



BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT

DATE : 16.07.2019

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE B.PUGALENDHI

W.P. (MD) NO. 15726 OF 2019

R.Rajendran

.. Petitioner

- Vs -

The State of Tamil Nadu
rep. by the Secretary to
Government, Ministry of Home
Fort St. George
Chennai 600 009.

.. Respondent

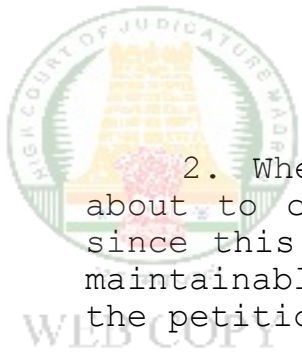
Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of mandamus directing the respondent to withdraw the transfer order issued to the Superintendent of Police in Karur, by name Mr.V.Vikraman, as the same is in violation of the guidelines set by the Hon'ble Supreme Court of India.

For Petitioner : Mr. V.Rajiv Rufus
For Respondents : Mr. A.K.Baskarapandian, Spl.G.P.

ORDER

(Order of the Court was made by M.Sathyannarayanan, J.)

The writ petition, styled as a public interest litigation, is filed by a resident of Kongu Nagar, Vengamedu, Karur, stating among other things that Mr.V.Vikraman, IPS, was transferred and posted as Superintendent of Police only on 11.5.19 and he was discharging his duties honestly and effectively and brought forth positive changes within the short tenure of his service and he has also strictly enforced law and order and public order, but, however, due to political influence and other extraneous considerations, he has been transferred within fifty days from the date of his posting. Therefore, against the said transfer, the petitioner submitted a representation dated 28.6.19 through e-mail to the Home Secretary and despite receipt and acknowledgement, since no response was forthcoming, the petitioner is constrained to file the present writ petition.



2. When the learned counsel appearing for the petitioner was about to commence his arguments, this Court posed a question that since this is a service matter, how a public interest litigation is maintainable, that too by a lawyer to which the learned counsel for the petitioner is unable to respond positively.

3. The petitioner is a practising advocate and a member of the Karur Bar and as a lawyer, before he files a writ petition, he is supposed to gather materials especially with regard to the legal position as to the maintainability of public interest litigation and it appears that the petitioner has failed to discharge the said duty.

4. In **State of Uttaranchal - Vs - Balwant Singh Chaufal (2010 (3) SCC 402)**, a public interest litigation petition was filed challenging the appointment of Advocate General on the ground that he had crossed 62 years of age and, therefore, was not entitled to become a Judge of the High Court and, therefore, was also not entitled to be appointed as Advocate General. The writ petition was ordered and the State of Uttaranchal filed SLP before the Hon'ble Supreme Court, which was converted as C.A. Nos.1134 & 1135/2002. The Hon'ble Supreme Court found that it was an abuse of process of court and allowed the appeal filed by the State by imposing a cost of Rs.1 Lakh and laid down the following guidelines relating to public interest litigation :-

"181. We have carefully considered the facts of the present case. We have also examined the law declared by this Court and other courts in a number of judgments. In order to preserve the purity and sanctity of the PIL, it has become imperative to issue the following directions:

(1) The Courts must encourage genuine and bona fide PIL and effectively discourage and curb the PIL filed for extraneous considerations.

(2) Instead of every individual Judge devising his own procedure for dealing with the public interest litigation, it would be appropriate for each High Court to properly formulate rules for encouraging the genuine PIL and discouraging the PIL filed with oblique motives. Consequently, we request that the High Courts who have not yet framed the rules, should frame the rules within three months. The Registrar General of each High Court is directed to ensure that a copy of the rules prepared by the High Court is sent to the Secretary General of this Court immediately thereafter.

(3) The Courts should prima facie verify the credentials of the petitioner before entertaining a PIL.



(4) The Courts should be *prima facie* satisfied regarding the correctness of the contents of the petition before entertaining a PIL.

(5) The Courts should be fully satisfied that substantial public interest is involved before entertaining the petition.

(6) The Courts should ensure that the petition which involves larger public interest, gravity and urgency must be given priority over other petitions.

(7) The Courts before entertaining the PIL should ensure that the PIL is aimed at redressal of genuine public harm or public injury. The Court should also ensure that there is no personal gain, private motive or oblique motive behind filing the public interest litigation.

(8) The Courts should also ensure that the petitions filed by busybodies for extraneous and ulterior motives must be discouraged by imposing exemplary costs or by adopting similar novel methods to curb frivolous petitions and the petitions filed for extraneous considerations."

5. The Hon'ble Supreme Court has also taken into consideration that the said public interest litigation was filed by a lawyer and observed as follows :-

"It was expected from a member of noble profession not to invoke jurisdiction of the Court in a matter where controversy itself is no longer *res integra*. The petitioner, a local practising lawyer, ought to have bestowed some care before filing his writ petition in public interest under Article 226 of the Constitution. The controversy raised by the petitioner was decided 58 years ago by the High Court in Karkare, AIR 1952 Nag 330, which was approved by the Constitution Bench way back in 1962 in Atlas Cycle, AIR 1962 SC 1100. When the controversy is no longer *res integra* and the same controversy is raised repeatedly, then it is not only wastes precious time of the Court and prevents the Court from deciding other deserving cases, but also has immense potentiality of demeaning a very important constitutional office, and the person who has been appointed to that office. This is a clear case of abuse of process of the court in the name of public interest litigation. A degree of precision and purity in presentation is a *sine qua non* for a petition filed by a member of the Bar under the label of public interest litigation. It is expected from a member of the Bar to atleast carry out the basic research whether the point raised by him is *res*



integra or not. The lawyer who files such a petition cannot plead ignorance. This is a classic case of abuse of process of court. A practising lawyer has deliberately abused process of the court. In that process he has made a serious attempt to demean an important constitutional office. The petitioner ought to have refrained from filing such a frivolous petition.

This however does not mean that a petitioner cannot ask the court to review its own judgment because of flaws and lacunae, but there should have been a bona fide presentation with listing of all relevant cases in a chronological order and a brief description of what judicial opinion has been and cogent and clear request why there should be reconsideration of the existing law. The petitioner in the present case has not done this exercise. The petition has been filed for extraneous consideration. Such petition deserves to be discarded and discouraged so that no one in future would attempt to file a similar petition."

6. Apparently, the petitioner, being a lawyer has failed to do any exercise before filing the public interest litigation. Be that as it may, the matter in issue pertains to transfer of an IPS officer in the rank of Superintendent of Police and it is purely a service matter. The moot question that arises for consideration in this writ petition, styled as public interest litigation is as to the maintainability of public interest litigation in service matters and the said issue is no longer *res integra* in the light of the decision of the Supreme Court in **Duryodhan Sahu (Dr.) - Vs - Jitendra Kumar Mishra (1998 (7) SCC 273)**, and it is relevant to extract the following paragraphs for better clarity :-

"18. The constitution of Administrative Tribunals was necessitated because of the large pendency of cases relating to service matters in various courts in the country. It was expected that the setting up of Administrative Tribunals to deal exclusively in service matters would go a long way in not only reducing the burden of the courts but also provide to the persons covered by the Tribunals speedy relief in respect of their grievances. The basic idea as evident from the various provisions of the Act is that the Tribunal should quickly redress the grievances in relation to service matters. The definition of "service matters" found in Section 3(q) shows that in relation to a person, the expression means all service matters relating to the conditions of his service. The significance of the word "his" cannot be ignored. Section 3(b) defines the word "application" as an application made under Section 19. The latter section refers to "person aggrieved".



In order to bring a matter before the Tribunal, an application has to be made and the same can be made only by a person aggrieved by any order pertaining to any matter within the jurisdiction of the Tribunal. We have already seen that the word "order" has been defined in the explanation to sub-section (1) of Section 19 so that all matters referred to in Section 3(q) as service matters could be brought before the Tribunal. If in that context Sections 14 and 15 are read, there is no doubt that a total stranger to the service concerned cannot make an application before the Tribunal. If public interest litigations at the instance of strangers are allowed to be entertained by the Tribunal, the very object of speedy disposal of service matters would get defeated.

19. Our attention has been drawn to a judgment of the Orissa Administrative Tribunal in *Amitarani Khuntia v. State of Orissa* [(1996) 1 OLR (CSR) 2]. The Tribunal after considering the provisions of the Act held that a private citizen or a stranger having no existing right to any post and not intrinsically concerned with any service matter is not entitled to approach the Tribunal. The following passage in the judgment is relevant:

"... A reading of the aforesaid provisions would mean that an application for redressal of grievances could be filed only by a 'person aggrieved' within the meaning of the Act.

Tribunals are constituted under Article 323-A of the Constitution of India. The above article empowers Parliament to enact law providing for adjudication or trial by Administrative Tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or any local or other authority within the territory of India or under the control of the Government of India or of any corporation owned or controlled by the Government and such law shall specify the jurisdiction, powers and authority which may be exercised by each of the said Tribunals. Thus, it follows that Administrative Tribunals are constituted for adjudication or trial of the disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts. Its jurisdiction and powers have been well defined in the Act. It does not enjoy any plenary power."



We agree with the above reasoning."

7. Learned counsel appearing for the petitioner has also placed reliance upon the decision reported in **Prakash Singh & Ors. - Vs - Union of India & Ors. (2006 (8) SCC 1)** and submits that in the light of the said decision, public interest litigation is maintainable.

8. The Government of Tamil Nadu has passed Tamil Nadu Police (Reforms) Act, 2013 (Tamil Nadu Act 22 of 2013) to provide for a law to follow the directions of the Supreme Court in *Prakash Singh's* case (*supra*) regarding police reforms and for matters connected thereto and incidental thereto.

9. As already pointed out, transfer of an officer is purely a service matter and admittedly, the said officer did not make any challenge to the order of transfer and in the light of the categorical pronouncement of the Hon'ble Supreme Court in *Duryodhan Sahu's* case (*supra*), this Court is of the considered view that writ petition is not maintainable.

10. **For the reasons aforesaid, this writ petition is dismissed.** However, in the circumstances of the case, there shall be no order as to costs.

11. It is relevant to extract Section 8 of the Tamil Nadu Police (Reforms) Act, 2013 :-

"8. (1) There shall be a Police Establishment Board consisting of the Director General of Police and the following four Senior Police Officers in the rank of Additional Director General of Police, namely:-

(a) Additional Director General of Police (Administration);

(b) Additional Director General of Police (Law and Order);

(c) Additional Director General of Police (Head Quarters); and

(d) Additional Director General of Police (Intelligence).

(2) The Director General of Police shall be the Chairperson and the senior-most Additional Director General of Police shall be the convener of the Board. Annual report. Functions of Commission. Constitution and functions of the Police Establishment Board and Committees.

(3) The functions of the Board shall be as follows:-

(a) The Board shall consider and recommend promotion, transfer and posting of the officers in the rank of Superintendent of Police and above up to the rank of Inspector General of Police. On the recommendations of the Board, the Director General of Police shall send the proposals to the



Government for appropriate action. For promotion, transfer and posting of officers above the rank of Inspector General of Police, the Director General of Police shall send the proposals to the Government for appropriate action.

(b) The Board shall function as a forum to deal with the representations from officers of the rank of Superintendent of Police and above. The Board shall examine such representations and send its recommendations to the Government by the Director General of Police.

(c) The Board shall also make recommendations to the Government for award of Medals.

(4) There shall be a State Police Establishment Committee to consider matters relating to promotion, transfer and postings of officers of and below the rank of Additional Superintendent of Police.

(5) There shall be Zonal, Range, City and District Level Establishment Committees which will be empowered to effect transfers of Police Personnel of subordinate rank within their jurisdiction in accordance with the instructions and guidelines issued by the Government.

(6) The Government shall prescribe the composition, responsibilities, functions and powers of the State, Zonal, Range, City and District Level Establishment Committees.

(7) The recruitment and promotions made under this section shall be in accordance with the service rules governing the respective service, category and class."

12. Section 8 (3) (a) of the Tamil Nadu Police (Reforms) Act, reads that Police Establishment Board shall consider and recommend promotion, transfer and posting of officers in the rank of Superintendent of Police and above up to the rank of Inspector General of Police. On the recommendations of the Board, the Director General of Police shall send proposals to the Government for appropriate action. However, it is not clear whether rules have been framed in terms of Section 20 of the said Act. Learned Special Government Pleader prays for short accommodation to file affidavit of the Director General of Police as to the implementation of the provisions of the said Act.

13. Call on 30.7.2019 for filing of affidavit of the Director General of Police as to the implementation of the Tamil Nadu Police (Reforms) Act, 2013 and the rules, if any, framed therein.



14. Registry is directed to communicate a copy of this order to the Director General of Police, Chennai.

WEB COPY

// True Copy //

Sd/-

Assistant Registrar (C.O)

Sub Assistant Registrar(CS)

To

1. The Secretary to Government
Ministry of Home
Fort St. George
Chennai 600 009.
2. The Director General of Police
Chennai - 600 004.

+1 CC to Mr..V.RAJIV RUFUS, Advocate SR-75582.
+1 CC to SPL GP SR-75720.

W.P. (MD) NO. 15726 OF 2019

16.07.2019

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