

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :28.03.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.30757 of 2018
and
W.M.P.No.36388 of 2018

K.S.Chandrasekaran

..Petitioner

vs

The Principal Secretary/Commissioner of Treasuries
and Accounts,
III Floor, Integrated Office Complex for Finance
Department,
Veterinary Hospital Campus,
Anna Salai, Nandhanam,
Chennai - 600 035.

..Respondent

Prayer: Writ Petition filed under Article 226 of the
Constitution of India praying to issue a Writ of Certiorarified
Mandamus, calling for the records pertaining to the impugned
order of the respondent in Rc.No.1911/N2/2017 dated 23.10.2018
and quash the same as illegal and unlawful consequently direct
the respondent to permit the petitioner to serve as Assistant
Treasury Officer, District Treasury, Thiruppur, Tiruppur
District.

For Petitioner : Mr.J.Pooventhera Rajan

For Respondent : Mr.R.S.Selvam
Government Advocate

O R D E R

The order of transfer dated 23.10.2018, transferring the
writ petitioner from Tiruppur to Sub Treasury, Sirkali,
Nagapattinam District is under challenge in the present writ
petition.

2.The writ petitioner is working as Assistant Treasury
Officer, which is a responsible post.

3.The learned counsel for the writ petitioner states that on
receipt of certain complaints against the writ petitioner, the

impugned order of transfer has been issued. Thus, the transfer is punitive in nature. The said transfers are liable to be scrapped.

4. Undoubtedly, punitive transfers are bad in law. However, the Court has to examine, whether such transfers are genuinely punitive or not. A mere complaint resulted in transfer, would not amount to punitive transfer. This apart, in certain circumstances, transfer is permissible in lieu of an order of suspension. Thus, all transfers, which all are issued on certain complaints from the public or otherwise, cannot be construed as punitive transfers. Those transfers or complaints are to be construed as administrative transfers. Administrative transfers are issued in order to maintain effective and effective public administration. If this official in a particular post is not conducive to carry on public affairs and on receipt of such complaints from the public, the authorities competent are empowered to issue transfer orders in the interest of public administration and to run the administration in a peaceful manner, so as to serve the public effectively.

5. Even in Paragraph 6 of the counter affidavit, the respondents states that the impugned order was passed during the non-transfer period is not correct as the Head of the Department who is also the appointing authority is empowered to issue transfer orders when and where necessary to maintain the decency and decorum in the smooth functioning of the subordinate offices. Moreover, the act of the petitioner protesting for a particular allocation of Department bills, making dharna in front of the District Treasury, quarreling with the lady staff using un-parliamentary words has led to the transfer though the petitioner has not completed 3 years of service or on the verge of retirement. The above said lapses deserves initiation of stringent action against the petitioner. However, taking the lenient view, he has been transferred from the Post of Senior Superintendent, District Treasury, Tiruppur to Sub Treasury, Sirkali as Assistant Treasury Officer. Hence, based on these serious complaints received from the District Treasury Officer, Tiruppur, the petitioner was transferred to avoid further complaints. It is felt that allowing the petitioner in the same place would be detrimental to the routine official work. Therefore, the order of transfer issued by the respondent in proceedings dated 23.10.2018 is based on the administrative exigency and to maintain normalcy in District Treasury, Tiruppur. The respondent is not inclined to accept the prayer of the petitioner made in the representation dated 25.10.2018.

6. This Court is of an opinion that transfers can be issued on various grounds. On a perusal of the impugned transfer order, it is stated that the writ petitioner is transferred on

administrative ground and in the interest of administration. Transfers are imminent in respect of public servants, whenever there is a wide complaint against the employee is made known to the competent authorities. In certain circumstances, there may not be an evidence to prosecute the employee or to initiate departmental disciplinary proceedings. However, the competent authorities may of the opinion that further continuance of a public servant in a particular place would cause inconvenience as well as cause some difficult situation for the peaceful functioning of the public administration. Thus, in those circumstances, transfers alone are the remedies in the interest of public administration. Therefore, it is not necessary that there must be a transfer only after conducting an enquiry or initiation of disciplinary proceedings.

7. Administrative transfers are issued on various circumstances and on various grounds. For instance, continuance of certain public servants in a particular post, may not be conducive for the peaceful administration or their further continuance may cause certain troubles to the people, who all are the beneficiaries in the Department. There are various such administrative aspects, which all are the reasons for the administrative transfers. Courts would not be in a position to scrutinize or conduct an enquiry in respect of those reasons for such issuance of the administrative transfers.

8. Administrative transfers are the prerogative of the Department concerned and the competent authorities are the best persons to assess and act accordingly. However, those competent authorities should act in the interest of public and in the event of any illegality or some personal motive, then alone, the employee can approach the Court of law for appropriate remedy. In other words, if an order of transfer is issued with a mala fide intention or in violation of the statutory rules, then a writ petition can be entertained. Even in such cases, the allegation of mala fide intention must be substantiated in the writ proceedings and the official concerned must be impleaded as party respondents in the writ proceedings. In the absence of any such legal ground, routine administrative transfers can never be interfered with by the Constitutional Courts. Transfer is an incidental to service, more so, a condition of service. Public servant is liable to work wherever he is posted in the interest of public administration. On accepting the offer of appointment, a person is agreeing for the conditions of service and transfer being incidental, he must be in a position to work, wherever he is posted.

9. Place or post can never be claimed as a matter of choice by the public servants. All public servants are duty bound to perform their duties diligently and with utmost care and

devotion. This being the basic principles to be followed and erosion in this regard can never be tolerated either by the officials or by the Courts. High Court cannot interfere with the routine administration of the State or its organization. In the event of such routine interference in administration, more specifically, in transfer cases, the very discipline and the functioning of the administration would be paralyzed. Thus, the judicial review of administrative transfers must be exercised with restraint and only on exceptional circumstances, such orders of transfers can be interfered with by the High Courts and not otherwise. This being the scope of the judicial review of administrative transfers issued by the competent authorities, this Court is of an undoubted opinion that the writ petitioner has not established any such strong acceptable ground for the purpose of interference in the order of transfer.

10. The Government employees are entitled to enforce their legal rights ensured under the Act and statutory Rules. However, they are not entitled to claim right based on certain facilities and concessions shown by the Government by way of Government letters/instructions. The State, being the model employer, time and again providing certain concessions/ facilities for the welfare of its employees and to encourage them, so as to run the administration in an effective manner. But those concessions/ facilities can never be a matter of legal right to the Government employees. The Constitutional Courts need not extend any consideration based on such facilities/instructions/guidelines extended by the Government in order to motivate the Government employees for running the State administration more effectively.

11. A mere forthcoming retirement or short tenure, cannot constitute a ground to attack the administrative orders of transfers. No doubt, certain difficulties may arise in the family of the Government servants in the event of an order of administrative transfer. But the interest of administration and the public interest alone are the paramount importance and this Court cannot extend any leniency to the Government employee on such pleadings of personal grievances. It is for the Competent Authorities to consider those grievances and even in case, such grievances are not considered by the original authority, it is left open to the Government employees to approach the higher authorities or the Government in this regard, but certainly not before this Court under Article 226 of the Constitution of India.

12. This Court is of the firm opinion that administrative transfers are never to be interfered with under Article 226 of the Constitution of India. This being the consistent view taken by the Hon'ble Supreme Court of India as well as the High Courts, no further consideration or adjudication needs to be

entertained in this writ petition on the grounds raised in the affidavit.

13.Thus, the writ petitioner has not established any acceptable legal ground for the purpose of interference with the administrative order of transfer and accordingly, the writ petition is devoid of merits and stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To

The Principal Secretary/Commissioner of Treasuries
and Accounts,
III Floor, Integrated Office Complex for Finance
Department,
Veterinary Hospital Campus,
Anna Salai, Nandhanam, Chennai - 600 035.

+1 cc to the Government Pleader, S.R.No.31107

W.P.No.30757 of 2018

MR(CO)
SSM(03/05/2019).

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