



W.P.(MD) Nos.10759, 11259, 11269, 11279 & 11298 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P. (MD) Nos.10759, 11259, 11269, 11279 & 11298 of 2021

and

W.M.P. (MD) Nos.8375, 8378, 8793, 8798, 8808, 8822, 11615, 11616
11668 & 11669 of 2021

W.P. (MD) No.10759 of 2021:

Narasingaraja

... Petitioner

-vs-

1.The Director General of Police /
Inspector General of Prisons
Department of Prison
Chennai-600 008

2.The Deputy Inspector General of Prisons
Department of Prisons
Madurai Region / Chennai Region

3.The Superintendent of Police
Central Prison
Palayamkottai
Tirunelveli District

4.The Superintendent of Police
Central Prison-1
Puzhal, Chennai

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus calling for the records relating to the impugned order in No.100/P1/2021, dated 19.06.2021, passed by the third respondent and quash the same and further directing the respondents 1 to 3 to permit the petitioner to continue his duty as Grade I Constable, Central Prison, Palyamkottai.

For Petitioner : Mr.Maheswaran.R.

For Respondents : Mr.Veera.Kathiravan
Additional Advocate General
assisted by Mr.A.K.Manikkam
Government Counsel



W.P. (MD) No.11259 of 2021:

K.Raja

... Petitioner

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-vs-

1.The Director General of Police /
Director General of Prisons and
Correctional Services
Whannels Road, Egmore
Chennai-600 008

2.The Superintendent of Central Prison
Palayamkottai
Tirunelveli-627 002

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari calling for the records relating to the order passed by the second respondent in No.7885/Po.1/2020, dated 01.07.2021 and quash the same.

For Petitioner : Mr.Conscious Ilango

For Respondents : Mr.Veera.Kathiravan
Additional Advocate General
assisted by Mr.A.K.Manikkam
Government Counsel

W.P. (MD) No.11269 of 2021:

A.Kumara Dhas

... Petitioner

-vs-

1.The Director General of Police /
Director General of Prisons and
Correctional Services
Whannels Road, Egmore, Chennai-600 008

2.The Superintendent of Central Prison
Palayamkottai, Tirunelveli-627 002

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari calling for the records relating to the order passed by the second respondent in No.7885/Po.1/2020, dated 01.07.2021 and quash the same.



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W.P.(MD) Nos.10759, 11259, 11269, 11279 & 11298 of 2021

For Petitioner : Mr.Conscious Ilango

For Respondents : Mr.Veera.Kathiravan
Additional Advocate General
assisted by Mr.A.K.Manikkam
Government Counsel

W.P. (MD) No.11279 of 2021:

P.Dharmeshwaran

... Petitioner

-vs-

1.The Director General of Police /
Director General of Prisons and
Correctional Services
Whannels Road, Egmore
Chennai-600 008

2.The Superintendent of Central Prison
Palayamkottai
Tirunelveli-627 002

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari calling for the records relating to the order passed by the second respondent in No.7885/Po.1/2020, dated 01.07.2021 and quash the same.

For Petitioner : Mr.Conscious Ilango

For Respondents : Mr.Veera.Kathiravan
Additional Advocate General
assisted by Mr.A.K.Manikkam
Government Counsel

W.P. (MD) No.11298 of 2021:

A.Jeya Manohar

... Petitioner

-vs-

1.The Director General of Police /
Director General of Prisons and
Correctional Services
Whannels Road, Egmore
Chennai-600 008

2.The Superintendent of Central Prison
Palayamkottai, Tirunelveli-627 002

... Respondents



PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari calling for the records relating to the order passed by the second respondent in No.7885/Po.1/2020, dated 01.07.2021 and quash the same.

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For Petitioner : Mr.Conscious Ilango
For Respondents : Mr.Veera.Kathiravan
Additional Advocate General
assisted by Mr.A.K.Manikkam
Government Counsel

C O M M O N O R D E R

Since the issue involved in all these writ petitions are one and the same, all these writ petitions are taken up and heard together and are being disposed of by this common order.

2. The prayer in W.P.(MD) No.10759 of 2021 is for issuance of a writ of certiorarified mandamus to quash the order dated 19.06.2021, passed by the Superintendent of Police, Central Prison, Palayamkottai, Tirunelveli District / third respondent transferring the petitioner from Central Prison, Palayamkottai to Central Prison, Puzhal-I, Chennai, on administrative grounds, and to direct the respondents 1 to 3 to permit the petitioner to continue his duty as Grade I Constable in Central Prison, Palayamkottai.

3. The prayer in the other writ petitions, namely, W.P.(MD) No.11259, 11269, 11279 and 11298 of 2021 is for issuance of a writ of certiorari to quash the orders dated 01.07.2021, passed by the Superintendent of Central Prison, Palayamkottai, Tirunelveli / second respondent transferring the petitioners from the Central Prison Palayamkottai to the Central Prison, Salem, Central Prison-I, Puzhal, Chennai and Central Prison, Trichy respectively on administrative grounds.

4. According to the petitioners, they are Police personnel working in Central Prison, Palayamkottai. On 22.04.2021, one P.Muthu Manu, a prisoner, was assaulted by the other prisoners and he succumbed to the head injury sustained by him in the said incident. While the accused prisoners were arrested, the prison Authorities, who were on duty on the date of incident and responsible for security of the prisoners, were placed under suspension. At the same time, the respondents have also transferred the petitioners from the Central Prison, Palayamkottai, to other prisons alleging dereliction of duty. Challenging the said transfer orders, the present writ petitions have been filed.

5. The learned counsel for the petitioners would submit that the petitioners were not at all on duty on the occurrence date



and they were not in-charge of the duty and by no means they were responsible for the said incident.

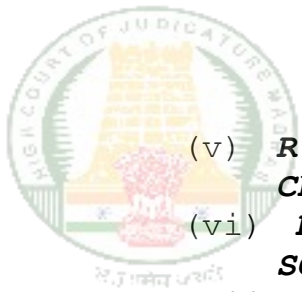
6. The learned counsel for the petitioners would further submit that before passing the impugned transfer orders, the respondents have not afforded any opportunity of hearing to the petitioners and therefore, the respondents have violated the principles of natural justice while passing the impugned transfer orders. Even though the impugned transfer orders have been passed on administrative grounds, it is only on a collateral purpose and it attaches stigma on the petitioners. The learned counsel would further submit that it is well settled that punitive transfer cannot be made without giving an opportunity of hearing to the employee concerned, who is sought to be transferred as a punitive measure. Further, the learned counsel would submit that the impugned transfer orders suffer from malice in law as the same were not based on any factor germane for passing such transfer orders.

7. The learned counsel for the petitioner would further submit that transfer orders could not be passed on the basis of frivolous allegations and the transfer orders must have a valid reason. Further, he would submit that if an order of transfer was found to be an outcome of *mala fide* exercise of power or it was made in connection with the departmental proceedings or for extraneous considerations or for collateral purpose or it was made in violation of the principles of natural justice, the Courts can interfere as against such transfer orders.

8. The learned counsel for the petitioners would further submit that the impugned transfer orders are erred in law, since there is no ground much less a valid ground to transfer the petitioners. While the Authority concerned transfers the employee, they are supposed to disclose the reasons for such transfer even though the transfer is on administrative grounds. The only reason mentioned in the impugned transfer orders is that on administrative grounds, which is nothing but to achieve the oblique purpose.

9. In support of his contentions, the learned counsel has placed reliance upon the following decisions:

- (i) ***S.Pitchai Arockiyam vs. District Elementary Educational Officer, Karur District and another [CDJ 2006 MHC 1888];***
- (ii) ***Somesh Tiwari vs. Union of India and others [CDJ 2008 SC 2162];***
- (iii) ***K.M.Elumalai vs. The Superintendent of Prisons Central Prison-II and another [CDJ 2009 MHC 4819];***
- (iv) ***Judgment dated 07.12.2011 in S.A.No.765 of 2011 [Ram Kripal Yadav vs. State of U.P. (Allahabad High Court)];***



- (v) **R.Ponnusamy vs. The Director General of Police, Chennai and others [CDJ 2011 MHC 3593];**
- (vi) **P.Karunakaran vs. Union of India and others [2013 SCC Online Mad 3958;**
- (vii) **G.Prasad vs. The Divisional Railway Manager, Southern Railway, Commercial Branch, Chennai-600 003 and others [2017 SCC OnLine Mad 5552];**
- (viii) **Order dated 30.01.2019 in W.P.No.30092 of 2017 [R.Kalpana vs. The State of Tamil Nadu];**
- (ix) **Order dated 08.07.2019 in W.P.No.33929 of 2018 [K.Parthasarathi vs. The State Commissioner for the Differently Abled Welfare office and others];**
- (x) **Judgment dated 30.08.2019 in W.A.(MD) Nos.1684 to 1695 of 2018 [S.Ganesamoorthy vs. Bharat Heavy Electricals Limited];**
- (xi) **Order dated 11.12.2020 in W.P.No.12252 of 2020 and Cont.P.No.825 of 2020 [Dr.A.Jayachitra vs. The Principal Secretary / Member Secretary and others];**
- (xii) **S.Sivaperumal vs. The Director General of Police [CDJ 2020 MHC 1089];**
- (xiii) **G.Chakkaravarthy vs. The State of Tamil Nadu and others [CDJ 2020 MHC 1628]; and**
- (xiv) **Judgment dated 08.01.2021 in W.A.No.1142 of 2020 [The State of Tamil Nadu and another vs. P.Subbuthai and others].**

10. Per contra, Mr.Veera.Kathiravan, learned Additional Advocate General, assisted by Mr.A.K.Manikkam, learned Government Counsel appearing for the respondents, would submit that the petitioners are having the habit of twisting the news and making group rivalry / tension between the core sectors. Since Palayamkottai Central Prison being a caste sensitive place, the prisoners have been segregated and lodged in separate cells. Even though the petitioners do not belong to any sensitive sector, they are having the habit of spreading malique information and creating group clash between two core sect of prisoners, as well as staff in the Central Prison. Moreover, the petitioners have also smelled the legal course of action being taken by the Prison Authorities and passed the information to the rival parties and created rivalry between the groups. Therefore, according to the learned Additional Advocate General, in order to avoid more complications and for security purpose and maintaining peaceful atmosphere, the impugned transfer orders came to be passed.

11. The learned Additional Advocate General would further submit that transfer is a contingency of service and the employer has full discretion to transfer the employees on administrative exigencies. Further, the impugned transfer orders were made on



administrative grounds and therefore, the same cannot be questioned by the employee. Further he would submit that no public or Government servant has any legal right to be posted at any particular place since transfer of a Government servant from one place to another is not only a condition of service, but incident of service and hence, he urged this Court to dismiss the writ petitions.

12. In support of his contentions, the learned Government Counsel has placed reliance upon the following decisions:

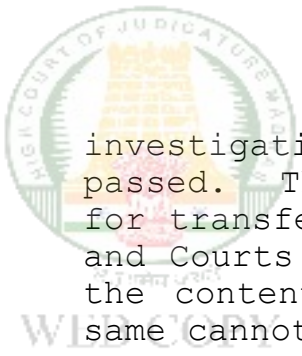
- (i) ***Tamil Nadu Electricity Board, Madras vs. K.Raman and another [1984 SCC OnLine Mad 51];***
- (ii) ***G.Vijayamani vs. The General Manager and others [2014 SCC OnLine Mad11986];***
- (iii) ***S.Kamaraj vs. The Director of School Education and others [2017 SCC OnLine Mad 30740];*** and
- (iv) ***Order dated 06.09.2021 in SLP (C) No.36717 of 2017 [Namrata Verma vs. The State of Uttar Pradesh and others].***

13. Heard the learned counsel for the parties elaborately and carefully perused the materials available on record.

14. The core issue to be decided in the present case is that whether the impugned transfer orders can be sustained based on a discreet enquiry conducted behind the back of the petitioners on the ground of public interest and would amount to violation of principles of natural justice or not.

15. According to the petitioners, based on the discreet enquiry report, the impugned orders have been passed stating to be on administrative grounds. But, the respondents, in their counter affidavit, have stated that based on the allegation against the petitioners with regard to the incident took place on 22.04.2021 in the Palayamkottai Central Jail premises, the impugned transfer orders have been passed. The issue arises in such circumstances is as to whether transfer orders can be passed only based on the discreet enquiry report without following the due process of law. According to the petitioners, the allegations made in the counter affidavit are self-explanatory statement of the respondents and hence, the impugned transfer orders are not on the administrative grounds and that apart, the allegations based on which the impugned orders came to be passed have also not been mentioned in the impugned transfer orders. Therefore, the petitioners' case is well established and hence, the impugned transfer is punitive in nature and not on administrative ground.

16. According to the learned Additional Advocate General, even though allegations as against the employees are pending



investigation, on administrative grounds, transfer orders can be passed. The employee cannot challenge the powers of the Authority for transferring him / her as transfer is incidental to the service and Courts cannot interfere with the transfer orders and therefore, the contentions made by the petitioners are unsustainable and the same cannot be entertained.

17. The learned Additional Advocate General has stoutly relied on Paragraph Nos.9, 14 and 15 of the decision in the case of **Tamil Nadu Electricity Board** (supra), which are extracted hereunder:

"One thing must be stated at the outset. This Court exercising powers under Art.226 of the Constitution is not exercising administrative supervision of the affairs of the Electricity Board and the Board known how to administer its affairs. It cannot be gainsaid that transfer is an incidence of service. As the learned Judge himself has rightly put it, if it is a part of the conditions of service, it is not normally open to judicial review. It is equally true that if an order of transfer is maintained with mala fides or violative of certain well accepted norms or penal in nature, the Court can always find out whether such an order or transfer is mala fide, passed with ulterior motive or intended to achieve an object circumventing disciplinary proceedings. In this case we have set out the facts in detail. One thing that is very clear is the theft of electrical energy came to be noticed as early as 26th May, 1983. The letter of the Inspector-General of Police dated 9th August, 1983 which we have extracted in full complaints about lack of co-operation on the part of the officials concerned. Where, therefore, as stated by the Electricity Board, it was felt that the respondents were prima facie found to have committed misconduct and disciplinary action was initiated against them, it cannot be said that the basis of the orders of transfer was the misconduct, as such. We state so because, the assertion of the Board is that the Meter Relay Test is a sensitive branch which is in charge of metering in High Tension Services and Low Tension Services, that investigation is in progress against the respondents and that therefore it was not considered safe to allow them to continue in the same posts. Therefore we do not understand the stand of the Electricity Board as saying that it

<https://hcservices.ecourts.gov.in/hcservices/> misconduct which is the foundation of the



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orders of transfer. We are afraid the learned Judge was very much influenced by the words as though the respondents herein were guilty of misconduct. After having extracted the relevant portion of the counter-affidavit, the learned Judge went on to hold that when the stand is expressed in the present case that the orders of transfer have come to be passed, taking note of certain alleged misconduct, then certain principles intervene and compel this Court to examine the matter to find out as to whether the alleged misconduct was the very foundation of the order of transfer so as make the order of transfer nothing but a guise for an order of punishment in fact, skipping over the process of disciplinary proceedings, as laid down by law. For our part, we are unable to appreciate this finding. What is the punishment which the Electricity Board might have imposed by resorting to disciplinary proceedings, which proceedings are circumvented by passing the order of transfer? As rightly pointed out by the learned Advocate-General transfer is not one of the punishments contemplated under the rules by resorting to disciplinary proceedings. As a matter of fact, in every administration, day in and day out orders of transfer are passed on account of exigencies of administration. As to what such exigency is, we do not think that the authority passing the order must be called upon to explain to this Court. However, that is not to be confused with the situation where the order of transfer is actuated by mala fides. As to what would constitute mala fides we will deal with in the latter part of our Judgment. For aught one knows, allegations or complaints however baseless they may be, may constitute a cause for transfer, sometimes even the foundation for such transfer. After all, what is done by a transfer, which as stated above, is part of a contingency of service ? If the administration finds that having regard to the complaints or allegations it is better a particular officer is removed from the particular workspot, transfer is ordered. Beyond that it does not visit the officer concerned with any penalty whatever, penalty not in the sense of disciplinary proceedings but from the point of view of emoluments, rank or status. If that be the position in law, where then is the necessity for



the full exposure of the justifying factors for transfer before the Court? For our part, we are unable to see any necessity.

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14. With this, we go on to the question of malice in law. What is malice? The word 'malice' means ill-will, spite, disposition to injure others. It is derived from the Latin word malitia meaning ill-will. In law, mala fides has its own meaning. Mala fides does not necessarily involve malicious intentions. It is enough, if the aggrieved party establishes (1) that the authority making the impugned order did not apply its mind at all to the matter in question, or (2) that the impugned order was made for a purpose or upon a ground other than what is mentioned on the face of the order. Neither the two tests is satisfied in the present case. Of course, the learned Judge relying on his own decision in *R. Padmanabhan v. The State of Tamil Nadu* (W.P.No.3022 of 1983 - Order dated 27th January, 1984), which dealt with a case of suspension pending enquiry, held that it will equally apply to a case of transfer. This finding ignores the vital distinction between the effect of transfer and suspension. *Oil and Natural Gas Commission v. Dr..Mohammad S.Iskander Ali* [1980-II L.L.J. 155], was a case of termination simpliciter. In *Government of India v. Tarak Nath*, the Supreme Court in paragraph 8 thereof observed:

"If the disciplinary authority takes note of such allegations and is of opinion after some preliminary enquiries that the circumstances of the case justify further investigation to be made before definite charges can be framed, it would not be improper to remove the officer concerned from the sphere of his activity in as much as it may be necessary to find out facts from people working under him or look into papers which are in his custody and it would be embarrassing and inopportune both for the officer concerned as well as to these whose duty it was to make the enquiry to do so while the officer was present at the spot. Such a situation can be avoided



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either by transferring the officer to some other place or by temporarily putting him out of action by making an order of suspension."

No doubt this case dealt with an order of suspension, but what exactly is contemplated by an order of transfer has been succinctly set out. Even looked at in the light of the subsequent events, namely, by an order dated 28th October, 1983 the Superintending Engineer retransferred the Storekeeper from Poonamallee to Madras, by a memo dated 31st October, 1983 Raman was called upon to explain and he offered his explanation on 7th November, 1983, we are unable to hold that there is malice in law.

15. We are not called upon to decide whether the transfers are against statutory rules or not, because no argument was advanced by the respondents on that aspect, which was held against them by the learned Judge."

18. In the instant case, it is seen that the impugned transfer orders are stated to have been passed on administrative grounds. The Government, by G.O.Ms.No.10, Personnel and Administrative Reforms Department, dated 07.01.1994, has issued revised instructions in the matter of transfer of Government servants from one station / post to another once in three years. Subsequently, the Government, vide Letter dated 09.08.1994, clarified G.O.Ms.No.10, dated 07.01.1994, clarifying that when transfers on complaints / allegations are made after preliminary enquiry, it should be followed up by a detailed investigation and disciplinary action instituted on allegations finally found to be substantiated. The relevant portion of the said letter is extracted hereunder:

"(III). In the said G.O. In sub-clause (f) of para III (vii), the following shall be added at the end:

"Transfers shall not be effected on the basis of allegations, unless the allegations are prima facie found to be true by a preliminary enquiry and it is decided by the transferring authority that the continuance of the officer in the same station is injurious to public interest and that he can



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be transferred rather than suspended from service. When such transfers on complaints / allegations are made after preliminary enquiry, it should be followed up by a detailed investigation and disciplinary action instituted on allegations finally found to be substantiated".

19. In *K.M.Elumalai vs. The Superintendent of Prisons, Central Prison-II and another* [CDJ 2009 MHC 4819], this Court, by taking note of catena of decisions of the Honourable Apex Court, has held as follows:

"12.The above said principles of law evolved by the English Courts would clearly lead to the conclusion that while acting upon a fact the person who exercises the power treating the said fact as conclusive will have to satisfy himself about the due proof of the same before taking any action based upon the same. In other words when a power is vested upon an authority the said authority will have to exercise the said power only in the manner known to law which is by giving a sufficient opportunity to the person against whom the action is proposed. The basic requirement of the said principle is to inform the person concerned about the charges levelled against him and thereafter affording an opportunity to putforth his case followed by a further opportunity to peruse the materials placed against him and cross-examine the witnesses who deposed against him.

13.It is no doubt true that an order of transfer is incidental to the service but the question for consideration is as to whether such an order can be passed in total violation of principles of the natural justice and by dispensing with the enquiry.

...

...

20.Therefore this Court is of the opinion that the impugned orders passed by the respondents will have to be set aside being punitive in nature and therefore bad in law in not following the principles of natural justice, by affording an opportunity to the petitioner and by conducting an enquiry.

21.The proceedings are also liable to be set aside since the respondents have come to the



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conclusion based upon a discreet enquiry which is again based upon the statement obtained from persons behind the back of the petitioner. Even in an enquiry a statement obtained in a preliminary enquiry prior to a full-fledged enquiry cannot be relied upon. Therefore in such a case an order passed based upon such an enquiry cannot be sustained. In the judgment reported in (2006) 2 MLJ 202 [T.PITCHAI vs. DEPUTY INSPECTOR GENERAL OF POLICE, TIRUNELVELI RANGE, TIRUNELVELI AND ANOTHER] the Hon'ble High Court after considering the judgment of the Hon'ble Apex Court and the Division Bench judgment of the Hon'ble High Court was pleased to hold that the punishment based upon a statement given a preliminary enquiry cannot be sustained. The Hon'ble High Court has observed as follows:

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...

22.The learned Government Advocate made strong reliance upon the judgment of the Hon'ble Apex Court reported in (2004) 4 SCC 245 [UNION OF INDIA AND OTHERS vs. JANARDHAN DEBANATH AND ANOTHER] and submitted that under Fundamental Rules 15 an order of transfer can be passed even in a case of misbehaviour or misconduct by the employee concerned. It is a well settled principle of law that a judgment will have to be applied to the facts of each case, in the said case the Hon'ble Apex Court was dealing with the case where based upon certain allegation an order of transfer was made by exercising the power under the Fundamental Rules. Therefore, the Hon'ble Supreme Court was considering the powers of the authorities under the said Rules. Moreover a reading of the said judgment would show that it was clearly observed that the question of misbehaviour can be gone into departmental proceedings whereas in the present case it has been clearly stated by the respondents that they have no intention to go with the departmental proceedings since they know very well that it is not possible to prove the factum of the alleged misconduct by the petitioner.

23.Moreover the interpretation of Fundamental Rules 15 is not in question in the present case



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since the power has been exercised by the first respondent under the Tamil Nadu Jail Subordinate Rules. Further a reading of the Fundamental Rules would show that the power has to be exercised by the Government whereas in the present case on hand the said power has been exercised under the Tamil Nadu Jail Subordinate Rules by the first respondent herein. In this connection, it is useful to refer the judgment of the Division Bench reported in 2009(3) CTC 97 [D.Sivakumar v. The Government of Tamil Nadu] wherein the Hon'ble Division Bench has observed as follows:

...
...

24. Similarly in the judgment reported in 2009 AIR SCW 942 [COMMISSIONER OF CENTRAL EXCISE, BANGALORE v. SRIKUMAR AGENCIES] the Hon'ble Supreme Court has observed as follows:

"4. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgements. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. v. Horton (1951 Apex Court 737 at p.761), Lord Mac Dermot observed:

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J. as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the



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great weight to be given to the language actually used by that most distinguished judge."

In *Home Office v. Dorset Yacht Co.* (1970(2) All ER 294) Lord Reid said, "Lord Atkin's speech.... is not to be treated as if it was a statute definition. It will required qualification in new circumstances." Megarry, J. in (1971) 1 WLR 1062 observed: One must not, of course, construe even a reserved judgment of Russell L.J. as if it were an Act of Parliament." And, in *Herrington v. British Railways Board* (1972(2) WLR 537) Lord Morris said:

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

5. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

The following words of Lord Denning in the matter of applying precedents have become locus classicus:

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

25. Therefore on a reading of the said judgments, this Court is of the opinion that the judgments relied upon by the learned Government



Advocate do not apply to the present case on hand.

26. Thus on a consideration of the facts and circumstances and also on a consideration of the legal issues involved, this Court is of the considered view that the impugned orders passed by the respondents are liable to be set aside. Accordingly they are set aside and the writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed."

20. According to the respondents, based on the discreet enquiry report the impugned transfer orders were passed. However, in the aforesaid letter, it is categorically stated that transfers made after preliminary enquiry should be followed up by a detailed investigation and disciplinary action instituted on allegations finally found to be substantiated. That apart, the respondents have not initiated disciplinary proceedings till the matter is taken up for hearing.

21. According to the learned counsel for the petitioners, the decision in the case of **Tamil Nadu Electricity Board** (supra) has not been placed before this Court in **Elumalai's** case (supra). On examining, it is seen that in **Tamil Nadu Electricity Board's** case (supra), the Honourable Division Bench of this Court has not gone into the issue as to whether the transfer order passed only based on the discreet enquiry report without providing any opportunity to the employee is sustainable. Further, the relevant rules or orders have not been placed in the aforesaid case on the side of the respondent / employee. According to the learned counsel for the petitioners, charges have been framed against the petitioner only after the matter has been taken up for hearing in order to fill up the lacuna and therefore, the action on the part of the respondents is a clear *mala fide* action and hence, the impugned transfer orders are punitive in nature. According to the learned counsel for the petitioners, in **Elumalai's** case (supra), this Court has elaborately decided the said issue and came to the conclusion that opportunity should be granted to the employee, if transfer order was passed based on the discreet enquiry report. In such circumstances, the decision in **Elumalai's** case (supra) would squarely apply to the case on hand.

22. At this juncture, it would be more useful to refer **Elumalai's** case (supra). In **Elumalai's** case (supra), there was a complaint by way of pseudonymous petition made to the first respondent therein alleging that in the Sub Jail, Tiruvallur, non vegetarian food, liquor and cell phone are allowed and the said complaint was enquired on 30.05.2009 at Sub Jail, Tiruvallur, in which the staff and the prisoners have stated that the petitioner



wanted to retain him at Sub Jail, Tiruvallur itself as Grade-I Warder and on his failure to do so he said that the others would be shunted out of the Sub Jail, Tiruvallur to more than 300 kilometres within three days. Therefore, based upon the said statement, it was concluded in the discreet enquiry that the pseudonymous petition must have been sent by the petitioner alone. However, it was decided by the respondents therein not to conduct any enquiry since it was not possible to prove the same. In such circumstances, the impugned orders were passed against the petitioner therein. The decisions in the case of **Somesh Tiwari** (supra) and **S. Sevugan vs. The Chief Education Officer [2006 (2) CTC 468]** were relied on by the petitioner therein for the proposition that order of transfer being punitive in nature cannot be sustained without affording an opportunity to him. After elaborately hearing the learned counsel on either side and taking into consideration the decisions cited by both sides, this Court opined that there is no dispute or quarrel on the settled proposition of law that a transfer which is administrative, made in public interest and being incidental to service cannot be challenged. Further, this Court was of the view that since the respondents have not followed the principles of natural justice by affording an opportunity to the petitioner therein and conducting an enquiry, the orders impugned therein were punitive in nature and therefore bad in law and accordingly, came to the conclusion that the impugned orders will have to be set aside. Further, it was held by this Court that even in an enquiry, a statement obtained in a preliminary enquiry prior to a fullfledged enquiry cannot be relied upon. Therefore, in such a case an order passed based upon such an enquiry cannot be sustained. Further, this Court took note of a decision in **T. Pitchai vs. Deputy Inspector General of Police, Tirunelveli Range, Tirunelveli and another [(2006) 2 MLJ 202]** wherein this Court, after considering the decisions of the Honourable Apex Court as well as the Honourable Division of this Court, has held that the punishment imposed on the basis of a statement given in a preliminary enquiry cannot be sustained. Considering the principles laid down by the Honourable Division Bench of this Court and the Honourable Supreme Court in the decisions cited supra, this Court came to the conclusion that the impugned orders were bad in law, since the respondents therein have violated the principles of natural justice by not affording an opportunity to the petitioner and not conducting any enquiry before passing the transfer orders, set aside the impugned transfers. Accordingly, this Court allowed the writ petitions and set aside the impugned transfer orders.

23. In **Somesh Tiwari's** case (supra), the Honourable Apex Court has held as follows:

"19. Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an



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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.

20. 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.

...

...

25. No vigilance enquiry was initiated against him. The order of transfer was passed on material which was not existent. The order, therefore, not only suffers from total non application of mind on the part of authorities of respondent No.1, but also suffers from malice in law.

26. The High Court while exercising its jurisdiction under Article 226 of the Constitution of India must consider the fact of each case. Mechanical application of the normal rule "no work no pay" may in a case of this nature, be found to be wholly unjust. No absolute proposition of law in this behalf can be laid down."

24. In **P.Karunakaran's** case (supra), the Honourable Division Bench of this Court has held as follows:

"13. Thus, it is crystal clear that on the date when the transfer order was issued, the suspension order was in force and therefore, there cannot be any doubt to hold that the transfer order, even though styled as an administrative measure, in fact came to be passed only on collateral purpose as a punitive measure. If the



contending that it was made as a punitive measure by raising various grounds, the Court can lift the veil to find out as to whether it was made on administrative grounds as stated in the transfer order or as a punitive measure as contended by the affected party..."

25. In **G.Prasad's** case (supra), the Honourable Division Bench has held as follows:

"23. In the instant case, it is to be seen that the facts and circumstances of the case, squarely fall within four corners of the Judgment dated 4.10.2013 rendered by the Division Bench of this Court, in W.P.No.12812 of 2013 in the matter of "P.Karunakaran versus The Union of India and others" wherein, the Division Bench has laid down the law after adverting to various case laws cited on either side. In para 33 of the order, the Division Bench concluded as follows:

"33. Thus, by considering all the facts and circumstances of this case and considering the admitted position that the transfer order came to be passed only in pursuant to the incident that took place on 14.12.2012, which undoubtedly causes some allegations against the petitioner for which disciplinary proceeding is already initiated, we are of the view that the order of transfer cannot be sustained and accordingly, the transfer order dated 21.1.2013 as well as the order of the Central Administrative Tribunal dated 9.4.2013 are liable to be set aside and the same are accordingly set aside. The writ petition is allowed. We make it clear that this order will not stand in the way of proceeding with the disciplinary proceedings initiated against the petitioner. Consequently, the connected M.Ps. are closed. No costs."

24. While so, we cannot lose sight of the fact that there were serious allegations against the petitioners of mis-appropriation of amounts due to the Railways. We were informed that one of the writ petitioners has also been issued with the charge sheet, subsequent to the order of transfer. In the circumstances, in the fitness of things, it is necessary that a direction be issued to the Railways to initiate and complete the disciplinary action against the petitioners while following the



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due process of law in terms of their Regulations and Railway Board orders. At the same time, if any disciplinary action is initiated and the process is continued against the petitioners, they shall extend their full cooperation to the Department for expediting the disciplinary action.

25. In the light of the above the impugned transfer orders dated 15.2.2016 and 22.12.2015 passed by the Railway Administration, are set aside together with the impugned common order dated 29.9.2016 passed by the 4th respondent Tribunal in O.A.Nos.687 and 1158 of 2016."

26. In **G.Chakkaravarthy's** case (supra), the Honourable Division Bench of this Court has held as follows:

"4.2. It is the specific case of the appellant that the impugned order dated 12.01.2019 came to be issued in the above background. The appellant also came forward with further materials in the form of an audio clipping of a conversation between a murder accused and one Mr.Murugan a friend of another Inspector working within the jurisdiction of Palayamkottai. From the conversation recorded, it was suggested by the appellant that the transfer order was not on account of any administrative reasons but passed purely as a punitive measure suspecting that the appellant had recovered the jewels from Mr.Rathinakumar but failed to hand it over to the complainant. The appellant challenged the order of transfer mainly on the ground that the same is punitive in nature. It was then contended that the impugned orders are liable to be quashed as it casts a stigma on the appellant. Stating that the order of transfer had been passed on a wrong premise, it was further submitted that the same cannot be sustained in view of non-observance of principles of natural justice.

...
...

10. It is well settled that transfer is an incident of service and transfer on account of administrative exigencies cannot be interfered with by Courts in exercise of judicial review unless the order of transfer is found to be mala fide."



27. Admittedly the respondents have passed the impugned transfer orders based on the discreet enquiry for the alleged incident took place on 22.04.2021. Further, it is to be noted that even though the incident alleged to have been taken place as early as on 22.04.2021, the impugned transfer orders were came to be passed only on 19.06.2021 and 01.07.2021 that too only based on the discreet enquiry report and not by way of any disciplinary proceedings. Further, it is to be noted that when the matter was taken up for hearing after being adjourned several times, by way of filing additional counter affidavit only on 29.09.2021, it was brought to the notice of this Court that the Jailor and the Superintendent of Prisons, Central Prison, Palayamkottai, have initiated disciplinary proceedings against the petitioners and other erring officials under Rule 17(b) of Tamil Civil Services (Discipline & Appeal) Rules on 27.09.2021, in the light of G.O.Ms.No.10, dated 07.01.1994 and the clarificatory letter dated 09.08.1994 and therefore, according to the respondents, charges have been framed against the petitioners and hence, the impugned transfer orders are not punitive in nature and malice cannot be attributed to the respondents. However, to be noted, in the original counter affidavit filed on 24.08.2021, it is stated that based on the discreet enquiry report alone, the impugned transfer orders have been passed. Therefore, it is evident that at the time of passing the impugned transfer orders, the petitioners were not afforded with any opportunity. Hence, the impugned transfer orders passed by the respondents are punitive in nature, without following the principles of natural justice. As discussed above, the charges are framed at a later point of time. Further, in Paragraph No.15 in Tamil Nadu Electricity Board's case (supra) the Honourable Division Bench has observed that we are not called upon to decide whether the transfers are against statutory rules or not, because no argument was advanced by the respondents on that aspect. But, in the present case, the Government Order as well as the clarification letter have been produced. Therefore, on this ground also, the decision in **Tamil Nadu Electricity Board's** case (supra) would not apply to the facts and circumstances of the present case. Further, the very same Prison Authority is the party in Elumalai's case (supra) and they have not preferred any appeal as against the decision in **Elumalai's** case (supra). In such circumstances, the decision in Elumalai's case (supra) would squarely apply to the case on hand.

28. In view of the above settled legal position, this Court is of the opinion that when transfers are effected after preliminary enquiry on the complaints / allegations, it should necessarily be followed up by a detailed investigation and disciplinary proceedings initiated on the allegations resultantly found to be substantiated. However, in the present case, *prima facie* it is found that disciplinary proceedings were initiated and charge memos were issued



only when the matter was taken up for hearing that too after the matter was being adjourned on several occasions, which is contrary to the aforesaid G.O.Ms.No.10, dated 07.01.1994 and the clarificatory letter dated 09.08.1994. Even on perusal of the impugned transfer orders, it is seen that the same were passed on administrative grounds, however, in the counter affidavit filed by the respondents, it is stated that based on the discreet enquiry report, the impugned transfer orders were passed. Further, according to the respondents, the impugned transfer orders were passed to avoid more complications in the prison administration. That apart, the respondents have not initiated disciplinary proceedings immediately after the incident had taken place and only in the month of September, 2021, by way of filing additional counter affidavit, it was brought to the notice of this Court that disciplinary proceedings have been initiated against the petitioner for the incident alleged to have been taken place in the month of April, 2021 and in the counter affidavit filed in the month of August, 2021, there is no whisper about the disciplinary proceedings against the petitioners and only after the matter was taken up for hearing, disciplinary proceedings were initiated and charge memos were issued to the petitioner. Hence, this Court comes to a conclusion that the impugned transfer orders are punitive in nature and there is violation of the principles of natural justice on the part of the respondents and therefore, the respondents have not followed the clarification order issued by the Government and the decision in the case of **Elumalai's** case (supra) would therefore squarely apply to the facts and circumstances of the present case. Hence, the respondents have violated the principles of natural justice as observed in the aforesaid decision. Hence, for all these reasons, the impugned transfer orders are liable to be set aside.

29. Before parting, this Court is of the opinion that there are various interpretations made by the parties for the definitions "administrative ground" and "punitive in nature". The Courts decide the issue as to whether the transfer is on administrative ground or it is punitive in nature on case-to-case basis depending upon the facts and circumstances of the case. Therefore, for giving more clarity to the definitions "administrative ground" and "punitive in nature", it is the right time for the Government to issue clarificatory guidelines in transfer matters, where allegations / complaints are pending against the employees by taking note of the aforesaid decisions of this Court as well as the Honourable Supreme Court.

30. In fine,

- (i) The writ petitions are allowed;
- (ii) The impugned transfer orders, dated 19.06.2021 and 01.07.2021, passed by the Superintendent of Prison, Central Prison, Palayamkottai, Tirunelveli, are quashed;



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- (iii) However, this order will not stand in the way of the respondents in passing fresh orders, if they are so advised, in the manner known to law;
- (iv) In view of the fact that the writ petitions are allowed and the impugned transfer orders are set aside, the observations made in this order shall not be influenced in the future course of action by both the parties.
- (v) It is made clear that this order will not stand in the way of the respondents to proceed with the charges framed against the petitioners in accordance with law.
- (vi) No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

krk

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 responsibility of the advocate/litigant concerned.

To:

- 1.The Director General of Police /
Inspector General of Prisons,
Department of Prison, Chennai-600 008.
- 2.The Deputy Inspector General of Prisons,
Department of Prisons,
Madurai Region / Chennai Region.
- 3.The Superintendent of Police,
Central Prison,
Palayamkottai, Tirunelveli District.
- 4.The Superintendent of Police,
Central Prison-1, Puzhal, Chennai.



W.P.(MD) Nos.10759, 11259, 11269, 11279 & 11298 of 2021

5.The Secretary to Government,
Personnel and Administrative Reforms Department,
Fort St.George, Chennai-600 009.

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6.The Director General of Police /
Director General of Prisons and
Correctional Services
Whannels Road, Egmore
Chennai-600 008

+4 CC to Mr.V.SASIKUMAR, Advocate SR.No. 33440 TO 33443

+1 CC to Mr. Special Government Pleader, SR.No. 33383

W.P. (MD) Nos.10759, 11259, 11269, 11279 & 11298 of 2021
and W.M.P. (MD) Nos.8375, 8378, 8793,
8798, 8808, 8822, 11615, 11616 11668 &
11669 of 2021
28.10.2021

PS (CO)

TR(30.11.2021) 24P 12C