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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.09.2021

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THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA  
AND  
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.A.NO.7 OF 2021

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

.. Appellant/Respondent

..Vs..

Dr.A.Jayachitra

.. Respondent/Petitioner

PRAYER :

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 11.12.2020 passed in W.P.No.12252 of 2020.

W.P.No.12252 of 2020:-

Writ Petition filed under Article 226 of the Constitution of India 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 in so far as the petitioner is concerned.

For Appellant : Ms.Narmadha Sampath,  
for Mr.I.Sathish

For Respondents: Mr.V.Vijayshankar

JUDGMENT

PUSHPA SATHYANARAYANA, J.

Laying challenge to the order of the learned Single Judge in allowing W.P.No.12252 of 2020, the Sports Development Authority of Tamil Nadu has instituted this appeal.



2. By virtue of the impugned order, the transfer order passed by the appellant dated 25.08.2020 in Proceedings No.192/AO.1/2020, was quashed by the writ Court insofar as the writ petitioner/respondent herein is concerned.

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3. The respondent is a first woman in Fencing coaching in the State of Tamil Nadu and first person in India to be conferred with a Doctorate in sports coaching in the said discipline. She is a recipient of cash award from the Hon'ble Chief Minister of the State for having imparted coaching to the Gold Medalists in the National Games. She obtained several Diplomas and certificates in the field of sports and coaching. She has many research articles and papers to her credit, besides participation in many international seminars and conferences. She joined the appellant authority as Fencing Coach on 09.05.2012, after serving in an aided school for a few years. She was promoted to the post of District Sports and Youth Welfare Officer on 09.02.2019 and posted at Tirunelveli. On 12.09.2019, she was transferred to the post of Manager-IV in the appellant authority to look after the Amma Youth Sports Scheme. Before even completing an year, she was transferred to the Women Sports Hostel, Tiruvannamalai on 25.08.2020 and she was relieved on 03.09.2020. The only reason assigned for such transfer is "administrative reasons". Hence, she questioned the same in W.P.No.12252 of 2020. When the said writ petition came up for hearing on 07.09.2020, this Court stayed the said transfer order and ordered notice to the appellant/the respondent therein.

3.1. Since the interim order of stay was not complied with, she also filed Cont.P.No.825 of 2020.

3.2. The Writ Court heard both the petitions together and passed the impugned common order setting aside the order of transfer impugned therein and closing the contempt petition.

3.3. Aggrieved by the said order, the appellant filed this intra-court appeal.

4. The learned counsel for the writ petitioner/the respondent herein contended before the Writ Court that the order of transfer of the writ petitioner is not based on administrative reasons, but for achieving a collateral purpose. It was contended that one Ms.Geetha, who is a colleague of the writ petitioner, was sexually harassed by their male colleague and on the guidance of the writ petitioner, she lodged a complaint against the erring official. Though an Internal Complaints Committee was constituted, as mandated under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (in short, "POSH Act"), since the said Committee had conducted the proceedings in a partisan manner,



the said Geetha filed a writ petition and obtained an interim order of status quo on 19.08.2020. According to the learned counsel for the writ petitioner, fearing that the respondent herein, who was the writ petitioner, may depose against the errant staff, she was threatened not to do so and she having refused to oblige for the coercion, the transfer order was inflicted upon her. The learned counsel also relied upon the G.O.Ms.No.249, dated 21.05.2020 and contended that against the guidelines stated therein, the order of transfer was issued. It was also the contention of the learned counsel that when the officers of the same cadre are permitted to continue in Chennai for more than 15 years, her transfer to far-off place, that too, within an year of her request transfer from Tirunelveli to Chennai, after serving only around seven months at Chennai, is nothing, but a vindictive action. It was also the contention of the learned counsel for the writ petitioner that the request for transfer from Tirunelveli was made by the writ petitioner on the sole ground that she is a single woman now and she has to look after her two grown up daughters, who are studying in Chennai, one Medicine and the other school final.

5. The learned counsel for the Sports Development Authority of Tamil Nadu (SDAT) contended that the order of transfer was issued to the writ petitioner to accommodate an experienced coach at the Women's Hostel in Tiruvannamalai, wherein around 120 inmates are to be imparted training in various disciplines but no regular officer is posted recently. The learned counsel denied the allegation that the transfer is on account of the involvement of the writ petitioner in guiding Ms.Geetha in the sexual harassment complaint. On the other hand, it was her submission that the writ petitioner, being Group B Officer, should be ready to serve anywhere in the State, but she had only thrown aspersions on the appellant without any material and basis. It was also submitted that the writ petitioner was relieved from the post and the next officer also joined duty and therefore, she sought to sustain the transfer order.

6. After considering the rival submissions, the writ Court set aside the order impugned therein and issued consequential directions. Though the writ petitioner instituted contempt proceedings for non-compliance of the interim order, the same was closed, in view of the fact that the transfer order itself is quashed. Thus, the appellant is before this Bench in this appeal.

7. When this appeal was taken up for hearing on 02.08.2021, it was stated that the writ petitioner was accommodated in one of the vacant posts in Nehru Stadium, vide order dated 23.07.2021, which arose on account of leave vacancy of an another officer. Therefore, learned counsel for the



appellant was directed to produce the copy of the transfer order. Subsequently, the learned counsel produced the proceedings of the appellant dated 05.08.2021 posting the writ petitioner in a regular vacancy as Stadium Officer, Nehru Park Sports Complex, Chennai, and the operative portion of the said order reads as follows :

The following transfer and posting order is issued.

2) Thiru N.Nagarathinam who was holding the post of Stadium Officer, Nehru Park Sports Complex and additional charge of the post of District Sports and Youth Welfare Office, Chennai District and also incharge of Boys Sports Hostel for Cricket, Pudur, Chennai, had proceeded on Medical Leave for three weeks from 12.07.2021.

3) Subsequently, Tmt.A. Jayachitra, former Manager-IV, SDAT Head Office, Chennai, was posted as Stadium Officer, Nehru Park Sports Complex, Chennai vide reference second cited.

4) Since Thiru N. Nagarathinam had joined duty on 2.8.2021 after completion of Unearned Leave on Medical Certificate vide reference third cited, he is posted as District Sports and Youth Welfare Officer, Chennai vide Tr. G. Premkumar, holding additional charge.

5) He will also be incharge of Boys Sports Hostel for Cricket, Pudur vice Thiru M.Senthil holding additional charge.

6) The date of relief and joining of the officials in the respective places shall be informed to the Head Office promptly."

8. Heard the learned counsel on either side and perused the materials placed before this Court.

9. It is true that the transfer is an exigency of service and while dealing with the petition questioning transfer, the principle of restraint will come into play before the judicial fora. However, if the order of transfer was an act of unfair treatment and is vitiated by malafides, the exception to this rule could be carved out and such transfer order has to be interfered with.



10. In a recent judgment, the Hon'ble Supreme Court while dealing with the transfer of a Bank Officer, who was also a victim of sexual harassment, reiterated this position. In this regard, it is apposite to refer to the judgment in Punjab and Sind Bank and Others V. Durgesh Kuwar, 2020 SCC OnLine SC 774, wherein, it has been held as follows :

"17. We must begin our analysis of the rival submissions by advertng to the settled principle that transfer is an exigency of service. An employee cannot have a choice of postings. Administrative circulars and guidelines are indicators of the manner in which the transfer policy has to be implemented. However, an administrative circular may not in itself confer a vested right which can be enforceable by a writ of mandamus. Unless an order of transfer is established to be malafide or contrary to a statutory provision or has been issued by an authority not competent to order transfer, the Court in exercise of judicial review would not be inclined to interfere. These principles emerge from the judgments which have been relied upon by the appellants in support of their submissions and to which we have already made a reference above. There can be no dispute about the position in law."

11. The learned counsel for the appellant placed reliance on the decision of the Hon'ble Supreme Court in Mohd. Masood Ahmad V. State of U.P., (2007) 8 SCC 150, to contend that the instant transfer order ought not to have been interfered with by the writ Court in exercise of its discretionary jurisdiction under Article 226 of the Constitution. In the said judgment, relying upon a catena of earlier decisions, the Hon'ble Supreme Court held as follows :

"4. .... Since the petitioner was on a transferable post, in our opinion, the High Court has rightly dismissed the writ petition since transfer is an exigency of service and is an administrative decision. Interference by the courts with transfer orders should only be in very rare cases. As repeatedly held in several decisions, transfer is an exigency of service vide B. Varadha Rao v. State of Karnataka (1986) 4 SCC 131, Shilpi Bose v. State of Bihar 1991 Supp (2) SCC 659, Union of India v. N.P. Thomas AIR 1993 SC 1605, Union of India v. S.L. Abbas (1993) 4 SCC 357.

5. In State of Punjab v. Joginder Singh Dhatt, AIR 1993 SC 2486, this Court observed :



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"3. We have heard learned counsel for the parties. This Court has time and again expressed its disapproval of the courts below interfering with the order of transfer of public servant from one place to another. It is entirely for the employer to decide when, where and at what point of time a public servant is transferred from his present posting. Ordinarily the courts have no jurisdiction to interfere with the order of transfer. The High Court grossly erred in quashing the order of transfer of the respondent from Hoshiarpur to Sangrur. The High Court was not justified in extending its jurisdiction under Article 226 of the Constitution of India in a matter where, on the face of it, no injustice was caused."

6. In *Abani Kanta Ray v. State of Orissa*, 1995 Supp (4) SCC 169, this Court observed :

"10. It is settled law that a transfer which is an incident of service is not to be interfered with by the courts unless it is shown to be clearly arbitrary or vitiated by mala fides or infraction of any professed norm or principle governing the transfer. (See *N.K. Singh v. Union of India* (1994) 6 SCC 98."

7. The scope of judicial review of transfer under Article 226 of the Constitution of India has been settled by the Supreme Court in *Rajendra Roy v. Union of India*, (1993) 1 SCC 148, *National Hydroelectric Power Corpn. Ltd. v. Shri Bhagwan* (2001) 8 SCC 574, *State Bank of India v. Anjan Sanyal* (2001) 5 SCC 508. Following the aforesaid principles laid down by the Supreme Court, the Allahabad High Court in *Vijay Pal Singh v. State of U.P.* (1997) 3 ESC 1668 and *Onkar Nath Tiwari v. Chief Engineer, Minor Irrigation Deptt.* (1997) 3 ESC 1866 has held that the principle of law laid down in the aforesaid decisions is that an order of transfer is a part of the service conditions of an employee which should not be interfered with ordinarily by a court of law in exercise of its discretionary jurisdiction under Article 226 unless the court finds that either the order is mala fide or that the service rules prohibit such transfer, or that the authorities who issued the orders, were not competent to pass the orders."



12. On the other hand, learned counsel for the respondent relied upon the judgment of the Hon'ble Apex Court in Ravi Yashwant Bhoir V. District Collector, Raigad (2012) 4 SCC 407, to buttress the submission that the impugned order of transfer is an outcome of colourable exercise of power and sought to sustain the interference with the same by the writ Court. The Hon'ble Supreme Court in the said judgment held as follows :

"47. This Court has consistently held that the State is under an obligation to act fairly without ill will or malice in fact or in law. Where malice is attributed to the State, it can never be a case of personal ill will or spite on the part of the State. "Legal malice" or "malice in law" means something done without lawful excuse. It is a deliberate act in disregard to the rights of others. It is an act which is taken with an oblique or indirect object. It is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite.

48. Mala fide exercise of power does not imply any moral turpitude. It means exercise of statutory power for "purposes foreign to those for which it is in law intended". It means conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others, where intent is manifested by its injurious acts. Passing an order for unauthorised purpose constitutes malice in law. (See ADM, Jabalpur v. Shivakant Shukla (1976) 2 SCC 521, Union of India v. V. Ramakrishnan (2005) 8 SCC 394 and Kalabharati Advertising v. Hemant Vimalnath Narichania (2010) 9 SCC 437."

13. There is no quarrel qua the aforementioned propositions. Be that as it may, the undisputed fact remains that the writ petitioner said to have guided one Ms.Geetha to lodge the sexual harassment complaint against the errant officials. The enquiry on the said complaint is surrounded with certain unforeseen circumstances leading to the filing of the writ petition before this Court. The appellant claimed that the writ petitioner herein was not arrayed as witness in the said proceedings and hence, her transfer cannot be linked with the sexual harassment complaint. Even assuming that the appellant has no intention to summon the writ petitioner /respondent herein to be a witness in the sexual harassment complaint of Ms.Geetha, Ms.Geetha may choose to examine the writ petitioner / respondent. In such an event, in terms of Section 19 of the POSH Act, it is the duty of the employer to assist in securing the attendance of witnesses



before the Internal Committee or the Local Committee, as the case may be. The said provision reads as follows:

"19. Duties of employer.- Every employer shall-  
.....

(e) assist in securing the attendance of respondent and witnesses before the Internal Committee or the Local Committee, as the case may be;"

14. This Court is well aware of the fact that the presumption cannot be allowed to substitute legal or factual position. Still, the writ petitioner should be allowed to assist Ms.Geetha, who fights against the sexual harassment complaint. We need not delve upon this aspect, as this is the domain of the Committee constituted under the Statute. We would only say that the appellant, being instrumentality of the State, should behave like a model employer and it should give protection to the victim and the witness in a complaint of this nature.

15. Besides the above, as has been pleaded before the writ Court as well as before us, the writ petitioner / respondent is a single woman and she is taking care of two grown up daughters, who are studying Medicine and school final respectively in Chennai. Applying the guidelines governing transfer of Government servants, the appellant could have considered her retention at Chennai. As mentioned supra, since the respondent has already been posted as Stadium Officer, Nehru Park Sports Complex, Chennai, vide order dated 05.08.2021, the same need not be disturbed.

16. For the foregoing reasons, without throwing aspersions on any of the officials and though it was contended that there were other officials, who are serving in Chennai for longer years than that of the writ petitioner, without delving into that, we are of the view that ends of justice would be served, if the writ petitioner / respondent is allowed to continue in Chennai, for the present.

17. Accordingly, the appeal of the SDAT is dismissed, affirming the order of the writ Court. However, there is no order as to costs.

Sd/-  
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

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

+1cc to Mr.V.Vijayshankar, Advocate, S.R.No.45667

+1cc to Mr.I.Sathish, Advocate, S.R.No.45602

W.A.No.7 of 2021

BS (CO)  
CS/22/09/2021