



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.03.2020

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.2886 of 2020

and

WMP(MD)Nos.2433 to 2435 of 2020

S.Sivaperumal

... Petitioner

vs.

- 1)The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai-600 004.
 - 2)The Additional Director General of Police(Administration),
Office of the Director General of Police,
Dr.Radhakrishnan Salai, Mylapore, Chennai-600 004.
 - 3)The Additional Director General of Police
(Social Justice and Human Rights),
Office of the Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore,Chennai-600 004.
 - 4)The Commissioner of Police,
Trichy City Police, Trichy.
 - 5)Mr.P.Anbarasan,
Automobile Engineer,
Regional Police Transport Workshop,
Trichy-620 012.
- ... Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the order C.No.001176/NGB2(1)/2020 dated 06.02.2020 passed by the 2nd respondent and the consequential Transfer and Relieving order C.No.A1/65/2020-W.O.No.04/2020 dated 06.02.2020 passed by the 5th respondent and quash the same and consequently, direct the 2nd respondent to post the petitioner in the vacant post of Superintendent existing in the 4th respondent office on humanitarian grounds within a time limit to be fixed by this Hon'ble Court.



For Petitioner : Mr.A.Thirumurthy
For R1 to R4 : Mr.M.Karuppasamy Pandian
Government Advocate

ORDER

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This writ petition has been filed for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the order C.No.001176/NGB2(1)/2020 dated 06.02.2020 passed by the 2nd respondent and the consequential Transfer and Relieving order C.No.A1/65/2020-W.O.No.04/2020 dated 06.02.2020 passed by the 5th respondent and quash the same and consequently, direct the 2nd respondent to post the petitioner in the vacant post of Superintendent existing in the 4th respondent office on humanitarian grounds within a time limit to be fixed by this Court.

2.The petitioner would submit that he was appointed as Junior Assistant on 10.07.1992 on compassionate grounds and he was posted at Special Branch CID Police Office, Chennai. Subsequently, he was promoted as Assistant on 09.10.2002 and posted at the District Police Office, Perambalur and later, he was promoted as Superintendent on 13.03.2013 and posted at Greater Chennai Police Office, Chennai. He suffered heart attack in 2013 and was diagnosed having coronary artery disease (70% Proximal Left Anterior Descending Coronary Artery Disease) and he underwent inpatient treatment. Since he needed intensive heart treatment, he was transferred to the Regional Police Transport Workshop, Trichy (in Tamil Nadu Special Police, I Battalion, Trichy) on 21.10.2016 and working there till date. According to the petitioner, there is only one post of Office Superintendent in the Regional Police Transport Workshop, in which, he is working at present and as he could not apply for leave even for medical treatment, he made applications dated 29.05.2019 and 07.11.2019 for transfer in any vacancy that would arise in the office of the Commissioner of Police, Trichy City, or the District Police Office, Trichy, where more number of post of Office Superintendents are existing and the 5th respondent who is the immediate superior officer has recommended his transfer application and he was awaiting for transfer.

3.The petitioner would further submit that while so, the 5th respondent who has been newly appointed as Automobile Engineer before 10 months, is not well aware of all the rules and procedures and therefore, the instructions issued by the 5th respondent in respect of administration, functioning and execution of the works at the workshop have been inconsonance with the rules and procedures prescribed by the Government and the petitioner



used to say the correct rules and procedure to avoid mismanagement and consequent audit objections and other consequences in future. But the 5th respondent has got personally annoyed by such act of the petitioner, as if he is disobeying his orders due to his long service which according to the petitioner is only a misconception. The petitioner refused to comply with certain instructions of the 5th respondent since they were inconsonance with the prescribed rules and procedures. While so, the petitioner was transferred to the 3rd respondent office by the impugned order dated 06.02.2020 of the 2nd respondent and on the same day, he has been relieved by the 5th respondent. Hence, this writ petition.

4.Learned counsel for the petitioner would state that the transfer order dated 06.02.2020 passed by the 2nd respondent on administrative grounds is deliberately false since there is no ground to transfer the petitioner on any valid reason. He would further contend that the petitioner came to know that due to the annoyance got by the 5th respondent on the petitioner due to his inability to comply with the instructions which are inconsonance with the rules and procedures, the 5th respondent has made a false report against the petitioner which culminated in issuing the impugned transfer order and when there is no one posted to the petitioner's place, the 5th respondent in an arbitrary manner, has passed the reliving order on the same day. Thus, he would state that the order of transfer is punitive in nature, though it is stated as administrative grounds and would pray to quash the same.

5.The respondents 1 to 4 have filed counter affidavit. Learned Government Advocate appearing for the respondents 1 to 4 would contend that there is no report received to the effect that the instructions given by the 5th respondent are inconsonance with the rules and procedure. The 2nd respondent issued a memo to the 5th respondent to take disciplinary action against the petitioner on 23.08.2018 which was found missing in the 5th respondent's office and at that time, the petitioner was the Superintendent in that section and therefore, no disciplinary action was taken against him. He would further state that as per the Chief Office Circular Memo in C.No.11222/NGB.2(1)/2018, dated 14.02.2018, request transfer for other offices within the district is not being practised in the department and since the petitioner was already working in Trichy based office, he could not be transferred to other Trichy based offices. Further, the then Commandant, Tamil Nadu Special Police Battalion, Trichy i/c Automobile Engineer, Regional Police Transport Workshop, Trichy, has forwarded a report to the 2nd respondent stating that the petitioner has falsely claimed TA Bill, discrepancies were found in the entries of earned leave availed by the petitioner and there was non co-operation by the petitioner with the other staff.



Based on the report, the then Commandant, Tamil Nadu Special Police Battalion, Trichy, was instructed to initiate disciplinary action against the petitioner and therefore, the petitioner has been transferred on administrative reasons for his indiscipline behaviour. Thus, he would pray that the interference of this Court is not necessary.

6. Heard the learned counsel for the petitioner as well as the respondents 1 to 4.

7. On the last occasion, when the matter came up for hearing, going through the counter affidavit, this Court, finding that the impugned order of transfer is a punitive transfer, had directed the learned Government Advocate for the official respondents to find out whether there is any vacancy in and around Trichy District, as the petitioner was even willing to work in the nearby places in Trichy District.

8. Today, the learned Government Advocate would produce the communication of the Additional Director General of Police, (Administration), Chennai, in Rc.No.01176/NGB.2(1)/2020, dated 13.03.2020, addressed to him, wherein, it has been stated that many persons who had sought for transfer, are kept under the waiting list and there are almost 21 Superintendents in the request transfer waiting list for Trichy based offices from the year 2018 and it is not possible to post the petitioner in and around the city of Trichy, by overlooking all the 21 Superintendents in the request transfer waiting list and therefore, the petitioner could not be accommodated.

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.



10. Accordingly, the order in C.No.001176/NGB2(1)/2020 dated 06.02.2020 passed by the 2nd respondent and the consequential Transfer and Relieving order C.No.A1/65/2020-W.O.No.04/2020 dated 06.02.2020 passed by the 5th respondent are quashed and the respondents 1 to 4 are directed to post the petitioner in his original place of duty and shall pass such positing orders forthwith and serve the same to the petitioner immediately.

With the above direction, the writ petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar (CS)

To

- 1) The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai-600 004.
- 2) The Additional Director General of Police (Administration),
Office of the Director General of Police,
Dr.Radhakrishnan Salai, Mylapore, Chennai-600 004.
- 3) The Additional Director General of Police
(Social Justice and Human Rights),
Office of the Director General of Police,
Dr.Radhakrishnan Salai, Mylapore, Chennai-600 004.
- 4) The Commissioner of Police,
Trichy City Police, Trichy.

+1 CC to Mr.A.THIRUMURTHY, Advocate (SR-11985[F] dated 17/03/2020)
+1 CC to SPECIAL GOVERNMENT PLEADER (SR-12007[F] dated
17/03/2020)

ORDER MADE IN
W.P (MD) No.2886 of 2020
DATED : 16.03.2020

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AE SAR-I (18.03.2020) 5P 7C