

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.12.2020

Pronounced on : 11.12.2020

CORAM :

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.12252 of 2020 and
W.M.P.No.15026 of 2020 and
Cont.P.No.825 of 2020

Dr.A.Jayachitra

... Petitioner in both W.P. and Cont.P.

-Vs-

The Principal Secretary/Member Secretary,
Sports Development Authority of Tamil Nadu,
Periyar EVR Road, Nehru Park,
Chennai 600 084. ... Respondent in both W.P. and Cont.P.

Prayer in W.P. : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records leading to impugned order dated 25.08.2020 in proceedings No.192/AO.1/2020 of the respondent and quash the same insofar as the petitioner is concerned.

Prayer in Cont. Petition : Petition filed under Section 11 of Contempt of Courts Act, praying to issue notice to the respondent and punish him for having committed contempt of the order of this Court dated 07.09.2020 passed in W.M.P.No.15026 of 2020 in writ petition No.12252 of 2020.

Both in W.P. And Cont.P.

For Petitioner : Mr.V.Vijay Shankar
for M/s.C.Jagadish

For Respondent : Ms.Narmadha Sampath, AAG
Assisted by
Mr.I.Sathish, AGP

O R D E R

This writ petition has been filed to call for the records leading to impugned order dated 25.08.2020 in proceedings No.192/AO.1/2020 of the respondent and quash the same insofar as the petitioner is concerned.

2. The petitioner is a graduate in Physical Education and conferred with the Doctorate in Sports Coaching in the discipline of Fencing. The petitioner claims to have obtained several Diplomas in the field of sports and coaching. According to her, she is a recipient of cash award from the Hon'ble Chief Minister for having coached National Games Gold Medalists. She claims to be a first woman in Fencing coaching in the State of Tamil Nadu.

3. On 09.05.2012, the petitioner was appointed as Fencing Coach in the respondent authority. Subsequently, on 09.02.2019, she was promoted as District Sports and Youth Welfare Officer and posted at Tirunelveli. Thereafter, the petitioner was transferred to the post of Manager - IV Sport Development Authority of Tamil Nadu at Chennai for looking after Amma Youth Sports Scheme. The latest transfer to Chennai was on 12.09.2019. She claims to be one of the senior officials, possessing high qualification and with experience, particularly, in her discipline of Fencing.

4. The grievance of the petitioner herein is that while she was working in Chennai after her transfer from Tirunelveli on 12.09.2019, suddenly she was transferred to the post of Manager, Women Sports Hostel, Tiruvannamalai on the pretext of administrative reasons vide order dated 25.08.2020 and was also relieved immediately from her Office in Chennai. Challenging the transfer order, the petitioner is before this Court.

5. At the time when the matter was admitted, this Court has granted an interim order, staying the impugned transfer order, on 07.09.2020, after taking note of the fact that the petitioner was relieved on 03.09.2020. The interim stay was granted as at that time, the Court found that the transfer order was passed for a malafide consideration on the basis of the facts disclosed in the affidavit.

6. According to the petitioner, her colleague one Ms.Geetha has given sexual harassment complaint against some of the male staff of the respondent authority in the work place and in response to the complaint, an Internal Complaints Committee was constituted. The petitioner claims that she was instrumental in guiding her colleague Ms.Geetha to take forward her complaint against the sexual harassment indulged by the male staff in the Office. The said Geetha has also approached this Court in W.P.No.11080 of 2020, complaining against the conduct of the Internal Complaints Committee as according to the said official, it was proceeding in a partisan manner. This Court, on consideration of the facts, is stated to have granted an interim order of status-quo on 19.08.2020.

7. According to the petitioner herein she was threatened by the male staff concerned against whom complaint was preferred by the said Ms.Geetha, not to support or give evidence in relation to the complaint of the said Geetha and the petitioner appeared to have refused to oblige them and told them that she would state as to what truly happened to the said Geetha. The petitioner claims that her refusal to oblige the male staff against giving evidence in favour of Ms.Geetha, with a malicious purpose to physically remove her from Chennai Office, the transfer order was engineered at their instance and suddenly was issued on 25.08.2020. Therefore, the petitioner claims that the transfer is not for administrative reasons, as stated in the order, but is passed for achieving a collateral purpose.

8. In the affidavit filed by the petitioner, it is also stated that the transfer order is also in violation of G.O.Ms.No.249 dated 21.05.2020, which mandates keeping in abeyance of routine transfers and in case of any necessity for transfer, such power of transfer ought to be exercised by the authority higher than the one normally competent to transfer. According to her, in this case, the authority who passed the order namely the respondent, is the competent authority in the normal sense, but not competent in view of the above said Government Order. The petitioner also questioned the time of the transfer as the same is in violation of Government instruction on the subject matter as the same being outside the transfer period.

9. In response to the notice, Mr.I.Sathish, learned Additional Government Pleader entered appearance and a detailed counter affidavit has been filed. In the counter affidavit, all the averments have been strongly refuted by saying that there were no malafides in passing the impugned order. According to the counter affidavit, the petitioner's service was required as being an experienced hand to be in charge of the women's hostel in Tiruvannamalai. According to the counter affidavit, the Hostel in Tiruvannamalai has been functioning without an independent Manager, and has been hitherto looked after with the additional charge by the Local District Sports and Youth Welfare Officer.

10. In the counter affidavit, it is also averred that the exclusive Sports Hostel for Girls with intake of 120 inmates are under going sports coaching in various discipline and though the Hostel has been closed due to Covid-19 situation as of now, but the same will be opened in due course of time after the announcement of the Government. Therefore, it became necessary to get all the facilities in place as the Hostel is likely to open shortly any time whenever the announcement comes from the Government, in this regard.

11. It is also averred in the counter affidavit that the complaint of Ms.Geetha and the constitution of Internal Complaints Committee, has nothing to do with the transfer of the petitioner. Moreover, it is stated in the counter affidavit that she being a Group B Officer, is liable to be transferred to any place in the State of Tamil Nadu and she has no right to be retained in the same station. As regards the violation of G.O.Ms.No.249, dated 21.05.2020, it is stated in the counter affidavit that the respondent Board is a Society registered under the Societies Registration Act, the Principal Secretary/Member Secretary is the Chief Executive Officer and he being the highest Officer, has issued the transfer order. There is no higher authority above the Principal Secretary and therefore, the question of violation of G.O.Ms.No.249 dated 21.05.2020, did not arise in this case.

12. Mr.Vijay Shankar, learned counsel for the petitioner would vehemently submit that the transfer order is intended to remove the petitioner from the present place of work in Chennai for the above stated reasons, as there was no requirement of transferring and posting the petitioner at Tiruvannamalai, where the hostel has been closed for a few months and according to the learned counsel, even as on date, it has not reopened. Therefore, there was no administrative exigency at all for resorting to transfer of the petitioner in the month of August 2020.

13. The learned counsel would submit that when she was posted in Chennai on 12.09.2019, from her earlier posting at Tirunelveli, it was a request transfer, as the petitioner being a single woman having two grown up daughters, one studying Medicine and other in School final, both in Chennai. When she had come on request transfer only in September 2019, within one year, she is now sought to be shunted out to a place where there is no work at all.

14. The learned counsel would also reiterate the averments contained in the affidavit filed in support of the writ petition, regarding the sexual harassment complaint given by petitioner's colleague and the petitioner's involvement in the complaint as a supporter of the said Geetha in pursuing the complaint against the perpetrators of the harassment. The learned counsel would further submit that there are several persons working in the same cadre, who have been retained in Chennai for 15 years or so. There are also vacancies in Chennai in the same cadre as on date in which, the petitioner was employed. According to the learned counsel, retaining those persons who have been serving for more number of years than the petitioner and shunting her out, despite her status being a

single woman having two daughters studying in Chennai, to a far away place when there is no immediate administrative requirement, by itself would disclose that the transfer of the petitioner is not for a bonafide reasons.

15. The learned counsel would also submit that regarding the violation of G.O.Ms.No.249 dated 21.05.2020, the Principal Secretary / Member Secretary is the competent authority and therefore, he is not empowered to transfer the petitioner in the face of the said Government Order, as on date. In terms of the said G.O., the power of transfer in Covid-19 situation is delegated to the highest authority with a view to minimise the transfer of Government officials during this period.

16. The learned counsel would further refer to the guidelines issued by the Government on 05.08.1998 which has been scrupulously followed in all transfer of Government Servants. As per the guidelines, the transfer period is defined as between 1st April and 31st May, every year and the general transfer shall always take place during the said period. Therefore, the transfer of the petitioner in August, is well outside the transfer period, as per the Government instructions and this fact would also make the transfer, invalid.

17. Per contra, the learned Additional Government Pleader led by the learned Additional Advocate General Ms.Narmadha Sampath, would strongly refute the allegation of malafides against the respondent. The learned Additional Advocate General would submit that the petitioner in this regard has come up with bald averments in the affidavit in support of her allegations. She has not chosen to name any of the male staff involved in the so called sexual harassment against her colleague Ms.Geetha. Further, she has not stated how the male staff concerned have prevailed upon the respondent who is a very senior civil servant of the State, to issue the transfer order. The plea of malafides has not been even remotely established and hence, the transfer order cannot said to be tainted with malafides at all.

18. As regards the violation of G.O.Ms.No.249 dated 21.05.2020, she would submit that the respondent is none other than the Principal Secretary to the Government and also the Member Secretary of the Board, who issued the order of transfer and no other authority is higher than him in the hierarchy of the administration for effecting transfer of the petitioner herein.

19. The learned Additional Advocate General would also submit that the Hostel at Tiruvannamalai may have been closed due to Covid-19 situation, yet, the Hostel is likely to be re-opened at any time when the Government makes any announcement in

that regard. The respondent authority in anticipation of the reopening of the Hostel, felt the need of an Officer to manage the Hostel independently, as the Hostel has been looked after by the Local Youth Welfare Officer as an additional charge for sometime. In fact, the respondent in the fitness of things, felt to appoint a woman officer to manage the Girls Hostel effectively. Therefore, the question of attributing any malafides or ill motive to the transfer, is unfounded and thoroughly baseless. She would also add that the petitioner in fact has worked in Chennai for more than seven years and therefore, she cannot have any legitimate cause for complaining against her present transfer.

20. She would also submit that the transfer order was given effect to and another officer who was transferred in her place, had also joined the post on the same day when the petitioner was relieved in August itself.

21. By way of reply, the learned counsel for the petitioner would submit that normally the managers at her level are posted only in bigger cities like Madurai, Coimbatore, Trichy, Chennai and Salem, etc., where there is an adequate scope for work at her level. As far as the smaller towns are concerned like Tiruvannamalai and other places, it is always being the practice that the Hostels in such location, have been managed by the Local Youth Welfare Officer, as additional incharge. This is the first time that the designated Manager has been posted to a smaller town and that itself is an ample testimony that all is not well with the transfer order. The learned counsel cited two decisions in support of the legal contentions, but, despite the court directions to produce the copies of the orders relied on, the same has not been produced for perusal of this Court. Therefore, the same are not referred to in this order.

22. This Court has considered the submissions of the learned counsel for the petitioner and the learned Additional Advocate General for the respondent authority. In regard to the submission made that the transfer order is passed in violation of G.O.Ms.No.249 dated 21.05.2020, it is to be seen that the transfer order is passed by none other than the Principal Secretary/Member Secretary of the authority. Once the transfer order is passed by the Principal Secretary to the Government, as rightly contended by the learned Additional Advocate General, there cannot be any higher authority than him in the hierarchy of civil administration of the Government. Even otherwise on behalf of the petitioner, it was not conclusively established that there exist any higher competent authority who could have a role in the impugned transfer in terms of G.O.Ms.No.249 dated 21.05.2020. In fact, an attempt has been made by the learned

counsel for the petitioner that in this case, when the Principal Secretary happened to be the regular competent authority, in terms of G.O.Ms.No.249 dated 21.05.2020, the decision of transfer should have been taken at the Chief Secretary level. This Court is not inclined to be persuaded by such off handed submission, since nothing has been produced in material terms to support such legal submission. Therefore, the submission regarding violation of G.O.Ms.No.249 dated 21.05.2020, appears to be without any merits and therefore, the same is rejected.

23. The other submission made by the learned counsel for the petitioner on the aspect of transfer period specified in Government instructions dated 05.08.1998, the policy as disclosed in the instructions, may not be applied across the Board, even in case of any administrative necessity arising outside the transfer period. It is a general policy which required to be observed scrupulously to the extent possible, but, the same cannot be applied in all situations and all the transfer orders issued outside the transfer period cannot be held ipso facto illegal on that ground.

24. Moreover, the files have been produced for perusal of this Court and this Court finds the transfer orders of various officers of the respondent Authority, have been routinely issued outside the transfer period and in that view of the matter, the transfer order issued against the petitioner in August 2020, need not be tested on the touchstone of the Government instruction dated 05.08.1998. In fact, this Court also finds that during the same period, two other officers by separate orders, have been transferred to other places.

25. Even otherwise, this Court is of the view that the general transfer guidelines cannot be taken into consideration as a basis for testing the validity of the transfer, particularly, in respect of Group B Officers. Therefore, this Court finds that the arguments on this aspect, are without any merits and hence, rejected.

26. In regard to malafides attributed to the transfer order on the basis of the sexual harassment complaint given by the colleague of the petitioner and the connected litigation before this Court etc., this Court finds that factually, it is not established by the petitioner that the complaint regarding the sexual harassment was the basis for the issuance of the transfer order. In fact, the files regarding the sexual harassment case and also the deposition of the colleague of the petitioner before the Internal Complaints Committee in a Pen drive form, has been circulated for this Court's consideration. Although this Court was wary of dissipating its precious judicial time on hearing the so called deposition of the victim

of sexual harassment and the supportive role of the petitioner in favour of the victim colleague, as claimed by the petitioner, yet after hearing the lengthy deposition for sometime, this Court did not find any material evidence to hold that the deposition had any nexus to the claim of the petitioner that she being cited as a witness in the complaint, the transfer was inflicted on her vindictively.

27. However, assuming that the petitioner's support to the colleague in the sexual harassment complaint, was a triggering point in passing of the impugned order, but, it is difficult to hold that the transfer order is founded on such fact, as factually, the nexus between the sexual harassment complaint and the transfer of the petitioner could not be established, conclusively. Therefore, the allegation of the factual malafide against the authority, is not established, particularly, against the respondent who passed the impugned order of transfer. This conclusion is also fortified by the reason that the relevant files and documents circulated did not suggest any such consideration by the respondent authority while transferring the petitioner.

28. Be that as it may, leaving aside the issues, which did not find favour with this Court in the above judicial discourse, coming to the aspect of the necessity of transfer of the petitioner under the pretext of administrative requirement, calls for judicial scrutiny with reference to one of the grounds of assailment i.e., malice in law. Looking at the issue from that perspective, this Court has to necessarily examine the impugned transfer, in regard to the necessity of the petitioner to be shunted to a far away place to manage the Hostel, when the Hostel itself has been under lockdown for more than 6 months and has still not re-opened. In consideration of the above fact, this Court finds that there is something amiss with the transfer order issued against the petitioner at this juncture, which raise more questions than answers. When the authority issued an order of transfer in the middle of the academic year, particularly, in this case, when the petitioner being a single woman having two grown up daughters studying in Chennai, unless such transfer order was impelled by compelling administrative reasons, such transfer cannot be considered as one necessitated for administrative reasons or purpose. In this case, there are more than one reason where this Court finds that the transfer may not be in the true interest of advancement of Sports administration, warranting the service of the petitioner at once in Tiruvannamalai in August, during the lockdown period. The explanation of the authority that the Hostel is likely to open in the near future, does not carry enough conviction with this Court for its acceptance.

29. As stated above, firstly, there was no earth shaking urgency in transferring the petitioner in August 2020, when the respondent was aware that the Hostel in Tiruvannamalai has not been functioning at all and closed. Even assuming that the Hostel is likely to open at any time, there is still no necessity to transfer the petitioner, when admittedly that Hostel has been managed additionally by the Local Youth Welfare Officer for all these time. From the file, this Court did not find any material to establish that the services of the petitioner was required urgently to manage the Hostel in Tiruvannamalai.

30. This Court therefore finds substance in the submission made on behalf of the petitioner that when there are vacancies available in Chennai itself in the position held by the petitioner, transferring the petitioner to Tiruvannamalai, more particularly, when the petitioner had come on a request transfer to Chennai and was posted only on 12.09.2019, from her earlier posting in Tirunelveli, was not warranted at all. When she requested for transfer to Chennai, the petitioner cited reason of she being a single parent and having two grown up daughters studying in Chennai. When that was the consideration for conceding to the request of the petitioner and transferring her to Chennai, within a matter of one year, it is quite strange that such consideration has been reversed for no valid reasons, by posting her far away from Chennai.

31. Moreover, it is not in dispute that the persons in the same cadre have been retained in Chennai and have been working for nearly 15 years. However, the explanation of the authority that the petitioner had worked more than seven years in Chennai, cannot be a valid reason for transferring her to Tiruvannamalai. Admittedly, the petitioner has served less than one year in the last posting in Chennai, which posting was on the basis of her personal request and in the absence of change of circumstances, transferring the petitioner from Chennai, is apparently intended to achieve a purpose than what is indicated in the impugned order as the reason for the transfer. As observed above, this Court did not find any supporting materials in the files that the service of the petitioner was required immediately nor it could find any compulsion for the authority to transfer the petitioner brusquely during the height of pandemic crisis. No iota of material is found in the file even remotely justifying the transfer of the petitioner in August 2020.

32. Therefore, this Court has to eventually come to the conclusion that the allegation of malafides and the stated facts may not be established in this case as it is always very difficult for the litigant to establish the malice in fact, in

the action of the authorities. What goes on in the cerebral decision making process of the authority, is beyond the comprehension and discernment of any judicial mind and to conclusively hold that the authority has based and founded his decision in the alleged context, as asserted by the petitioner in the affidavit. Such consideration in the factual realm would only lead to slippery inferences and beyond the pale of judicial certainty. At the same time, on objective consideration, this Court can draw safe inferences on the basis of the entirety of facts and the circumstances in order to fathom as to whether the impugned transfer was passed for administrative reason or for other than the administrative reason as indicated in the order. Malice in fact may not have been conclusively established in this case, but, malice in law appears to have actuated the present order of transfer.

33. In the absence of any administrative requirement or exigencies, any transfer order issued in such situation and terming the same as being issued on the ruse of administrative requirement, may have to ultimately pass the test of judicial review. Merely because the transfer order is couched in such hackneyed, oft repeated and routine administrative terminology, unless the reason set forth in the transfer order when questioned, is established factually to the satisfaction of this Court, a ritualistic and cliched expression "administrative reasons" in the transfer order, cannot be taken at its face value and the relief refused to the affected individuals. In this case, though the petitioner failed in other fronts of attack, ultimately, this Court finds that the transfer of the petitioner is not based on administrative requirement, but, for an extraneous reason and therefore, the transfer order is liable to be set aside only on that ground. As stated above, this Court perused the relevant files and did not discover a modicum of material supporting the respondent's plea of administrative requirement for transferring the petitioner to Tiruvannamalai. It is well within the power of the Court to pierce the veil of the fig leaf behind the transfer order and to hold that the impugned action of the respondent authority stemmed from a colourful exercise of power on his part and hence, liable to be interfered solely on the well established legal premise namely the transfer is hit by malice in law.

34. Having concluded as above, this Court has to see what relief the petitioner herein is entitled to. The petitioner herein has not chosen to implead the Officer who was appointed in her place in Chennai and therefore, this Court is not inclined to set aside the entire order, detrimental to the interest of the other Officer. In the above said circumstances, the transfer order dated 25.08.2020 in proceedings

No.192/AO.1/2020 of the respondent is hereby set aside, insofar as the petitioner is concerned.

35. The respondent is directed to post the petitioner in any of the vacancies in Chennai and if not available, post her in and around Chennai, particularly, on consideration of the petitioner's status as being a single woman having two grown up daughters studying in Chennai.

36. The respondent is directed to pass appropriate orders in this regard, within a period of two weeks from the date of receipt of a copy of this order.

37. This Court trust the respondent shall not take affront that the petitioner is questioning his authority by challenging the transfer order passed by him, as approaching the Constitution Court is a vindication of one's right guaranteed in the Constitution. But, shall consider the grievance of the petitioner graciously as she deserved.

38. With the above direction and observation, this writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed. In view of the final order being passed, the contempt petition is closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

gsk

To
The Principal Secretary/Member Secretary,
Sports Development Authority of Tamil Nadu,
Periyar EVR Road, Nehru Park,
Chennai 600 084.

+1cc to Mr.C.Jagadish, Advocate, S.R.No. 40520

+2cc to Mr.I.Sathish, Advocate, S.R.No. 40659 (05/01/2020)

W.P.No.12252 of 2020 and
W.M.P.No.15026 of 2020
and
Cont.P.No.825 of 2020

BP(CO)
GN(14/12/2020)