

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:08.07.2019

Coram

The Hon'ble Mr.Justice V.PARTHIBAN

W.P.No.33929 of 2018
and
W.M.P.No.39391 of 2018

K.Parthasarathi ... Petitioner

Vs.

1.The State Commissioner for
The Differently Abled Welfare Office,
No.5, Kamarajar Salai,
Chennai-600 005

2.The Joint Director for Differently
Abled Welfare Officer,
O/o.The State Commissioner for
the Differently Abled Welfare Office,
5, Kamarajar Salai, Chennai-5

3.The District Differently Abled Welfare Officer,
Old District Board Campus,
Anna Salai, Vellore-1 ...Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records connected with the impugned Transfer order of the first respondent in Se.Mu.Order No.9433/Nir.5/2018, dated 22.11.2018 and to quash the same in so far as transferring the petitioner from the office of the 3rd respondent at Vellore to the office of District Welfare Officer for the Differently Abled at Namakkal.

For Petitioner .. Mr.V.Ajoy Khose

For Respondents .. Mr.V.Kathirvelu, Spl.G.P.

ORDER

The petitioner was appointed as a Multipurpose Rehabilitation Aide by the first respondent, by his proceedings in R.C.No.4526/Admin-2-2015, dated Nil.02.2016, in the pay scale of Rs.5200-20200/-, with Grade Pay of Rs.2400/-. He was allotted to Vellore District on his appointment. In pursuance of the appointment, the petitioner joined in the Office of the District Differently Abled Welfare Officer, Vellore, on 01.03.2016, as a Multipurpose Rehabilitation Aide. According to the petitioner, the Multipurpose Rehabilitation Aide post is the only one sanctioned post in that District, to give Therapy to the pivotal Cerebral Palsy and Mentally retarded children. According to the petitioner, the post is a very crucial one and that cannot be left vacant even for a day, since the Multipurpose Rehabilitation Aide is to cover the entire District of Vellore for giving appropriate and necessary Therapy to the mentally retarded children and also children affected by Cerebral Palsy.

2.After his appointment in 2016, the petitioner's services came to be regularised by the first respondent, vide his proceedings dated 08.06.2017, in the same post, with effect from 01.03.2016, the date on which he was originally appointed. His probation was also subsequently declared on 10.09.2018 with effect from 28.02.2018. According to the petitioner, the District Collector has issued a Certificate of appreciation on 26.01.2018 for the meritorious and sincere service rendered by him in the District.

3.While so, on 28.11.2018, the petitioner was issued with a transfer order dated 22.11.2018, transferring him from Vellore District to Namakkal on Administrative grounds. However, the petitioner finds that there was a reference to Letter dated 31.10.2018 in the transfer order and the petitioner, however, was at a loss to understand as to the urgent requirement of his service in Namakkal District. Since the petitioner wanted to ascertain as to what was the communication dated 31.10.2018, which is referred to in the transfer order, he approached the authority concerned under RTI Act and obtained copy of the letter dated 31.10.2018. The petitioner, on obtaining the copy of the letter dated 31.10.2018, found that it was a complaint addressed to the second respondent in regard to the conduct of two other employees in Vellore District, viz., Nalini and Muniappan and the Officer, who issued the communication, requested the second respondent to take

disciplinary action against those two employees. The petitioner found that his name was not mentioned in the letter.

4.The petitioner, in fact wanted to make sure as to whether there was any complaint from any quarters prompting the administration to transfer him abruptly from Vellore to Namakkal, particularly, when he was rendering a meritorious service in Vellore District. Therefore, he had sought information from the authority under the Right to Information Act and as per the information furnished on 06.12.2018, the petitioner found that there was absolutely no complaint against him, in regard to discharge of duty, from any quarters and he had also not come under any cloud during his period of service in Vellore. In such circumstances, the petitioner's transfer to Namakkal appears to be on certain extraneous consideration and therefore, he is before this Court challenging the transfer order dated 22.11.2018.

5.On notice, Mr.V.Kathirvelu, the learned Special Government Pleader entered appearance on behalf of the respondents and filed counter affidavit.

6.Shri.Ajoy Khosh, the learned counsel appearing for the petitioner would submit that from the materials as disclosed, the transfer of the petitioner cannot be on a bona fide consideration by the first respondent, since the reason mentioned in the transfer order, viz., administrative requirement, is only a ruse to achieve oblique purpose. According to the learned counsel mala fides writ large on the transfer of the petitioner from Vellore District to Namakkal District, particularly, when the transfer order refers to a letter dated 31.10.2018, which letter is in regard to a disciplinary action proposed against two other employees of Vellore District and not the petitioner. Moreover, the learned counsel would also submit that as per the RTI information, there was no complaint against the petitioner from any quarters and no disciplinary action or complaint is pending against him as on date. That being the case, transferring the petitioner on the basis of a disciplinary action to be initiated against two other employees of the Vellore District is per se tainted with mala fides and the same suffers from arbitrariness and liable to be interfered with.

7.Per contra, the learned Special Government Pleader appearing for the respondents would submit that there was a complaint against the petitioner by the third

respondent on 19.11.2018, stating that the petitioner's father is a well known local politician and the petitioner was always surrounded by politicians and he was unnecessarily wasting office time talking to the Government officers and such conduct of the petitioner was not conducive to the work atmosphere of the office. According to the counter affidavit, the petitioner was in the habit of talking loudly over phone and indirectly threatening the staff and officer that they would be transferred to various departments or suspended from service. Therefore, the administration felt that in the public interest transfer is imminent, so that his contact with the local politicians would be curtailed or removed altogether. In the said circumstances, he would submit that transfer is on a bona fide consideration to protect the public interest and therefore, the same need not be interfered with.

8.The learned counsel appearing for the petitioner would submit that the averments as contained in the counter affidavit are baseless and not supported by any materials. In fact, a detailed rejoinder has been filed stating that when answers are furnished to him to the RTI questions posed by the petitioner, it was clearly mentioned that there was absolutely no complaint against the petitioner from any quarters. Therefore, he would submit that such allegations contained in the counter affidavit are only made for the purpose of the case in order to prejudice the mind of the Court. According to him, the allegations of the petitioner wasting his time in the office by chatting with local politicians are all concocted, baseless, unfounded and the same are not supported by any documents or materials. In the absence of any materials, these allegations have no legs to stand on and in any event, no copy of any complaint has been furnished in the proceedings before this Court in support of any of the allegations. Therefore, he would submit that the order of transfer is passed on mala fide consideration and hence, liable to be set aside.

9.The learned counsel, in fact, in support of his contention, would also draw the attention of this Court to the decision of the Hon'ble Supreme Court in Somesh Tiwari vs. Union of India and Others [(2009) 2 Supreme Court Cases 592], wherein, the Hon'ble Supreme Court has held that the transfer order can be held invalid if it is made on a punitive ground or by mala fide exercise of power or the transfer order is issued with non-application of mind.

10.This Court considered the rival submissions of the learned counsels appearing for both sides and perused

the materials and pleadings placed before this Court.

11.Although in the transfer order it is stated that the petitioner has been transferred on administrative grounds, from the materials as made available and the pleadings as disclosed, this Court has no doubt that the transfer order was not passed for administrative requirement, but was effected for extraneous consideration. Although a letter dated 31.10.2018 was referred to in the transfer order as if there was a complaint against the petitioner, but that letter pertains to certain allegations made in respect of two other employees of Vellore District and the same does not pertain to the petitioner at all. Even otherwise, as rightly contended by the learned counsel for the petitioner, in the information furnished to the petitioner, on his RTI enquiry, it was very clearly mentioned that there were no complaints at all against him nor the petitioner was issued with any memo. If only there was any complaint against the petitioner, as made out in the counter affidavit, it would have been mentioned in the information furnished under the RTI Act. The allegations, as contained in the counter affidavit, without any supportive materials, cannot be relied upon for the purpose of justifying the transfer of the petitioner. The allegations at best can be looked into, but cannot be acted upon, as they remain as mere allegations without any proof.

12.Once it is established clearly that the reasons as stated in the transfer order is contrary to records, the order per se is liable to be interfered with. This is particularly so when some allegations are made in the counter affidavit about the conduct of the petitioner, in which event, the transfer assumes punitive character and the same cannot be passed as a substitute to a disciplinary action against him for any act of misconduct.

13.Moreover, the transfer order, which refers to a letter, dated 31.10.2018, as if that was a foundation for the transfer, suffers from non-application and mis-application of mind on the part of the authority concerned, as the said letter refers to complaint against two other employees and the petitioner is having no connection whatsoever with the allegations made therein and therefore, such letter ought not to have been referred to in the transfer order. By referring to such letter, the authority, who passed the impugned order, discloses non application of mind on his part. Therefore, on this ground also the transfer order is liable to be interfered with.

14.From the totality of circumstances, this Court is of the view that the transfer order is passed on mala fide consideration and not for achieving any administrative requirements. In fact, even in the counter affidavit, nothing has been spelt out as to what was the administrative exigency or requirement for transferring the petitioner abruptly, before he completed three years of service in Vellore. In any event, the transfer, as it appears from the records, is malicious, arbitrary and therefore, the same cannot be upheld by this Court.

15.For the above said reasons, the impugned order of the first respondent in Se.Mu.Order No.9433/Nir.5/2018, dated 22.11.2018, is hereby set aside and there shall be a direction to the respondents to restore the petitioner in service in Vellore District and grant him all benefits on such restoration. The consequential order is to be passed by the respondents within a period of two weeks from the date of receipt of a copy of this order.

In the result, the writ petition stands allowed.
No costs. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

msk
To

- 1.The State Commissioner for
The Differently Abled Welfare Office,
No.5, Kamarajar Salai,
Chennai-600 005
- 2.The Joint Director for Differently
Abled Welfare Office,
O/o.The State Commissioner for
the Differently Abled Welfare Office,
5, Kamarajar Salai, Chennai-5
- 3.The District Differently Abled Welfare Officer,
Old District Board Campus,
Anna Salai, Vellore-1

+1cc to Mr. V.Ajoy Khose, Advocate SR.No. 57210

W.P.No.33929 of 2018

A.SK(25/07/2019)