IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 30-07-2021

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P.Nos.4799 & 4803 of 2021

W.P.No.4799/2021 :

P.Velmurugan ... Petitioner

-vs-

1. The Director,
   The Local Fund Audit Department,
   Amma Complex, 4th Floor,
   Veterinary Hospital Complex,
   Chennai-600 035.

2.M.Moorthi ... Respondents

W.P.No.4803/2021 :

L.Kullappan ... Petitioner

-vs-

1. The Director,
   The Local Fund Audit Department,
   Amma Complex,4th Floor, Veterinary Hospital Complex,
   Chennai-600 035.

2.P.Kavitha ... Respondents

W.P.No.4799 of 2021 is filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorarified Mandamus, to call for the records on the file of the first respondent in (1) Na.Ka.No.P&AR 1(2)/1295/2021-53, dated 17.02.2021, and (2) Proc.Na.Ka.No.P&AR 1(2)/23164/2019-6, dated 17.02.2021, quash the same and consequently direct the respondents to allow the petitioner to continue to serve in the present post and station.

W.P.No.4803 of 2021 is filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorarified Mandamus, to call for the records on the file of the first respondent in (1) Na.Ka.No.P&AR 1(2)/1295/2021-64, dated 17.02.2021, and (2) Na.Ka.No.P&AR 1(2)/1295/2021, dated 17.02.2021, quash the same and consequently direct the respondents to allow the petitioner to continue to serve in the present post and station.

For Petitioner in both W.Ps. : Mr.M.Ravi

For Respondent 1 in both W.Ps. : Mr.C.Kathiravan, Government Advocate.

For Respondent 2 in both W.Ps. : Mr.L.Chandrakumar

ORDER

These Writ Petitions have been filed praying for issuance of a writ of Certiorarified Mandamus to call for the records on the file of the first respondent in (1) Na.Ka.No.P&AR 1(2)/ 1295/2021-53, dated 17.02.2021, and (2) Proc.Na.Ka.No.P&AR 1(2)/ 23164/2019-6, dated 17.02.2021; and (1) Na.Ka.No.P&AR 1(2)/ 1295/2021-64, dated 17.02.2021, and (2) Na.Ka.No.P&AR 1(2)/ 1295/2021, dated 17.02.2021, respectively, quash the same and consequently direct the respondents to allow the petitioners to continue to serve in the present post and station.

2. The petitioners have challenged the orders of transfer, dated 17.02.2021 in these Writ Petitions. According to the petitioner in W.P.No.4799 of 2021, he was initially appointed as Assistant Inspector of Local Fund Audit in the year 2001 and thereafter promoted to the post of Deputy Inspector of Local Fund Audit in the year 2012 so also to the post of Inspector of Local Fund Audit during the year 2013. Similarly, the petitioner in W.P.No.4803 of 2021 was also promoted to the post of Inspector of Local Fund Audit during the year 2015. So, both the petitioners are working as Inspectors in the office of Assistant Director of Local Fund Audit, Namakkal. That being the position, by the impugned orders of the first respondent, the petitioners were transferred to Tirunelveli and Nagercoil respectively and the second respondents in the writ petitions were posted in the place of the petitioners.

3. The case of the petitioners is that the impugned orders of transfer in both the cases are without authority and jurisdiction and contrary to the Transfer Policy vide G.OMs.No.249, Finance (Budget General-I) Department, dated 21.05.2020. It is also the case of the petitioners that the first respondent does not have the power or authority to issue an order of transfer from one district to another in terms of the said G.O. The petitioners also allege malafides by pleading

that the transfer was at the behest of the respective second respondents.

4. Pointing out that several other persons are serving for more than six or seven years in the same stations, learned counsel for the petitioners submitted that the orders of transfer suffer from discrimination, bias and malice in law. In support of his submission, the learned counsel relied upon G.O.Ms.No.249, dated 21.05.2020, issued by the Department of Finance (Budget General-I). As part of the economy mesures and resource mobilisation efforts, the Government has decided to curtail certain avoidable items of expenditure during the financial year 2020-2021, due to Covid-19 pandemic. The relevant portion of the said G.O., relied upon by the learned counsel for the petitioners, reads as follows :

> ''304 01 and 02 Travelling Allowance and Daily Allowance: The following measures shall take effect from the date of issue of orders, until further orders:
>
> a) The permission for official travel should be given judiciously and restricted only to absolutely essential official requirements. Regular review meetings can be organized through video conferencing and tele-conferencing in a secure environment.
>
> b) Foreign travel at Government cost is not permitted.
>
> c) Air travel within the State is not permitted for officials unless the cost of air fare is less than or equal to the cost of eligible train fare.
>
> d) Journey by air outside the State is also restricted and the Resident Commissioners of Tamil Nadu House in New Delhi shall be deputed to attend Government of India meetings in New Delhi as far as possible.
>
> e) Travel by air in Executive Class is not permitted for officers of any pay grade.
>
> f) The permissible rates of Daily Allowance shall be reduced by 25%. Only 75% of eligible amount shall be allowed to be drawn subject to rounding off to next 10 rupees for all categories of officials / non-officials. This will 3 come into effect for the journeys performed after the date of issue of this order.
>
> g) General transfers shall be kept on hold for 2020-21 to minimize expenditure on transfer travel expenses. Only transfers on administrative grounds by an authority higher than the authority normally

> empowered to transfer and mutual request transfers will alone be allowed.'' (emphasis supplied)

5. Learned counsel for the petitioner also relied upon G.O.Ms.No.10, Personnel and Administrative Reforms (Per/S) Department, dated 07.01.1994, containing the instructions relating to transfer of Government servants, to demonstrate that general transfer of Government servants, who have completed three years in a particular station, can be effected during the ''transfer period'' i.e., from 1st April to 30th June.

6. Heard Mr.M.Ravi, learned counsel for the petitioners; Mr.C.Kathiravan, learned Government Advocate for the first respondent; and Mr.L.Chandrakumar for the second respondents.

7. This Court, while enertaining the Writ Petitions, granted interim order of stay, as prayed for, initially for a limited period and the same was subsequently extended periodically. Hence, in both the Writ Petitions, the respondents have filed petitions to vacate the interim order.

8. In the counter affidavit filed by the first respondent, it is stated as follows :

> ''3.... In departmental review meeting which is the primary base for effecting promotions in the cadre of Inspector which resulted in the transfer of some already existing Inspectors who were serving in the same station for years together and the petitioner is one among those long serving Inspectors in the same station. Hence, there is no violation of rules on part of the department.
>
> 4.... Due to administrative exigency of effecting promotion in the cadre of Inspector, the transfer of the 2nd respondent as well as petitioner is necessitated who was serving in the same station for years together. Hence, the transfer of the petitioner was processed purely on administrative exigencies and as the petitioner is serving in this department since 2008, he should be aware that the transfer is an incident of Government Service.
>
> 5. It is submitted that the transfer of the petitioner was not part of 'Geneal Transfer' which is kept on hold in lieu of G.O.Ms.No.249, Finance (Budget General) Department, dated 21.05.2020. It is further submitted that the above mentioned G.O.is common for all departments whereas G.O.Ms.No.916, Finance (OP-II) Department, dated 18.08.1976, is specific to Local Fund Audit

Department in which larger powers were delegated to the Heads of Department under the control of Finance Department regarding the transfers and postings of Gazetted Officers below the second level. The Inpector post in the Local Fund Audit Department is of 5^{th} level. Hence, it is reiterated that the transfer of the petitioner was well within the powers delegated to the Director of Local Fund Audit Department."

9. Learned counsel for the first respondent submitted that the petitioners cannot either direct the first respondent or interfere with the discretionary power of the first respondent to decide when and where they are to be transferred. He also relied upon a few decisions of the Supreme Court, wherein it is held that a public servant, who holds a transferrable post, has no vested right to remain in a particular place for ever and that the transfer is an incident of Government service.

10. Learned counsel for the petitioners, referring to G.O.Ms.No.249, dated 21.05.2020, submitted that the Government has directed the general transfers to be kept on hold for the year 2020-2021 to minimise the expenditure on travelling expenses and that transfers on administrative grounds is permissible only by an authority higher than the one normally empowered to transfer.

11. The impugned order is dated 17.02.2021. Learned counsel for the petitioner relied upon G.O.Ms.No.10, Personnel and Administrative Reforms (Per/S) Department, dated 07.01.1994, to show that general transfers can be effected during the transfer period, namely, between 1^{st} April and 30^{th} June every year. In the said G.O., it is also stated that during the non-transfer period, namely, between 1^{st} July and 31^{st} March, transfers necessitated on account of promotion, incuding recruitment by transfer (which has the effect of transfer), may be ordered. Since the petitioners are not transferred on account of promotion, learned counsel for the petitioners contended that the impugned orders are against the Transfer Policy of the Government. Since the respondents have contended that the transfers in the present case vide the impugned orders are on administrative grounds, learned counsel for the petitioners submitted that as per G.O.Ms.No.249, transfer on administrative grounds should be by an authority, who is higher than the one normally empowered to transfer.

12. Admittedly, in this case, the transfers of petitioners from Namakkal to Tirunelveli and Kanyakumari are not tranfers on mutual requests. The impugned orders have been passed by the first respondent, who is the Director of Local

Fund Audit Department. Though it is contended that the Director is the authority higher in heirarchy, learned counsel for the petitioners submitted that the first respondent is the authority normally empowered to transfer a person from one district to another. The learned counsel also relied upon an information vide letter, dated 06.05.2021, issued by the Information Officer. In the Local Fund Audit Department, several persons from the office of Joint Director have been transferred on administrative grounds. In those cases, transfer of persons from one district to another was directed by the Government and not by the Director of Local Fund Audit Department. It is true that the Head of the Department enjoys powers to transfer and post Gazetted Officers below the Second Level as per G.O.Ms.No.916, Finance (OP-II) Department, dated 18.08.1976. However, it is not shown in counter of the respondents that any other authority, other than the first respondent, is given power to transfer the said staff from one district to another.

13. Prima facie, this Court is convinced that the transfer of petitioners from Namakkal to Tirunelveli and Kanyakumari respectively by the first respondent is not authorised. It is admitted before this Court that that transfer in this case is not general transfer, where the Government servants, who are serving in the same station for three or four years, are transferred to some other stations. Having admitted that the orders of transfer impugned in these Writ Petitions are not general transfers, the respondents have stated in the impugned orders that since the petitioners were in service for more than four years in the same station, on administrative grounds, they are transferred. The impugned orders clearly indicate that they are contrary to the Transfer Policy of the Government vide G.O.Ms.No.249, dated 21.05.2020, and G.O.Ms.No.10, dated 07.01.1994.

14. Learned counsel for the second respondent submitted that in pursuance to the impugned orders, dated 17.02.2021, the second respondents were relieved from their original stations and, accordingly, they reported for duty on 22.02.2021. It is also stated that the second respondents are continuing in the transferred stations, which fact is specifically disputed by the learned counsel for the petitioners.

15. It is to be seen that this Court passed the interim order on 27.02.2021. It is not the case of the second respondent that the petitioners were relieved from Namakkal, where they were functioning as Inspectors. In the counter affidavit filed by the second respndent, it is reiterated that the petitioners were relieved from the present place on 22.02.2021 and that they obtained interim orders under the pretext that the orders of transfer were not given effect.

16. Learned counsel for the petitioners submited that the petitioners applied for Unearned Leave with Medical Certificate on 18.02.2021 and that they were not relieved. It is also submitted that the respective second respondents were not relieved on 22.02.2021 and, therefore, the orders of stay granted by this Court should be duly respected and the prayer in the Writ Petitions cannot be rendered infructuous.

17. In view of the fact that the main Writ Petitions are taken up for hearing, the factual submissions with regard to relieving of second respondents and their joining duty in the transferred place have no relevance at this juncture.

18. This Court considered the scope of G.O.Ms.NO.249, dated 21.05.2020. The Government has taken a policy decision not to effect general transfers during pandemic. Though the decision is to cut expenditure, it is binding on the first respondent, who has passed the impugned orders. When general transfers are prohibited, citing reasons, which are cited for effecting general transfers in the impugned orders, cannot be considered valid. The power of transfer on administrative grounds has to be exercised by a higher authority than the authority, who is normally empowered. In this cae, similar orders of transfer from one district to another have been effected by orders of Government, as demonstrated before this Court. Hence, the impugned orders of transfer are contrary to the policy, as explicit from G.O.Ms.No.249, dated 21.05.2020.

19. The petitioners have been transferred by orders of the first respondent, dated 17.02.2021. It is submitted that the transfer is not during ''transfer period''. Transfer on account of promotion, including recruitment by transfer, can be ordered at a place where the vacancy already exists. Though, in this case, the transfer of second respondents was by promotion, it is not possible to accommodate the said persons in a place where there is no vacancy.

20. Learned counsel for the petitioners relied upon a decision of this Court in W.P.No.12252 of 2020 in the case of Dr.A.Jayachitra v. The Principal Secretary/ Member Secretary, Sports Development Authority of Tamil Nadu, dated 11.12.2020, wherein, it is held as follows :

> ''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 setforth 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.''

21. Though this Court has no strong reason to believe the case of the petitioners that the transfers suffer from malafides, there are reasons to believe that the impugned orders are hit by malice in law, especially having regard to the reasons stated therein. Since the impugned orders of transfer are in violation of G.O.Ms.No.249, dated 21.05.2020, and this Court is unable to accept the transfers as ones pursuant to a departmental review meeting, the impugned orders are liable to be set aside for want of bonafides and competence.

22. Accordingly, these Writ Petitions are allowed and the orders impugned are set aside. No costs. Consequently, the connected W.M.P.Nos.5426 to 5429, 11687, 11691, 14964 and 14965 of 2021 are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

dixit

To

The Director,
The Local Fund Audit Department,
Amma Complex, 4th Floor,
Veterinary Hospital Complex,
Chennai-600 035.

+8cc to Mr.M.Ravi, Advocate, S.R.No.37538, 36848
+2cc to Mr.L.Chandrakumar, Advocate, S.R.No.38503
+1cc to the Government Pleader, S.R.No.38838

W.P.Nos.4799 & 4803/2021

NR(CO)
HS(12/08/2021)