



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.(MD).No.9154 of 2020

and W.M.P.(MD).No.8371 of 2020

Paripoorana Mariya Nesan

... Petitioner

Vs.

1.The Principal Secretary to Government,
Adi Dravidar Welfare Department,
Secretariat,
Chennai - 9.

2.The Commissioner,
Adi Dravidar Welfare Department,
Chepauk, Chennai - 600 005.

3.The District Adi Dravidar & Tribunal Welfare Officer,
Pudukottai District. ... Respondents.

PRAYER: Writ petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari, calling for the records of the impugned transfer order in Na.Ka.No.2/10944/2020, dated 08.07.2020, issued by the 2nd respondent and quash the same as illegal, arbitrary and without affording an opportunity.

For Petitioner : Mr.R.Devaraj for Mr.D.Sasikumar
For Respondents : Mr.S.Dayalan
Government Advocate

O R D E R

Heard Mr.R.Devaraj, learned counsel for the petitioner and Mr.S.Dayalan, learned Government Advocate, for the respondents.

2.The order of transfer, transferring the petitioner from Government Adi Dravidar Welfare Higher Secondary School, Mullanguruchi, Pudukottai District to the Government Adi Dravidar Welfare Higher Secondary School at Manamai, Kanjipuram District, is put under challenge in the present writ petition.

3.It is settled preposition that the High Courts would not exercise its power under Article 226 of the Constitution of India, unless and until the order of transfer is mulcted with malafides or is in violation of statutory provisions. There is yet another ground on which the High Courts may be empowered to interfere with the transfer order, when the order of transfer is punitive in nature. This proposition has been reiterated in various decisions including the decision of the Honourable Apex Court in the case of **Somesh Tiwari Vs. Union of India and others** reported in **2009 (2) SCC 592**. The Honourable Apex Court had held so in the following manner.

<https://hcservices.ecourts.gov.in/hcservices/>



" 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 mala fide 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."

(emphasis added)

4. In this legal scenario, it is seen that while passing the impugned transfer order, the respondents had observed that since the petitioner herein had indulged in certain misconducts, they were constrained to transfer him through the impugned order. Such a punitive measure is impermissible in view of the law laid down in the case of **Somesh Tiwari** referred to supra. As such, the order itself cannot be sustained. It is brought to the notice of this Court that the petitioner is yet to join in the transfer post and has not been relieved.

5. In the light of the above observation, the impugned order transfer order in Na.Ka.No. 2/10944/2020, dated 08.07.2020, issued by the 2nd respondent is quashed.

6. This writ petition stands allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)



Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

WEB COPY

To

- 1.The Principal Secretary to Government,
Adi Dravidar Welfare Department,
Secretariat,
Chennai - 9.
- 2.The Commissioner,
Adi Dravidar Welfare Department,
Chepauk, Chennai - 600 005.
- 3.The District Adi Dravidar & Tribunal Welfare Officer,
Pudukottai District.

+1 CC to M/s.D.SASI KUMAR, Advocate (SR-4175[F] dated 10/02/2021)

+1 CC to M/s.GP (SR-4250[F] dated 10/02/2021)

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SSS (CO)
KB(24.02.2021) 3P 6C