

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :12.09.2019

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.26530 of 2019

&

W.M.P.No.25898 of 2019

Thiru.S.Rajendran

..Petitioner

vs

1.The Principal Chief Conservator of Forests,
Panagal Buildings, Saidapet
Chennai - 600 015.

2.The District Forest Officer,
Salem Division,
Salem District.

3.M.Lakshmi

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus to call for the records relating to the transfer order issued by the 2nd respondent in Pa.AA.No.P2/248/2019 dated 21.08.2019 transferring the petitioner from Jadayagoundan Beat, Attur Range to Chengatur Beat, Vazhapadi Range and to quash the same and consequently issue direction to the respondents to allow the petitioner to serve in the Jadayagoundan Beat, Attur Range.

For Petitioner

: Mr.T.Dharani

For Respondents

: Mr.M.Elumalai
Government Advocate

O R D E R

The prayer sought for in this Writ Petition is to call for the records relating to the transfer order issued by the 2nd respondent in Pa.AA.No.P2/248/2019 dated 21.08.2019

transferring the petitioner from Jadayagoundan Beat, Attur Range to Chengatur Beat, Vazhapadi Range and to quash the same and consequently issue direction to the respondents to allow the petitioner to serve in the Jadayagoundan Beat, Attur Range.

2. The case of the petitioner is that he was appointed as Forest Watcher on 28.09.1991 and thereafter he was promoted as Forest Guard on 13.06.2018. During 2015, on certain lapses the petitioner was placed under suspension and later it was revoked and he was posted in Kalrayan range vide proceedings dated 02.09.2015. On 24.05.2016, the petitioner transferred and posted in Jadayagoundan Beat, Attur Range.

3. While so, the petitioner was once again subjected to another transfer vide letter dated 13.06.2018 and posted at Nagallur East Beat. On 23.02.2019, the petitioner was again transferred to Jadayagoundan Beat, Attur Range within a period of 8 months from the earlier order of transfer.

4. It is the further case of the petitioner that on 21.08.2019, within a period of 6 months from the earlier order of transfer the petitioner was again subjected to transfer from Jadayagoundan Beat, Attur Range to Vazhapadi Range, Chengatur Beat. It is his further case that the said Transfer order was issued on administrative ground that one M.Lakshmi, Forest Guard who was subjected to transfer by the 2nd respondent transferring to Vazhapadi Range, Chengatur Beat, as soon as the order of transfer was served on her she had taken medical leave and did not join in the transferred place, since she has not joined in the transferred place now the petitioner was subjected to transfer within a period of 6 months from the date of earlier order of transfer. Since the petitioner was subjected to transfer within 6 months from the date of joining in the Jadayagoundan Beat, Attur Range, he was constrained to submit representation to the official respondents to withhold the transfer and allow him to continue in the Attur Range, however, the respondents have not considered the representation till date. Hence the Writ Petition is filed.

5. The learned counsel appearing for the petitioner would submit that the petitioner was subjected to transfer time and again within a short period of 6 months and such transfer is contrary to the Transfer Policy of the Government envisaged in G.O.Ms.No.10, Personnel and

Administrative Department dated 07.04.1994. The learned counsel would point out that within a period of one year, the petitioner was thrice transferred. He would contend that the transfer orders were passed with mala fide intention to cause much inconvenience to the petitioner and also to accommodate the 3rd respondent, Lakshmi of her choice. Therefore, the learned counsel would implore this Court to set aside the transfer order and direct the respondents to permit the petitioner to serve in Jadayagoundan Beat.

6. The learned Government Advocate appearing for the respondents would submit that the transfer 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 and he cannot insist to post him at a particular place of his choice as a matter of right.

7. Heard the learned counsel for the petitioner and the learned Government Advocate for the respondents and perused the materials on record.

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

9. 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.”n

10. The second decision relates to M.Sankaranarayanan, IAS Vs. State of Karnataka and others reported in (1993) 1 SCC 54. The following passage found in para 12 is worthy of reproduction here:

“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 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 case¹ by this Court."

11. In both the cases, the issue related to transfer orders of the highest officials of the State Government i.e. Chief Secretary to the Government.

12. 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.

13. 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.

14. 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 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 ¹."

15. 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."

16. In the case on hand, no doubt the petitioner has been frequently transferred much less thrice in a year. However on perusal of the transfer order it would disclose that there was bona fide exigency for the department to necessarily transfer the petitioner. The reasons set forth in the impugned transfer order are that the Forest Guard one Lakshmi, who was transferred to Vazhapadi Range,

Chengatur Beat is in medical leave due to her ill health, the forest is of high dense with number of dangerous animals, the forest offences are being committed rapidly and considering these administrative reasons, the petitioner was transferred to Vazhapadi Range, Chengatur Beat. Therefore while effecting the transfer order, the 2nd respondent has given sufficient reasons and therefore no mala fide can be attributed as contended by the petitioner to interfere with the same. This Court does not find any illegality or infirmity much less malafide in the impugned transfer order. Therefore, there is no scope to interfere with the same.

17. 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. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Cjconf)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal Chief Conservator of Forests,
Panagal Buildings, Saidapet
Chennai - 600 015.

2.The District Forest Officer,
Salem Division,
Salem District.

+1 cc to Spl Government Pleader (Forest)Sr.No. 78629

A.SK(22/10/2019)

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