

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.30092 of 2017

and

W.M.P.Nos.32666 & 32667 of 2017

R.Kalpana

...Petitioner

Vs.

1. The State of Tamil Nadu,
Represented by the Principal Secretary,
Social Welfare and Nutritious Programme Department
Fort St.George, Chennai-9.

2. The District Project Officer,
ICDS,
Thiruvallur District.

3. The Director-Cum-Mission Director of ICDS
Taramani, Chennai-113.

4. Ms.P.Pavithra
Child Development Project Officer
Arur Division, Dharmapuri District.

....Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records relating to the first respondent's order made in G.O.No.182 Social Welfare and Nutritious Programme (Sa.Na 1) Department dated 01.08.2017, and 2nd respondent's order made in Proceedings Se.Mu.Na.Ka.No.641/A1/2017 dated 08.08.2017, to quash the same insofar as the petitioner is concerned.

For Petitioner : Mr.L.Chandrakumar

For Respondent : Mr.I.Sathish
Additional Government Pleader
R1 to R3
R4-Tapal Due

O R D E R

The petitioner is aggrieved against the order of transfer dated 01.08.2017, transferring the petitioner as a Child

Development Project Officer from Puzhal Block, Thiruvallur District to Melbhuvanagiri Block, Cuddalore District.

2. The reason stated for such transfer is on administrative grounds. The petitioner filed the present writ petition and challenged the said order of transfer by contending that the transfer is punitive in nature, since the petitioner had already been subjected to initiation of disciplinary proceeding. It is further contended by the petitioner that the impugned transfer was made also to accommodate the fourth respondent in the place, in which, the petitioner was originally functioning.

3. A counter affidavit is filed by the respondents wherein, it is stated that the disciplinary proceeding has been initiated under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules against the petitioner by the Director-cum-Mission, Director of ICDS, Taramani, Chennai for the charges that she had chosen to act beyond the powers by calling upon the subordinates to affirm and to swear on god and children that they have not committed either theft or any illegality in implementation of the scheme based on the representation of the Anganwadi Workers Association dated 23.12.2016. It is further stated in the counter affidavit that based on the letter of the Director of Social Welfare, Chennai dated 05.07.2017, a transfer order was made wherein, four persons including the petitioner were transferred. The transfer order of the petitioner was made on the ground of administrative reasons and the rest of the persons are on willingness. It is further stated that the petitioner was transferred not only on the ground of administrative reasons but also for several allegations and irregularities committed by her.

4. Mr.L.Chandrakumar, learned counsel appearing for the petitioner submitted that the very counter filed by the respondents supports the claim of the petitioner that the impugned transfer is a punitive one and thus, cannot be sustained for violating the principles of natural justice. The learned counsel further contended that it is well settled that punitive transfer cannot be made without giving an opportunity of hearing to the person, who is sought to be transferred, as a punitive measure. In support of his contention, the learned counsel relied on a decision of the Division Bench of this Court made in P.Karunakaran V. The Union of India and Others reported in [2014] LAB.I.C.146.

5. On the other hand, the learned Additional Government Pleader submitted that the very order impugned in this writ petition would show that the transfer of the petitioner was made only on the administrative reasons and therefore, she cannot claim otherwise. However, the learned Additional Government

Pleader is not disputing the fact that the petitioner's transfer was made not only on the administrative reasons, but also based on several allegations and irregularities said to have been committed by the petitioner.

6. Heard both sides and perused the materials placed before this Court.

7. The petitioner is aggrieved against the order of transfer. Though the impugned order says that the transfer was made on administrative grounds, the petitioner specifically claimed that such transfer was made as a punitive measure, since disciplinary proceeding was initiated against the petitioner. The above said claim made by the petitioner is supported by the very counter filed by the respondents wherein, it is admitted that the impugned transfer was made not only on the ground of administrative reasons, but also for several allegations and irregularities committed by the petitioner. Therefore, it is apparent that the impugned order was made as a punitive measure and not on the administrative reasons in toto as referred to in the impugned order. If it is on administrative reasons, certainly, this Court may not interfere with such transfer, but, if it is also on the ground of several allegations and irregularities alleged to have been committed by the petitioner and such fact is also admitted by the respondents that the disciplinary proceeding was initiated and the same is pending against the petitioner, this Court is of the view that the impugned order of transfer, though styled as the one passed on administrative reasons, is in fact made as a punitive measure. If it is in the nature of punitive, certainly, the same cannot be made without giving an opportunity of hearing to the petitioner to defend such transfer. In this case, it has not been done so. The very same issue as to whether the transfer by way of punitive measure, without putting the concerned person on notice and giving an opportunity of hearing, can be sustained or not, was already considered by the Division Bench of this Court in P.Karunakaran V. The Union of India and Others reported in [2014] LAB.I.C.146, wherein, at Paragraph Nos.14 to 16, it has been observed as follows:

"14. Thus, it is crystal clear that on the date when the transfer order was issued, the suspension order was in force and therefore, there cannot be any doubt to hold that the transfer order, even though styled as an administrative measure, in fact came to be passed only on collateral purpose as a punitive measure. If the affected person challenges the transfer order by contending that it was made as a punitive measure by raising various grounds, the Court can lift the veil to find

out as to whether it was made on administrative grounds as stated in the transfer order or as a punitive measure as contended by the affected party. But in this case such exercise of lifting the veil is also not warranted and the respondents have not given scope for such exercise, when they have specifically admitted in their counter that the transfer order came to be made taking note of the gravity of the incident that took place on 14.12.2012 and also to boost the morale of the public servants on duty. At this juncture, it is useful to extract the relevant averments made at paragraphs 10 of the counter affidavit as follows:-

"10. I submit that the petitioner, a professional Boxer appointed under the Sports Quota had a dubious history of various minor and major misconducts and imposed with penalties. The same had not improved his conduct and further, he had gone to the extent of assaulting the public servants on duty. In view of the gravity of the incident that took place on 14.12.12 and also to boost the morale of the public servants on duty, a proposal was sent to the Railway Board to transfer the petitioner out of Southern Railway with immediate effect in the interest of the administration."

Therefore, it is an admitted case of the respondents that the petitioner was transferred only because of the incident that took place on 14.12.2012 and also to boost the morale of the public servants on duty. If that is the contention of the respondents, then there can be no doubt that the order of transfer was made only for collateral purpose to punish the petitioner. In our considered view, a punishment cannot be imposed on a person without affording an opportunity of hearing, conducting an enquiry and giving a finding that such person was guilty of charges levelled against him.

15. Admittedly, in this case, no charge memo was issued to the petitioner and on the other hand, the suspension order issued on him was also revoked on 23.1.2013. No doubt, the transfer is not a punishment and

it is only an incident of service. There is no quarrel about the said proposition. At the same time, if it is admitted that the employee was transferred as a punitive measure or preventive measure, then such transfer takes a different colour and shape in the eye of the employee not as an incident of service but as a punishment out of an untold charge levelled against him.

16. Once it is admitted by the authorities that transfer was made based on certain reasons of unbecoming attitude of the employee, more particularly, based on certain incident said to have taken place on a particular date, then the authorities cannot exercise the power of transfer on that ground without affording an opportunity of hearing and allowing the employee to defend his case. Administrative grounds can be put as the reason for transfer, so long as such administrative grounds do not affect the interest of the employee personally with civil consequences or such grounds do not attribute imputation on the character of the employee. If any of these elements are apparent based on admitted facts, then such grounds can no longer be termed as administrative grounds. Therefore, we are of the firm view that the order of transfer in this case was passed only as punitive measure to achieve the collateral purpose and therefore the same cannot be sustained in the eye of law as the same has been made in violation of principles of natural justice."

8. The ratio laid down in the above case squarely applies to the present case as well in favour of the petitioner. Considering the above stated facts and circumstances, this Court is satisfied that the impugned transfer order is punitive in nature and therefore, the same cannot be sustained, since it is passed in violation of principles of natural justice.

9. Accordingly, this writ petition is allowed and the impugned transfer order is set aside. In view of the order passed in this writ petition setting aside the said transfer order as stated supra, the first respondent shall issue consequential appropriate order within a period of four weeks

from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The State of Tamil Nadu,
Represented by the Principal Secretary,
Social Welfare and Nutritious Programme Department
Fort St.George, Chennai-9.
2. The District Project Officer,
ICDS,
Thiruvallur District.
3. The Director-Cum-Mission Director of ICDS
Taramani, Chennai-113.

+lcc to Mr. L.Chandrakumar, Advocate, S.R.No.8332

+lcc to the Government Pleader, S.R.No. 8194

W.P.No.30092 of 2017

NMI (CO)
GN(28/02/2019)

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