



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD)No.20896 of 2013

and

M.P. (MD)Nos.1 of 2013 and 1 of 2014

Kumaraprasad

... Petitioner

-Vs-

1.The Management of Tamil Nadu

State Transport Corporation (Kumbakonam) Limited,
Represented by its General Manager,
Karaikudi Region, Maruthupathi,
Karaikudi.

2.M.M.Subramanian

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records pertaining to the impugned order of transfer passed by the first respondent in Ref.Ths.Na.Aa.Po.Ka./Ni.Pi./Pa 1 /1245 dated 07.12.2013, quash the same.

For Petitioner : Mr.A.Rahul

For Respondents : Mr.D.Sivaraman for R1

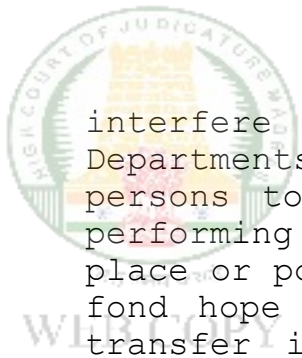
ORDER

The order of transfer dated 07.12.2013 transferring the writ petitioner from Karaikudi to Devakottai Branch, is under challenge in the present Writ Petition.

2.The writ petitioner was working as Senior Assistant in the Disciplinary Enquiry Section at Karaikudi Region. The writ petitioner was transferred to Devakottai Branch on administrative grounds.

3.The learned counsel appearing on behalf of the writ petitioner states that the impugned transfer order was punitive in nature. The disciplinary proceedings were initiated in respect of one Karthigaishwami and on account of the disciplinary proceedings, the writ petitioner was transferred from Karaikudi to Devakottai.

4.This Court is of the considered opinion that mere pendency of the disciplinary proceedings even against the employee cannot be a bar for issuing administrative transfers. It is not necessary that an employee facing disciplinary proceedings should be allowed to continue in the same post till the disposal of the disciplinary proceedings. Administrative transfers are prerogative of the employer and they are at liberty to transfer an employee for the effective and efficient administration. The High Court would not



interfere in the routine administration of the Government Departments or corporations. The authorities competent are the best persons to decide to post an employee in a particular place for performing public duties. Thus, the High Court cannot decide the place or post, in which the employee should be allowed to work. The fond hope of entertaining the Writ Petition against the order of transfer is undoubtedly limited. The order of transfer can be challenged, only if the same is in violation of the statutory rules or an allegation of *mala fide* is raised or an order was issued without jurisdiction. Even in case of allegation of *mala fide*, the authorities against whom such an allegation is raised must be impleaded as party respondent in his personal capacity. Though the allegation of *mala fide* is raised, this Court is of the considered opinion that there is no substantial evidence to establish the same. This apart, the pendency of the disciplinary proceedings cannot be a bar for issuing administrative transfers.

5.The learned counsel appearing on behalf of the respondents states that the Writ Petition was filed in the year 2013 and this Court granted an interim stay of the transfer order and pursuant to the interim order, the writ petitioner is continuing in the same post for the past about 6 years.

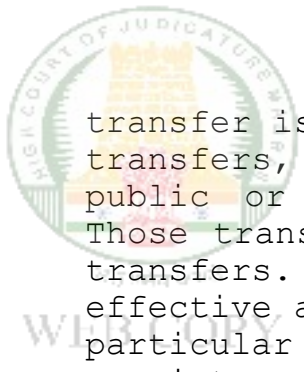
6.The learned counsel appearing on behalf of the writ petitioner states that during the pendency of the Writ Petition, the writ petitioner was transferred to Kamudhi.

7.In this regard, the learned counsel appearing on behalf of the respondents states that undoubtedly, the writ petitioner during the pendency of the Writ Petition was transferred to Kamudhi and within 10 days he was again re-transferred to Karaikudi and continuing at Karaikudi as of now.

8.At the outset the writ petitioner is continuing in the same station at Karaikudi for more than 6 years. Even prior to the issuance of the transfer order, the writ petitioner was continuing in the same station at Karaikudi.

9.This being the factum, further continuance of the writ petitioner at Karaikudi is not preferable. This Court cannot grant any relief at this length of time, in view of the fact that the writ petitioner has already been serving in Karaikudi for a considerable length of time and it is for the authorities to take a decision in the interest of public administration.

10.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,

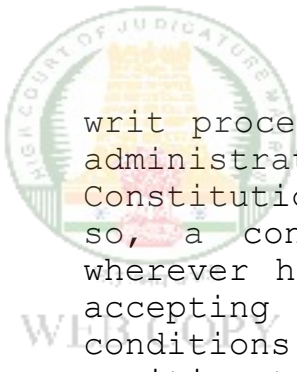


transfer is permissible in lieu of an order of suspension. Thus, all transfers, which all are issued on certain complaints from the public or otherwise, cannot be construed as punitive transfers. Those transfers or complaints are to be construed as administrative transfers. Administrative transfers are 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.

11.This Court is of an opinion that transfers can be issued on various grounds. Transfers are imminent in respect of public servants, whenever a 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 come to the conclusion that further continuance of a public servant in the 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 remedy 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.

12.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.

13.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.

14.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.

15.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.

16.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.

17.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.

18.In view of the fact that pursuant to the interim order granted by this Court, the writ petitioner is continuing in the same station at Karaikudi for more than 6 years and intermittent transfer was only for about 10 days, this Court is not inclined to consider the case of the writ petitioner and it is left open to the respondents to take a decision on administrative ground and in the interest of public in respect of such transfers.

19.With these observations, this Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

Sub Assistant Registrar(CS)

+1 CC to M/s.D.SIVARAMAN, Advocate (SR-80042[F] dated 06/08/2019)

+1 CC to M/s.A.RAHUL, Advocate (SR-80409[F] dated 07/08/2019)

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