of any special status which they are supposed to enjoy, nor because they are highly placed in social life or administrative set up—these considerations are wholly irrelevant in judicial approach—but because otherwise, functioning effectively would become difficult in a democracy. It is from this standpoint that we must assess the merits of the allegations of mala



fides made by the petitioner against the second respondent."

8. Since the transfer was made on administrative grounds, the Court cannot go behind the said reason so long as the power has been exercised properly by the authorities. Even following of the guidelines are not required when transfer is made on administrative grounds.

9. As admittedly, since the petitioner belong to a State Service created under Article 309 of the Constitution of India and they are entitled to serve wherever a posting is given to them. Therefore, the basic question is whether the petitioner is entitled to resist an order of transfer or in the alternative, through the Court, can get the posting to a particular place in the absence of Rules. Under the Rules framed under Article 309 of the Constitution of India being a State Service, transfer is an incidence of service of any service personnel and unless the transfer is made on the ground of mala fide or for extraneous reasons, the Court cannot go behind the power of the authorities in effecting transfer.

10. In this context, it is necessary to refer to the decision of the Hon'ble Supreme Court reported in State of U.P. Vs. Siya Ram and another - (2004 (7) SCC 405). In paragraph 5 observed as follows.

"5.The High Court while exercising jurisdiction under Articles 226 and 227 of the Constitution of India had gone into the question as to whether the transfer was in the interest of public service. That would essentially require factual adjudication and invariably depend upon peculiar facts and circumstances of the case concerned. No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals normally cannot interfere with such orders as a matter of routine, as though



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they were appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this Court in National Hydroelectric Power Corpn. Ltd. v. Shri Bhagwan."

11. Further, the Hon'ble Supreme Court in yet another decision reported in 2004 (11) SCC 402 - (State of U.P. Vs. Gobardhan Lal), in paragraph 7 observed as follows:-

"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."



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12. In the absence of any valid legal grounds and factual pleadings regarding mala fides, the Writ petition deserves to be dismissed and accordingly, dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

- 1.The Chief Engineer (Personnel)
Tamil Nadu Generation & Distribution
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No.144, Anna Salai,
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- 3.The Superintendent Engineer,
Villupuram Electricity Distribution Circle,
Tamil Nadu Generation & Distribution
Corporation Ltd., (TANGEDCO)
Villupuram.

+1 cc to M/s.M.R.Jothimanian,Advocate Sr.No. 92815

+1 cc to M/s.Fakkir Mohideen,Advocate Sr.No. 92844

AKM/21.01.2020/6P- 6C /

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