



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.09.2020

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

W.A. (MD)No.466 of 2020

and

C.M.P (MD) .Nos.3861 of 2020

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.

... Appellants/ Respondents 1 to 4

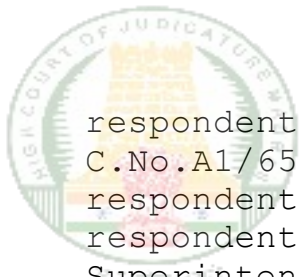
Vs.

1. S.S.Sivaperumal ... 1st Respondent/Writ petitioner
2. Mr.P.Anbarasan ... 2nd Respondent/5th Respondent

Prayer: Writ Appeal filed under Clause 15 of Letters Patent,
against the order of this Court made in W.P.(MD).No.2886 of 2020
dated 16.03.2020.

PRAYER IN W.P.(MD).No.2886 of 2020:

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 Appellants : Mr.M.Muthu Geethaiyan
Special Government Pleader.

For Respondents : Mr.M.Valinayagam,
Senior Counsel, for
Mr.D.Nallathambi for R1

No Appearance for R2

J U D G M E N T

(Judgment of the Court was delivered by **M.SATHYANARAYANAN, J.**)

The official respondents in W.P.(MD).No.2886 of 2020, are the appellants.

2. The first respondent/writ petitioner challenged the impugned order of transfer and relieving orders dated 06.02.2020, passed by the respondents 2 and 5, respectively and the consequential directions for his retention at Trichy, in the vacant post of Superintendent, which exists in the Office of the fourth respondent on humanitarian grounds.

3. The Writ petition after contest, came to be allowed vide impugned order dated 16.03.2020 and hence, this Writ Appeal.

4. The first respondent/Writ petitioner joined the service as a Junior Assistant on 10.07.1992, on compassionate ground and got his promotion as Assistant on 09.10.2002 and he was posted at the District Police Office, Perambalur and thereafter, got a promotion as Superintendent on 13.03.2013 and posted at Greater Chennai Police Office, Chennai. The first respondent/Writ petitioner had suffered a heart attack in the year 2013 and undergone the procedure and in order to facilitate his heart treatment, he was transferred to Regional Police Transport Workshop, Trichy in Tamil Nadu Special Police, I Battalion, Trichy on 21.10.2016.

5. It is a case of the first respondent/Writ petitioner that he has rendered sincere and unblemished service with utmost satisfaction to his superiors and he was also awarded with 'Certificate of Commemoration' with a cash award of Rs.2,000/- for



completion of 25 years of service. The first respondent/Writ petitioner also submitted applications dated 29.05.2019 and 07.11.2019 to the second appellant/second respondent, to accommodate him in any vacancy that may arise in the Office of the Commissioner of Police, Trichy City and the fifth respondent, since his immediate superior of the Writ petitioner has also made a positive endorsement.

6. It is a specific case of the first respondent/Writ petitioner that the fifth respondent was a freshly appointed Officer and assumed charge and he was not well-versed with the office procedures and therefore, he used to commit mistakes and the first respondent/Writ petitioner was used to rectify the same and as such, he developed personal animosity as if the first respondent/Writ petitioner was deserving his Office. The first respondent/Writ petitioner due to his ill health, also applied for medical leave for a week from 07.02.2020, but to his shock and surprise, vide proceedings of the second respondent dated 06.02.2020, he was transferred to the third respondent office at Chennai and he was also relieved on the same day, vide proceedings of the fifth respondent.

7. It is the stand of the fifth respondent that though the impugned order of transfer dated 06.02.2020, passed by the second appellant is for the administrative grounds for the reason it is really a punitive transfer, at the instance of the fifth respondent. It is also pleaded by the first respondent/Writ petitioner that his spouse is employed at Trichy and his daughter is studying Xth standard in the School at Trichy and he cannot be transferred to Chennai during the middle of academic year affecting her education, care and security in violation of the G.O.Ms.No.10, Personnel and Administrative Reforms department, dated 07.01.1994, as well as Guidelines for transfer of Ministerial Staff dated 14.02.2018 and hence, prays for interference.

8. The Writ petition was entertained and the second respondent who filed the counter affidavit and apart from denying the allegations, took a stand that though the second respondent has issued a memo to the fifth respondent to take disciplinary action against the first respondent/Writ petitioner on 23.08.2018 and however, it was found missing and the first respondent/Writ petitioner was the dealing Superintendent in that Section and despite that, no disciplinary action has been initiated against the Writ petitioner and insofar as the allegations of *malafide* and punitive transfer is concerned, it is the stand of the second respondent in paragraph Nos.15, 16 and 18 of the counter affidavit that the administration took a call taking into account his indiscipline behaviour and therefore in the exigency of



administration, he has been transferred to Chennai.

9. The second respondent also took a stand, insofar as his request for continuous accommodation at Trichy, there are 21 Superintendents also made a request for their accommodation at Trichy and as such, the request cannot be considered positively and prays for dismissal of the Writ petition.

10. The learned Single Judge after taken into consideration of the rival submissions and on perusal of the materials placed and also in the light of the judgment rendered by the Hon'ble Supreme Court reported in [(2009) 2 SCC 592], **Somesh Tiwari v. Union of India & Ors.**, which laid down the preposition that if there is malice and the employee is transferred on the basis of non-existent facts and if the same is punitive and on the facts of this case, found that the impugned order has been passed by the second appellant is punitive, only to intimidate the first respondent/Writ petitioner and accordingly, quashed the order of transfer as well as the consequential relieving order with direction, directing the appellants/respondents 1 to 4 to post the first respondent/Writ petitioner in his original place of duty.

11. The learned Special Government Pleader appearing for the appellants/respondents has drawn the attention of this Court to the counter affidavit of the second appellant/second respondent and he would submit that though the fifth respondent was directed to issue memo to the first respondent/Writ petitioner on 23.08.2018, it was found missing and the first respondent/Writ petitioner was the dealing Superintendent in that Section and despite that, no disciplinary action has been initiated. The second appellant/second respondent being in charge of administration, has also taken note of his indiscipline behaviour and in order to ensure smooth functioning of the administration, took a fair and conscious decision to transfer the first respondent/Writ petitioner to Chennai. It is also pointed out by the learned Special Government Pleader that the first respondent/Writ petitioner had also worked at Chennai prior to his promotion and transfer to Trichy and also in a nearby district at Perambalur.

12. Insofar as the plea made by the first respondent/Writ petitioner as to the employment of his spouse at Trichy and that her daughter is undergoing Xth standard examination, the same cannot be a ground for the reason that, there are very many spouses of the employees may be in similar position and if it is taken into consideration, it may not be impossible to transfer anybody and it is only a guiding factor and not a determinative one and in the light of the well settled legal position as to the interest of the services with the order of transfer passed by the



administration, prays for allowing of the Writ Appeal and setting aside the impugned order passed in the Writ petition.

13. Mr.M.Muthugeethaiyan, learned Special Government Pleader appearing for the appellants has also placed reliance upon the unreported decision vide order dated 31.01.2020, passed in W.P.No.2282 of 2020, **C.Thangaraj v. The Registrar, Central Administrative Tribunal**, in support of his submission.

14. Per contra, Mr.Vallinayagam, learned Senior Counsel, assisted by Mr.D.Nallathambi, learned Counsel appearing for the first respondent/Writ petitioner would submit that, though the impugned order of transfer is worded cleverly, the real reason has came out in paragraph Nos.15, 16 and 18 of the counter affidavits filed by the second appellant/second respondent and it is a clear case of punitive transfer and the learned Single Judge taken note of the well settled legal position, enunciated in the judgment reported in [(2009) 2 SCC 592] cited supra, has rightly interfered with the order of transfer.

15. It is also pleaded by the learned Senior Counsel appearing for the first respondent/Writ petitioner that the first respondent/Writ petitioner is a heart patient and he is taking treatment at Moorthys Hospital, at Trichy and that apart, his wife is also employed at Trichy and his daughter slated to join in Higher Secondary first year School at Trichy and if he transferred out of Trichy at this crucial juncture, not only his health is likely to be deteriorated but his family would also suffer and hence, prayed for mercy.

16. This Court has carefully considered the rival submissions and also perused the materials placed before it.

17. The impugned order of transfer passed by the second respondent/second appellant reads that he has transferred on administrative ground. In paragraph No.9 of the counter affidavit filed by the second appellant/second respondent, it is averred that he directed issuance of memo to the fifth respondent to take disciplinary action against the first respondent/Writ petitioner on 23.08.2018 and however, the said memo was found missing and though the first respondent/Writ petitioner was the dealing Superintendent in that Section, no disciplinary action has been taken against him.

18. In paragraph Nos.15, 16 and 18 of the said counter affidavit, the second appellant/second respondent took a stand that the administrative reason for effecting the transfer of the first respondent/Writ petitioner is with regard to the ~~conduct of the first respondent~~ and according to the learned Senior Counsel



appearing for the first respondent/Writ petitioner, on account of the said reason, the transfer is nothing but punitive one and therefore, the said order has been rightly set aside by the learned Single Judge, while allowing the Writ petition.

19. The Hon'ble Supreme Court of India, in the decision reported in [2011 (12) SCC 137], **The Registrar, Madras High Court v. R.Perachi and Others**, has considered the similar issue. The facts of the case would disclose that the respondent was working as Sheristadar category I, in the Court of Principal District Judge, Thoothukudi and he was holding additional charge of the post of Personal Assistant to the District Judge, Thoothukudi and vide order of the Principal District Judge, Thoothukudi dated 19.09.2006, on behalf of the High Court was transferred outside the District on administrative grounds and the same was put to challenge before the High Court on jurisdiction. A Division Bench of this Court had interfered with the order of transfer, on account of the lack of jurisdiction and that it is also a punitive one and he is likely to lose his seniority as well as his pay.

20. The Registrar General of High Court of Madras, aggrieved by the quashing of the impugned order of transfer by the Division Bench of this Court, filed the Special Leave Petition and it was entertained and converted into Civil Appeal No.7936 of 2011. The Hon'ble Supreme Court of India, had elaborately dealt with the factual aspects as well as the earlier decisions with regard to the challenge made to the order of transfer on the account of *malafide* and punishment and allowed the Civil Appeal filed by the High Court of Madras. It is relevant to extract the following paragraph Nos.31, 33 and 35:-

"31. Noting that the respondent No. 1 was transferred on account of an anonymous complaint the Division Bench had referred to a few judgments wherein this Court has emphasized the responsibility of the Higher Judiciary to guard the judicial officers in the Subordinate Courts against unjustified complaints. *Ishwar Chand Jain (supra)* was a case where the Advocates who were not satisfied with the orders passed by the Appellant Judicial Officer had made unjustified complaints against him. This Court had set-aside the order of termination of services of the appellant which was based on these complaints, and in that context observed that if complaints are entertained on trifling matters relating to judicial orders which may have been upheld by the High Court on the judicial side, no judicial officer would feel protected. In *K.P. Tiwari (supra)* the High Court had made disparaging remarks, against the appellant, a



Judicial Officer, while recalling an unjustified bail order granted by him. This Court had deprecated attributing of improper motives to the subordinate officers. In Ramesh Chandra Singh (supra) disciplinary proceedings were initiated by the High Court against the Appellant Judicial Officer for a bail order which order could not be said to be unjustified. The Disciplinary action was disapproved by this Court and the matter was remitted to the Full Court for its consideration.

33. The Division Bench also erred in ignoring that the first respondent had been transferred under a common order alongwith two other employees i.e. S. Kuttiapa Esakki, and one T.C. Shankar. The Writ Petitions filed by them had been dismissed. Besides, a judgment of a co-ordinate bench in A.K. Vasudevan was cited before the Division Bench wherein the facts were almost identical. It was therefore, not expected of the Division Bench to take a different view from the point of view of judicial discipline. To put it in the words of this Court in Sri Venkateswara Rice Ginning & Groundnut Oil Mill Vs. State of Andhra Pradesh reported in [AIR 1972 SC 51], 'it is regrettable that the learned Judges who decided the latter case overlooked the fact that they were bound by the earlier decision' (para 9 of the report in AIR).

35. 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.

21. A Division Bench of this Court, to which one of us (MSNJ) was party, has also considered the similar issue in W.P.No.2282 of 2020 (cited supra) and upheld the order passed by the Central Administrative Tribunal by relying upon the above cited decision of the Hon'ble Supreme Court of India.

22. In the considered opinion of this Court, the wheels of the administration should run smoothly and the concerned Administrative Head is also under obligation to ensure that the concerned officials performed their duties diligently and properly. It is the specific stand of the second appellant/second



respondent that in order to ensure smooth running of the administration, in the light of the fact of having noted indiscipline behaviour on the part of the first respondent/Writ petitioner, a fair decision of transfer was taken to transferring him out of Trichy to Chennai.

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23. It is also to be noted at this juncture, that the first respondent/Writ petitioner who was accommodated as a Junior Assistant by way of compassionate ground appointment, served in the capacity at Chennai also and thereafter, on his promotion as Assistant, got posted at District Police Office, Perambalur, which is a nearby district to Trichy and on his further promotion as Superintendent, was once again accommodated at Trichy. Thereafter, he was transferred to Trichy on 21.10.2016 and he has completed three years of service also.

24. Once a person joins in the Government job, he is expected to serve throughout Tamil Nadu and he cannot insist that he should be accommodated in a particular place. No doubt, the wife of the first respondent/Writ petitioner is employed at Trichy and their daughter at the time of transfer was studying in Xth standard and if the said fact has been taken into consideration for his retention at Trichy, there may be very many employees who are similarly placed like that of the first respondent/Writ petitioner and in that event, they cannot be transferred, which in turn, leads to difficulty in overseeing the Administration.

25. In the considered opinion of this Court, the impugned order of transfer as well as the consequential relieving order passed against the first respondent/Writ petitioner cannot be faulted with, in the light of the above cited reasons.

26. The impugned order bristles with error apparent on the face of the record and therefore, it warrants interference. In the result, **this Writ Appeal is allowed** and the impugned order passed in the Writ petition in W.P.(MD).No.2886 of 2020, dated 16.03.2020, is set aside and consequently, Writ petition is dismissed. However, in the circumstances of the case, there shall be no order as to costs. Consequently, the connected civil miscellaneous petition is closed.

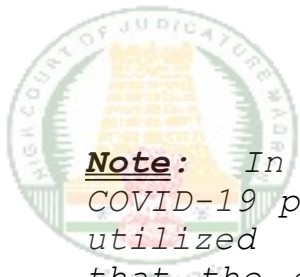
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Assistant Registrar(CS-I)

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Sub Assistant Registrar(CS)



Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

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 M/s.D. NALLATHAMBI, Advocate (SR-16160
[F] dated 07/09/2020)

W.A. (MD) No. 466 of 2020
and
C.M.P (MD) .No. 3861 of 2020
04.09.2020

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