

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on 23 .12.2020

Order delivered on 05.02.2021

CORAM

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.10172 of 2020

and

WM.P.No.12386 of 2020

Major.A.Arockia Doss,
S/o Late.S.Arul,
Headquarters Chief Engineer,
Chennai Zone,
Island Grounds,
Chennai - 600 009.

Vs

...Petitioner

1. The Military Secretary,
Military Secretary's Branch (MS 12A) IHQ MoD (Army)
Kashmir House, Rajji Marg,
New Delhi - 110 011
2. The General Officer Commanding in Chief (GOC-in-C)
Headquarters Southern Command,
Pune, Maharashtra,
Pin-411 001.
3. The General Officer Commanding (GOC),
Headquarters, Dakshin Bharat Area,
Island Grounds,
Chennai - 600 009.
4. The Chief Engineer,
Headquarters Chief Engineer,
Chennai Zone,
Chennai - 600 009.
5. Mrs.A.Rita Mary,
D/o S.Abragam,
No.23, Kutti Maistry Street,
Seven Wells,
Chennai - 600 001.

... Respondents

Prayer: Writ Petition filed under Article 226 of the
Constitution of India praying Writ of Certiorari to call for the
records relating to the impugned order (A/55152/PI-111/MS-12A)

dated 19.06.2020 passed by the 1st respondent herein and quash the same.

For Petitioner : Mr.N.Vijaya Basker
for M/s.Law Vision.

For Respondents: Mr.R.Sankaranarayanan
Additional Solicitor General of India
Assisted by Ms.S.Meenakumari,
Sr.Panel Counsel for R1 to R4.

O R D E R

The matter is taken up through web hearing.

This Writ Petition has been filed seeking to issue a Writ of Certiorari to call for the records relating to the impugned order (A/55152/PO-111/MS-12A) dated 19.06.2020 passed by the 1st respondent herein and quash the same.

2. The petitioner is presently working as a Major under the control of the 2nd respondent. According to the petitioner, after his marriage which took place on 25.04.1997 with the 5th respondent, the petitioner was not having a smooth and proper conjugal relationship and there were lot of disputes touching upon the matrimonial disharmony between the petitioner and the 5th respondent. Complaints have been lodged and the cases have been filed. Before the respondents, the Conciliation / Counselling had also taken place over a period of time, but the dispute did not seem to be resolved at all. According to the petitioner, every time, when he had shown conciliatory gestures towards his wife, the same was not appreciated and the 5th respondent went on harassing the petitioner and has not allowed the petitioner to focus on his work.

3. The 5th respondent, in order to wreak vengeance on him, has made a false complaint against the petitioner to the 4th respondent on 19.04.2018 and thereafter, counselling was held on 21.05.2018 and in the counselling, it was suggested by the petitioner to withdraw the FIR filed at her instance against the petitioner and accept for mutual consent for legal separation. However, she refused to give consent for a mutual divorce as suggested in the conciliation talks. The cases were filed in the High Court for quashing the FIRs and finally, the petitioner's quash petition was allowed on 10.04.2019.

4. Thereafter, one time settlement was arrived at between the petitioner and the 5th respondent and subsequently, the petitioner requested the respondents not to entertain any further complaint against him by the 5th respondent. But

unfortunately, notwithstanding the settlement, a complaint was made as if the petitioner failed to maintain her and his children. In that backdrop, an order was issued on 19.06.2020 by the 1st respondent, transferring the petitioner from the 4th respondent office to the State of West Bengal.

5. At the time, when the writ petition was entertained, stay of transfer order was passed on 04.08.2020 and the matter was adjourned on several occasions for filing of counter affidavit on behalf of the respondents.

6. In response to the notice issued, a detailed counter affidavit has been filed on behalf of the respondents. According to the counter affidavit, apart from the matrimonial dispute, as he has been having with his wife, it is stated in paragraph No.24 of the counter affidavit that after the transfer order was issued, the petitioner was on the strength of the Unit only until 02.08.2020 and thereafter, he was struck off strength from the local unit. According to the counter affidavit, the petitioner having moved to the next Unit viz., the transferred place, has approached this Court and obtained interim order of stay on 04.08.2020. According to the counter affidavit, the posting of the petitioner is nothing to do with the personal matter of the petitioner and it was entirely due to administrative reasons and requirement of the Unit concerned.

7. Learned counsel for the petitioner stated that when the petitioner is having a running feud with his wife and issues are pending, transferring him to a far away place, would put him to untold hardship and suffering. According to the learned counsel that the transfer was entirely due to the complaint given by the petitioner's wife and therefore, it was not for administrative reasons. Apart from that, the learned counsel stated that he has to complete the normal tenure of three years in the station in which, he was earlier working.

8. Per contra, learned Additional Solicitor General of India Mr.R.Sankaranarayan, appeared and stated that the petitioner is not entitled for continuance of the interim order, since he has not approached this Court with clean hands. According to the Additional Solicitor General, after the movement order was issued on 31.07.2020, the petitioner was granted 40 days part of actual leave (PAL) by the new unit on 10.08.2020. Having obtained leave from the new unit, it is not open to the petitioner to approach this Court and to obtain stay as if he was not relieved from the old unit.

9. According to the Additional Solicitor General, the petitioner having accepted the transfer and posting, he is estopped from approaching this Court, having no territorial

jurisdiction over the matter and in case, the petitioner has any grievance over the transfer and posting, he has to approach only the Kolkata High Court. According to the Additional Solicitor General that as per the policy dated 04.12.2019, the transfer orders have been routinely issued and it is averred in paragraph No.12, which is extracted hereunder.

12. It is submitted that infact, typically an officer who has served in a peace zone for a particular tenure would be posted to a field posting in the next allotment of posting. The same is manifest through posting policy provided for in Army Headquarters, New Delhi letter No.04520/MS: Policy dated 04 Dec. 1990. The relevant provision is extracted herein under:

"Balance of Peace/ Field/Sector Profiles: In order to ensure professional grooming and all round development of an officer, it is our constant endeavour to ensure that the officers are given different kind of exposure in various types of appointments and terrain provided they meet the laid down qualitative requirements. Efforts are made to ensure that officers get a chance to serve in all commands and their field/ peace tenures and a balance of hardships and experience is equitably shared by all. However, often it is not feasible to achieve the ideal due to various other constraints.

In this case, however, the petitioner has been only posted from one peace zone to another and further from one metropolitan city to another, namely Chennai to Kolkata, which is by itself a coincidental occurrence that the Petitioner can benefit from.

10. The petitioner cannot plead matrimonial dispute as the only basis for his retention in the present unit as he has not raised any other substantial grounds for assailing the transfer order.

11. At this, learned counsel for the petitioner repeatedly submitted that the transfer was only due to the complaint of the petitioner's wife and therefore, the policy application would not arise at all in this case. However, the learned counsel is not in a position to explain as to how he can approach this Court when the petitioner has been already granted PAL for 40 days by the new unit which would mean that he had already accepted the sanction of the leave from the new unit. The learned counsel for the petitioner would however, submit that notwithstanding the fact the petitioner was relieved from the old Unit the order of transfer is a colourable exercise of power and liable to be set aside.

12. On behalf of the respondents, number of documents have been filed to show as to how the petitioner's non-complying with the transfer and posting under the cover of the interim order passed by the Court has been causing administrative inconvenience and hardship. According to the respondents, the chain of transfer has been affected, because of the petitioner's non-joining of the post and the petitioner being a Major in the Army, cannot seek to remain in the same place of posting for an indefinite period of time for the reason that he has some matrimonial issues with his wife. Such retention of officers at the level of major would be against the overall interest of the military establishment.

13. Considered the submission of the learned counsel for the petitioner and the submission of the learned Additional Solicitor General of India appeared on behalf of the respondents 1 to 4.

14. Although this Court has initially granted interim order of stay on a prima facie consideration that the petitioner had some dispute pending against him at the instance of his wife, yet ultimately, when the matter is to be decided finally, the matrimonial issues alone, cannot be the basis for grant of relief to the petitioner. In the affidavit filed in support of the writ petition, no substantial grounds have been raised to assail the transfer order successfully. In fact, the affidavit in its entirety contains the sequence of events highlighting the various disputes between the petitioner and the 5th respondent and the efforts taken to settle the issues. This Court is of the considered opinion that merely because the petitioner has been having a constant matrimonial discord with his wife for whatever reasons, that cannot be the basis for interfering with the order of transfer, particularly in matters of defence administration.

15. It is trite in law to hold that the transfer orders are not to be interfered with normally, unless the same is tainted with malafides or it is against any statutory stipulation. In this case, no malafides have been pleaded against any Officers nor any statutory regulation has been stated to be violated. In the absence of both the grounds as specified above, it is needless to mention that the transfer order cannot be interfered at all by this Court. Compilation of decisions has been filed almost touching upon similar facts and circumstances of the case, wherein the Courts have consistently held that the transfer orders cannot be interfered with, as a matter of routine, resulting in administrative dislocation affecting public interest. This Court cannot have different opinion in the settled legal principles governing challenges to transfer orders in public service. The petitioner, being Senior

Officer of the Army, is liable to be transferred and posted to any part of the country periodically. Therefore, merely because the petitioner has incessant nagging feud with his wife, he cannot seek to stay in the same Station till the dispute is resolved to his satisfaction. In fact, as could be seen from the affidavit filed in support of the petition, this dispute has been going on for years together and therefore, being a service personnel, cannot seek sympathy for his retention in this Station, beyond a particular point. His service in Army is required in a different Unit according to the administrative exigency of the establishment and in that view, the exercise of power of the transfer and posting in the case on hand, is not to be faulted with.

16. For the above stated reasons, this Court finds no merits in the writ petition and hence, the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

vsi

To

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Military Secretary's Branch (MS 12A) IHQ MoD (Army)
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New Delhi - 110 011
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GP(CO)
GN(26/02/2021)