

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 15.07.2020

DELIVERED ON : 06.08.2020

CORAM

THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.No.8348 of 2020
& WMP Nos.10017 &10018 of 2020

Dr.A.Valarmathi

...Petitioner

versus

1.The State of Tamil Nadu,
rep. by its Additional Chief Secretary to Government,
Labour and Employment Department,
Secretariat, Fort St. George,
Secretariat, Fort St. George,
Chennai- 600 009.

2.The Commissioner of Labour,
DMS Compound, Tenampet,
Chennai- 600 006

...Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus to call for the records relating to the impugned order issued by the first respondent in G.O(D) No.294, Labour and Employment(E1) Department dated 08.06.2020 and to quash the same and consequently direct the respondents to restore the petitioner in the post of Assistant Commissioner of Labour(Enforcement) Thiruvallur District, Thiruvallur.

For Petitioner : Mr.P.Wilson, Sr.Counsel for
Mr.G.Sankaran

For Respondents : Mr.P.H.Arvind Pandian,
Additional Advocate General, assisted by
Mr.R.Vijay Kumar, Addl.Govt.Pleader

ORDER

This matter is taken up through Web hearing.

2. The petitioner has approached this Court, seeking the following relief:

"Issue Writ of Certiorarified Mandamus, to call for the records relating to the impugned order issued by the first respondent in G.O(D) No.294, Labour and Employment(EI) Department dated 08.06.2020 and to quash the same and consequently direct the respondents to restore the petitioner in the post of Assistant Commissioner of Labour (Enforcement) Thiruvallur District, Thiruvallur."

3. The brief facts and circumstances, which gave raise to the filing of the present writ petition are stated herein:

3.1 The petitioner is presently working as Assistant Commissioner of Labour (Enforcement) at Thiruvallur, Thiruvallur District. She was initially appointed as Assistant Inspector of Labour, selected through the Tamil Nadu Public Service Commission in 2002. She was promoted to the post of Deputy Inspector of Labour in 2011 and further promoted as Assistant Commissioner of Labour in 2012. She was posted to the present position as Assistant Commissioner of Labour (Enforcement), Thiruvallur on 28.09.2017. According to the petitioner, she has been enjoying unblemished record of service through out her career.

3.2 According to the petitioner, one J.Ashok Kumar, working as Stamping Inspector at Thiruvallur under the petitioner, had indulged in certain corrupt practices in regard to the discharge of his duties. Several complaints were received and in response to the complaint, the Controller of Legal Meteorology, issued proceedings dated 18.02.2020 addressing the same to the petitioner in her official capacity for conducting enquiry into the conduct of the said Stamping Inspector. The petitioner appears to have conducted enquiry on 28.02.2020 as averred by her in her affidavit.

3.3 According to the petitioner, during the course of the enquiry and on completion thereof, the said J.Ashok Kumar alleged to have committed serious irregularities in the matter of inspection and stamping of weights and machines and as a consequence of commission of acts of misconduct, he was placed under suspension vide proceedings of the Joint Commissioner of Labour, Chennai dated 13.04.2020. Thereafter, he was issued

with a charge memorandum dated 29.04.2020 under Rule 17 B of the Tamilnadu Civil Services (Disciplinary and Appeal) Rules.

3.4 While matters stood thus, according to the petitioner, the said J.Ashok Kumar, being a trouble monger and was in the habit of making wild allegations against women staff and officers for extraneous reasons, was also involved in causing publication of scurrilous materials in certain journals, damaging the reputation of the Department and its officers. In effect, according to the petitioner, the said J.Ashok Kumar, used to arm twist the staff of the Department in order to achieve his oblique motives. Since the petitioner happened to be the immediate superior of the said J.Ashok Kumar and having conducted the enquiry against him, he appears to have harboured malice against her. The said J.Ashok Kumar, according to the petitioner, with sinister motive, forwarded a complaint in the name of one K.Ashok, styling himself as ''Thalaimai Valakaringnar of Pathirikaiyalargal Sangam'', making false and wild allegations as if the petitioner had been involved in corrupt practices. In response to the so-called complaint, a Joint Secretary of the Department, called the petitioner for enquiry on 05.05.2020 and the petitioner appeared before the Joint Secretary and was shown the copy of the complaint given by the said K.Ashok, Advocate and was also read out. The petitioner refuted the allegations as being baseless and also expressed her misgiving on the veracity of the complaint since the identity of the complainant was not revealed nor his address was mentioned anywhere in the complaint.

3.5 On the heels of the above enquiry against the petitioner, the Government issued G.O(D) No.294, Labour and Employment Department dated 08.06.2020, transferring and posting the petitioner as Assistant Commissioner of Labour (Social Security Scheme) Thiruvannamalai. The petitioner is stated to be aggrieved by the sudden action of the first respondent in shifting her to a different place and to a different wing of the Labour Department, as according to her, the transfer order was not issued due to administrative reasons but was founded on the so-called complaint by a fictitious individual. Therefore, she is before this Court, challenging the G.O(D) No.294, Labour and Employment Department dated 08.06.2020.

4. In support of the writ petition, number of grounds have been raised, assailing the order of transfer and in substance, the plea of the petitioner is that the impugned action of the Government is not a bona fide exercise of power for advancing the cause of good administration and action was due to extraneous reasons.

5. This Court, ordered notice in the Writ Petition. Thereupon, Mr. R.Vijay Kumar, learned Add.Govt.Pleader entered appeared on behalf of the respondents. A detailed counter affidavit has been filed on behalf of the respondents refuting the averments contained in the Writ Petition and a reply affidavit has also been filed on behalf of the petitioner.

6. As the pleadings were complete with supportive documents from either side, the matter was taken up for final hearing through Video Conferencing on 15.07.2020. At the commencement of the hearing, this Court was also informed that while entertaining the writ petition at the stage of its admission, an interim order was passed protecting the interest of the petitioner pending finalization of the Writ Petition.

7. Mr.P.Wilson, learned Senior Counsel appearing for the petitioner on behalf of Mr.G.Sankaran, instructing counsel made, elaborate submission on various aspects of facts and law attacking the impugned action of the respondents. The learned Senior Counsel preferred his submissions by drawing the attention of this Court to the transfer order in question dated 08.06.2020, which reads as under:

"Due to administrative reasons, Tmt.A.Valarmathi, Assistant Commissioner of Labour (Enforcement), Thiruvallur is transferred and posted as Assistant Commissioner of Labour (Social Security Scheme), Thiruvannamalai on deputation in the existing vacancy."

8. According to the learned Senior Counsel that in case of deputation to foreign service, certain legal requirements need to be followed under Chapter XII, Part V of the Tamil Nadu Fundamental Rules. The deputation is essentially governed by two Fundamental Rules, viz., Rule 110 and 111 and as per which, the Commissioner of Labour alone is competent to sanction the deputation. The learned Senior counsel would draw the attention of this Court to Sub Rule XVIII of Rule 110 to support the above point. The learned Senior counsel also submitted that no specific period has been mentioned in the transfer order as normally done in case of deputation and therefore the transfer order deputing the petitioner for an unspecified period, is invalid and illegal. According to him, that the Government is not empowered to effect the deputation under the Fundamental Rules and any Government Order, which is to be relied by the respondents empowering the Government to transfer as far as the petitioner is concerned is legally impermissible.

9. As far as the above submission of the learned Senior Counsel for the petitioner is concerned, this Court had its own doubt about the petitioner being sent on deputation as the transfer was well within the department itself, since shunting of the petitioner is appeared to be from one to another wing i.e. from Enforcement to Social Security Scheme. On instructions from the competent authority, Mr.P.H.Arvind Pandian, learned Additional Advocate General, who appeared for the respondents submitted that it was not a deputation as mentioned in the transfer order since shifting of the petitioner was only within the same department and therefore requested this Court to consider the validity of the impugned order as a transfer simpliciter and not deputation. In view of the categorical submission of the learned Additional Advocate General on instructions from the Government, the arguments of the learned Senior counsel for the petitioner on this aspect need not be addressed at all, as this Court is convinced that the impugned action of the Government was only a transfer simpliciter and deputation. Therefore, the impugned transfer order needs to be decided on its validity with reference to the other submissions made by the learned Senior counsel.

10. Mr.P.Wilson, learned Senior Counsel would place great emphasis on the run-up to the issuance of the transfer order by referring to various documents filed in support of the Writ Petition, namely, the complaints received against one J.Ashok Kumar, Stamping Inspector, from the dealers concerned in the months of February and March 2020 and the communication of the Controller of Legal Meteorology, dated 18.02.2020 etc. addressed to the petitioner. On the basis of the communication, from the Controller, the petitioner had conducted an enquiry on 09.03.2020 and found certain irregularities and called for explanation from her subordinate J.Ashok Kumar, Stamping Inspector and subsequently, appeared to have advised him to discharge his duties without any complaints from the dealers.

11. The learned Senior counsel has also referred to the suspension order passed against the said J.Ashok Kumar, Stamping Inspector vide proceedings of the Joint Commissioner of Labour, Chennai dated 13.04.2020. At this stage, at the instance of J.Ashok Kumar, through one Ashok, who claimed himself to be a Post Graduate with a Law degree and a Legal Adviser to some Journalists Association, caused a complaint against the petitioner, alleging certain corrupt practices in collusion with an outsider, named in the compliant, one M.Ganesh Kumar. According to the learned Senior counsel, unfortunately and unusually, the Government acted in an ulterior haste in summoning the petitioner for enquiry on the basis of the

complaint by a person, who did not even disclose his full or proper identity and address and the petitioner was not even furnished with a copy of the complaint. The manner in which the Government acted swiftly on the basis of the complaint by a person in anonymity, was rather strange and was not in consonance with the instructions issued by the Government in this regard. The learned Senior Counsel would draw the attention of this Court to a Circular issued by the Central Vigilance Commission dated 07.03.2016, in which, inter alia, a clarification was issued which reads as under:

Circular No.03/03/2016

Sub: Action on Anonymous/Pseudonymous Complaints - Reg.

"1. to 4."

"5. Based on the opinion furnished by learned AG, the following clarifications are being issued.

(i) No action should be taken on anonymous/pseudonymous complaints in line with Commission's present instructions dated 25th November, 2014 and such complaints should be filed."

12. The learned Senior Counsel would submit that the Government ought not to have acted on the complaint in summoning the petitioner for enquiry in the first place and more so the complaint ought not to have been the basis for transfer of the petitioner. The impugned transfer is therefore, nothing, but could be characterized to be punitive and liable to be interfered with.

13. The learned Senior Counsel has made extensive submissions on the punitive nature of the transfer, as obviously on the basis of the enquiry conducted by the Joint Secretary in regard to the complaint against the petitioner, the transfer order came to be issued. In effect, the learned Senior Counsel would submit that the transfer of the petitioner was not on administrative grounds, but was intended to victimize the petitioner on the basis of anonymous/pseudonymous complaint and such transfers have always been frowned upon by various judicial precedents. Any transfer in the name of administrative reasons and in actuality, intended to punish a Government servant, the Courts have interfered with such transfer orders as being a mala fide exercise of power. The learned Senior Counsel would submit that this Court has the power to pierce the veil of the transfer order and examine the same on the basis of the events which preceded the transfer order and also on the basis of the relevant records necessitated the transfer of the petitioner.

14. Further, the learned Senior Counsel has also submitted that under the Sub Rules governing the service conditions of the

petitioner, the posting and transfer of the Assistant Commissioner of Labour, shall be made by the Commissioner of Labour who is the second respondent herein, but in the present case, the first respondent has passed the order of transfer and on this ground alone, the transfer order is liable to be set aside. He has relied on Rule 7 of the Special Rules for Tamil Nadu Labour Service, which Rule is extracted as under:

"7. Postings and transfers: Posting and Transfers of Deputy Commissioner of Labour (including Deputy Commissioner of Labour (Establishment and General) and Assistant Commissioners of Labour shall be made by the Commissioner of Labour, Chennai."

15. The learned Senior Counsel submitted that the justification of the Government in transferring the petitioner presently is on the basis of the latest G.O.Ms.No.249 Finance Department, dated 21.05.2020 which was issued due to Covid-19 situation. The learned Senior Counsel relied upon a relevant portion of the G.O., which reads as under:

"General transfer shall be kept on hold for 2020-21 to minimize expenditure on transfer travel expenses. Only transfers on administrative grounds by an authority higher than the authority normally empowered to transfer and mutual request transfers will alone be allowed."

16. The learned Senior Counsel submitted that the Government cannot arrogate itself the power of transfer in the face of statutory regulations and it is trite in law that no executive instructions can override or supersede the statutory rules. He therefore submitted that since the order of transfer was not passed by the competent authority, it is non-est in law and the order has to go lock, stock and barrel. In any event, the learned Senior Counsel submitted that the transfer order was fundamentally on the basis of the complaint made against the petitioner by some unknown individuals and the Government through its Joint Secretary, had conducted an enquiry and on conclusion of the enquiry, immediately, passed the present transfer order and therefore, mala fides is writ large in transferring the petitioner. The Government which exercised the power in this case has to ensure that the power even assuming it has one has to be exercised properly and fairly, otherwise, the transfer order per se becomes vulnerable to interference. In this case, the power of the Government was exercised arbitrarily for mala fide consideration and therefore, he implored this

Court to set aside the order of transfer as being illegal and void.

17. The learned Senior counsel has also relied upon various decisions in support of his contentions which are to be dealt with as under:

Firstly, he would rely on a decision rendered by a Division Bench of this Court reported in "2008-4-L.W.564 (Dr.P.Rajaji, Advocate versus The State of Tamil Nadu & others)", wherein, he relied on particular passages in paragraphs 38 and 39, which are extracted as under:

"38. This being the authoritative pronouncement of the Hon'ble Supreme Court, which is still holding the field, it is difficult for this Court to accept the contention of the learned counsel for the respondents that Article 162 of the Constitution enables the State Government to pass executive orders which are contrary to the law which has already been made on the subject by the State. Such a construction would amount to rewriting Article 162 of the Constitution. ..."

"39. In view of such clear statutory provision, the Court cannot uphold the impugned order as having been made under Article 162 of the Constitution. It is clear that acting under Article 162 of the Constitution the government cannot exercise its executive power contrary to law. ..."

18. The learned Senior Counsel also relied on a decision of the Hon'ble Supreme Court reported in "(2022) 11 SCC 136 (Ajaya Kumar Das versus State of Orissa and others)" wherein, it has been held that the Government Circulars cannot override the statutory provisions. Yet another decision was also relied upon by the learned Senior Counsel in support of the above legal plea, reported in "(1998) 8 SCC 660 (K.Kuppusamy and another versus State of T.N.and others)", wherein, it has been held that subordinate legislation cannot override statutory rules.

19. Therefore, in view of the above rulings, the learned Senior Counsel submitted that G.O.Ms.No.249 relied upon by the Government dated 21.05.2020 for transferring the petitioner overlooking the power of the competent authority, namely, the 2nd

respondent herein is unsustainable as the G.O. cannot override the statutory Rule 7 of the Special Rules applicable to the Labour Service.

20. As far as the aspect of punitive nature of the transfer is concerned, the learned Senior Counsel relied on a common order passed by a Division Bench of this Court in W.P.Nos.42783 and 42784 of 2016 dated 12.01.2017, he, in extenso, relied upon a detailed order passed by this Court in regard to the punitive transfer and its validity in the eye of law. He particularly referred to few observations made by the Division Bench as found in paragraphs 19, 20 and 21 as under:

"19. Heard the submissions of the learned counsel appearing for the petitioner and learned Standing counsel for the Railway Administration and perused the entire materials available on record including the citations.

"20. As regards the decision reported in "(2011) 12 SCC 137 (cited supra) is concerned, it was referred to and distinguished by the Division Bench of this Court in its order, dated 4.10.2013 in W.P.No.12812 of 2013 in the matter of "P.Karunakaran versus The Union of India and others". The facts of the said writ petition were almost identical to the facts of the present writ petitions and similar issues and grounds were also raised before the Division Bench. The learned Division Bench after adverting to all the case laws and submissions of the parties, finally held that the transfer order was liable to be set aside. In fact, in paragraphs 14 to 16, the learned Division Bench has held as under:

"14. Thus, it is crystal clear that on the date when the transfer order was issued, the suspension order was in force and therefore, there cannot be any doubt to hold that the transfer order, even though styled as an administrative measure, in fact came to be passed only on collateral purpose as a punitive measure. If the affected person challenges the transfer order by contending that it was made as a punitive measure by raising various grounds, the Court can lift the veil to find out as to whether it was made on administrative grounds as stated in the

transfer order or as a punitive measure as contended by the affected party. But in this case such exercise of lifting the veil is also not warranted and the respondents have not given scope for such exercise, when they have specifically admitted in their counter that the transfer order came to be made taking note of the gravity Supreme Today With All High Courts Page 4 of 11 of the incident that took place on 14.12.2012 and also to boost the morale of the public servants on duty. At this juncture, it is useful to extract the relevant averments made at paragraphs 10 of the counter affidavit as follows:-

"10. I submit that the petitioner, a professional Boxer appointed under the Sports Quota had a dubious history of various minor and major misconducts and imposed with penalties. The same had not improved his conduct and further, he had gone to the extent of assaulting the public servants on duty. In view of the gravity of the incident that took place on 14.12.12 and also to boost the morale of the public servants on duty, a proposal was sent to the Railway Board to transfer the petitioner out of Southern Railway with immediate effect in the interest of the administration. "

Therefore, it is an admitted case of the respondents that the petitioner was transferred only because of the incident that took place on 14.12.2012 and also to boost the morale of the public servants on duty. If that is the contention of the respondents, then there can be no doubt that the order of transfer was made only for collateral purpose to punish the petitioner. In our considered view, a punishment cannot be imposed on a person without affording an opportunity of hearing, conducting an enquiry and giving a finding that such person was guilty of charges levelled against him.

"15. Admittedly, in this case, no charge memo was issued to the petitioner and on the other hand, the suspension order issued on him was also revoked on 23.1.2013. No doubt, the transfer is not a punishment and it is only an

incident of service. There is no quarrel about the said proposition. At the same time, if it is admitted that the employee was transferred as a punitive measure or preventive measure, then such transfer takes a different colour and shape in the eye of the employee not as an incident of service but as a punishment out of an untold charge levelled against him.

"16. Once it is admitted by the authorities that transfer was made based on certain reasons of unbecoming attitude of the employee, more particularly, based on certain incident said to have taken place on a particular date, then the authorities cannot exercise the power of transfer on that ground without affording an opportunity of hearing and allowing the employee to defend his case. Administrative grounds can be put as the reason for transfer, so long as such administrative grounds do not affect the interest of the employee personally with civil consequences or such grounds do not attribute imputation on the character of the employee. If any of these elements are apparent based on admitted facts, then such grounds can no longer be termed as administrative grounds. Therefore, we are of the firm view that the order of transfer in this case was passed only as punitive measure to achieve the collateral purpose and therefore the same cannot be sustained in the eye of law as the same has been made in violation of principles of natural justice."

21. A perusal of the above, it would reveal that the Division Bench has clearly spelt out as to how the transfer order could not be made on the basis of allegations. From the above, it could be seen that the present facts are also almost similar and therefore, the observations made by the learned Division Bench would be squarely applicable to the present case also. In fact, the Division Bench has in extenso analyzed all the decisions of the Hon'ble Supreme Court and other High Courts including the decision cited by the learned counsel appearing for the Railways reported in 'Registrar General, High Court of Judicature of Madras versus R.Perachi and others'..."

21. The learned Senior Counsel also relied on an order passed by a learned single Judge of this Court passed in W.P. (MD) No.2886 of 2020 dated 16.03.2020, wherein, he would draw the reference to paragraph 9 of the finding of the learned Judge, which is extracted as under:

"9. Perusal of record shows that on the one hand, in the impugned order, the official respondents have taken a stand that the impugned transfer order is passed on the administrative grounds, whereas, on the other hand, in the counter affidavit, they have taken a quite contrary plea that the petitioner has been transferred for his indiscipline behaviour. Thus, it is seen that the respondents themselves have admitted that the impugned transfer is a punitive transfer. The Hon'ble Supreme Court in Somesh Tiwari vs. Union of India and others reported in (2009) 2 SCC 592, has held that transfer order in administrative exigencies should not be interfered by the Court, but, if there is malice and the employee is transferred on the basis of non-existent facts and if the same is punitive in nature or shows non application of mind, transfer order can be interfered with. In my considered opinion, the impugned transfer order is a punitive transfer passed only to victimise the petitioner and therefore, there is no other go for this Court except to quash the impugned order. Therefore, I am inclined to interfere with the impugned orders."

22. In the above case, after the learned Judge found that the transfer order was punitive in nature, has set aside the same. In the same breadth, the learned Senior Counsel also relied on a judgment of a Division Bench of this Court made in W.A.(MD) No.219 of 2019, dated 27.01.2020, wherein, the Division Bench, on the basis of the factual matrix of that case, set aside the order of transfer. The learned Senior Counsel finally relied on the decision of the Hon'ble Supreme Court reported in "(2009) 2 SCC 592 (Somesh Tiwari versus Union of India and others)", wherein, it has been held in paragraph 16 as under:

"16. Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where inter alia mala fide on the part of the authority is proved. Mala fide is of

two kinds - one malice in fact and the second malice in law. The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground i.e. on the allegations made against the appellant in the anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal."

23. In the above paragraph, the Hon'ble Supreme Court has made a succinct observation in regard to transfer on administrative exigencies and the transfer in lieu of punishment and latter character of transfer was held as illegal.

24. To sum up, the learned Senior Counsel submitted that the impugned order of transfer is a product of colourable exercise of power and necessarily, the same needs to be interfered with.

25. Per contra, Mr.P.H.Aravind Pandian, learned Addl.Advocate General appearing for the respondents has made detailed submissions. According to him, transfer order was passed in the interest of the administration, since an enquiry was conducted into a complaint submitted by one Mr.K.Ashok, M.A., B.L., Press Association, Chennai. A Joint Secretary to the Government who conducted the enquiry, found that there was a prima facie case against the petitioner into the contents of the complaint. The complainant was also present for enquiry and one another witness, Mr.Ganesh Kumar who was allegedly close to the petitioner in her corrupt practices, were enquired and a report was submitted by the Joint Secretary to the Government, wherein, a finding was given that there was a prima facie evidence against the petitioner regarding misuse of her official position leading to the corrupt practice. On the basis of the finding, a detailed vigilance enquiry was ordered and therefore, the Government felt that it was appropriate to shift the petitioner to a non-sensitive post until the vigilance enquiry was over. The learned Addl.Advocate General submitted that when a vigilance enquiry was underway, it was not in the public interest to keep the Officer in a sensitive post and therefore, the petitioner was transferred to a nearby district to a non-sensitive post and there was no loss of emoluments or reduction

in status or rank. According to him, no mala fides had been attributed against the Government which passed the transfer order, by the petitioner in her entire affidavit filed in support of the Writ Petition. According to the learned Addl. Advocate General, in the absence of specific plea of mala fides, it was not open to the petitioner to rest her case on that ground.

26. The learned Adl. Advocate General also submitted that the suspension of Mr. J. Ashok Kumar, Stamping Inspector and initiation of disciplinary proceedings against him, had nothing to do with the transfer of the petitioner. As far as the petitioner was concerned, the complaint against her was independently enquired into at the level of Joint Secretary to the Government and on the basis of the finding of the enquiry, further enquiry was directed to be followed up by the Vigilance Department. The person who had come under a cloud facing vigilance enquiry, cannot be allowed to hold a sensitive post, as that could undermine good administration.

27. As regards the impugned order passed by the Government in the place of the 2nd respondent, the learned Addl. Advocate General submitted that in view of the extraordinary Covid-19 situation, the Government has come forward with G.O. Ms. No. 249, Finance Department, dated 21.05.2020, providing for freezing of general transfers as one of the measures to overcome the pandemic crisis for the year 2020-2021 in order to minimize expenditure on transfer and any administrative transfer shall be made by an authority higher than the authority normally empowered to transfer apart from mutual request transfers. In this case, the Government being higher authority, has effected the transfer in tune with the above G.O. and the power exercised by the Government cannot be construed as illegal as it is always within the domain of the Government to take action in exceptional circumstances, particularly in today's context where the Government was constrained to empower itself to mitigate the financial hardship in public interest. He therefore, submitted that there is nothing illegal or wrong in the exercise of power by the Government in transferring the petitioner.

28. The learned Addl. Advocate General proceeded to rely on a decision of the Hon'ble Supreme Court reported in (2011) 12 SCC 137 "(Registrar General, High Court of Judicature of Madras versus R. Perachi and others)", wherein, he extensively relied on various legal findings of the Hon'ble Supreme Court as found in paragraphs 17, 18, 22, 31, 36 and 41, which are extracted as

under:

"17. The Division Bench thereafter noted that the impugned order of transfer had been passed on an anonymous letter and thereafter on the basis of a report from the District Judge and after ordering of a vigilance enquiry. The Division Bench referred to three judgments of this Court in Ishwar Chand Jain Vs. High Court Punjab and Haryana reported in [1988 (3) SCC 370], K.P. Tiwari Vs. State of M.P. reported in [1994 Suppl. (1) SCC 540] and Ramesh Chander Singh Vs. High Court Allahabad reported in [2007 (4) SCC 247] and also to Centre for Public Interest Litigation Vs. Union of India reported in [2005 (8) SCC 202] and thereafter observed in paragraph 25 and 26 as follows:-

"25. Thus, it has been time and again held by the Honourable Apex Court that it is the duty of the higher judiciary to protect the officers of the lower judiciary from the persons, who make reckless, baseless and unfounded allegations, by way of anonymous petitions. The same reasoning would apply even in the case of staff members. Admittedly, in the case on hand, the impugned action has been initiated pursuant to an anonymous petition received.....'

"26. None of these aspects have been taken into consideration before ordering transfer of the petitioner. No doubt, transfer is an incidence of service. But, since in the peculiar facts and circumstances of the case on hand, where the impugned order of transfer has served as a punishment on the petitioner, that too without conducting any enquiry, since it has impaired his chances of promotion besides reducing his cadre to that of the Sheristadar of the Chief Judicial Magistrate's Court from that of the P.A. to the District Judge, which he was enjoying even though as an additional charge, as there are many more seniors in the Ramanathapuram District, now a question would arise as to whether such an order of transfer which worked as a punishment on the petitioner, is sustainable under law.'

"18. The appellant had drawn the attention of the Division Bench to the judgment of another Division Bench of Madras High Court in the case of The Registrar of High Court of Madras Vs. Vasudevan,

A.K. reported in [1996 (1) MLJ 153]. In that matter complaints were received against court bailiffs working in the City Civil Court at Madras. After the vigilance cell held discreet enquiries, they were transferred to various courts outside Madras on administrative grounds. A Single Judge had set-aside those transfers by holding them to be punitive. Allowing the Writ Appeal, the Division Bench had held that the employer is entitled to consider whether the particular employee is suitable to work in a particular place or to continue there. It is however to be seen that transfer has not affected the service conditions in any way. The Division Bench held that the order of transfer had not affected any of the service conditions of the bailiffs and their chances of promotion were also not diluted. Therefore, there was no question of providing any hearing as well."

"19. to 21.

"22. In the context of transfer of a govt. servant we may refer to the dicta of this Court in N.K. Singh Vs. Union of India reported in [AIR 1995 SC 423] where this Court observed in para 22 as follows:-

"22..... Transfer of a government servant in a transferable service is a necessary incident of the service career. Assessment of the quality of men is to be made by the superiors taking into account several factors including suitability of the person for a particular post and exigencies of administration. Several imponderables requiring formation of a subjective opinion in that sphere may be involved, at times. The only realistic approach is to leave it to the wisdom of the hierarchical superiors to make the decision. Unless the decision is vitiated by mala fides or infraction of any professed norm of principle governing the transfer, which alone can be scrutinized judicially, there are no judicially manageable standards for scrutinizing all transfers and the courts lack the necessary expertise for personnel management of all government departments. This must be left, in public interest, to the departmental heads subject to the limited judicial scrutiny indicated.'

"23. to 30.

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...

"31. As seen above, the transfer was purely on the administrative ground in view of the pending complaint and departmental enquiry against first respondent. When a complaint against the integrity of an employee is being investigated, very often he is transferred outside the concerned unit. That is desirable from the point of view of the administration as well as that of the employee. The complaint with respect to the first respondent was that he was dominating the administration of the District Judiciary, and the District Judge had reported that his retention in the district was undesirable, and also that departmental enquiries were pending against him and other employees, with respect to their integrity. In the circumstances the decision of the then Chief Justice to transfer him outside that district could not be faulted.

"32 to 35.

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"36. As can be seen from these judgments, they were all rendered in altogether different context. In the present case we are concerned with a Sheristadar who has been transferred on receiving a complaint, although an anonymous one, but against whom a departmental inquiry is pending. He has been transferred to another district though retaining him in the same cadre with the same pay as well as his seniority. Such an action was fully justified and within the authority of the High Court. No observations were made against him, nor was any stigma attached. The reliance on the above three judgments to interfere in such an order clearly shows a non-application of mind by the Division Bench to the problem which the High Court Administration was faced with, and which was being attended in accordance with the relevant rules.

"37 to 40.

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"41. Thus it is very clear that the impugned judgment and order are wholly unsustainable, and in complete disregard of the law laid down by this Court. This Court has, therefore, to allow this appeal and to set-aside the judgment and order dated 28.8.2008 passed by the Madras High Court on W.P. (MD) No. 7121 of 2007. Accordingly, this appeal is allowed and the order dated 28.8.2008 passed by the Madras High Court on Writ Petition (MD) No. 7121 of

2007 is set-aside. The said writ petition shall stand dismissed. There will, however, not be any order as to the costs."

29. The learned Addl. Advocate General submitted that in the above case, in identical situation, an Officer of the Court was transferred to a different District as he was facing a complaint. The hands of the Government cannot be tied in the face of allegations against the petitioner of corrupt practices, particularly, when a preliminary enquiry was conducted against her and on the conclusion of the enquiry, it was found some substance in the allegations. The learned Addl. Advocate General also relied on a decision of the learned Division Bench of this Court reported in "2014 SCC OnLine Mad 10545 (A. Edmond versus The Chief Engineer (Distribution), Tirunelveli and others)" where in this short judgment, the Hon'ble Division Bench of this Court has held that the transfer is an incident of service and any transfer on administrative exigencies is not penal. He also submitted that the heavy reliance placed on by the learned Senior Counsel for the petitioner on the Division Bench Judgment of this Court was on the basis of factual matrix of that case as the transfer order therefore was issued immediately after revocation of the suspension order of the official concerned. The Division Bench, in that case, had found that there was substance in the allegation of mala fides and that judgment was rendered on the basis of the contextual facts which cannot be ipso facto applied to the case on hand. Therefore, the learned Addl. Advocate General submitted that there are no merits and substance in the contentions raised on behalf of the petitioner and deserve to be rejected outright.

30. Mr. P. Wilson, learned Senior Counsel for the petitioner submitted by way of reply that in the counter affidavit, it is conclusively stated that 'it is because of the vigilance enquiry, the petitioner was transferred'. Therefore, terming the transfer order for administrative reasons was contrary to the stated fact. According to the learned Senior Counsel, in paragraph 10 of the counter affidavit, it is clearly mentioned that one Thiru Ganesh Kumar, allegedly the close associate of the petitioner whose involvement in the alleged corrupt practices along with the petitioner was also examined in the enquiry conducted by the Joint Secretary to the Government. However, the fact of the matter was that the said Ganesh Kumar was part of the reception committee of J. Ashok Kumar, Stamping Inspector's daughter's wedding. He has drawn the attention of this Court to the photograph of the reception committee in which, the name of the said Ganesh Kumar had been mentioned. Therefore, the version that the Ganesh Kumar was close associate

of the petitioner was concocted and a complete falsehood. According to the learned Senior Counsel, the said Ganesh Kumar being actually a close associate of Mr.J.Ashok Kumar, Stamping Inspector, had an axe to grind against the petitioner who enquired into the complaints against the Stamping Inspector. In any event, the learned Senior Counsel submitted that when admittedly, allegations against the petitioner were the basis of the transfer, the transfer can never be termed as 'for administrative reasons'.

31. Considered the submissions made by the learned Senior Counsel, Mr.P.Wilson, for the petitioner and the learned Addl.Advocate General, Mr. P.H.Arvind Pandian, for the respondents and perused the entire materials available on record.

32. As far as the first issue whether the impugned order was a transfer simpliciter or was a deputation to a foreign service, it has been categorically clarified by the learned Addl.Advocate General on instructions from the Government that the posting of the petitioner to Thiruvannamalai as Assistant Commissioner of Labour (Social Security Scheme) was only by way of transfer and not by deputation as the transfer was well within the department and not to a foreign service. Although the learned Senior Counsel for the petitioner contended that terming the transfer as deputation, the order suffered from non-application of mind, this Court is not inclined to be swayed in favour of such pedantic submission nor inclined to be bogged down to adopt a fastidious approach in preference to a larger issue of transfer, whether the same being punitive or malicious. Therefore, this Court has to take a call in regard to the substantive challenge made in the Writ Petition and not to be overly concerned with the language in which the impugned order is couched. No doubt that the Government which passed the order has used wrong expression, terming it as deputation as if the petitioner was posted to a foreign service and in fact, on the basis of the content, counter affidavit was also filed on behalf of the Government. Yet subsequently, when this Court raised its own misgiving about the posting of the petitioner to a foreign service, it was clarified by the Government that it is only a transfer simpliciter and not deputation. Therefore, this Court is not inclined to accept the submission of the learned Senior Counsel that the order has to go on the basis of the non-application of mind on the part of the Government. Every infraction in an order particularly infraction of the present nature does not vitiate the order itself.

33. As far as the principal contention of the learned Senior

Counsel for the petitioner that the transfer order was tainted with mala fides and also the same was punitive in nature is concerned, submissions were made by learned Senior Counsel for the petitioner and the learned Addl. Advocate General with supportive documents and judicial precedents. In order to appreciate the rival contentions of the parties, this Court has to necessarily look into the relevant files which gave rise to the impugned action of the Government. Therefore, the relevant original files were called for and the same were made available on behalf of the respondents for perusal by this Court.

34. This Court has perused the files with reference to the contentions raised on behalf of the petitioner as to whether the impugned order was tainted with mala fides or whether it was passed by way of punishing the petitioner on the basis of anonymous/pseudonymous complaint. This Court has perused the files and also the enquiry report submitted by the Joint Secretary dated 02.06.2020. From the enquiry report, it is seen that there were several allegations of corrupt practices attributed against the petitioner in discharging of her duties and ultimately, on the conclusion of the enquiry, a finding was given by the Enquiry Officer, namely, Joint Secretary to the Government that there was a prima facie evidence as regards involvement of the petitioner in receiving bribes and other corrupt practices and therefore, opined that a vigilance enquiry against the Officer was necessary. Whereupon, it appears that the Addl. Chief Secretary who had forwarded the complaint to the Director of Vigilance and Anti Corruption for detailed enquiry, felt that it was appropriate to transfer the petitioner to a non-sensitive post and finally it was decided to transfer the petitioner to the present place of posting in a non-sensitive post. In the enquiry report, it could be seen that the complainant was enquired on 11.5.2020 and he appeared to have reiterated the contents of his complaint and one Ganesh Kumar, who was allegedly to be the close associate of the petitioner in her corrupt practices, was also enquired on 11.5.2020. It appeared from the report that on examination of the witnesses, the said Ganesh Kumar had admitted having collaborated with the petitioner for receiving the bribe amounts on her behalf from the various establishments. Several transactions were mentioned in the report which did not speak well of the Officer concerned. According to the Enquiry Officer, there were incriminating materials available in regard to the allegations made against the petitioner. In fact, the enquiry report also annexed audio file containing audio conversations between Ganesh Kumar and the petitioner in regard to certain illegal transactions.

35. In the teeth of the above finding, the Government

probably had no option except to shift the petitioner from the sensitive post to a non-sensitive post. This Court, on the whole, after perusing the entire file, did not find anything amiss in the ultimate action taken by the Government.

36. Be that as it may, the so-called complainant one K.Ashok claiming himself to be a Head lawyer (whatever it means) of a Journalists Association whose full identity was not revealed, yet by that alone the complaint as such against the petitioner cannot be ignored. No doubt, the Government needs to be wary of complaints by busybodies and coarse meddlers, in taking action against the officials, nonetheless the Government has the discretion to weigh the pros and cons to act on such complaints. Besides this Court cannot lose sight of the fact that eventually a Senior Official of the Government who acted as an Enquiry Officer, found prima facie material in support of the allegations against the petitioner and in the opinion of this Court, such findings were based on certain concrete evidence made available by the witnesses who were examined in the enquiry. When ordering a inhouse preliminary enquiry CVC Circular relied upon by the learned Senior Counsel may not have any application, as the vigilance enquiry was yet to happen.

37. Reading of the cumulative circumstances of the case, shifting of the Officer to a non-sensitive post, cannot be assailed as a punitive transfer for more than one reason. Firstly, punitive transfer must necessarily have adverse consequence. As far as the case on hand is concerned, this Court does not see any adverse consequence befalling the petitioner as she has been transferred only to a neighbouring district with the same emoluments and status. Secondly, when there are allegations of corrupt practices against the official of the Government, individual right of the petitioner for enforcement of normal procedure for transfer is to be subordinated to the larger public interest. In the realm of the public administration, the paramount consideration of the Government is to uphold the public interest in order to advance good administration. Allegedly tainted Government servant cannot hold a sensitive post in the face of the finding of the preliminary enquiry and continuing such official in the said post would be a affront to public interest at large. It is the prerogative of the Government to shift the official for achieving the larger purpose of good governance, when ubiquitous corruption is eating into vitals of the public administration in these days. Abominable menace of corruption must be checked at every stage and any action taken to salvage further transgression by the official concerned, cannot be construed as punitive at all. On

the other hand, the action like in the present case could be construed, as taken for administrative reasons.

38. The challenge in regard to the power of the Government to transfer as against the Rule position demonstrated by the learned Senior Counsel for the petitioner, this Court is unable to persuade itself for the reason that G.O.Ms.No.249, dated 21.05.2020 was issued in the most extraordinary and exceptional circumstances of unprecedented kind, the State is facing today. No order can be declared as invalid because of the fact that the higher authority has passed the order. The spirit of the rule is only to ensure that the order is not passed by the authority who is less than the authority competent to pass the same. When the Government takes upon itself the responsibility of transferring the officials at certain level, it is by all the more reason that the questioning the transfer order on the ground of competency has no legal strength at all. By introducing the G.O. in view of the monstrosity of situation cannot be construed to override the statutory provision, but it is meant to overcome the crisis faced by the State and to protect its citizenry from any impending adversity. In the above circumstances, this Court is not impressed by the submissions made by the learned Senior Counsel that the order passed by the Government is contrary to the Rules. When an higher authority passed an order than the competent authority as mentioned in the Rules, the sanctity of such power for passing the order cannot be questioned as if it is contrary to statutory regulation. In essence, the Government order is merely a supplement to the Rules in order to surmount the present trying times of resource crunch faced by the Government. Therefore, this Court does not see any infirmity in the Government bestowing upon itself the power and the exercise thereof to transfer the petitioner herein.

39. The decisions relied upon by the learned Senior Counsel for the petitioner are no doubt governing the transfer orders passed on mala fide consideration and as a punitive measure, however, those decisions are on the basis of conclusive evidence of malicious intent in passing the respective orders. Statement of law laid down by the Courts cannot be pitchforked and applied blindly regardless of the factual matrix of the case. After all, the legal principles have to match with the facts of each case and not a mechanical import of the principles would be like applying square pegs of law in the round holes of facts. When the facts are not favouring the petitioner, the legal principles enunciated on the subject matter is of no help to the petitioner. In the said circumstances, the case laws relied on by the learned Senior counsel for the petitioner are not applicable to the case on hand. The application of legal

principles unmindful of the fact situation does not make of a good law. On the other hand, it makes a poor reading of law. As far as the case on hand is concerned, this Court did not find anything even remotely that the Government had any malicious intent to punish the Officer. Since the learned Senior Counsel has attributed malice in law against the Government as a fulcrum of his argument, this Court ventured to fathom the intent of the Government in transferring the petitioner but it did not come across any document to indicate any oblique motive or malicious intent on the part of the Government in transferring the petitioner. In which event, this Court has to come to a inexorable conclusion that the order of transfer cannot held to be a colourable exercise of power as contended by the learned Senior Counsel for the petitioner, but the action was necessitated owing to the deviant conduct of the petitioner herself. In such circumstances,, it is well within the authority of the government to shift the petitioner to a non-sensitive post so that the public interest is preserved and upheld.

40. In the light of the foregoing reasons, this Court finds no merit and substance in the Writ Petition. Accordingly, the Writ Petition fails and it is dismissed. No costs. Consequently, connected WMPs are closed and the interim order if any granted, is hereby vacated.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

suk/dn

To

1. Additional Chief Secretary to Government,
The State of Tamil Nadu,
Labour and Employment Department,
Secretariat, Fort St. George,
Secretariat, Fort St. George,
Chennai- 600 009.
2. The Commissioner of Labour,
DMS Compound, Tenampet, Chennai- 600 006

Pre delivery Order in
W.P.No.8348 of 2020

KJ(CO)
KKV/13/08/2020