IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :20.09.2019

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.27979 of 2019
and W.M.P.Nos.27574 & 27575 of 2019

V.Senthilkumar ...Petitioner

vs

1.The Director of Rural Development &
Panchayatraj Department
Panagal Building, Saidapet
Chennai-600 015.

2.The District Collector
Coimbatore District, Coimbatore. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the 1st respondent in Na.Ka.No.17116/2019/ஜஇ, 2.4, dated 16.09.2019 and consequential order passed by the 2nd respondent bearing Na.Ka.No.892/2019/ஒக 1 dated 16.09.2019 and quash the same.

For Petitioner : Mr.V.Suthakar

For Respondents : Mrs.R.Janaki
Additional Government Pleader

O R D E R

Writ Petition is filed for issuance of Writ of Certiorari calling for the records of the 1st respondent in Na.Ka.No.17116/2019/ஜஇ 2.4, dated 16.09.2019 and consequential order passed by the 2nd respondent bearing Na.Ka.No.892/2019/ஒக 1 dated 17.09.2019 and quash the same.

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

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3.The case of the petitioner is that the petitioner was originally joined service in the year 1993. Thereafter, he was promoted in various stages as Junior Assistant, Assistant, Extension Officer, Deputy Block Development Officer and is presently working as Block Development Officer. The petitioner has put more than 20 years of service without any complaint. The petitioner is also actively involved in associations representing the interest of the employees viz., Tamil Nadu Government Employees Association (TNGEA) and Tamil Nadu Rural Development Officials Association (TNRDOA). While being so, the District Collector, Coimbatore, has issued a relieving order pursuant to a District transfer of the petitioner from Coimbatore District to Tiruvannamalai District on 16.09.2019. However, the said transfer order has been served on the petitioner on 17.09.2019 and the order makes a reference to the proceedings of the 1st respondent, dated 16.09.2019, a copy of which was not given to the petitioner. Challenging the same, the present writ petition is filed.

4. Learned counsel for the petitioner has fairly conceded that the petitioner is working in the present station more than three years. The impugned order of transfer is passed only based on the reason that the petitioner is an office bearer of the Employees' Association. A representation dated 17.09.2019 was sent on behalf of the association where petitioner is office bearer.

5. Per contra, the learned Additional Government Pleader appearing for the respondents on instructions submitted that the petitioner is a Block Development Officer. The competent authority is the Director of Rural Development & Panchayat Department. Based on his transfer order dated 16.09.2019, the present relieving order was passed. She further submitted that transfer of the petitioner was made purely on administrative grounds and no mala fides can be attributed. She 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.

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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:

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"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."

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8. 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 case[1] by this Court."

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9. 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.

10. 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.

11. 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.

12. 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

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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."

13. 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

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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."

14. 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 petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

Kj

To

1.The Director of Rural Development &
Panchayatraj Department
Panagal Building, Saidapet
Chennai-600 015.

2.The District Collector,
Coimbatore District, Coimbatore.

+1cc to the Government Pleader Sr.81621
+1cc to M/s.V.Suthakar, Advocate Sr.81101

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