

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	PRONOUNCED ON
01.03.2021	30.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.NO.4408 OF 2021
AND W.M.P.NO.5007 OF 2021

G.Srinivasan

...Petitioner

-vs-

1.The Additional Chief Secretary /
Commissioner of Revenue Administration and
Disaster Management,
Chepauk, Chennai-5.

2.The Collector,
Salem District.

3.The Collector,
Thirupattur.

4.The Director
Vigilance and Anti Corruption Department,
Salem.

...Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records relating to the first respondent vide Proc.No.Ser.IV(1)/894/2021 dated 29.01.2021 and to quash the same.

For Petitioner : Mr.S.Vijayakumar

For Respondents: Mr.J.Pothiraj

Spl. Govt. Pleader

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O R D E R

The Writ Petition has been filed, challenging the order of the 1st respondent passed in Proc.No.Ser.IV(1)/894/2021 dated 29.01.2021, in and by which the petitioner was transferred to Tirupattur District Revenue Unit on administrative reasons.

2. It was the case of the petitioner that he was appointed as Revenue Assistant on 04.01.2013 and at present, he has been working as Senior Revenue Inspector (Srilankan Refugee Camp), Omalur Taluk, Salem District. The petitioner was charged with a

Criminal Case, which is pending in Spl.C.C.No.3 of 2015 on the file of Special Judge for Trial of cases under Prevention of Corruption Act, Salem and the same was posted for argument after examination of 29 witnesses. It was further case of the petitioner that while so, the 1st respondent, all of a sudden, transferred him from Salem District to Tirupattur District, with a direction to post him in a non sensitive post and the impugned order of transfer, which was issued without application of mind in pursuance of the communication received from the 4th respondent dated 29.12.2020, is arbitrary in nature and whimsical.

2.1. It was also the case of the petitioner that when the criminal case is pending for argument, there is no necessity to pass the impugned order of transfer in a hasty manner, on the specific reason that there is every possibility of the petitioner tampering with the witnesses. The transfer order was passed on the basis of mere assumption, which is nothing but victimization of the petitioner and therefore, this Court has to interfere with the impugned order and the same is liable to be quashed.

3. Learned Special Government Pleader appearing for the respondents contended that the petitioner was involved in a criminal case of bribe and he was transferred to a far off place and instead of suspending him and paying the subsistence allowance from the exchequer money, he was ordered to be posted in a non sensitive post on administrative reason as per the principle laid down by the Hon'ble Supreme Court in the case of Ajay Kumar Choudhary vs. Union of India through its Secretary and another, reported in 2015 (7) SCC 291 and this Court. He further contended that in case he is allowed to continue in the same place, there is a chance of threatening the witnesses by misuse of his power and as a result, the interest of justice would be defeated. Thus, it was vehemently opposed as to the grant of relief prayed for by the petitioner in this Writ Petition.

4. Heard the learned counsel on either side and perused the material documents available on record.

5. A careful scrutiny of the entire facts discloses that the petitioner is a Senior Revenue Inspector and a criminal case is pending against him in Spl.C.C.No.3 of 2015 before the Special Judge for Trial of cases under Prevention of Corruption Act, Salem. In the meanwhile, the petitioner has been served with an order of transfer dated 29.01.2021, thereby transferring him from Salem to Tirupattur District due to administrative reasons.

6. The petitioner has stated that he has been facing criminal charges and a charge sheet was also laid in the said criminal case and the matter is pending for trial. The

petitioner, by drawing the attention of this Court to Page No.36 of the typeset of papers, submitted that when the case is posted for argument, there is no need to transfer him at all.

7. Per contra, the respondents contended that it is only an administrative transfer, which cannot be questioned. Merely because the criminal case is pending, it does not mean that the petitioner cannot be transferred on administrative reasons and the pendency of criminal case is not a bar for the respondents to transfer the petitioner.

8. Learned counsel for the petitioner submitted that if the transfer is effected on the basis of pending criminal, as stated in the subject column of the impugned order, it will certainly cast a stigma on the service condition of the petitioner and in support of his submission, he has relied upon a decision of this Court in the cases of S.Sevugan vs. The Chief Educational Officer, Virudhunagar District and another, reported in 2006 (2) CTC 468 and J.Alex Dorai Vetha Sam vs. District Educational Officer and others, reported in (2010) 6 MLJ 63, in which, this Court had set aside the order of transfer, since the said transfer order was issued on the basis of a complaint.

9. The reference made with regard to the criminal case against the petitioner in the subject column of the impugned order is only for the purpose of indication of the case that is pending and not otherwise. Even assuming for the sake of argument that if it is taken that the order of transfer is a punishment and not on administrative reason, pending trial includes passing of final orders. It is true that criminal case is pending against the petitioner and he can be transferred to a non sensitive post. When DVAC case is pending against the petitioner, there is nothing wrong in transferring and posting him in a far off place in a non sensitive post. Mere description of the pendency of the criminal case in the subject cannot be said to be arbitrary, biased or illegal. It is pertinent to mention here that if a person is charged with misconduct, then the said person has got to be transferred or shifted and in that case, it will be construed as a stigma, is an ancient theory. Under some pretext or the other, orders are obtained against the order of transfer, with which, employees attempt to serve for decades in the same place. It is appropriate to state here that if a routine transfer takes place after a period of three years, de hors the interim order passed by this Court, the person can be disturbed and has to be transferred on regular basis. If the person refuses to go on transfer, then he/she will not be entitled to any wages and is liable even for facing dismissal order and the order of transfer after a period of three years will never be construed as disobedience of the orders of this Court.

10. The Hon'ble Supreme Court in the case of Ajay Kumar Choudhary vs. Union of India through its Secretary and another, reported in 2015 (3) CTC 119, held as under:

"14. We, therefore, direct that the currency of a Suspension Order should not extend beyond three months if within this period the Memorandum of Charges/Chargesheet is not served on the delinquent officer/employee; if the Memorandum of Charges/Chargesheet is served a reasoned order must be passed for the extension of the suspension. As in the case in hand, the Government is free to transfer the concerned person to any Department in any of its offices within or outside the State so as to sever any local or personal contact that he may have and which he may misuse for obstructing the investigation against him."

As per the said judgment, an inference can be drawn that instead of keeping a person under suspension and reviewing it periodically, it is better that he is transferred and posted in a non-sensitive place. In view of the later development, I am of the view that even without suspending an employee, the delinquent can be transferred to some other place on the ground of charges / misconduct, which will not amount to stigma. Otherwise, by getting an order / interim order, the employees would continuously serve in the same place for decades. In case of breach of trust, offences involving criminal nature and the like, the employee should be transferred and it cannot be questioned on the ground of causing stigma.

11. In the present case on hand, the criminal case is posted for argument and no judgment has been delivered and therefore, the petitioner cannot take the plea of stigma till a decision is taken by the Trial Court. Even in the letter of the petitioner addressed to the 1st respondent (which is annexed in the typeset of papers), he requested for transfer to a far off place in a non sensitive post for conduct of fair and free trial in the interest of justice and the petitioner cannot now go back, saying that he should not be transferred and posted in a non sensitive post.

12. It is seen that though the criminal case was posted for argument from 13.02.2020, due to Covid situation, the case is taken under the same caption till 26.02.2021 and the arguments could not have been concluded. Therefore, this Court directs the Special Judge for Trial of cases under Prevention of Corruption Act, Salem to pass orders in Spl.C.C.No.3 of 2015 within a period of one month from the date of conclusion of arguments, preferably on or before mid of May, 2021, as it was stated that both the petitioner and the prosecution had already filed the written arguments .

13. With the above observation and direction, the Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar(CCC)

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Sub-Assistant Registrar

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To:

- 1.The Additional Chief Secretary /
Commissioner of Revenue Administration and
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Chepauk, Chennai-5.
 - 2.The Collector,
Salem District.
 - 3.The Collector,
Thirupattur.
 - 4.The Director
Vigilance and Anti Corruption Department,
Salem.
 - 5.The Special Judge for Trial of cases under
Prevention of Corruption Act, Salem
- +1cc to M/s.S.Vijaya Kumar, Advocate, Sr.No.20917



PRE-DELIVERY ORDER IN
W.P.No.4408 of 2021

KV(CO)
KKV/01/04/2021

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