



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD) No.6351 of 2011

and

M.P.(MD) Nos.1 & 2 of 2011 & 1 of 2012

S.Thirumalaikumarasamy

... Petitioner

vs.

1.The Principal Secretary to Government
School Education Department
Secretariat, Fort St.George
Chennai-9

2.The Director of Public Library
Anna Salai, Chennai-600 002

3.The District Library Officer
Theni District, Theni

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus calling for the records relating to the 2nd respondent's proceedings in Na.Ka.No.4349/A1/2010, dated 10.12.2010 and quash the same and consequently direct the respondents to permit the petitioner to continue to work as Assistant at the District Library Office, Theni, Theni District.

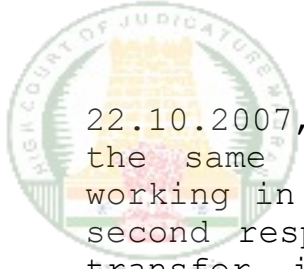
For Petitioner : Mr.P.Krishnasamy

For Respondents : Mrs.S.Srimathy
Special Government Pleader

O R D E R

The order of transfer dated 10.12.2010 issued by the second respondent is sought to be quashed in the present writ petition and a direction is also sought for to permit the writ petitioner to continue to work as Assistant in the District Library Office, Theni District.

2. The writ petitioner joined as Junior Assistant during the year 1998 in the District Library Office, Theni and subsequently, on



22.10.2007, he was promoted to the post of Assistant and posted in the same office at Theni. Thereafter, the writ petitioner is working in the District Library Office, Theni, for many years. The second respondent - Director of Public Library issued an order of transfer in proceedings dated 10.12.2010 transferring the writ petitioner from the District Library Office, Theni to the office of the Director of Public Libraries, Chennai, on administrative grounds. The said order of transfer is under challenge in the present writ petition and pursuant to the interim order of stay granted in the writ petition, the writ petitioner has been allowed to continue in the office of the District Library, Theni and working as such for the past more than 8 1/2 (eight and half) years. It is an unfortunate situation, where the interim order of stay was obtained by the writ petitioner and he is continuing in the same post and in the same office for more than 8 1/2 (eight and half) years, in spite of the fact that the order of transfer was issued on administrative grounds.

3. Transfer is an incidental to service more so a condition of service. Post or place can never be claimed as a matter of choice by the employee. High Court cannot interfere with the routine administrative orders. The order of transfer can be challenged on limited grounds. Judicial review against the transfer order is undoubtedly limited. If the High Court interferes with the routine administrative transfer orders issued by the competent authorities, the same would cause prejudice to the maintenance of efficient public administration by the competent authorities. Thus, the High Court should exercise restraint from entertaining the writ petitions filed challenging the administrative orders of transfer. Writ proceedings against an order of transfer can be entertained, only if the same has been issued by an incompetent authorities or with *mala fide* intention or in violation of statutory rules in force. Even in case of *mala fide* intention, the authority against whom such an allegation is raised is to be impleaded as party respondent in the writ proceedings and in the absence of any of the above legal grounds, no writ petition can be entertained against an order of administrative transfer.

4. Administrative transfer orders can be issued on various grounds and on various circumstances in order to run the public administration effectively and efficiently. If frequent complaints are received against a public servant, the authority concerned is empowered to transfer him on administrative grounds. In some cases, it is not possible to establish the charge with proof. However, the authorities concerned are of the opinion that the further continuance of an employee would cause prejudice to the interest of the public administration, then also, administrative transfer orders can be issued. In lieu of suspension and in alternate, the administrative transfer orders can be issued. High Court must be cautious in entertaining such writ petitions. In the present case on hand, the writ petition is allowed to continue in the same place and in the same post for more than 8 1/2 (eight and half) years, by



virtue of the interim order of stay. Undoubtedly, such a situation would cause prejudice to the public administration and therefore, this Court is of the considered opinion that the administrative transfer orders deserve no routine interference at all.

5. The learned counsel appearing for the writ petitioner states that the provisions of the Local Library Authority Act, 1948 prohibits the authority concerned to issue such an order of transfer. The writ petitioner was not appointed under the provisions of the Local Library Authority Act and he was appointed by the Government of Tamil Nadu in the post of Junior Assistant and his services are governed by the Service Rules and conditions issued by the Government of Tamil Nadu in this regard. The writ petitioner is receiving salary as applicable to the post of Assistant. Thus, the provisions of the Local Library Authority Act, 1948 are not applicable to the service conditions of the writ petitioner as he is a Government servant. If at all the writ petitioner states that his service is governed by the Local Library Authority Act, 1948, he is not entitled to receive any benefit being granted to the other Government servants. On one hand, he is claiming that he should not be transferred in violation of the provisions of the Local Library Authority Act, 1948 and on the other hand, he is claiming the benefits being granted to the other Government servants. Such a dual stand taken by the writ petitioner is impermissible and undoubtedly, the writ petitioner being a Government servant is governed by the Service Rules and his appointment to the post of Junior Assistant is only with reference to the Service Rules in force issued by the Government of Tamil Nadu.

6. This being the factum, the writ petitioner has already continued in the same place and in the same post for more than 8 1/2 (eight and half) years during the pendency of the writ petition and even before filing of the writ petition, he was serving in the same place for many years and under these circumstances, the writ petitioner is liable to join in the transferred place and if at all, the post is not vacant in the transferred place, the respondents are at liberty to transfer the writ petitioner to some other place, within a period of four weeks from the date of receipt of a copy of this order.

7. The High Court of Madras (Principal Bench) passed an order, dated 26.09.2018 in W.P.(MD) No.11798 of 2016 and Paragraph No.11 of the said order is extracted hereunder:

"11.Considering the pain and agony of the litigants, who all are waiting for long years and for an unspecified period to redress their grievances and considering the inconvenience to the respective learned counsels appearing on behalf of the parties to the lis and, considering the factor that the learned counsels are unable to get along with the cases on account on non filing of counter statements by the respondents, this



Court is inclined to pass the following orders:

(i) The Registrar General, High Court of Madras is directed to implement Rule 3A of the Rules to Regulate Proceedings under Article 226 of the Constitution of India issued in the year 1965 (P.Dis.187/1965)

(ii) The Registrar General, High Court of Madras is directed to incorporate the contents of the said Rule 3-A suitably in the Rule Nisi Notice, to be issued to the respondents / litigants in all the writ petitions filed under Article 226 of the Constitution of India with effect from 1st October 2018.

(iii) The Registrar General, High Court of Madras is directed to issue instructions to the Registry, in the event of not filing the counter affidavits / documents by the respondents / litigants within the time limit of Three Months as stipulated in the above Rules, the litigants / respondents shall explain the reasons for such delay in the affidavits.

(iv) The Registrar General, High Court of Madras is directed to scrutinize / process the Vacate Stay Petitions filed by the litigants within a period of two weeks from the date its filing. If the papers filed are improper, the same must be returned immediately by assigning reasons.

(v) The Registrar General, High Court of Madras, is directed to issue orders / instructions / circulars to all the Sections of the High Court of Madras to list the Vacate Stay Petitions within a period of two weeks from the date of numbering of the Vacate Stay Petitions before the appropriate Court.

(vi) The Registrar General, High Court of Madras is directed to issue instructions clearly by stating that in the event of not listing the Vacate Stay Petitions within a period of two weeks from the date of numbering of the Vacate Stay Petitions, then suitable disciplinary actions will be taken against the officials concerned.

(vii) The Registrar General, High Court of Madras is directed to communicate this order to the Additional Registrar General, Madurai Bench of Madras High Court for implementation.

(viii) The Registrar General, High Court of Madras, is directed to implement the above directions and report compliance on 05.10.2018.



P.Dis:173/2018, dated 01.10.2018, issued the following instructions:

- "1. The appeal Examiners are directed to scrutinize/process the vacate stay petitions filed by the litigants within a period of two weeks from the date of its filing. If papers filed are improper, the same must be returned immediately by assigning reasons;
2. The Posting Clerks are directed to list the vacate stay petitions within a period of two weeks from the date of numbering of the vacate stay petitions before the appropriate Court.
3. All concerned are hereby informed that, in the even tof not listing the vacate stay petitions within a period of two weeks from the date of numbering of the vacate stay petitions, then suitable actions will be taken against the officials concerned.
4. All concerned in the Registry are instructed that, in the even tof not filing the counter affidavit/documents by the respondents/litigants within the time limit of three months, as stipulated in Rule 3-A of Rules to Regulate the Proceedings under Article 226 of the Constitution of India issued in the year 1965(P.Dis.187/1965). The litigants/respondents shall explain the reasons for such delay in the counter affidavits."

9. The Registrar General in unambiguous terms has stated that the above instructions shall be scrupulously adhered to. The copy of the above circular was communicated to all the Registrars, Officers and Section Heads of the High Court of Madras as well as the Madurai Bench of Madras High Court. So also, the copy was also communicated to all the Appeal Examiners, Posting Clerks as well as the Record Keepers. In spite of the orders of the High Court as well as the consequential Circular issued by the Registrar General of High Court of Madras, it is found that no effective steps have been taken by the Registry of the Madurai Bench of Madras High Court for listing the vacate stay petitions, which were numbered long back and in the present case on hand, the vacate stay petition was numbered during the year 2012 and the said vacate stay petition filed by the respondent - Department has not even posted for hearing at least once for the past about seven years. It is an unfortunate situation that the Circular was issued on 01.10.2018. At least, thereafter, the Registry would have taken steps to list the vacate stay petitions before the Court concerned for the purpose of hearing. After all a Circular was issued to list the matter, even that is not done, this Court is of the opinion that the confidence in the minds of the litigants regarding the judicial functions would be shakened. Thus, the Registry of Madurai Bench of Madras High Court is directed to adhere the orders of the Court passed in W.P. (MD) No.11798 of 2016 as well as the consequential Circular issued by the Registrar General of the High Court of Madras on 01.10.2018,



in all other writ petitions, which all are now pending.

10. In respect of the facts and circumstances of the present writ petition is concerned, the writ petitioner is not entitled for any relief as such sought for in the present writ petition and accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (A.E)

// True Copy //

Sub Assistant Registrar(CS)

Note to Office :

Mark a copy of this order to the Registrar (Judicial), Madurai Bench of Madras High Court, Madurai, for appropriate action.

Krk

To:

1.The Principal Secretary to Government,
School Education Department,
Secretariat, Fort St.George,
Chennai-9.

2.The Director of Public Library,
Anna Salai, Chennai-600 002.

3.The District Library Officer,
Theni District, Theni.

Copy to:

The Registrar Judicial,
Madurai Bench of Madras High Court,
Madurai.

+1CC to Special Government Pleader, Sr.No.67038.

**W.P. (MD) No.6351 of 2011
and**

**M.P. (MD) Nos.1 & 2 of 2011 & 1 of 2012
04.06.2019**

CS: (14/06/2019) 6P 6C