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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.06.2021

CORAM:

THE HONOURABLE Mr. JUSTICE S.S.SUNDAR

W.P. Nos. 12043 & 12044 of 2021

and

W.M.P. Nos.12814, 12816 & 12817 of 2021

W.P. No.12043 of 2021

M.Sampath

.. Petitioner

Versus

1.The Chief Engineer / Personnel,
Tamil Nadu Generation and
Distribution Corporation Ltd. (TANGEDCO),
No.144, Anna Salai,
Chennai - 600 002.

2.The Superintending Engineer / Chennai EDC/South-I,
Tamil Nadu Generation and
Distribution Corporation Ltd. (TANGEDCO),
No.110 KV, KK Nagar SS complex,
Anna Main Road (First Floor),
KK Nagar, Chennai - 600 078.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of certiorari, calling for the records in proceedings in Memo No. 021777/441/G25/G251/2021 dated 06.05.2021 passed by the first respondent and quash the same as illegal.

W.P. No.12044 of 2021

1.D.Mohanasundaram
2.D.Purushothaman
3.S.Gopi
4.M.Moorthy

.. Petitioners

Versus

1.The Chief Engineer / Personnel,
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No.144, Anna Salai,
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2.The Superintending Engineer / Chennai EDC/South-I,
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.. Respondents



Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of certiorari, calling for the records in proceedings in Memo No. 021855/569/G42/G.422/2021-1 dated 06.05.2021 passed by the first respondent and quash the same as illegal.

For Petitioner : Mr. J.Kumaran
(in both petitions)

For Respondents : Mr. P.R.Dhilip Kumar
(in both petitions) Standing Counsel

O R D E R

These writ petitions have been filed by the employees of the respondents against the impugned order of transfer dated 06.05.2021.

2. The petitioners in these writ petitions are working as Inspector of Assessment, Commercial Inspector, Foreman Gr.I, Wireman and Special Grade Foreman respectively. It is admitted by the petitioners even in the affidavit that on 12.01.2021, the Vigilance Department conducted an inspection and scrutinized all the office documents. It is also admitted that during inspection, the officials from Vigilance Department have seized some amount from the petitioners. It is contended by the petitioners that the officials have seized only the personal cash from the petitioners. Thereafter, it is stated that the petitioners were shocked and surprised to receive the order of transfer dated 06.05.2021, issued by the first respondent. Even though there was a reference to the surprise check conducted by DV and AC in the impugned order, the impugned order does not refer to any charges or about the adverse report of the officials against the petitioners. The petitioners were transferred and posted to various circles purely on the administrative grounds. The transfer appears to be to secure better administration in the wake of surprise inspection, may be after taking note of some irregularities. Transfer will also pave way for a fair enquiry.

3. The order impugned in the writ petition cannot be considered as an order by way of punishment. When the findings of the officials who made surprise inspection lead to framing of charges against the individuals for any offence, without even going into the merits of the findings, the employer or the establishment or the Government Department may transfer the employee from one place to another to secure better administration in the working place. When a transfer is made due to administrative exigencies, the same shall be considered as transfer on administrative grounds, as in the present case.



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4. Learned counsel appearing for the petitioners relied upon the judgment of the Hon'ble Supreme Court in the case of Somesh Tiwari Vs. Union of India and others reported in [(2009) 2 SCC 592] wherein the Hon'ble Supreme Court has held as follows:

" ...

16. Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where inter alia malafide on the part of the authority is proved. Mala fide is of two kinds - one malice in fact and the second malice in law. The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground i.e. on the allegations made against the appellant in the anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal."

In that case, the facts are different and hence the petitioners cannot rely upon the above judgment.

5. This Court is fully convinced that the transfer in the present case is purely on administrative grounds. Further, it is clear that the first respondent has passed an order in the interest of establishment. The order cannot be said to be vitiated for malafides. The petitioner has not impleaded any officer in his individual capacity attributing motive for transferring the petitioners to some other place. Learned counsel appearing for the petitioners states that the petitioners have been transferred to a far away place. This Court is not inclined to interfere with the impugned order on the said ground. It is open to the petitioners to make a representation before the respondents regarding place or distance. Upon such a representation being made by any of the petitioners, the respondents shall pass appropriate orders on merits and in accordance with law. The respondents may try to accommodate the petitioner in a nearby place.

6. Accordingly, these writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar



To

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+1cc to Mr.P.R.Dhilip Kumar, Advocate, S.R.No. 28928

W.P. Nos. 12043 & 12044 of 2021

GPL(CO)
GN(20/07/2021)